§ 3801.1 General.

This part is issued in accordance with the regulations of the Secretary of Agriculture in §§1.1–1.23 of this title and Appendix A thereto, implementing the Freedom of Information Act (FOIA) (5 U.S.C. 552), and governs the availability of records of the World Agricultural Outlook Board (WAOB) to the public.

§ 3801.2 Public inspection, copying, and indexing.

5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying and that a current index of these materials be published quarterly or otherwise be made available. WAOB does not maintain any materials within the scope of these requirements.

§ 3801.3 Requests for records.

Requests for records of WAOB shall be made in accordance with §1.6 (a) and (b) of this title and addressed to: Economics Agencies FOIA Officer, Economics Management Staff, USDA, Room 4310, South Building, 12th and Independence Avenue SW., Washington, DC 20250. This official is delegated authority to make determinations regarding such requests in accordance with §1.3(a)(3) of this title.

§ 3801.4 Denials.

If the Economics Agencies FOIA Officer determines that a requested record is exempt from mandatory disclosure and that discretionary release would be improper, the Economics Agencies FOIA Officer shall give written notice of denial in accordance with §1.8(a) of this title.

§ 3801.5 Appeals.

Any person whose request is denied shall have the right to appeal such denial. Appeals shall be in accordance with §1.6(e) of this title and addressed to the Chairperson, World Agricultural Outlook Board, U.S. Department of Agriculture, Washington, DC 20250.

§ 3801.6 Requests for published data and information.

Information on published data, subscription rates, and all WAOB programs is available from the Chairperson, World Agricultural Outlook Board, U.S. Department of Agriculture, Washington, DC 20250.

CHAPTER XLI [RESERVED]
**CHAPTER XLII—RURAL BUSINESS-COOPERATIVE SERVICE AND RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE**

**EDITORIAL NOTE:** Nomenclature changes to chapter XLII appear at 61 FR 3782, Feb. 2, 1996.

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PART 4274—DIRECT AND INSURED LOANMAKING

Subparts A–C [Reserved]

Subpart D—Intermediary Relending Program (IRP)

Sec. 4274.301 Introduction.
(b) The purpose of the program is to alleviate poverty and increase economic activity and employment in rural communities, especially disadvantaged and remote communities, through financing targeted primarily towards smaller and emerging businesses, in partnership with other public and private resources, and in accordance with State and regional strategy based on identified community needs. This purpose is achieved through loans made to intermediaries that establish programs for the purpose of providing loans to ultimate recipients for business facilities and community developments in a rural area.

(c) Proposed intermediaries are required to identify any known relationship or association with a USDA Rural Development employee. Any processing or servicing Agency activity conducted pursuant to this subpart involving authorized assistance to United States Department of Agriculture (USDA) Rural Development employees, members of their families, close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter.

(d) Copies of all forms, regulations, and Agency procedures referenced in this subpart are available in the National Office or any Rural Development State Office.

§ 4274.302 Definitions and abbreviations.
(a) General definitions. The following definitions are applicable to the terms used in this subpart:
Agency. The Federal agency within the USDA with responsibility assigned by the Secretary of Agriculture to administer IRP. At the time of publication of this rule, that Agency was the Rural Business-Cooperative Service (RBS).

Agency IRP loan funds. Cash proceeds of a loan obtained from the Agency through IRP, including the portion of

rowers and other parties involved in making such loans. The provisions of this subpart supersede conflicting provisions of any other subpart. The servicing and liquidation of such loans will be in accordance with part 1951, subpart R, of this title.
an IRP revolving fund directly provided by the Agency IRP loan. Agency IRP loan funds are Federal funds.

Agricultural production or agriculture production. The cultivation, production, growing, raising, feeding, housing, breeding, hatching, or managing of crops, plants, animals, or birds, either for fiber, food for human consumption, or livestock feed.

Initial Agency IRP loan. The first IRP loan made by the Agency to an intermediary.

Intermediary. The entity requesting or receiving Agency IRP loan funds for establishing a revolving fund and relending to ultimate recipients.

IRP revolving fund. A group of assets, obtained through or related to an Agency IRP loan and recorded by the intermediary in a bookkeeping account or set of accounts and accounted for, along with related liabilities, revenues, and expenses, as an entity or enterprise separate from the intermediary’s other assets and financial activities.

Principals of intermediary. Members, officers, directors, and other individuals or entities directly involved in the operation and management (including setting policy) of an intermediary.

Processing office or officer. The processing office for an IRP application is the office within the Agency administrative organization with assigned authority and responsibility to process the application. The processing office is the primary contact for the proposed intermediary and maintains the official application case file. The processing officer for a loan is the person in charge of the processing office. The processing officer is responsible for ensuring that all regulations and Agency procedures are complied with in regard to loans under the office's jurisdiction.

Revolved funds. The cash portion of an IRP revolving fund that is not composed of Agency loan funds, including funds that are repayments of Agency IRP loans and including fees and interest collected on such loans. Revolved funds shall not be considered Federal funds.

Rural area. All territory of a State that is not within the outer boundary of any city having a population of 25,000 or more, according to the latest decennial census.

Servicing office or officer. The servicing office for an IRP loan is the office within the Agency administrative organization with assigned authority and responsibility to service the loan. The servicing officer is the primary contact for the borrower and maintains the official case file after the loan is closed. The servicing officer for a loan is the person in charge of the servicing office. The servicing officer is responsible for ensuring that all regulations and Agency procedures are complied with in regard to loans under the office’s jurisdiction.

State. Any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, 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.

Statewide Nonmetropolitan Median Household Income (SNMHI). Median household income of the State’s nonmetropolitan counties and portions of metropolitan counties outside of cities, towns or places of 50,000 or more population.

Subsequent IRP loan. An IRP loan from the Agency to an intermediary that has received one or more IRP loans previously.

Technical assistance. A function performed for the benefit of an ultimate recipient or proposed ultimate recipient, which is a problem solving activity. The Agency will determine whether a specific activity qualifies as technical assistance.

Ultimate recipient. An entity or individual that receives a loan from an intermediary’s IRP revolving fund.

Underrepresented group. U.S. citizens with identifiable common characteristics, that have not received IRP assistance or have received a lower percentage of total IRP dollars than the percentage they represent of the general population.

United States. The 50 States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, 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.

(b) Abbreviations. The following are applicable to this subpart:

B&I—Business and Industry
IRP—Intermediary Relending Program
OGC—Office of the General Counsel
OIG—Office of Inspector General
OMB—Office of Management and Budget
RBS—Rural Business-Cooperative Service, or any successor agency
RDLF—Rural Development Loan Fund
USDA—United States Department of Agriculture

§§ 4274.303–4274.306 [Reserved]

§ 4274.307 Eligibility requirements—Intermediary.

(a) The types of entities which may become intermediaries are:

(1) Private nonprofit corporations.

(2) Public agencies—Any State or local government, or any branch or agency of such government having authority to act on behalf of that government, borrow funds, and engage in activities eligible for funding under this subpart.

(3) Indian groups—Indian tribes on a Federal or State reservation or other federally recognized tribal groups.

(4) Cooperatives—Incorporated associations, at least 51 percent of whose members are rural residents, whose members have one vote each, and which conduct, for the mutual benefit of their members, such operations as producing, purchasing, marketing, processing, or other activities aimed at improving the income of their members as producers or their purchasing power as consumers.

(b) The intermediary must:

(1) Have the legal authority necessary for carrying out the proposed loan purposes and for obtaining, giving security for, and repaying the proposed loan.

(2) Have a proven record of successfully assisting rural business and industry, or, for intermediaries that propose to finance community development, a proven record of successfully assisting rural community development projects of the type planned.

(i) Except as provided in paragraph (b)(2)(ii) of this section, such record will include recent experience in loan making and servicing with loans that are similar in nature to those proposed for the IRP and a delinquency and loss rate acceptable to the Agency.

(ii) The Agency may approve an exception to the requirement for loan making and servicing experience provided:

(A) The proposed intermediary has a proven record of successfully assisting (other than through lending) rural business and industry or rural community development projects of the type planned; and

(B) The proposed intermediary will, before the loan is closed, bring individuals with loan making and servicing expertise into the operation of the IRP revolving fund.

(3) Have the services of a staff with loan making and servicing expertise acceptable to the Agency.

(4) Have capitalization acceptable to the Agency.

(c) No loans will be extended to an intermediary unless:

(1) There is adequate assurance of repayment of the loan based on the fiscal and managerial capabilities of the proposed intermediary.

(2) The loan is not otherwise available on reasonable (i.e., usual and customary) rates and terms from private sources or other Federal, State, or local programs.

(3) The amount of the loan, together with other funds available, is adequate to assure completion of the project or achieve the purposes for which the loan is made.

(d) At least 51 percent of the outstanding interest or membership in any nonpublic body intermediary must be composed of citizens of the United States or individuals who reside in the United States after being legally admitted for permanent residence.

(e) Any delinquent debt to the Federal Government by the intermediary or any principal of the intermediary shall cause the intermediary to be ineligible to receive any IRP loan. Agency loan funds may not be used to satisfy the debt.
§ 4274.308 Eligibility requirements—Ultimate recipients.

(a) Ultimate recipients may be individuals, public or private organizations, or other legal entities, with authority to incur the debt and carry out the purpose of the loan.

(b) To be eligible to receive loans from the IRP revolving loan fund, ultimate recipients;

(1) Must be citizens of the United States or reside in the United States after being legally admitted for permanent residence. In the case of an organization, at least 51 percent of the outstanding membership or ownership must be either citizens of the United States or residents of the United States after being legally admitted for permanent residence.

(2) Must be located in a rural area of a State.

(3) Must be unable to finance the proposed project from its own resources or through commercial credit or other Federal, State, or local programs at reasonable rates and terms.

(4) Must, along with its principal officers (including their immediate family), hold no legal or financial interest or influence in the intermediary. Also, the intermediary and its principal officers (including immediate family) must hold no legal or financial interest or influence in the ultimate recipient. However, this paragraph shall not prevent an intermediary that is organized as a cooperative from making a loan to one of its members.

(c) Any delinquent debt to the Federal Government by the ultimate recipient or any of its principals shall cause the proposed ultimate recipient to be ineligible to receive a loan from Agency IRP loan funds. Agency IRP loan funds may not be used to satisfy the delinquency.

§§ 4274.309–4274.313 [Reserved]

§ 4274.314 Loan purposes.

(a) Intermediaries. Agency IRP loan funds must be placed in the intermediary’s IRP revolving fund and used by the intermediary to provide direct loans to eligible ultimate recipients.

(b) Ultimate recipients. Loans from the intermediary to the ultimate recipient using the IRP revolving fund must be for community development projects, the establishment of new businesses, expansion of existing businesses, creation of employment opportunities, or saving existing jobs. Such loans may include, but are not limited to:

(1) Business and industrial acquisitions when the loan will keep the business from closing, prevent the loss of employment opportunities, or provide expanded job opportunities.

(2) Business construction, conversion, enlargement, repair, modernization, or development.

(3) Purchase and development of land, easements, rights-of-way, buildings, facilities, leases, or materials.

(4) Purchase of equipment, leasehold improvements, machinery, or supplies.

(5) Pollution control and abatement.

(6) Transportation services.

(7) Start-up operating costs and working capital.

(8) Interest (including interest on interim financing) during the period before the facility becomes income producing, but not to exceed 3 years.

(9) Feasibility studies.

(10) Debt refinancing.

(i) The intermediary is responsible for making prudent lending decisions based on sound underwriting principles when considering the restructuring of an ultimate recipient’s debt; and

(ii) Refinancing debts may be allowed only when it is determined by the intermediary that the project is viable and refinancing is necessary to create new or save existing jobs or create or continue a needed service; and

(iii) On any request for refinancing of existing secured loans, the intermediary is required, at a minimum, to obtain the previously held collateral as security for the loans and must not pay off a creditor in excess of the value of the collateral. Additional collateral will be required when the refinancing of unsecured loans is unavoidable to accomplish the necessary strengthening of the ultimate recipient’s position.

(11) Reasonable fees and charges only as specifically listed in this paragraph. Authorized fees include loan packaging fees, environmental data collection fees, management consultant fees, and
RBS and RUS, USDA § 4274.319

other fees for services rendered by professionals. Professionals are generally persons licensed by States or accreditation associations, such as engineers, architects, lawyers, accountants, and appraisers. The maximum amount of fee will be what is reasonable and customary in the community or region where the project is located. Any such fees are to be fully documented and justified.

(12) Hotels, motels, tourist homes, bed and breakfast establishments, convention centers, and other tourist and recreational facilities except as prohibited by §4274.319.

(13) Educational institutions.

(14) Revolving lines of credit: Provided:

(i) The portion of the intermediary’s total IRP revolving fund that is committed to or in use for revolving lines of credit will not exceed 25 percent at any time;

(ii) All ultimate recipients receiving revolving lines of credit will be required to reduce the outstanding balance of the revolving line of credit to zero at least one time each year;

(iii) All revolving lines of credit will be approved by the intermediary for a specific maximum amount and for a specific maximum time period, not to exceed two years;

(iv) The intermediary will provide a detailed description, which will be incorporated into the intermediary’s work plan and be subject to Agency approval, of how the revolving lines of credit will be operated and managed. The description will include evidence that the intermediary has an adequate system for:

(A) Interest calculations on varying balances, and

(B) Monitoring and control of the ultimate recipients’ cash, inventory, and accounts receivable; and

(v) If, at any time, the Agency determines that an intermediary’s operation of revolving lines of credit is causing excessive risk of loss for the intermediary or the Government, the Agency may terminate the intermediary’s authority to use the IRP revolving fund for revolving lines of credit. Such termination will be by written notice and will prevent the intermediary from approving any new lines of credit or extending any existing revolving lines of credit beyond the effective date of termination contained in the notice.

(15) Aquaculture-based rural small businesses.

[63 FR 6053, Feb. 6, 1998, as amended at 73 FR 54307, Sept. 19, 2008]

§§ 4274.315–4274.318 [Reserved]

§ 4274.319 Ineligible loan purposes.

Agency IRP loan funds may not be used for payment of the intermediary’s administrative costs or expenses. The IRP revolving fund may not be used for:

(a) Assistance in excess of what is needed to accomplish the purpose of the ultimate recipient’s project.

(b) Distribution or payment to the owner, partners, shareholders, or beneficiaries of the ultimate recipient or members of their families when such persons will retain any portion of their equity in the ultimate recipient.

(c) Charitable institutions, that would not have revenue from sales, fees, or stable revenue to support the operation and repay the loan, and fraternal organizations.

(d) Assistance to Federal government employees, active duty military personnel, employees of the intermediary, or any organization for which such persons are directors or officers or have 20 percent or more ownership.

(e) A loan to an ultimate recipient which has an application pending with or a loan outstanding from another intermediary involving an IRP revolving fund if the total IRP loans would exceed the limits established in §4274.331(b).

(f) Agricultural production.

(g) The transfer of ownership unless the loan will keep the business from closing, or prevent the loss of employment opportunities in the area, or provide expanded job opportunities.

(h) Community antenna television services or facilities.

(i) Any illegal activity.

(j) Any project that is in violation of either a Federal, State, or local environmental protection law or regulation or an enforceable land use restriction unless the assistance given will result in curing or removing the violation.
§ 4274.320 Loan terms.

(a) No loan to an intermediary shall be extended for a period exceeding 30 years. Interest and principal payments will be scheduled at least annually. The initial principal payment may be deferred (during the period before the facility becomes income producing) by the Agency, but not more than 3 years.

(b) Loans made by an intermediary to an ultimate recipient from the IRP revolving fund will be scheduled for repayment over a term negotiated by the intermediary and ultimate recipient. The term must be reasonable and prudent considering the purpose of the loan, expected repayment ability of the ultimate recipient, and the useful life of collateral, and must be within any limits established by the intermediary’s work plan.

§§ 4274.321–4274.324 [Reserved]

§ 4274.325 Interest rates.

(a) Loans made by the Agency pursuant to this subpart shall bear interest at a fixed rate of 1 percent per annum over the term of the loan.

(b) Interest rates charged by intermediaries to ultimate recipients on loans from the IRP revolving fund shall be negotiated by the intermediary and ultimate recipient. The rate must be within limits established by the intermediary’s work plan approved by the Agency. The rate should normally be the lowest rate sufficient to cover the loan’s proportional share of the IRP revolving fund’s debt service costs, reserve for bad debts, and administrative costs.

§ 4274.326 Security.

(a) Intermediaries. Security for all loans to intermediaries must be such that the repayment of the loan is reasonably assured, when considered along with the intermediary’s financial condition, work plan, and management ability. It is the responsibility of the intermediary to make loans to ultimate recipients in such a manner that will fully protect the interests of the intermediary and the Government. (1) Security for such loans may include, but is not limited to:

(i) Any realty, personalty, or intangible capable of being mortgaged, pledged, or otherwise encumbered by the intermediary in favor of the Agency; and

(ii) Any realty, personalty, or intangible capable of being mortgaged, pledged, or otherwise encumbered by an ultimate recipient in favor of the Agency.

(2) Initial security will consist of a pledge by the intermediary of all assets now in or hereafter placed in the IRP revolving fund, including cash and investments, notes receivable from ultimate recipients, and the intermediary’s security interest in collateral pledged by ultimate recipients. Except for good cause shown, the Agency will not obtain assignments of specific assets at the time a loan is made to an intermediary or ultimate recipient. The intermediary will covenant that, in the event the intermediary’s financial condition deteriorates or the intermediary takes action detrimental to prudent fund operation or fails to take action required of a prudent lender, the intermediary will provide additional security, execute any additional documents, and undertake any reasonable acts the Agency may request to protect the Agency’s interest or to perfect a security interest in any asset, including physical delivery of assets and specific assignments to the Agency. All debt instruments and collateral documents used by an intermediary in connection with loans to ultimate recipients must be assignable.

(3) In addition to normal security documents, a first lien interest in the intermediary’s revolving fund account will be accomplished by a control agreement satisfactory to RBS. The control agreement does not have to require RBS signature for withdrawals. The depository bank shall waive its offset and recoupment rights against the...
depository account to RBS and subordinate any liens it may have against the IRP depository bank account. The use of Form RD 402-1, “Deposit Agreement,” or similar form developed by the State Regional Office of the General Counsel is acceptable.

(b) **Ultimate recipients.** Security for a loan from an intermediary’s IRP revolving fund to an ultimate recipient will be negotiated between the intermediary and ultimate recipient, within the general security policies established by the intermediary and approved by the Agency.

[(63 FR 6053, Feb. 6, 1998, as amended at 70 FR 38572, July 5, 2005)]

§§ 4274.327–4274.330 [Reserved]

§ 4274.331 Loan limits.

(a) **Intermediary.** (1) No loan to an intermediary will exceed the maximum amount the intermediary can reasonably be expected to lend to eligible ultimate recipients, in an effective and sound manner, within 1 year after loan closing.

(2) The initial Agency IRP loan as defined in §4274.302(a) will not exceed $2 million.

(3) Intermediaries that have received one or more IRP loans may apply for and be considered for subsequent IRP loans provided:

(i) At least 80 percent of each of an intermediary’s IRP loans, except those earmarked for special purposes, must have been disbursed to eligible ultimate recipients or the subsequent loan will serve a geographic area not included in an area currently served.

(ii) The intermediary is promptly repaying all collections from loans made from its IRP revolving fund in excess of what is needed for required debt service, reasonable administrative costs approved by the Agency, and a reasonable reserve for debt service and uncollectible accounts;

(iii) The outstanding loans of the intermediary’s IRP revolving fund are generally sound; and

(iv) The intermediary is in compliance with all applicable regulations and its loan agreements with the Agency.

(4) Subsequent loans will not exceed $1 million each and not more than one loan will be approved by the Agency for an intermediary in any single fiscal year unless the request is from an IRP earmark.

(5) Total outstanding IRP indebtedness of an intermediary to the Agency will not exceed $15 million at any time.

(b) **Ultimate recipients.** Loans from intermediaries to ultimate recipients using the IRP revolving fund must not exceed the lesser of:

(1) $250,000; or

(2) Seventy five percent of the total cost of the ultimate recipient’s project for which the loan is being made.

(c) **Portfolio.** No more than 25 percent of an IRP loan approved may be used for loans to ultimate recipients that exceed $150,000. This limit does not apply to revolved funds.

[(63 FR 6053, Feb. 6, 1998, as amended at 70 FR 38573, July 5, 2005)]

§ 4274.332 Post award requirements.

(a) **Applicability.** Intermediaries receiving loans under this program shall be governed by these regulations, the loan agreement, the approved work plan, security interests, and any other conditions which the Agency may impose in making a loan. Whenever this subpart imposes a requirement on loans made from the “IRP revolving fund,” such requirement shall apply to all loans made by an intermediary to an ultimate recipient from the intermediary’s IRP revolving fund for as long as any portion of the intermediary’s IRP loan from the Agency remains unpaid. Whenever this subpart imposes a requirement on loans made by intermediaries from “Agency IRP loan funds,” without specific reference to the IRP revolving fund, such requirement shall apply only to loans made by an intermediary using Agency IRP loan funds, and will not apply to loans made from revolved funds.

(b) **Maintenance of IRP revolving fund.** For as long as any part of an IRP loan to an intermediary remains unpaid, the intermediary must maintain the IRP revolving fund. All Agency IRP loan funds received by an intermediary
must be deposited into an IRP revolving fund. The intermediary may transfer additional assets into the IRP revolving fund. All cash of the IRP revolving fund shall be deposited in a separate bank account or accounts. No other funds of the intermediary will be commingled with such money. All moneys deposited in such bank account or accounts shall be money of the IRP revolving fund. Loans to ultimate recipients are advanced from the IRP revolving fund. The receivables created by making loans to ultimate recipients, the intermediary’s security interest in collateral pledged by ultimate recipients, collections on the receivables, interest, fees, and any other income or assets derived from the operation of the IRP revolving fund are a part of the IRP revolving fund.

(1) The portion of the IRP revolving fund that consists of Agency IRP loan funds, on a last-in-first-out basis, may only be used for making loans in accordance with §4274.314 of this subpart. The portion of the IRP revolving fund which consists of revolving funds may be used for debt service, reasonable administrative costs, or reserves in accordance with this section, or for making additional loans.

(2) The intermediary must submit an annual budget of proposed administrative costs for Agency approval. The amount removed from the IRP revolving fund for administrative costs in any year must be reasonable, must not exceed the actual cost of operating the IRP revolving fund, including loan servicing and providing technical assistance, and must not exceed the amount approved by the Agency in the intermediary’s annual budget.

(3) A reasonable amount of revolved funds must be used to create a reserve for bad debts. Reserves must be accumulated over a period of years. The total amount should not exceed maximum expected losses, considering the quality of the intermediary’s portfolio of loans. Unless the intermediary provides loss and delinquency records that, in the opinion of the Agency, justifies different amounts, a reserve for bad debts of 6 percent of outstanding loans must be accumulated over 3 years and then maintained.

(4) Any cash in the IRP revolving fund from any source that is not needed for debt service, approved administrative costs, or reasonable reserves must be available for additional loans to ultimate recipients.

(5) All reserves and other cash in the IRP revolving loan fund not immediately needed for loans to ultimate recipients or other authorized uses will be deposited in accounts in banks or other financial institutions. Such accounts will be fully covered by Federal deposit insurance or fully collateralized with U.S. Government obligations, and must be interest bearing. Any interest earned thereon remains a part of the IRP revolving fund.

(6) If an intermediary receives more than one IRP loan, it need not establish and maintain a separate IRP revolving loan fund for each loan; it may combine them and maintain only one IRP revolving fund, unless the Agency requires separate IRP revolving funds because there are significant differences in the loan purposes, work plans, loan agreements, or requirements for the loans. The Agency may allow loans with different requirements to be combined into one IRP revolving fund if the intermediary agrees in writing to operate the combined revolving funds in accordance with the most stringent requirements as required by the Agency.

§§ 4274.333–4274.336 [Reserved]

§ 4274.337 Other regulatory requirements.

(a) Intergovernmental consultation. The IRP is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. The approval of a loan to an intermediary will be the subject of intergovernmental consultation. For each ultimate recipient to be assisted with a loan from Agency IRP loan funds and for which the State in which the ultimate recipient is to be located has elected to review the program under their intergovernmental review process, the State Single Point of Contact must be notified. Notification, in the form of a project description, must be initiated by the intermediary or the ultimate recipient. Any
comments from the State must be included with the intermediary’s request to use the Agency loan funds for the ultimate recipient. Prior to the Agency’s decision on the request, compliance with the requirements of intergovernmental consultation must be demonstrated for each ultimate recipient. These requirements are set forth in U.S. Department of Agriculture regulations 7 CFR part 3015, subpart V, and RD Instruction 1970–I, ‘Intergovernmental Review,’ available in any Agency office or on the Agency’s Web site.

(b) Environmental requirements. (1) Unless specifically modified by this section, the requirements of part 1940, subpart G, of this title apply to this subpart. Intermediaries and ultimate recipients must consider the potential environmental impacts of their projects at the earliest planning stages and develop plans to minimize the potential to adversely impact the environment. Both the intermediaries and the ultimate recipients must cooperate and furnish such information and assistance as the Agency needs to make any of its environmental determinations.

(2) For each application for an initial loan to an intermediary, the Agency will review the application, supporting materials, and any environmental information required from the intermediary and complete a Class II environmental assessment. This assessment will focus on the potential cumulative impacts of the projects as well as any environmental concerns or problems that are associated with individual projects that can be identified at this time. Neither the completion of the environmental assessment nor the approval of the application is an Agency commitment to the use of loan funds for a specific project; therefore, no public notification requirements for a Class II assessment will apply to the application. An application for a subsequent loan to an intermediary may be considered a categorical exclusion for environmental review, rather than a Class II action, provided the service area, eligibility requirements, and eligible purposes for loans to ultimate recipients will be the same for the subsequent loan as were considered in the previous environmental assessment, and the purpose of the loan is not environmentally controversial.

(3) For each proposed loan from an intermediary to an ultimate recipient using Agency IRP loan funds, the Agency will complete the environmental review required by part 1940, subpart G, of this title including public notification requirements. The results of this review will be used by the Agency in making its decision on concurrence in the proposed loan. The Agency will prepare an Environmental Impact Statement for any application for a loan from Agency IRP loan funds determined to have a significant effect on the quality of the human environment.

(c) Equal opportunity and nondiscrimination requirements. (1) In accordance with title V of Pub. L. 93–495, the Equal Credit Opportunity Act, and section 504 of the Rehabilitation Act for Federally Conducted Programs and Activities, neither the intermediary nor the Agency will discriminate against any employee, intermediary, or proposed ultimate recipient on the basis of sex, marital status, race, color, religion, national origin, age, physical or mental disability (provided the proposed intermediary or proposed ultimate recipient has the capacity to contract), because all or part of the proposed intermediary’s or proposed ultimate recipient’s income is derived from public assistance of any kind, or because the proposed intermediary or proposed ultimate recipient has in good faith exercised any right under the Consumer Credit Protection Act, with respect to any aspect of a credit transaction anytime Agency loan funds are involved.

(2) The regulations contained in subpart E of part 1901 of this title apply to this program.

(3) The Administrator will assure that equal opportunity and nondiscrimination requirements are met in accordance with the Equal Credit Opportunity Act, title VI of the Civil Rights Act of 1964, “Nondiscrimination in Federally Assisted Programs,” 42 U.S.C. 2000d–4, Section 504 of the Rehabilitation Act for Federally Conducted Programs and Activities, the Age Discrimination Act of 1975, and the Americans With Disabilities Act.
§ 4274.338 Loan agreements between the Agency and the intermediary.

A loan agreement or a supplement to a previous loan agreement must be executed by the intermediary and the Agency at loan closing for each loan. The loan agreement will be prepared by the Agency and reviewed by the intermediary prior to loan closing.

(a) The loan agreement will, as a minimum, set out:

(1) The amount of the loan;
(2) The interest rate;
(3) The term and repayment schedule;

(b) The provisions for late charges. The intermediary shall pay a late charge of 4 percent of the payment due if payment is not received within 15 calendar days following the due date. The late charge shall be considered unpaid if not received within 30 calendar days of the missed due date for which it was imposed. Any unpaid late charge shall be added to principal and be due as an extra payment at the end of the term. Acceptance of a late charge by the Agency does not constitute a waiver of default;

(c) The disbursement procedure. Disbursement of loan funds by the Agency to the intermediary shall take place after the loan agreement and promissory note are executed, and any other conditions precedent to disbursement of funds are fully satisfied. For purposes of computing interest, the date of each draw down shall constitute the date the funds are advanced under the loan agreement;

(i) The intermediary may initially draw up to 25 percent of the loan funds or, the intermediary must have at least one ultimate recipient loan application ready to close. Upon requesting a disbursement, the intermediary must provide documentation showing that its equity contribution has been deposited into the IRP revolving loan fund account. The initial draw must be deposited in an interest bearing account in accordance with § 4274.332(b)(5) until needed and must be used for loans to ultimate recipients before any additional Agency IRP loan funds may be drawn by the intermediary.

(ii) After the initial draw of funds, an intermediary may draw down only such funds as are necessary to cover a 30-day period in implementing its approved work plan. Advances must be requested by the intermediary in writing;

(d) The provisions regarding default. On the occurrence of any event of default, the Agency may declare all or any portion of the debt and interest to be immediately due and payable and may proceed to enforce its rights under the loan agreement or any other instruments securing or relating to the loan and in accordance with the applicable law and regulations. Any of the following may be regarded as an "event of
default” in the sole discretion of the Agency:

(i) Failure of the intermediary to carry out the specific activities in its loan application as approved by the Agency or comply with the loan terms and conditions of the loan agreement, any applicable Federal or State laws, or with such USDA or Agency regulations as may become applicable;

(ii) Failure of the intermediary to pay within 15 calendar days of its due date any installment of principal or interest on its promissory note to the Agency;

(iii) The occurrence of:

(A) The intermediary becoming insolvent, or ceasing, being unable, or admitting in writing its inability to pay its debts as they mature, or making a general assignment for the benefit of, or entering into any composition or arrangement with creditors, or;

(B) Proceedings for the appointment of a receiver, trustee, or liquidator of the intermediary, or of a substantial part of its assets, being authorized or instituted by or against it;

(iv) Submission or making of any report, statement, warranty, or representation by the intermediary or agent on its behalf to USDA or the Agency in connection with the financial assistance awarded hereunder which is false, incomplete, or incorrect in any material respect; or

(v) Failure of the intermediary to remedy any material adverse change in its financial or other condition (such as the representational character of its board of directors or policymaking body) arising since the date of the Agency’s award of assistance hereunder which is false, incomplete, or incorrect in any material respect; or

(7) The insurance requirements. (i) Hazard insurance with a standard mortgage clause naming the intermediary as beneficiary will be required by the intermediary on every ultimate recipient’s project funded from the IRP revolving fund in an amount that is at least the lesser of the depreciated replacement value of the property being insured or the amount of the loan. Hazard insurance includes fire, windstorm, lightning, hail, business interruption, explosion, riot, civil commotion, aircraft, vehicle, marine, smoke, builder’s risk, public liability, property damage, flood or mudslide, or any other hazard insurance that may be required to protect the security. The intermediary’s interest in the insurance will be assigned to the Agency, upon the Agency’s request, in the event of default by the intermediary.

(ii) Ordinarily, life insurance, which may be decreasing term insurance, is required for the principals and key employees of the ultimate recipient funded from the IRP revolving fund and will be assigned or pledged to the intermediary and subsequently, in the event of request by the Agency following default by the intermediary, to the Agency. A schedule of life insurance available for the benefit of the loan will be included as part of the application.

(iii) Workmen’s compensation insurance on ultimate recipients is required in accordance with the State law.

(iv) Flood insurance. The intermediary is responsible for determining if an ultimate recipient funded from the IRP revolving fund is located in a special flood or mudslide hazard area. If the ultimate recipient is in a flood or mudslide area, then flood or mudslide insurance must be provided in accordance with subpart B of part 1806 of this chapter.

(v) Intermediaries will provide fidelity bond coverage for all persons who have access to intermediary funds. Coverage may be provided either for all individual positions or persons, or through “blanket” coverage providing protection for all appropriate employees and officials. The Agency may also require the intermediary to carry other appropriate insurance, such as public liability, workers compensation, and property damage.

(A) The amount of fidelity bond coverage required by the Agency will normally approximate the total annual debt service requirements for the Agency loans;

(B) Other types of coverage may be considered acceptable if it is determined by the Agency that they fulfill essentially the same purpose as a fidelity bond;

(C) Intermediaries must provide evidence of adequate fidelity bond and other appropriate insurance coverage by loan closing. Adequate coverage in
accordance with this section must then be maintained for the life of the loan. It is the responsibility of the intermediary to assure and provide evidence that adequate coverage is maintained. This may consist of a listing of policies and coverage amounts in reports required by paragraph (b)(4) of this section or other documentation.

(b) The intermediary will agree in the loan agreement:

(1) Not to make any changes in the intermediary’s articles of incorporation, charter, or by-laws without the concurrence of the Agency;

(2) Not to make a loan commitment to an ultimate recipient to be funded from Agency IRP loan funds without first receiving the Agency’s written concurrence;

(3) To maintain a separate ledger and segregated account for the IRP revolving fund;

(4) To Agency reporting requirements by providing:

(i) An annual audit;

(A) Dates of audit report period need not necessarily coincide with other reports on the IRP. Audit reports shall be due 90 days following the audit period. Audits must cover all of the intermediary’s activities. Audits will be performed by an independent certified public accountant. An acceptable audit will be performed in accordance with Generally Accepted Government Auditing Standards and include such tests of the accounting records as the auditor considers necessary in order to express an opinion on the financial condition of the intermediary. The Agency does not require an unqualified audit opinion as a result of the audit. Compilations or reviews do not satisfy the audit requirement;

(B) It is not intended that audits required by this subpart be separate and apart from audits performed in accordance with State and local laws or for other purposes. To the extent feasible, the audit work should be done in connection with these audits. Intermediaries covered by OMB Circular A-133 should submit audits made in accordance with that circular;

(ii) Quarterly or semiannual reports (due 30 days after the end of the period);

(A) Reports will be required quarterly during the first year after loan closing and, if all loan funds are not utilized during the first year, quarterly reports will be continued until at least 90 percent of the Agency IRP loan funds have been advanced to ultimate recipients. Thereafter, reports will be required semiannually. Also, the Agency may require quarterly reports if the intermediary becomes delinquent in repayment of its loan or otherwise fails to fully comply with the provisions of its work plan or Loan Agreement, or the Agency determines that the intermediary’s IRP revolving fund is not adequately protected by the current sound worth and paying capacity of the ultimate recipients.

(B) These reports shall contain information only on the IRP revolving loan fund, or if other funds are included, the IRP loan program portion shall be segregated from the others; and in the case where the intermediary has more than one IRP revolving fund from the Agency a separate report shall be made for each of the IRP revolving funds.

(C) The reports will include, on a form provided by the Agency, information on the intermediary’s lending activity, income and expenses, financial condition, and a summary of names and characteristics of the ultimate recipients the intermediary has financed.

(iii) Annual proposed budget for the following year; and

(iv) Other reports as the Agency may require from time to time.

(5) Before the first relending of Agency funds to an ultimate recipient, to obtain written Agency approval of:

(i) All forms to be used for relending purposes, including application forms, loan agreements, promissory notes, and security instruments;

(ii) Intermediary’s policy with regard to the amount and form of security to be required;

(6) To obtain written approval of the Agency before making any significant changes in forms, security policy, or the work plan. The servicing officer
may approve changes in forms, security policy, or work plans at any time upon a written request from the intermediary and determination by the Agency that the change will not jeopardize repayment of the loan or violate any requirement of this subpart or other Agency regulations. The intermediary must comply with the work plan approved by the Agency so long as any portion of the intermediary’s IRP loan is outstanding;

(7) To secure the indebtedness by pledging the IRP revolving fund, including its portfolio of investments derived from the proceeds of the loan award, and pledging its real and personal property and other rights and interests as the Agency may require;

(8) In the event the intermediary’s financial condition deteriorates or the intermediary takes action detrimental to prudent fund operation or fails to take action required of a prudent lender, to provide additional security, execute any additional documents, and undertake any reasonable acts the Agency may request, to protect the agency’s interest or to perfect a security interest in any assets, including physical delivery of assets and specific assignments; and

(9) That if any part of the loan has not been used in accordance with the intermediary’s work plan by a date three years from the date of the loan agreement, the Agency may cancel the approval of any funds not yet delivered to the intermediary and the intermediary will return, as an extra payment on the loan, any funds delivered to the intermediary that have not been used by the intermediary in accordance with the work plan. The Agency, at its sole discretion, may allow the intermediary additional time to use the loan funds by delaying cancellation of the funds by not more than 3 additional years. If any loan funds have not been used by 6 years from the date of the loan agreement, the approval will be canceled of any funds that have not been delivered to the intermediary and the intermediary will return, as an extra payment on the loan, any funds it has received and not used in accordance with the work plan. In accordance with the Intermediary Relending Program promissory note, regular loan payments will be based on the amount of funds actually drawn by the intermediary.


§§ 4274.339–4274.342 [Reserved]

§ 4274.343 Application.

(a) The application will consist of:

(1) An application form provided by the Agency;

(2) A written work plan and other evidence the Agency requires to demonstrate the feasibility of the intermediary’s program to meet the objectives of this program. The plan must, at a minimum:

(i) Document the intermediary’s ability to administer IRP in accordance with the provisions of this subpart. In order to adequately demonstrate the ability to administer the program, the intermediary must provide a complete listing of all personnel responsible for administering this program along with a statement of their qualifications and experience. The personnel may be either members or employees of the intermediary’s organization or contract personnel hired for this purpose. If the personnel are to be contracted for, the contract between the intermediary and the entity providing such service will be submitted for Agency review, and the terms of the contract and its duration must be sufficient to adequately service the Agency loan through to its ultimate conclusion. If the Agency determines the personnel lack the necessary expertise to administer the program, the loan request will not be approved;

(ii) Document the intermediary’s ability to commit financial resources under the control of the intermediary to the establishment of IRP. This should include a statement of the sources of non-Agency funds for administration of the intermediary’s operations and financial assistance for projects;

(iii) Demonstrate a need for loan funds. As a minimum, the intermediary should identify a sufficient number of proposed and known ultimate recipients it has on hand to justify Agency funding of its loan request, or include
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well developed targeting criteria for ultimate recipients consistent with the intermediary’s mission and strategy for IRP, along with supporting statistical or narrative evidence that such prospective recipients exist in sufficient numbers to justify Agency funding of the loan request;

(iv) Include a list of proposed fees and other charges it will assess the ultimate recipients;

(v) Demonstrate to Agency satisfaction that the intermediary has secured commitments of significant financial support from public agencies and private organizations;

(vi) Provide evidence to Agency satisfaction that the intermediary has a proven record of obtaining private or philanthropic funds for the operation of similar programs to IRP;

(vii) Include the intermediary’s plan (specific loan purposes) for relending the loan funds. The plan must be of sufficient detail to provide the Agency with a complete understanding of what the intermediary will accomplish by lending the funds to the ultimate recipient and the complete mechanics of how the funds will get from the intermediary to the ultimate recipient. The service area, eligibility criteria, loan purposes, fees, rates, terms, collateral requirements, limits, priorities, application process, method of disposition of the funds to the ultimate recipient, monitoring of the ultimate recipient’s accomplishments, and reporting requirements by the ultimate recipient’s management are some of the items that must be addressed by the intermediary’s relending plan;

(viii) Provide a set of goals, strategies, and anticipated outcomes for the intermediary’s program. Outcomes should be expressed in quantitative or observable terms such as jobs created for low income area residents or self empowerment opportunities funded, and should relate to the purpose of IRP (see §4274.301(b)); and

(ix) Provide specific information as to whether and how the intermediary will ensure that technical assistance is made available to ultimate recipients and potential ultimate recipients. Describe the qualifications of the technical assistance providers, the nature of technical assistance that will be available, and expected and committed sources of funding for technical assistance. If other than the intermediary itself, describe the organizations providing such assistance and the arrangements between such organizations and the intermediary.

(3) Environmental information on a form provided by the Agency for all projects positively identified as proposed ultimate recipient loans that are Class I or Class II actions under subpart G of part 1940 of this title;

(4) Comments from the State Single Point of Contact, if the State has elected to review the program under Executive Order 12372;

(5) A pro forma balance sheet at start-up and projected balance sheets for at least 3 additional years; financial statements for the last 3 years, or from inception of the operations of the intermediary if less than 3 years; and projected cash flow and earnings statements for at least 3 years supported by a list of assumptions showing the basis for the projections. The projected earnings statement and balance sheet must include one set of projections that shows the IRP revolving fund only and a separate set of projections that shows the proposed intermediary organization’s total operations. Also, if principal repayment on the IRP loan will not be scheduled during the first 3 years, the projections for the IRP revolving fund must extend to include a year with a full annual installment on the IRP loan;

(6) A written agreement of the intermediary to the Agency audit requirements;

(7) An agreement on a form provided by the Agency assuring compliance with Title VI of the Civil Rights Act of 1964;

(8) Complete organizational documents, including evidence of authority to conduct the proposed activities;

(9) Evidence that the loan is not available at reasonable rates and terms from private sources or other Federal, State, or local programs;

(10) Latest audit report, if available;

(11) A form provided by the Agency in which the applicant certifies its understanding of the Federal collection policies for consumer or commercial debts;
(12) A Department of Agriculture form containing a certification regarding debarment, suspension, and other responsibility matters for primary covered transactions; and
(13) A statement on a form provided by the Agency regarding lobbying, as required by 7 CFR part 3018.

(b) Applications from intermediaries that already have an active IRP loan may be streamlined as follows:
(1) The requirements of paragraphs (a)(6), (a)(8), and (a)(10) of this section may be omitted;
(2) A statement that the new loan would be operated in accordance with the work plan on file for the previous loan may be submitted in lieu of a new work plan; and
(3) The financial information required by paragraph (a)(5) of this section may be limited to projections for the proposed new IRP revolving loan fund.

§ 4274.344 Filing and processing applications for loans.

(a) Intermediaries' contact. Intermediaries desiring assistance under this subpart may file applications with the state office for the state in which the intermediary’s headquarters is located. Intermediaries headquartered in the District of Columbia may file the application with the National Office, Rural Business-Cooperative Service, USDA, Specialty Lenders Division, STOP 1521, 1400 Independence Avenue SW, Washington, DC 20250–1521.

(b) Filing applications. Intermediaries must file the complete application, in one package. Applications received by the Agency will be reviewed and ranked quarterly and funded in the order of priority ranking. The Agency will retain unsuccessful applications for consideration in subsequent reviews, through a total of four quarterly reviews.

(c) Loan priorities. A point system will be used to determine an eligible applicant’s priority for available loan funds. Points will be allowed only for factors indicated by well documented, reasonable plans which, in the opinion of the Agency, provide assurance that the items have a high probability of being accomplished. The points awarded will be as specified in paragraphs (c)(1) through (c)(6) of this section. If an application does not fit one of the categories listed, it receives no points for that paragraph or subparagraph.

(1) Other funds. Points allowed under this paragraph are to be based on documented successful history or written evidence that the funds are available.

(i) The intermediary will obtain non-Federal loan or grant funds to pay part of the cost of the ultimate recipients’ projects. The amount of funds from other sources will average:
(A) At least 10% but less than 25% of the total project cost—5 points;
(B) At least 25% but less than 50% of the total project cost—10 points; or
(C) 50% or more of the total project cost—15 points.

(ii) The intermediary will provide loans to ultimate recipients from its project contribution funds to pay part of the costs of ultimate recipient projects. Project contribution funds must be separate and distinct from any loan or grant dollars provided to the intermediary under the IRP, as well as the intermediary’s equity contribution. When evaluating an application for initial or supplemental funding, the Agency will consider the level of the applicant’s project contribution and award points as follows:
(A) At least 10% but less than 25% of the total project costs—5 points;
(B) At least 25% but less than 50% of total project costs—10 points; or
(C) 50% or more of total project costs—15 points.

(2) Employment. For computations under this paragraph, income data should be from the latest decennial census of the United States, updated according to changes in the consumer price index. The poverty line used will be as defined in section 673 (2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)). Unemployment data used will be that published by the Bureau of Labor Statistics, U.S. Department of Labor.

(i) The median household income in the service area of the proposed intermediary equals the following percentage of the poverty line for a family of four:
(A) At least 150% but not more than 175%—5 points;
(B) At least 125% but less than 150%—10 points; or
(C) Below 125%—15 points.

(ii) The following percentage of the loans the intermediary makes from Agency IRP loan funds will be in counties with median household income below 80 percent of the statewide non-metropolitan median household income. (To receive priority points under this category, the intermediary must provide a list of counties in the service area that have qualifying income):
(A) At least 50% but less than 75%—5 points;
(B) At least 75% but less than 100%—10 points; or
(C) 100%—15 points.

(iii) The unemployment rate in the intermediary’s service area equals the following percentage of the national unemployment rate:
(A) At least 100% but less than 125%—5 points;
(B) At least 125% but less than 150%—10 points; or
(C) 150% or more—15 points.

(iv) The intermediary will require, as a condition of eligibility for a loan to an ultimate recipient from Agency IRP loan funds, that the ultimate recipient certify in writing that it will employ the following percentage of its workforce from members of families with income below the poverty line:
(A) At least 10% but less than 20%—5 points;
(B) At least 20% but less than 30% of the workforce—10 points; or
(C) 30% or more—15 points.

(v) The intermediary has a demonstrated record of providing assistance to members of underrepresented groups, has a realistic plan for targeting loans to members of underrepresented groups, and, based on the intermediary’s record and plans, it is expected that the following percentages of its loans made from Agency IRP loan funds will be made to entities owned by members of underrepresented groups:
(A) At least 10% but less than 20%—5 points;
(B) At least 20% but less than 30%—10 points; or
(C) 30% or more—15 points.

(vi) The population of the service area according to the most recent decennial census was lower than that recorded by the previous decennial census by the following percentage:
(A) At least 10 percent but less than 20 percent—5 points;
(B) At least 20 percent but less than 30 percent—10 points; or
(C) 30 percent or more—15 points.

(3) Intermediary contribution. All assets of the IRP revolving fund will serve as security for the IRP loan, and the intermediary will contribute funds not derived from the Agency into the IRP revolving fund along with the proceeds of the IRP loan. The amount of non-Agency derived funds contributed to the IRP revolving fund will equal the following percentage of the Agency IRP loan:
(i) At least 5% but less than 15%—15 points;
(ii) At least 15% but less than 25%—30 points; or
(iii) 25% or more—50 points.

(4) Experience. The intermediary has actual experience in making and servicing commercial loans, with a successful record, for the following number of full years:
(i) At least 1 but less than 3 years—5 points;
(ii) At least 3 but less than 5 years—10 points; or
(iv) 10 or more years—30 points.

(5) Community representation. The service area is not more than 14 counties and the intermediary utilizes local opinions and experience by including community representatives on its board of directors or equivalent oversight board. For purposes of this section, community representatives are people, such as civic leaders, business representatives, or bankers, who reside in the service area and are not employees of the intermediary. Points will be assigned as follows:
(i) At least 10% but less than 40% of the board members are community representatives—5 points;
(ii) At least 40% but less than 75% of the board members are community representatives—10 points; or
(iii) At least 75% of the board members are community representatives—15 points.

(6) Administrative. The Administrator may assign up to 35 additional points to an application to account for the following items not adequately covered by the other priority criteria set out in this section. The items that may be considered are the amount of funds requested in relation to the amount of need; a particularly successful business development record; a service area with no other IRP coverage; a service area with severe economic problems, such as communities that have remained persistently poor over the last 60 years or have experienced long-term population decline or job deterioration; a service area with emergency conditions caused by a natural disaster or loss of a major industry; a work plan that is in accord with a strategic plan, particularly a plan prepared as part of a request for an Empowerment Zone/Enterprise Community designation; or excellent utilization of a previous IRP loan.

§ 4274.350 Letter of conditions.

If the Agency is able to make the loan, it will provide the intermediary a letter of conditions listing all requirements for the loan. Immediately after reviewing the conditions and requirements in the letter of conditions, the intermediary should complete, sign and return the form provided by the Agency indicating the intermediary’s intent to meet the conditions. If certain conditions cannot be met, the intermediary may propose alternate conditions to the Agency. The Agency loan approval official must concur with any changes made to the initially issued or proposed letter of conditions prior to acceptance.

§§ 4274.351–4274.354 [Reserved]

§ 4274.355 Loan approval and obligating funds.

The loan will be considered approved on the date the signed copy of the obligation of funds document is mailed to the intermediary. The approving official may request an obligation of funds when available and according to the following:

(a) The obligation of funds document may be executed by the loan approving official providing the intermediary has the legal authority to contract for a loan and to enter into required agreements, and has signed the obligation of funds document.

(b) An obligation of funds established for an intermediary may be transferred to a different (substituted) intermediary provided:

1. The substituted intermediary is eligible to receive the assistance approved for the original intermediary;

2. The substituted intermediary bears a close and genuine relationship to the original intermediary; and

3. The need for and scope of the project and the purposes for which Agency IRP loan funds will be used remain substantially unchanged.

§ 4274.356 Loan closing.

(a) At loan closing, the intermediary must certify to the following:

1. No major changes have been made in the work plan except those approved in the interim by the Agency.

2. All requirements of the letter of conditions have been met.

3. There has been no material change in the intermediary nor its financial condition since the issuance of the letter of conditions. If there have been changes, they must be explained. The changes may be waived, at the sole discretion of the Agency.

4. That no claim or liens of laborers, materialmen, contractors, subcontractors, suppliers of machinery and equipment, or other parties are pending against the security of the intermediary, and that no suits are pending or threatened that would adversely affect the security of the intermediary when the security instruments are filed.

(b) The processing officer will approve only minor changes which do not materially affect the project, its capacity, employment, original projections, or credit factors. Changes in legal entities or where tax consideration are the reason for change will not be approved.
§§ 4274.357–4274.360  [Reserved]

§ 4274.361 Requests to make loans to ultimate recipients.

(a) An intermediary may use revolving funds to make loans to ultimate recipients without obtaining prior Agency concurrence. When an intermediary proposes to use Agency IRP loan funds to make a loan to an ultimate recipient, and prior to final approval of such loan, Agency concurrence is required.

(b) A request for Agency concurrence in approval of a proposed loan to an ultimate recipient must include:

1. Certification by the intermediary that:
   (i) The proposed ultimate recipient is eligible for the loan;
   (ii) The proposed loan is for eligible purposes;
   (iii) The proposed loan complies with all applicable statutes and regulations;
   (iv) The ultimate recipient is unable to finance the proposed project through commercial credit or other Federal, State, or local programs at reasonable rates and terms; and
   (v) The intermediary and its principal officers (including immediate family) hold no legal or financial interest or influence in the ultimate recipient, and the ultimate recipient and its principal officers (including immediate family) hold no legal or financial interest or influence in the intermediary except the interest and influence of a cooperative member when the intermediary is a cooperative;

2. For projects that meet the criteria for a Class I or Class II environmental assessment or environmental impact statement as provided in subpart G of part 1940 of this title, a completed and executed request for environmental information on a form provided by the Agency;

3. All comments obtained in accordance with § 4274.337(a), regarding intergovernmental consultation;

4. Copies of sufficient material from the ultimate recipient’s application and the intermediary’s related files, to allow the Agency to determine the:
   (i) Name and address of the ultimate recipient;
   (ii) Loan purposes;
   (iii) Interest rate and term;
   (iv) Location, nature, and scope of the project being financed;
   (v) Other funding included in the project; and
   (vi) Nature and lien priority of the collateral.

(5) Such other information as the Agency may request on specific cases.

§§ 4274.362–4274.372  [Reserved]

§ 4274.373 Appeals.

Any appealable adverse decision made by the Agency which affects the intermediary may be appealed in accordance with USDA appeal regulations found at 7 CFR part 11.

§§ 4274.374–4274.380  [Reserved]

§ 4274.381 Exception authority.

The Administrator may, in individual cases, grant an exception to any requirement or provision of this subpart which is not inconsistent with any applicable law, provided the Administrator determines that application of the requirement or provision would adversely affect USDA’s interest.

§§ 4274.382–4274.399  [Reserved]

§ 4274.400 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0570-0021 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).
§ 4279.1 Purpose.

(a) This subpart contains general regulations for making and servicing Business and Industry (B&I) loans guaranteed by the Agency and applies to lenders, holders, borrowers and other parties involved in making, guaranteeing,
holding, servicing, or liquidating such loans.

(b) It is the responsibility of the lender to ascertain that all requirements for making, securing, servicing, and collecting the loan are complied with.

(c) Copies of all forms, regulations, and Instructions referenced in this subpart are available in any Agency office. Whenever a form is designated in this subpart, that designation includes predecessor and successor forms, if applicable, as specified by the field or National Office.

§ 4279.2 Definitions and abbreviations.

(a) Definitions.

Adjusted tangible net worth. Tangible balance sheet equity plus allowed tangible asset appreciation and subordinated owner debt.

Agency. The Rural Business-Cooperative Service or successor agency assigned by the Secretary of Agriculture to administer the B&I program. References to the National Office, Finance Office, State Office or other Agency offices or officials should be read as prefaced by “Agency” or “Rural Development” as applicable.

Allowed tangible asset appreciation. The difference between the current net book value recorded on the financial statements (original cost less cumulative depreciation) of real property assets and the lesser of their current market value or original cost, where current market value is determined using an appraisal satisfactory to the Agency.

Arm’s-length transaction. The sale, release, or disposition of assets in which the title to the property passes to a ready, willing, and able disinterested third party that is not affiliated with or related to and has no security, monetary or stockholder interest in the borrower or transferee at the time of the transaction.

Assignment Guarantee Agreement (Business and Industry). Form RD 4279–6, the signed agreement among the Agency, the lender, and the holder containing the terms and conditions of an assignment of a guaranteed portion of a loan, using the single note system.

Biomass. Any organic material that is available on a renewable or recurring basis including agricultural crops, trees grown for energy production, wood waste and wood residues, plants, including aquatic plants and grasses, fibers, animal waste and other waste materials, fats, oils, greases, including recycled fats, oils and greases. It does not include paper that is commonly recycled or unsegregated solid waste.

Borrower. All parties liable for the loan except for guarantors.

Commercially available. Energy projects utilizing technology that has a proven operating history, and for which there is an established industry for the design, installation, and service (including spare parts) of the equipment.

Conditional Commitment (Business and Industry). Form RD 4279–3, the Agency’s notice to the lender that the loan guarantee it has requested is approved subject to the completion of all conditions and requirements set forth by the Agency.

Deficiency balance. The balance remaining on a loan after all collateral has been liquidated.

Deficiency judgment. A monetary judgment rendered by a court of competent jurisdiction after foreclosure and liquidation of all collateral securing the loan.

Energy projects. Commercially available projects that produce or distribute energy or power and/or produce biomass or biogas fuel. Commercially available energy projects that utilize technology that has a proven operating history, and for which there is an established industry for the design, installation, and service (including spare parts) of the equipment.

Existing lender debt. A debt not guaranteed by the Agency, but owed by a borrower to the same lender that is applying for or has received the Agency guarantee.

Fair market value. The price that could reasonably be expected for an asset in an arm’s-length transaction between a willing buyer and a willing seller under ordinary economic and business conditions.

Farmer’s Home Administration (FmHA). The former agency of USDA that previously administered the programs of
this Agency. Many Instructions and forms of FmHA are still applicable to Agency programs.

**Finance Office.** The office which maintains the Agency financial accounting records located in St. Louis, Missouri.

**High-impact business.** A business that offers specialized products and services that permit high prices for the products produced, may have a strong presence in international market sales, may provide a market for existing local business products and services, and which is locally owned and managed.

**Holder.** A person or entity, other than the lender, who owns all or part of the guaranteed portion of the loan with no servicing responsibilities. When the single note option is used and the lender assigns a part of the guaranteed note to an assignee, the assignee becomes a holder only when the Agency receives notice and the transaction is completed through the use of Form RD 4279-6 or predecessor form.

**Interest.** A fee paid by a borrower to the lender as a form of compensation for the use of money. When money is borrowed, interest is paid as a fee over a certain period of time (typically months or years) to the lender as a percentage of the principal amount owed. “Interest” does not include default or penalty, or late fees or charges. The lender may charge these fees and interest with prior Agency approval, but they are not covered by the Loan Note Guarantee.

**Interim financing.** A temporary or short-term loan made with the clear intent that it will be repaid through another loan. Interim financing is frequently used to pay construction and other costs associated with a planned project, with permanent financing to be obtained after project completion.

**Lender.** The organization making, servicing, and collecting the loan which is guaranteed under the provision of the appropriate subpart.

**Lender’s Agreement (Business and Industry).** Form RD 4279-4 or predecessor form between the Agency and the lender setting forth the lender’s loan responsibilities when the Loan Note Guarantee is issued.

**Loan Agreement.** The agreement between the borrower and lender containing the terms and conditions of the loan and the responsibilities of the borrower and lender.

**Loan Note Guarantee (Business and Industry).** Form RD 4279-5 or predecessor form, issued and executed by the Agency containing the terms and conditions of the guarantee.

**Loan-to-value.** The ratio of the dollar amount of a loan to the dollar value of the collateral pledged as security for the loan.

**Natural resource value-added product.** Any naturally occurring product that is processed to add value to the product. For example, straw is processed into particle board.

**Negligent servicing.** The failure to perform those services which a reasonably prudent lender would perform in servicing (including liquidation of) its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act, but also not acting in a timely manner, or acting in a manner contrary to the manner in which a reasonably prudent lender would act.

**Parity.** A lien position whereby two or more lenders share a security interest of equal priority in collateral. In the event of default, each lender will be affected on a pro rata basis.

**Participation.** Sale of an interest in a loan by the lender wherein the lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

**Poor.** A community or area is considered poor if, based on the most recent decennial census data, either the county, city, or census tract where the community or area is located has a median household income at or below the poverty line for a family of four; has a median household income below the nonmetropolitan median household income for the State; or has a population of which 25 percent or more have income at or below the poverty line.

**Promissory Note.** Evidence of debt. “Note” or “Promissory Note” shall also be construed to include “Bond” or other evidence of debt where appropriate.

**Qualified Intellectual Property.** Trademarks, patents or copyrights included
on current (within one year) audited balance sheets for which an audit opinion has been received that states the financial reports fairly represent the values therein and the reported value has been arrived at in accordance with GAAP standards for valuing intellectual property. The supporting work papers must be satisfactory to the Administrator.

Refinancing loan. A loan, all of the proceeds of which are applied to extinguish the entire balance of an outstanding debt.

Rural Development. The Under Secretary for Rural Development has policy and operational oversight responsibilities for RHS, RBS and RUS.

Spreadsheet. A table containing data from a series of financial statements of a business over a period of time. Financial statement analysis normally contains spreadsheets for balance sheet items and income statements and may include funds flow statement data and commonly used ratios. The spreadsheets enable a reviewer to easily scan the data, spot trends, and make comparisons.

State. Any of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, 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.

Subordinated owner debt. Debt owed by the borrower to one or more of the owner(s) that is subordinated to debt owed by the borrower to the Agency or guaranteed by the Agency (aggregate B&I loan exposure) pursuant to a subordination agreement satisfactory to the Agency. The debt must have been issued in exchange for cash loaned to the borrower for the benefit of the borrower’s business. The terms of the subordination agreement must provide that repayment will not commence until the earlier of the date all aggregate B&I loan exposure has been repaid or when a period of three consecutive years has passed during which the borrower has met all loan covenants and evidenced operating profit sufficient to commence partial repayment of this subordinated debt after giving effect to the annual debt service requirements of the aggregate B&I loan exposure. The partial repayment schedule in the case of the latter scenario is subject to annual Agency concurrence and may not be more accelerated than the rate of the debt repayment schedule in effect for the Agency’s aggregate B&I loan exposure.

Subordination. An agreement between the lender and borrower whereby lien priorities on certain assets pledged to secure payment of the guaranteed loan will be reduced to a position junior to, or on parity with, the lien position of another loan in order for the Agency borrower to obtain additional financing, not guaranteed by the Agency, from the lender or a third party.

Tangible balance sheet equity. Total equity less the value of intangible assets recorded on the financial statements, as determined from balance sheets prepared in accordance with generally accepted accounting principles (GAAP), plus qualified intellectual property.

Veteran. For the purposes of assigning priority points, a veteran is a person who is a veteran of any war, as defined in section 101(12) of title 38, United States Code.

(b) Abbreviations.

B&I—Business and Industry
CF—Community Facilities
CLP—Certified Lenders Program
FSA—Farm Service Agency
FMI—Forms Manual Insert
NAD—National Appeals Division
OGC—Office of the General Counsel
RBS—Rural Business-Cooperative Service
RHS—Rural Housing Service
RUS—Rural Utilities Service
SBA—Small Business Administration
USDA—United States Department of Agriculture

(c) Accounting terms not otherwise defined in this part shall have the definition ascribed to them under GAAP.


§§ 4279.3–4279.14 [Reserved]

§ 4279.15 Exception authority.

The Administrator may, in individual cases, grant an exception to any requirement or provision of this subpart which is not inconsistent with any
applicable law provided, the Administrator determines that application of the requirement or provision would adversely affect USDA’s interest.

§ 4279.16 Appeals.

Only the borrower, lender, or holder can appeal an Agency decision made under this subpart. In cases where the Agency has denied or reduced the amount of final loss payment to the lender, the adverse decision may be appealed by the lender only. An adverse decision that only impacts the holder may be appealed by the holder only. A decision by a lender adverse to the interest of the borrower is not a decision by the Agency, whether or not concurred in by the Agency. Appeals will be handled in accordance with 7 CFR, part 11. Any party adversely affected by an Agency decision under this subpart may request a determination of appealability from the Director, National Appeals Division, USDA, within 30 days of the adverse decision.

§§ 4279.17–4279.28 [Reserved]

§ 4279.29 Eligible lenders.

(a) Traditional lenders. An eligible lender is any Federal or State chartered bank, Farm Credit Bank, other Farm Credit System institution with direct lending authority, Bank for Cooperatives, Savings and Loan Association, or mortgage company that is part of a bank-holding company. These entities must be subject to credit examination and supervision by either an agency of the United States or a State. Eligible lenders may also include credit unions provided, they are subject to credit examination and supervision by either the National Credit Union Administration or a State agency, and insurance companies provided they are regulated by a State or National insurance regulatory agency. Eligible lenders include the National Rural Utilities Cooperative Finance Corporation.

(b) Other lenders. Rural Utilities Service borrowers and other lenders not meeting the criteria of paragraph (a) of this section may be considered by the Agency for eligibility to become a guaranteed lender provided, the Agency determines that they have the legal authority to operate a lending program and sufficient lending expertise and financial strength to operate a successful lending program.

(1) Such a lender must:

(i) Have a record of successfully making at least three commercial loans annually for at least the most recent 3 years, with delinquent loans not exceeding 10 percent of loans outstanding and historic losses not exceeding 10 percent of dollars loaned, or when the proposed lender can demonstrate that it has personnel with equivalent previous experience and where the commercial loan portfolio was of a similar quantity and quality; and

(ii) Have tangible balance sheet equity of at least seven percent of tangible assets and sufficient funds available to disburse the guaranteed loans it proposes to approve within the first 6 months of being approved as a guaranteed lender.

(2) A lender not eligible under paragraph (a) of this section that wishes consideration to become a guaranteed lender must submit a request in writing to the State Office for the State where the lender’s lending and servicing activity takes place. The National Office will notify the prospective lender, through the State Director, whether the lender’s request for eligibility is approved or rejected. If rejected, the reasons for the rejection will be indicated to the prospective lender in writing. The lender’s written request must include:

(i) Evidence showing that the lender has the necessary capital and resources to successfully meet its responsibilities.

(ii) Copy of any license, charter, or other evidence of authority to engage in the proposed loanmaking and servicing activities. If licensing by the State is not required, an attorney’s opinion to this effect must be submitted.

(iii) Information on lending experience, including length of time in the lending business; range and volume of lending and servicing activity; status of loan portfolio including delinquency rate, loss rate as a percentage of loan amounts, and other measures of success; experience of management and loan officers; audited financial statements not more than 1 year old;
§ 4279.30 Lenders’ functions and responsibilities.

(a) General. (1) Lenders have the primary responsibility for the successful delivery of the B&I loan program. All lenders obtaining or requesting a B&I loan guarantee are responsible for:
   (i) Processing applications for guaranteed loans,
   (ii) Developing and maintaining adequately documented loan files,
   (iii) Recommending only loan proposals that are eligible and financially feasible,
   (iv) Obtaining valid evidence of debt and collateral in accordance with sound lending practices,
   (v) Supervising construction
   (vi) Distribution of loan funds,
   (vii) Servicing guaranteed loans in a prudent manner, including liquidation if necessary,
   (viii) Following Agency regulations, and
   (ix) Obtaining Agency approvals or concurrence as required.

(2) This subpart, along with subpart B of part 4287 of this chapter, contain the regulations for this program, including the lenders’ responsibilities.

(b) Credit evaluation. This is a key function of all lenders during the loan processing phase. The lender must analyze all credit factors associated with each proposed loan and apply its professional judgment to determine that the credit factors, considered in combination, ensure loan repayment. The lender must have an adequate underwriting process to ensure that loans are reviewed by other than the originating officer. There must be good credit documentation procedures.

(c) Environmental responsibilities. Lenders have a responsibility to become familiar with Federal environmental requirements; to consider, in consultation with the prospective borrower, the potential environmental impacts of their proposals at the earliest planning stages; and to develop proposals that minimize the potential to adversely impact the environment. Lenders must alert the Agency to any controversial environmental issues related to a proposed project or items that may require extensive environmental review. Lenders must help the borrower prepare Form FmHA 1940-20, “Request for Environmental Information” (when required by subpart G of part 1940 of this title); assist in the collection of additional data when the Agency needs such data to complete its environmental review of the proposal; and assist in the resolution of environmental problems.

(d) Loan closing. The lender will conduct loan closings.

§§ 4279.31–4279.42 [Reserved]

§ 4279.43 Certified Lender Program.

(a) General. This section provides policies and procedures for the Certified Lender Program (CLP) for loans guaranteed under this part. The objectives are to expedite loan approval, making, and servicing.

(b) CLP eligibility criteria. The lender must meet established eligibility criteria as follows:

(1) Be an “eligible lender” as defined in 4279.29 of this subpart and authorized to do business in the State in which CLP status is desired.

(2) Demonstrate to the Agency’s satisfaction that it has a thorough knowledge of commercial lending. The lender will demonstrate such knowledge by providing a summary of its guaranteed and unguaranteed business lending activity. At a minimum, the summary must include the dollar amount and number of loans in the lender’s portfolio, unguaranteed and guaranteed by any Federal agency, with information on delinquencies and losses and, if applicable, the performance of the lender as a Small Business Administration
RBS and RUS, USDA § 4279.43

(SBA) certified or preferred lender. A certified lender must be recognized throughout the State as a commercial lender and have a track record of successfully making at least five commercial loans per year for at least the most recent 5 years, with delinquent commercial loans outstanding not exceeding 6 percent of commercial loans outstanding and historic losses not exceeding 6 percent of dollars loaned, or it must demonstrate that it has personnel with equivalent previous experience where the commercial loan portfolio was of a similar quantity and quality. The lender will provide a written certification to this effect along with a statistical analysis of its commercial loan portfolio for the last 3 of its fiscal years.

(3) The percentage of guarantee will not exceed 80 percent.

(4) If the lender is a bank or savings and loan, it must have a financial strength rating in the upper half of possible ratings as reported by a lender rating service selected by the Agency.

(5) Possess loan officers and other appropriate personnel who have received training conducted by the Agency. Additional training may be required if the lender’s contact person changes or if the Agency determines further instruction is needed.

(6) Have committed no action within the most recent 2 years prior to requesting CLP status which would be considered cause for revoking CLP status under paragraph (e) of this section.

(c) CLP approval. The Agency may grant CLP status for a period not to exceed 5 years by executing Form 4279-8, “Certified Lender, Business and Industry Program,” with the lender. CLP status will not apply to branches or suboffices of the lender unless so specified in the agreement. Such branches or suboffices may submit loans as regular lenders or apply for their own CLP status. Any lender who desires CLP status must prepare a written request to the State Director where it desires CLP status. The request must address each of the required criteria outlined in paragraph (b) of this section, except paragraph (b)(3), and should be accompanied by any other information the lender believes will be helpful. The request will also include Form 4279-8 completed and executed by the lender and an executed Lender’s Agreement if it does not already have a valid Lender’s Agreement on file with the Agency. Loans made by the lender and guaranteed by the Agency prior to the lender receiving CLP status shall continue to be governed by the forms and agreements executed between the lender and the Agency for those loans.

(d) Renewal of CLP status. Renewal of CLP status is not automatic. CLP status will lapse upon the expiration date of Form 4279-8 unless the lender obtains a renewal. A lender whose CLP status has lapsed may continue to submit loan guarantee requests as a regular lender. A new Form 4279-8 completed and executed by the lender must be provided, along with a written update of the eligibility criteria required by this section for CLP approval. The information must be supplied at least 60 days prior to the expiration of the existing agreement to be assured of uninterrupted status. The information must address how the lender is complying with each of the required criteria described in paragraph (b) of this section. It must include any proposed changes in the designated persons for processing guaranteed loans or operating methods used in processing and servicing Agency guaranteed loans.

(e) Revocation of CLP status. The lender’s CLP status may be revoked at any time for cause. The debarment of a lender is an additional alternative the Agency may consider. A lender which has lost its CLP status, but has not been debarred and still meets the requirements of §4279.29 of this subpart may continue to submit loan guarantee requests as a regular lender. Cause for revoking CLP status includes:

(1) Failure to maintain status as an eligible lender as set forth in §4279.29 of this subpart;

(2) Knowingly submitting false information when requesting a guarantee or basing a guarantee request on information known to be false or which the lender should have known to be false;

(3) Making a guaranteed loan with deficiencies which may cause losses not to be covered by the Loan Note Guarantee;

(4) Conviction for acts in connection with any loan transaction whether or
not the loan was guaranteed by the Agency;
(5) Violation of usury laws in connection with any loan guaranteed by the Agency;
(6) Failure to obtain the required security for any loan guaranteed by the Agency;
(7) Using loan funds guaranteed by the Agency for purposes other than those specifically approved by the Agency in the Conditional Commit-
(8) Violation of any term of the Lender’s Agreement;
(9) Failure to correct any cited deficiency in loan documents in a timely manner;
(10) Failure to submit reports required by the Agency in a timely manner;
(11) Failure to process Agency guaranteed loans in a reasonably prudent manner;
(12) Failure to provide for adequate construction planning and monitoring in connection with any loan to ensure that the project will be completed with the available funds and, once completed, will be suitable for the borrower’s needs;
(13) Repetitive recommendations for guaranteed loans with marginal or sub-
standard credit quality or that do not comply with Agency requirements;
(14) Repetitive recommendations for servicing actions that do not comply with Agency requirements;
(15) Negligent servicing; or
(16) Failure to conduct any approved liquidation of a loan guaranteed by the Agency or its predecessors in a timely and effective manner and in accordance with the approved liquidation plan.
(f) General loan processing and servicing guidelines. All requests for guaranteed loans will be processed and serviced under subparts A and B of this part and subpart B of part 4287 of this chapter except as modified by this section. When determining whether or not to request a guarantee for a proposed loan, lenders must consider the priorities set forth in §4279.155 of subpart B of this part.
(1) Prior to processing an application, the CLP lender may give written notice to the State Director of its intention to submit an application. Upon receipt of such written notice, the Agency will notify the CLP lender whether or not there is sufficient guarantee authority for the loan. Such guarantee authority will be held for 30 days pending receipt of the application. If a complete application for which guarantee authority is being held is not received within 30 days of the notice of intent to file or is rejected, the guarantee authority for this application will no longer be held in reserve. Notwithstanding the preceding, no guarantee authority will be held in reserve the last 60 days of the Agency’s fiscal year.
(2) Refinancing of existing lender debt in accordance with §4279.113(q) of subpart B of this part will not be permitted without prior Agency approval.
(3) CLP lenders will process all guaranteed loans as a “complete application” by obtaining and completing all items required by §4279.161(b) of subpart B of this part. The CLP lender must maintain all information required by §4279.161(b) in its loan file and determine that such material complies with all requirements.
(4) CLP lenders will make all material relating to any guarantee application available to the Agency upon request.
(5) At the time of the Agency’s issuance of the Loan Note Guarantee, the CLP lender will provide the Agency with copies of the following documents:
(i) Executed Loan Agreement;
(ii) Executed Promissory Notes; and
(iii) Executed security documents including personal and corporate guarantees.
(g) Unique characteristics of the CLP. A proposed loan by a CLP lender requires a review by the Agency of the information submitted by the lender, plus satisfactory completion of the environmental review process by the Agency. The Agency may rely on the lender’s credit analysis.
(1) The following will constitute a complete application submitted by a CLP lender:
(i) Form 4279–1, “Application for Loan Guarantee (Business and Industry),” (marked with the letters “CLP” at the top) completed in its entirety and executed by the borrower and CLP lender:
(ii) Copy of the proposed Loan Agreement or a list of proposed requirements;

(iii) Form FmHA 1940–20, completed and signed, with attachments;

(iv) The lender’s complete written analysis of the proposal, including spreadsheets of the balance sheets and income statements for the 3 previous years (for existing businesses), pro forma balance sheet at startup, and 2 years projected yearend balance sheets and income statements, with appropriate ratios and comparisons with industry standards (such as Dun & Bradstreet or Robert Morris Associates). All data must be shown in total dollars and also in common size form, obtained by expressing all balance sheet items as a percentage of assets and all income and expense items as a percentage of sales. The lender’s credit analysis must include the borrower’s management, repayment ability including a cash flow analysis, history of debt repayment, necessity of any debt refinancing, and the credit reports of the borrower, its principals, and any parent, affiliate, or subsidiary;

(v) Intergovernmental consultation comments in accordance with 7 CFR part 3015, subpart V; and

(vi) If the loan will exceed $1 million and will increase direct employment by more than 50 employees, Form 4279–2, “Certification of Non-Relocation and Market Capacity Information Report,” must be completed by the lender. For such loans, the Agency will submit Form 4279–2 to the Department of Labor and obtain clearance before a Conditional Commitment may be issued.

(2) The Agency will make the final credit decision based primarily on a review of the credit analysis submitted by the lender and approval of the Agency’s completed environmental analysis, if required, except that refinancing of existing lender debt in accordance with § 4279.118(q) of subpart B of this part will not be approved without a credit analysis by the Agency of the borrower’s complete financial statements; and completion by the Agency of the environmental analysis. The Agency may request such additional information as it determines is needed to make a decision.

(h) Lender loan servicing responsibilities. CLP lenders will be fully responsible for all aspects of loan servicing and, if necessary, liquidation as described in subpart B of part 4287 of this chapter.

§ 4279.44 Access to records.

The lender will permit representatives of the Agency (or other agencies of the United States) to inspect and make copies of any records of the lender pertaining to the Agency guaranteed loans during regular office hours of the lender or at any other time upon agreement between the lender and the Agency.

§§ 4279.45–4279.57 [Reserved]

§ 4279.58 Equal Credit Opportunity Act.

In accordance with title V of Public Law 93–495, the Equal Credit Opportunity Act, with respect to any aspect of a credit transaction, neither the lender nor the Agency will discriminate against any applicant on the basis of race, color, religion, national origin, sex, marital status or age (providing the applicant has the capacity to contract), or because all or part of the applicant’s income derives from a public assistance program, or because the applicant has, in good faith, exercised any right under the Consumer Protection Act. The lender will comply with the requirements of the Equal Credit Opportunity Act as contained in the Federal Reserve Board’s Regulation implementing that Act (see 12 CFR part 222). Such compliance will be accomplished prior to loan closing.

§ 4279.59 [Reserved]

§ 4279.60 Civil Rights Impact Analysis.

The Agency is responsible for ensuring that all requirements of FmHA Instruction 2006–P, “Civil Rights Impact Analysis” are met and will complete the appropriate level of review in accordance with that instruction.

§§ 4279.61–4279.70 [Reserved]

§ 4279.71 Public bodies and nonprofit corporations.

Any public body or nonprofit corporation that receives a guaranteed
§ 4279.72 Conditions of guarantee.

A loan guarantee under this part will be evidenced by a Loan Note Guarantee issued by the Agency. Each lender will execute a Lender’s Agreement. If a valid Lender’s Agreement already exists, it is not necessary to execute a new Lender’s Agreement with each loan guarantee. The provisions of this part and part 4287 of this chapter will apply to all outstanding guarantees. In the event of a conflict between the guarantee documents and these regulations as they exist at the time the documents are executed, the regulations will control.

(a) Full faith and credit. A guarantee under this part constitutes an obligation supported by the full faith and credit of the United States and is uncontestable except for fraud or misrepresentation of which a lender or holder has actual knowledge at the time it becomes such lender or holder or which a lender or holder participates in or condones. The guarantee will be unenforceable to the extent that any loss is occasioned by a provision for interest on interest. In addition, the guarantee will be unenforceable by the lender to the extent any loss is occasioned by the violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which the Agency acquires knowledge thereof. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by the Agency in its Conditional Commitment. The Agency will guarantee payment as follows:

1. To any holder, 100 percent of any loss sustained by the holder on the guaranteed portion of the loan and on interest due on such portion.

2. To the lender, the lesser of:
   (i) Any loss sustained by the lender on the guaranteed portion, including principal and interest evidenced by the notes or assumption agreements and secured advances for protection and preservation of collateral made with the Agency’s authorization; or
   (ii) The guaranteed principal advanced to or assumed by the borrower and any interest due thereon.

(b) Rights and liabilities. When a guaranteed portion of a loan is sold to a holder, the holder shall succeed to all rights of the lender under the Loan Note Guarantee to the extent of the portion purchased. The lender will remain bound to all obligations under the Loan Note Guarantee, Lender’s Agreement, and the Agency program regulations. A guarantee and right to require purchase will be directly enforceable by a holder notwithstanding any fraud or misrepresentation by the lender or any unenforceability of the guarantee by the lender, except for fraud or misrepresentation of which the holder had actual knowledge at the time it became the holder or in which the holder participates or condones. The lender will reimburse the Agency for any payments the Agency makes to a holder of lender’s guaranteed loan that, under the Loan Note Guarantee, would not have been paid to the lender had the lender retained the entire interest in the guaranteed loan and not conveyed an interest to a holder.

(c) Payments. A lender will receive all payments of principal and interest on account of the entire loan and will promptly remit to the holder its pro rata share thereof, determined according to its respective interest in the loan, less only the lender’s servicing fee.

§ 4279.75 Sale or assignment of guaranteed loan.

The lender may sell all or part of the guaranteed portion of the loan on the secondary market or retain the entire loan. The lender shall not sell or participate any amount of the guaranteed or unguaranteed portion of the loan to the borrower or members of the borrower’s immediate families, officers, directors, stockholders, other owners, or a parent, subsidiary or affiliate. If the lender desires to market all or part of the guaranteed portion of the loan at or subsequent to loan closing, such loan must not be in default. Loans made with the proceeds of any obligation the interest on which is excludable from income under 26 U.S.C. 103 (interest on State and local banks) or any successor section will not be guaranteed.

(a) Single note system. The entire loan is evidenced by one note, and one Loan Note Guarantee is issued. The lender may assign all or part of the guaranteed portion of the loan to one or more holders by using the Agency’s Assignment Guarantee Agreement. The holder, upon written notice to the lender and the Agency, may reassign the unpaid guaranteed portion of the loan sold under the Assignment Guarantee Agreement. Upon notification and completion of the assignment through the use of Form 4279–6, the assignee shall succeed to all rights and obligations of the holder thereunder. If this option is selected, the lender may not at a later date cause any additional notes to be issued.

(b) Multinote system. Under this option the lender may provide one note for the unguaranteed portion of the loan and no more than 10 notes for the guaranteed portion. When this option is selected by the lender, the holder will receive one of the borrower’s executed notes and a Loan Note Guarantee. The Agency will issue a Loan Note Guarantee for each note, including the unguaranteed note, to be attached to the note. An Assignment Guarantee Agreement will not be used when the multinote option is utilized.

(c) After loan closing. If a loan is closed using the multinote option and at a later date additional notes are desired, the lender may cause a series of new notes, so that the total number of notes issued does not exceed the total number provided for in paragraph (b) of this section, to be issued as replacement for previously issued guaranteed notes, provided:

1. Written approval of the Agency is obtained;
2. The borrower agrees and executes the new notes;
3. The interest rate does not exceed the interest rate in effect when the loan was closed;
4. The maturity date of the loan is not changed;
5. The Agency will not bear or guarantee any expenses that may be incurred in reference to such reissuances of notes;
6. There is adequate collateral securing the notes;
7. No intervening liens have arisen or have been perfected and the secured lien priority is better or remains the same; and
8. All holders agree.

(d) Termination of lender servicing fee. The lender’s servicing fee will stop when the Agency purchases the guaranteed portion of the loan from the secondary market. No such servicing fee may be charged to the Agency and all loan payments and collateral proceeds received will be applied first to the guaranteed loan and, when applied to the guaranteed loan, will be applied on a pro rata basis.

§ 4279.76 Participation.

The lender may obtain participation in the loan under its normal operating procedures; however, the lender must retain title to the notes if any of them are unguaranteed and retain the lender’s interest in the collateral.

§ 4279.77 Minimum retention.

The lender is required to hold in its own portfolio a minimum of 5 percent of the total loan amount. The amount required to be maintained must be of the unguaranteed portion of the loan and cannot be participated to another. The lender may sell the remaining amount of the unguaranteed portion of the loan only through participation.
§ 4279.78  Repurchase from holder.

(a) Repurchase by lender. A lender has the option to repurchase the unpaid guaranteed portion of the loan from a holder within 30 days of written demand by the holder when the borrower is in default not less than 60 days on principal or interest due on the loan; or the holder has failed to remit to the holder its pro rata share of any payment made by the borrower within 30 days of the lender's receipt thereof. The repurchase by the lender will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest less the lender's servicing fee. The holder must concurrently send a copy of the demand letter to the Agency. The guarantee will not cover the note interest to the holder on the guaranteed loan accruing after 90 days from the date of the demand letter to the lender requesting the repurchase. The lender will accept an assignment without recourse from the holder upon repurchase. The lender is encouraged to repurchase the loan to facilitate the accounting of funds, resolve the problem, and prevent default, where and when reasonable. The lender will notify the holder and the Agency of its decision.

(b) Agency purchase. (1) If the lender does not repurchase the unpaid guaranteed portion of the loan as provided in paragraph (a) of this section, the Agency will purchase from the holder the unpaid principal balance of the guaranteed portion together with accrued interest to date of repurchase, less the lender's servicing fee, within 30 days after written demand to the Agency from the holder. (This is in addition to the copy of the written demand on the lender.) The guarantee will not cover the note interest to the holder on the guaranteed loan accruing after 90 days from the date of the original demand letter to the lender requesting the repurchase.

(2) The holder's demand to the Agency must include a copy of the written demand made upon the lender. The holder must also include evidence of its right to require payment from the Agency. Such evidence will consist of either the original of the Loan Note Guarantee properly endorsed to the Agency or the original of the Assignment Agreement properly assigned to the Agency without recourse including all rights, title, and interest in the loan. The holder must include in its demand the amount due including unpaid principal, unpaid interest to date of demand, and interest subsequently accruing from date of demand to proposed payment date. The Agency will be subrogated to all rights of the holder.

(3) The Agency will notify the lender of its receipt of the holder's demand for payment. The lender must promptly provide the Agency with the information necessary for the Agency to determine the appropriate amount due the holder. Upon request by the Agency, the lender will furnish a current statement certified by an appropriate authorized officer of the lender of the unpaid principal and interest then owed by the borrower on the loan and the amount then owed to any holder. Any discrepancy between the amount claimed by the holder and the information submitted by the lender must be resolved between the lender and the holder before payment will be approved. Such conflict will suspend the running of the 30 day payment requirement.

(4) Purchase by the Agency neither changes, alters, nor modifies any of the lender's obligations to the Agency arising from the loan or guarantee nor does it waive any of Agency's rights against the lender. The Agency will have the right to set-off against the lender all rights inuring to the Agency as the holder of the instrument against the Agency's obligation to the lender under the guarantee.

(c) Repurchase for servicing. If, in the opinion of the lender, repurchase of the guaranteed portion of the loan is necessary to adequately service the loan, the holder must sell the guaranteed portion of the loan to the lender for an amount equal to the unpaid principal and interest on such portion less the lender's servicing fee. The guarantee will not cover the note interest to the holder on the guaranteed loan accruing after 90 days from the date of the demand letter of the lender or the Agency to the holder requesting the holder to tender its guaranteed portion. The lender must not repurchase from the
holder for arbitrage or other purposes to further its own financial gain. Any repurchase must only be made after the lender obtains the Agency’s written approval. If the lender does not repurchase the portion from the holder, the Agency may, at its option, purchase such guaranteed portion for servicing purposes.

§§ 4279.79–4279.83 [Reserved]

§ 4279.84 Replacement of document.

(a) The Agency may issue a replacement Loan Note Guarantee or Assignment Guarantee Agreement which was lost, stolen, destroyed, mutilated, or defaced to the lender or holder upon receipt of an acceptable certificate of loss and an indemnity bond.

(b) When a Loan Note Guarantee or Assignment Guarantee Agreement is lost, stolen, destroyed, mutilated, or defaced while in the custody of the lender or holder, the lender will coordinate the activities of the party who seeks the replacement documents and will submit the required documents to the Agency for processing. The requirements for replacement are as follows:

(1) A certificate of loss, notarized and containing a jurat, which includes:
   (i) Name and address of owner;
   (ii) Name and address of the lender of record;
   (iii) Capacity of person certifying;
   (iv) Full identification of the Loan Note Guarantee or Assignment Guarantee Agreement including the name of the borrower, the Agency’s case number, date of the Loan Note Guarantee or Assignment Guarantee Agreement, face amount of the evidence of debt purchased, date of evidence of debt, present balance of the loan, percentage of guarantee, and, if an Assignment Guarantee Agreement, the original named holder and the percentage of the guaranteed portion of the loan assigned to that holder. Any existing parts of the document to be replaced must be attached to the certificate;
   (v) A full statement of circumstances of the loss, theft, or destruction of the Loan Note Guarantee or Assignment Guarantee Agreement; and
   (vi) For the holder, evidence demonstrating current ownership of the Loan Note Guarantee and Note or the Assignment Guarantee Agreement. If the present holder is not the same as the original holder, a copy of the endorsement of each successive holder in the chain of transfer from the initial holder to present holder must be included if in existence. If copies of the endorsement cannot be obtained, best available records of transfer must be submitted to the Agency (e.g., order confirmation, canceled checks, etc.).

(2) An indemnity bond acceptable to the Agency shall accompany the request for replacement except when the holder is the United States, a Federal Reserve Bank, a Federal corporation, a State or territory, or the District of Columbia. The bond shall be with surety except when the outstanding principal balance and accrued interest due the present holder is less than $1 million verified by the lender in writing in a letter of certification of balance due. The surety shall be a qualified surety company holding a certificate of authority from the Secretary of the Treasury and listed in Treasury Department Circular 580.

(3) All indemnity bonds must be issued and payable to the United States of America acting through the USDA. The bond shall be in an amount not less than the unpaid principal and interest. The bond shall hold USDA harmless against any claim or demand which might arise or against any damage, loss, costs, or expenses which might be sustained or incurred by reasons of the loss or replacement of the instruments.

(4) In those cases where the guaranteed loan was closed under the provision of the multinote system, the Agency will not attempt to obtain, or participate in the obtaining of, replacement notes from the borrower. It will be the responsibility of the holder to bear costs of note replacement if the borrower agrees to issue a replacement instrument. Should such note be replaced, the terms of the note cannot be changed. If the evidence of debt has been lost, stolen, destroyed, mutilated or defaced, such evidence of debt must be replaced before the Agency will replace any instruments.
§ 4279.100 OMB control number.

The information collection requirements contained in this regulation have been approved by OMB and have been assigned OMB control number 0575–0171. Public reporting burden for this collection of information is estimated to vary from 1 hour to 8 hours per response, with an average of 4 hours per response, including time for reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Officer, OIRM, Stop 7630, Washington, D.C. 20250. You are not required to respond to this collection of information unless it displays a currently valid OMB control number.

Subpart B—Business and Industry Loans

§ 4279.101 Introduction.

(a) Content. This subpart contains loan processing regulations for the Business and Industry (B&I) Guaranteed Loan Program. It is supplemented by subpart A of this part, which contains general guaranteed loan regulations, and subpart B of part 4287 of this chapter, which contains loan servicing regulations.

(b) Purpose. The purpose of the B&I Guaranteed Loan Program is to improve, develop, or finance business, industry, and employment and improve the economic and environmental climate in rural communities. This purpose is achieved by bolstering the existing private credit structure through the guarantee of quality loans which will provide lasting community benefits. It is not intended that the guarantee authority will be used for marginal or substandard loans or for relief of lenders having such loans.

(c) Documents. Copies of all forms, regulations, and Instructions referenced in this subpart are available in any Agency office.

§ 4279.102 Definitions.

The definitions and abbreviations in § 4279.2 of subpart A of this part are applicable to this subpart.

§ 4279.103 Exception authority.

Section 4279.15 of subpart A of this part applies to this subpart.

§ 4279.104 Appeals.

Section 4279.16 of subpart A of this part applies to this subpart.

§§ 4279.105–4279.106 [Reserved]

§ 4279.107 Guarantee fees.

For all new loans there are two types of non-refundable guarantee fees to be paid by the lender. The fees may be passed on to the borrower. The fees may be forwarded to the Agency through an electronic funds transfer system or, at the Agency’s discretion, by a check payable to USDA using a USDA-approved form.

(a) Initial guarantee fee. The initial fee is paid at the time the Loan Note Guarantee is issued. The fee may be included as an eligible loan purpose in the guaranteed loan. The fee will be the rate (a specified percentage not to exceed 2 percent) multiplied by the principal loan amount, multiplied by the percent of guarantee. Subject to specified annual limits set by the Agency, the initial guarantee fee may be reduced to 1 percent if the borrower’s business supports value-added agriculture and results in farmers benefiting financially, or

(i) Is a high impact business development investment in accordance with § 4279.155(b)(5), and

(ii) Is located in a rural community that:

(i) Is experiencing long-term population decline and job deterioration, or

(ii) Has remained persistently poor over the last 60 years, or

(iii) Is experiencing trauma as a result of natural disaster, or

(iv) Is experiencing fundamental structural changes in its economic base.

(b) Annual renewal fee. The annual renewal fee is paid once a year and is required to maintain the enforceability of the guarantee as to the lender.
RBS and RUS, USDA

§ 4279.108 Eligible borrowers.

(a) Type of entity. A borrower may be a cooperative organization, corporation, partnership, or other legal entity organized and operated on a profit or nonprofit basis; an Indian tribe on a Federal or State reservation or other Federally recognized tribal group; a public body; or an individual. A cooperative organization is a cooperative or an entity, not chartered as a cooperative, that operates as a cooperative in that it is owned and operated for the benefit of its members, including the manner in which it distributes its dividends and assets. A borrower must be engaged in or proposing to engage in a business. Business may include manufacturing, wholesaling, retailing, providing services, or other activities that will:

(1) Provide employment;
(2) Improve the economic or environmental climate;
(3) Promote the conservation, development, and use of water for aquaculture; or
(4) Reduce reliance on nonrenewable energy resources by encouraging the development and construction of solar energy systems and other renewable energy systems (including wind energy systems, geothermal energy systems, and anaerobic digesters for the purpose of energy generation).

(b) Citizenship. Individual borrowers must be citizens of the United States (U.S.) or reside in the U.S. after being legally admitted for permanent residence. Citizens and residents of the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands shall be considered U.S. citizens. Corporations or other nonpublic body organization-type borrowers must be at least 51 percent owned by persons who are either citizens of the U.S. or reside in the U.S. after being legally admitted for permanent residence.

(c) Rural area. The business financed with a B&I Guaranteed Loan must be located in a rural area, except for cooperative organizations financed in accordance with paragraph (d)(3) of this section. Loans to borrowers with facilities located in both rural and non-rural areas will be limited to the amount necessary to finance the facility in the eligible rural area, except for cooperative organizations financed in accordance with paragraph (d)(3) of this section. Rural areas are any areas other than:

(1) A city or town that has a population of greater than 50,000 inhabitants; and
(2) The urbanized area contiguous and adjacent to such a city or town, as defined by the U.S. Bureau of the Census using the latest decennial census of the United States.

(d) Loans to cooperative organizations.

(1) B&I loans to eligible cooperative organizations may be made in principal amounts up to $40 million if the project is located in a rural area, the cooperative facility being financed provides for the value-added processing of agricultural commodities, and the total amount of loans exceeding $25 million does not exceed 10 percent of the funds available for the fiscal year.

(2) Cooperative organizations that are headquartered in a non-rural area may be eligible for a B&I loan if the
§ 4279.109–4279.112

Loan is used for a project or venture that is located in a rural area.

(3) B&I loans to eligible cooperative organizations may also be made in non-rural areas provided:

(i) The primary purpose of the loan is for a facility to provide value-added processing for agricultural producers that are located within 80 miles of the facility;

(ii) The applicant satisfactorily demonstrates that the primary benefit of the loan will be to provide employment for rural residents;

(iii) The principal amount of the loan does not exceed $25 million; and

(iv) The total amount of loans guaranteed under this section does not exceed 10 percent of the funds available for the fiscal year.

(4) An eligible cooperative organization may refinance an existing B&I loan provided that the existing loan is current and performing, the existing loan is not and has not been in payment default (more than 30 days late) or the collateral of which has not been converted, and there is adequate security or full collateral for the new B&I loan.

(e) Other credit. All applications for assistance will be accepted and processed without regard to the availability of credit from any other source.

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§ 4279.113 Eligible loan purposes.

Loan purposes must be consistent with the general purpose contained in §4279.101 of this subpart. They include but are not limited to the following:

(a) Business and industrial acquisitions when the loan will keep the business from closing, prevent the loss of employment opportunities, or provide expanded job opportunities.

(b) Business conversion, enlargement, repair, modernization, or development.

(c) Purchase and development of land, easements, rights-of-way, buildings, or facilities.

(d) Purchase of equipment, leasehold improvements, machinery, supplies, or inventory.

(e) Pollution control and abatement.

(f) Transportation services incidental to industrial development.

(g) Startup costs and working capital.

(h) Agricultural production, when not eligible for Farm Service Agency (FSA) farmer program assistance and when it is part of an integrated business also involved in the processing of agricultural products.

(1) Examples of potentially eligible production include but are not limited to: An apple orchard in conjunction with a food processing plant; poultry buildings linked to a meat processing operation; or sugar beet production coupled with storage and processing. Any agricultural production considered for B&I financing must be owned, operated, and maintained by the business receiving the loan for which a guarantee is provided. Independent agricultural production operations, even if not eligible for FSA farmer programs assistance, are not eligible for the B&I program.

(2) The agricultural-production portion of any loan will not exceed 50 percent of the total loan or $1 million, whichever is less.

(i) Purchase of membership, stocks, bonds, or debentures necessary to obtain a loan from Farm Credit System institutions and other lenders provided that the purchase is required for all of their borrowers.

(j) Purchase of cooperative stock by individual farmers or ranchers in a farmer or rancher cooperative established for the purpose of processing an agricultural commodity.

(1) The cooperative may contract for services to process agricultural commodities or otherwise process value-added agricultural products during the 5-year period beginning on the operation startup date of the cooperative in order to provide adequate time for the planning and construction of the processing facility of the cooperative.

(2) Notwithstanding §§4279.131(d) and 4279.137, the individual farmer or rancher may provide financial information in the manner that is generally required by commercial agricultural lenders in order to obtain a loan.

(k) Aquaculture, including conservation, development, and utilization of water for aquaculture.
§ 4279.114 Ineligible purposes.

(a) Distribution or payment to an individual owner, partner, stockholder, or beneficiary of the borrower or a close relative of such an individual when such individual will retain any

(b) Provide loan guarantees to assist industries adjusting to terminated Federal agricultural programs or increased foreign competition.

(cc) To finance energy projects. Commercially available energy projects that produce biomass fuel or biogas as an output must have completed two operating cycles at design performance levels submitted to the Agency. Projects that produce steam or electricity as an output must have met or exceeded acceptance test performance criteria submitted to the Agency and be successfully interconnected with the purchaser of the output. Performance or acceptance test requirements for all other energy projects will be determined by the Agency on a case by case basis. Financing for energy projects will only be allowed when the facility has been constructed according to plans and specifications and is producing at the quality and quantity projected in the application.

portion of the ownership of the borrower.

(b) Projects in excess of $1 million that would likely result in the transfer of jobs from one area to another and increase direct employment by more than 50 employees.

(c) Projects in excess of $1 million that would increase direct employment by more than 50 employees, if the project would result in an increase in the production of goods for which there is not sufficient demand, or if the availability of services or facilities is insufficient to meet the needs of the business.

(d) Charitable institutions, churches, or church-controlled or fraternal organizations.

(e) Lending and investment institutions and insurance companies.

(f) Assistance to Government employees and military personnel who are directors or officers or have a major ownership of 20 percent or more in the business.

(g) Racetracks for the conduct of races by professional drivers, jockeys, etc., where individual prizes are awarded in the amount of $500 or more.

(h) Any business that derives more than 10 percent of annual gross revenue from gambling activity.

(i) Any illegal business activity.

(j) Prostitution.

(k) Any line of credit.

(l) The guarantee of lease payments.

(m) The guarantee of loans made by other Federal agencies.

(n) Owner-occupied housing. Bed and breakfasts, storage facilities, etc., are allowed when the pro rata value of the owner’s living quarters is deleted.

(o) Projects that are eligible for the Rural Rental Housing and Rural Cooperative Housing loans under sections 515, 521, and 538 of the Housing Act of 1949, as amended.

(p) Loans made with the proceeds of any obligation the interest on which is excludable from income under 26 U.S.C. 103 or a successor statute. Funds generated through the issuance of tax-exempt obligations may neither be used to purchase the guaranteed portion of any Agency guaranteed loan nor may an Agency guaranteed loan serve as collateral for a tax-exempt issue. The Agency may guarantee a loan for a project which involves tax-exempt financing only when the guaranteed loan funds are used to finance a part of the project that is separate and distinct from the part which is financed by the tax-exempt obligation, and the guaranteed loan has at least a parity security position with the tax-exempt obligation.

(q) The guarantee of loans where there may be, directly or indirectly, a conflict of interest or an appearance of a conflict of interest involving any action by the Agency.

(r) Golf courses.

§ 4279.115 Prohibition under Agency programs.

No B&I loans guaranteed by the Agency will be conditioned on any requirement that the recipients of such assistance accept or receive electric service from any particular utility, supplier, or cooperative.

§§ 4279.116–4279.118 [Reserved]

§ 4279.119 Loan guarantee limits.

(a) Loan amount. The total amount of Agency loans to one borrower, including: The guaranteed and unguaranteed portions; the outstanding principal and interest balance of any existing Agency guaranteed loans; and new loan request, must not exceed $10 million, except as outlined in paragraphs (a)(1) and (2) of this section.

(1) The Administrator may, at the Administrator’s discretion, grant an exception to the $10 million limit for loans of $25 million or less under the following circumstances:

(i) The project to be financed is a high-priority project. Priority will be determined in accordance with the criteria contained in §4279.155 of this subpart;

(ii) The lender must document to the satisfaction of the Agency that the loan will not be made and the project will not be completed if the guarantee is not approved;

(iii) The percentage of guarantee will not exceed 60 percent. No exception to this requirement will be approved under paragraph (b) of this section for loans exceeding $10 million; and

(iv) Any request for a guaranteed loan exceeding the $10 million limit
must be submitted to the Agency in the form of a preapplication. The preapplication must be submitted to the National Office for review and concurrence before encouraging a full application.

(2) The Secretary, whose authority may not be redelegated, may approve guaranteed loans in excess of $25 million, at the Secretary’s discretion, for rural cooperative organizations that process value-added agricultural commodities in accordance with §4279.108(d)(1) of this subpart.

(b) Percent of guarantee. The percentage of guarantee, up to the maximum allowed by this section, is a matter of negotiation between the lender and the Agency. The maximum percentage of guarantee is 80 percent for loans of $5 million or less, 70 percent for loans between $5 and $10 million, and 60 percent for loans exceeding $10 million. Notwithstanding the preceding, the Administrator may, at the Administrator’s discretion, grant an exception allowing guarantees of up to 90 percent on loans of $10 million or less under the following circumstances:

(1) The project to be financed is a high-priority project. Priority will be determined in accordance with the criteria contained in 4279.155 of this subpart;

(2) The lender must document to the satisfaction of the Agency that the loan will not be made and the project will not be completed if the higher guarantee percentage is not approved; and

(3) The State Director may grant an exception for loans of up to 90 percent on loans of $2 million or less subject to the State Director’s delegated loan authority and meeting all of the conditions as set forth in this section. In cases where the State Director does not have the loan approval authority to approve a loan of $2 million or less or the proposed percentage, the case must be submitted to the National Office for review.

(4) Each fiscal year, the Agency will establish a limit on the maximum portion of guarantee authority available for that fiscal year that may be used to guarantee loans with a guarantee percentage exceeding 80 percent. The limit will be announced by publishing a notice in the Federal Register. Once the limit has been reached, the guarantee percentage for all additional loans guaranteed during the remainder of that fiscal year will not exceed 80 percent.


§ 4279.120 Fees and charges.

(a) Routine lender fees. The lender may establish charges and fees for the loan provided they are similar to those normally charged other applicants for the same type of loan in the ordinary course of business.

(b) Professional services. Professional services are those rendered by entities generally licensed or certified by States or accreditation associations, such as architects, engineers, packagers, accountants, attorneys, or appraisers. The borrower may pay fees for professional services needed for planning and developing a project provided that the amounts are reasonable and customary in the area. Professional fees may be included as an eligible use of loan proceeds.

§§ 4279.121–4279.124 [Reserved]

§ 4279.125 Interest rates.

The interest rate for the guaranteed loan will be negotiated between the lender and the applicant and may be either fixed or variable as long as it is a legal rate. Interest rates will not be more than those rates customarily charged borrowers in similar circumstances in the ordinary course of business and are subject to Agency review and approval. Lenders are encouraged to utilize the secondary market and pass interest-rate savings on to the borrower.

(a) A variable interest rate agreed to by the lender and borrower must be a rate that is tied to a base rate agreed to by the lender and the Agency. The variable interest rate may be adjusted at different intervals during the term of the loan, but the adjustments may not be more often than quarterly and must be specified in the Loan Agreement. The lender must incorporate, within the variable rate Promissory Note at loan closing, the provision for adjustment of payment installments.
§ 4279.126 Loan terms.

(a) The maximum repayment for loans on real estate will not exceed 30 years; machinery and equipment repayment will not exceed the useful life of the machinery and equipment purchased with loan funds or 15 years, whichever is less; and working capital repayment will not exceed 7 years. The term for a loan that is being refinanced may be based on the collateral the lender will take to secure the loan.

(b) The first installment of principal and interest will, if possible, be scheduled for payment after the project is operational and has begun to generate income. However, the first full installment must be due and payable within 3 years from the date of the Promissory Note and be paid at least annually thereafter. Interest-only payments will be paid at least annually from the date of the note.

(c) Only loans which require a periodic payment schedule which will retire the debt over the term of the loan without a balloon payment will be guaranteed.

(d) A loan’s maturity will take into consideration the use of proceeds, the useful life of assets being financed, and the borrower’s ability to repay the loan. The lender may apply the maximum guidelines specified above only when the loan cannot be repaid over a shorter term.

(e) All loans guaranteed through the B&I program must be sound, with reasonably assured repayment.

§§ 4279.127–4279.130 [Reserved]

§ 4279.131 Credit quality.

The lender is primarily responsible for determining credit quality and must address all of the elements of credit quality in a written credit analysis including adequacy of equity, cash flow, collateral, history, management, and the current status of the industry for which credit is to be extended.

(a) Cash flow. All efforts will be made to structure or restructure debt so that the business has adequate debt coverage and the ability to accommodate expansion.

(b) Collateral. (1) Collateral must have documented value sufficient to protect the interest of the lender and the Agency and, except as set forth in paragraph (b)(2) of this section, the discounted collateral value will be at least equal to the loan amount. Lenders will discount collateral consistent with sound loan-to-value policy.

(2) Some businesses are predominately cash-flow oriented, and where cash flow and profitability are strong, loan-to-value coverage may be discounted accordingly. A loan primarily based on cash flow must be supported by a successful and documented financial history.

(c) Industry. Current status of the industry will be considered and businesses in areas of decline will be required to provide strong business plans which outline how they differ from the current trends. The regulatory environment surrounding the particular business or industry will be considered.

(d) Equity. (1) A minimum of 10 percent tangible balance sheet equity will be required for existing businesses at loan closing. A minimum of 20 percent tangible balance sheet equity will be required for new businesses at loan closing. For energy projects, the minimum tangible balance sheet equity requirement range will be between 25 percent and 40 percent. Criteria for considering the minimum equity required for
an individual application will be based on: existing businesses with successful financial and management history vs. start-up businesses; personal/corporate guarantees offered; contractual relationships with suppliers and buyers; credit rating; and strength of the business plan/feasibility study. Where the application is a request to refinance outstanding Federal direct or guaranteed loans, without any new financing, the equity requirement may be determined using adjusted tangible net worth. An application that combines a refinancing guarantee request with a new loan guarantee request is subject to the standard, unadjusted, equity requirement except as provided in paragraphs (d)(1)(i) or (d)(1)(ii) of this section. Increases or decreases in the equity requirements may be imposed or granted as follows:

(i) A reduction in the equity requirement for existing businesses may be permitted by the Administrator. In order for a reduction to be considered, the borrower must furnish the following:

(A) Collateralized personal and corporate guarantees, including any parent, subsidiary, or affiliated company, when feasible and legally permissible (in accordance with §4279.149 of this subpart), and

(B) Pro forma and historical financial statements that indicate the business to be financed meets or exceeds the median quartile (as identified in the Risk Management Association’s Annual Statement Studies or similar publication) for the current ratio, quick ratio, debt-to-worth ratio, debt coverage ratio, and working capital.

(ii) The approval official may require more than the minimum equity requirement provided in this paragraph if the official makes a written determination that special circumstances necessitate this course of action.

(2) The equity requirement must be met in the form of either cash or tangible earning assets contributed to the business and reflected on the balance sheet.

(3) The lender must certify that the equity requirement was determined using balance sheets prepared in accordance with GAAP and met upon giving effect to the entirety of the loan in the calculation, whether or not the loan itself is fully advanced, as of the date the guaranteed loan is closed.

(e) Lien priorities. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of the loan will neither be paid first nor given any preference or priority over the guaranteed portion. A parity or junior position may be considered provided that discounted collateral values are adequate to secure the loan in accordance with paragraph (b) of this section after considering prior liens.

(f) Management. A thorough review of key management personnel will be completed to ensure that the business has adequately trained and experienced managers.

§ 4279.137 Financial statements.

(a) The lender will determine the type and frequency of submission of financial statements by the borrower. At a minimum, annual financial statements prepared by an accountant in accordance with Generally Accepted Accounting Principles will be required.

(b) If specific circumstances warrant and the proposed guaranteed loan will exceed $3 million, the Agency may require annual audited financial statements. For example, the need for audited financial statements will be carefully considered in connection with loans that depend heavily on inventory and accounts receivable for collateral.

§§ 4279.138–4279.142 [Reserved]

§ 4279.143 Insurance.

(a) Hazard. Hazard insurance with a standard mortgage clause naming the lender as beneficiary will be required on every loan in an amount that is at least the lesser of the depreciated replacement value of the collateral or the amount of the loan. Hazard insurance includes fire, windstorm, lightning, hail, explosion, riot, civil commotion, aircraft, vehicle, marine, smoke, builder’s risk during construction by the business, and property damage.
§ 4279.144 Appraisals.

Lenders will be responsible for ensuring that appraisal values adequately reflect the actual value of the collateral. All real property appraisals associated with Agency guaranteed loanmaking and servicing transactions will meet the requirements contained in the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) of 1989 and the appropriate guidelines contained in Standards 1 and 2 of the Uniform Standards of Professional Appraisal Practices (USPAP). In accordance with USPAP, the Agency will require documentation that the appraiser has the necessary experience and competency to appraise the property in question. All appraisals will include consideration of the potential effects from a release of hazardous substances or petroleum products or other environmental hazards on the market value of the collateral. For additional guidance and information concerning the completion of real property appraisals, refer to “Standard Practices for Environmental Site Assessments: Transaction Screen Questionnaire” and “Phase I Environmental Site Assessment,” both published by the American Society of Testing and Materials. Chattels will be evaluated in accordance with normal banking practices and generally accepted methods of determining value.

[69 FR 64831, Nov. 9, 2004]

§§ 4279.145–4279.148 [Reserved]

§ 4279.149 Personal and corporate guarantee.

(a) Unconditional personal and corporate guarantees are part of the collateral for the loan, but are not considered in determining whether a loan is adequately secured for loanmaking purposes. Agency approved personal and corporate guarantees for the full term of the loan and at least equal to the guarantor’s percent interest in the borrower, times the loan amount are required from those owning at least a 20 percent interest in the borrower, unless the lender documents to the Agency’s satisfaction that collateral, equity, cashflow, and profitability indicate an above-average ability to repay the loan. The guarantors will execute an Agency approved unconditional guarantee form. When warranted by an Agency assessment of potential financial risk, Agency approved guarantees may also be required of parent, subsidiaries, or affiliated companies (owning less than a 20 percent interest in the borrower) and require security for any guarantee provided under this section.

(b) Exceptions to the requirement for personal guarantees must be requested by the lender and concurred by the Agency approval official on a case-by-case basis. The lender must document that collateral, equity, cashflow, and profitability indicate an above-average ability to repay the loan.

[71 FR 67033, Nov. 20, 2006; 72 FR 27241, May 15, 2007]

§ 4279.150 Feasibility studies.

A feasibility study by a qualified independent consultant may be required by the Agency for start-up businesses or existing businesses when the project will significantly affect the borrower’s operations. An acceptable feasibility study should include, but not be limited to, economic, market, technical, financial, and management feasibility.
§ 4279.155 Loan priorities.

Applications and preapplications received by the Agency will be considered in the order received; however, for the purpose of assigning priorities as described in paragraph (b) of this section, the Agency will compare an application to other pending applications.

(a) When applications on hand otherwise have equal priority, applications for loans from qualified veterans will have preference.

(b) Priorities will be assigned by the Agency to eligible applications on the basis of a point system as contained in this section. The application and supporting information will be used to determine an eligible proposed project’s priority for available guarantee authority. All lenders, including CLP lenders, will consider Agency priorities when choosing projects for guarantee. The lender will provide necessary information related to determining the score, as requested.

(1) Population priority. Projects located in an unincorporated area or in a city with under 25,000 population (10 points).

(2) Community priority. The priority score for community will be the total score for the following categories:
   (i) Located in an eligible area of long term population decline and job deterioration based on reliable statistical data (5 points).
   (ii) Located in a rural community that has remained persistently poor over the last 60 years (5 points).
   (iii) Located in a rural community that is experiencing trauma as a result of natural disaster or experiencing fundamental structural changes in its economic base (5 points).
   (iv) Located in a city or county with an unemployment rate 125 percent of the statewide rate or greater (5 points).
   (3) Empowerment Zone/Enterprise Community (EZ/EC). (i) Located in an EZ/EC designated area (10 points).
   (ii) Located in a designated Champion Community (5 points). A Champion Community is a community which developed a strategic plan to apply for an EZ/EC designation, but not selected as a designated EZ/EC Community.

(4) Loan features. The priority score for loan features will be the total score for the following categories:
   (i) Lender will price the loan at the Wall Street Journal published Prime Rate plus 1.5 percent or less (5 points).
   (ii) Lender will price the loan at the Wall Street Journal published Prime Rate plus 1 percent or less (5 points).
   (iii) The Agency guaranteed loan is less than 50 percent of project cost (5 points).
   (iv) Percentage of guarantee is 10 or more percentage points less than the maximum allowable for a loan of its size (5 points).

(5) High impact business investment priorities. The priority score for high impact business investment will be the total score for the following three categories:
   (i) Industry. The priority score for industry will be the total score for the following, except that the total score for industry cannot exceed 10 points:
      (A) Business that offers high value, specialized products and services that command high prices (2 points).
      (B) Business that provides an additional market for existing local businesses (3 points).
      (C) Business that is locally owned and managed (3 points).
      (D) Business that will produce a natural resource value-added product (2 points).
   (ii) Business. The priority score for business will be the total score for the following:
      (A) Business that creates jobs with an average wage exceeding 125 percent of the Federal minimum wage (5 points).
      (B) Business that creates jobs with an average wage exceeding 150 percent of the Federal minimum wage (10 points).
   (iii) Occupations. The priority score for occupations will be the total score for the following, except that the total score for job quality cannot exceed 10 points:
      (A) Business that creates jobs with an average wage exceeding 125 percent of the Federal minimum wage (5 points).
      (B) Business that creates jobs with an average wage exceeding 150 percent of the Federal minimum wage (10 points).

(6) Administrative points. The State Director may assign up to 10 additional
§ 4279.156 Planning and performing development.

(a) Design policy. The lender must ensure that all project facilities must be designed utilizing accepted architectural and engineering practices and must conform to applicable Federal, state, and local codes and requirements. The lender will also ensure that the project will be completed using the available funds and, once completed, will be used for its intended purpose and produce products in the quality and quantity proposed in the completed application approved by the Agency.

(b) Project control. The lender will monitor the progress of construction and undertake the reviews and inspections necessary to ensure that construction conforms with applicable Federal, state, and local code requirements; proceeds are used in accordance with the approved plans, specifications, and contract documents; and that funds are used for eligible project costs.

(c) Equal opportunity. For all construction contracts in excess of $10,000, the contractor must comply with Executive Order 11246, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375, and as supplemented by applicable Department of Labor regulations (41 CFR, part 60). The borrower and lender are responsible for ensuring that the contractor complies with these requirements.

(d) Americans with Disabilities Act (ADA). B&I Guaranteed Loans which involve the construction of or addition to facilities that accommodate the public and commercial facilities, as defined by the ADA, must comply with the ADA. The lender and borrower are responsible for compliance.

§§ 4279.157–4279.160 [Reserved]

§ 4279.161 Filing preapplications and applications.

Borrowers and lenders are encouraged to file preapplications and obtain Agency comments before completing an application. However, if they prefer, they may file a complete application as the first contact with the Agency. Neither preapplications nor applications will be accepted or processed unless a lender has agreed to finance the proposal. Guaranteed loans of $600,000 and less may be processed under paragraph (b) or (c) of this section, but guaranteed loans exceeding $600,000 must be processed under paragraph (b) of this section.

(a) Preapplications. Lenders may file preapplications by submitting the following to the Agency:

(1) A letter signed by the borrower and lender containing the following:
   (i) Borrower’s name, organization type, address, contact person, and federal tax identification and telephone numbers.
   (ii) Amount of the loan request, percent of guarantee requested, and the proposed rates and terms.
   (iii) Name of the proposed lender, address, telephone number, contact person, and lender’s Internal Revenue Service (IRS) identification number.
   (iv) Brief description of the project, products, services provided, and availability of raw materials and supplies.
   (v) Type and number of jobs created or saved.
   (vi) Amount of borrower’s equity and a description of collateral, with estimated values, to be offered as security for the loan.
   (vii) If a corporate borrower, the names and addresses of the borrower’s parent, affiliates, and subsidiary firms, if any, and a description of the relationship.

(2) A completed Form 4279–2, “Certification of Non-Relocation and Market Capacity Information Report,” if
the proposed loan is in excess of $1 million and will increase direct employment by more than 50 employees.

(3) For existing businesses, a current balance sheet and a profit and loss statement not more than 90 days old and financial statements for the borrower and any parent, affiliates, and subsidiaries for at least the 3 most recent years.

(4) For start-up businesses, a preliminary business plan must be provided.

(b) Applications. Except for CLP lenders, applications will be filed with the Agency by submitting the following information: (CLP applications will be completed in accordance with 4279.43(g)(1) but CLP lenders must have the material listed in this paragraph in their files.)

(1) A completed Form 4279–1, “Application for Loan Guarantee (Business and Industry)”.

(2) The information required for filing a preapplication, as listed above, if not previously filed or if the information has changed.

(3) Form FmHA 1940–20, “Request for Environmental Information,” and attachments, unless the project is categorically excluded under Agency environmental regulations.

(4) A personal credit report from an acceptable credit reporting company for a proprietor (owner), each partner, officer, director, key employee, and stockholder owning 20 percent or more interest in the applicant, except for those corporations listed on a major stock exchange. Credit reports are not required for elected and appointed officials when the applicant is a public body.

(5) Intergovernmental consultation comments in accordance with 7 CFR, part 3015, subpart V.

(6) Appraisals, accompanied by a copy of the appropriate environmental site assessment, if available. (Agency approval in the form of a Conditional Commitment may be issued subject to receipt of adequate appraisals.)

(7) For all businesses, a current (not more than 90 days old) balance sheet, a pro forma balance sheet at startup, and projected balance sheets, income and expense statements, and cash flow statements for the next 2 years. Projections should be supported by a list of assumptions showing the basis for the projections.

(8) Lender’s complete written analysis, including spreadsheets of the balance sheets and income statements for the 3 previous years (for existing businesses), pro forma balance sheet at startup, and 2 years projected yearend balance sheets and income statements, with appropriate ratios and comparisons with industrial standards (such as Dun & Bradstreet or Robert Morris Associates). All data must be shown in total dollars and also in common size form, obtained by expressing all balance sheet items as a percentage of assets and all income and expense items as a percentage of sales. The lender’s credit analysis must address the borrower’s management, repayment ability, including a cash-flow analysis, history of debt repayment, necessity of any debt refinancing, and the credit reports of the borrower, its principals, and any parent, affiliate, or subsidiary.

(9) Commercial credit reports obtained by the lender on the borrower and any parent, affiliate, and subsidiary firms.

(10) Current personal and corporate financial statements of any guarantors.

(11) A proposed Loan Agreement or a sample Loan Agreement with an attached list of the proposed Loan Agreement provisions. The Loan Agreement must be executed by the lender and borrower before the Agency issues a Loan Note Guarantee. The following requirements must be addressed in the Loan Agreement:

(i) Prohibition against assuming liabilities or obligations of others.

(ii) Restriction on dividend payments.

(iii) Limitation on the purchase or sale of equipment and fixed assets.

(iv) Limitation on compensation of officers and owners.

(v) Minimum working capital or current ratio requirement.

(vi) Maximum debt-to-net worth ratio.

(vii) Restrictions concerning consolidations, mergers, or other circumstances.

(viii) Limitations on selling the business without the concurrence of the lender.
(ix) Repayment and amortization of the loan.

(x) List of collateral and lien priority for the loan including a list of persons and corporations guaranteeing the loan with a schedule for providing the lender with personal and corporate financial statements. Financial statements on the corporate and personal guarantors must be updated at least annually.

(xi) Type and frequency of financial statements to be required for the duration of the loan.

(xii) The final Loan Agreement between the lender and borrower will contain any additional requirements imposed by the Agency in its Conditional Commitment.

(xiii) A section for the later insertion of any necessary measures by the borrower to avoid or reduce adverse environmental impacts from this proposal’s construction or operation. Such measures, if necessary, will be determined by the Agency through the completion of the environmental review process.

(12) A business plan, which includes, at a minimum, a description of the business and project, management experience, products and services, proposed use of funds, availability of labor, raw materials and supplies, and the names of any corporate parent, affiliates, and subsidiaries with a description of the relationship. Any or all of these requirements may be omitted if the information is included in a feasibility study.

(13) Independent feasibility study, if required.

(14) For companies listed on a major stock exchange or subject to the Securities and Exchange Commission (SEC) regulations, a copy of SEC Form 10-K, “Annual Report Pursuant to Section 13 or 15D of the Act of 1934.”

(15) For health care facilities, a certificate of need, if required by statute.

(16) A certification by the lender that it has completed a comprehensive analysis of the proposal, the applicant is eligible, the loan is for authorized purposes, and there is reasonable assurance of repayment ability based on the borrower’s history, projections and equity, and the collateral to be obtained.

(17) Any additional information required by the Agency.

(c) Applications of $600,000 and less. Guaranteed loan applications may be processed under this paragraph if the request does not exceed $400,000. Beginning in fiscal year 2004, this limit may be increased on a case-by-case basis to $600,000 provided that the Agency determines that there is not a significant increased risk of a default on the loan. Applications may be resubmitted under paragraph (b) of this section when the application under this paragraph contains insufficient information for the Agency to guarantee the loan. Applications submitted under this paragraph must use the Agency’s short application form and include the information contained in paragraphs (b)(3), (5), (7), (8), and (11) of this section. The lender must have the documentation identified in paragraph (b) of this section, with the exception of paragraphs (b)(1), (2), (14), and (15), available in its file for review.


§§ 4279.162–4279.164 [Reserved]

§ 4279.165 Evaluation of application.

(a) General review. The Agency will evaluate the application and make a determination whether the borrower is eligible, the proposed loan is for an eligible purpose, there is reasonable assurance of repayment ability, there is sufficient collateral and equity, and the proposed loan complies with all applicable statutes and regulations. If the Agency determines it is unable to guarantee the loan, the lender will be informed in writing. Such notification will include the reasons for denial of the guarantee.

(b) Environmental requirements. The environmental review process must be completed, in accordance with subpart G of part 1940 of this title, prior to the issuance of the Conditional Commitment, loan approval, or obligation of funds, whichever occurs first.
§ 4279.173 Loan approval and obligating funds.

(a) Upon approval of a loan guarantee, the Agency will issue a Conditional Commitment to the lender containing conditions under which a Loan Note Guarantee will be issued.

(b) If certain conditions of the Conditional Commitment cannot be met, the lender and applicant may propose alternate conditions. Within the requirements of the applicable regulations and instructions and prudent lending practices, the Agency may negotiate with the lender and the applicant regarding any proposed changes to the Conditional Commitment.

§ 4279.174 Transfer of lenders.

(a) The loan approval official may approve the substitution of a new eligible lender in place of a former lender who holds an outstanding Conditional Commitment when the Loan Note Guarantee has not yet been issued provided, that there are no changes in the borrower’s ownership or control, loan purposes, or scope of project and loan conditions in the Conditional Commitment and the Loan Agreement remain the same.

(b) The new lender’s servicing capability, eligibility, and experience will be analyzed by the Agency prior to approval of the substitution. The original lender will provide the Agency with a letter stating the reasons it no longer desires to be a lender for the project. The substituted lender must execute a new part B of Form 4279–1.

§ 4279.175 Domestic lamb industry adjustment assistance program set aside.

A 3-year set aside of B&I Guaranteed Loan Program funds has been established in the National Office to fund loans to lamb processors for real estate purchases and improvements; working capital; debt refinancing; and upgrading, replacing, and installing new processing and packaging equipment for domestic lamb packing and processing plants. The set aside is $15 million for FY 2001, $5 million for FY 2002, and $5 million for FY 2003. These funds will be available through the third quarter of each respective year and, if not used, will revert for use in the general program.

§ 4279.176–4279.179 [Reserved]

§ 4279.180 Changes in borrower.

Any changes in borrower ownership or organization prior to the issuance of the Loan Note Guarantee must meet the eligibility requirements of the program and be approved by the Agency loan approval official.

§ 4279.181 Conditions precedent to issuance of Loan Note Guarantee.

The Loan Note Guarantee will not be issued until the lender, including a CLP lender, certifies to the following:

(a) No major changes have been made in the lender’s loan conditions and requirements since the issuance of the Conditional Commitment, unless such changes have been approved by the Agency.

(b) All planned property acquisition has been or will be completed, all development has been or will be substantially completed in accordance with plans and specifications, conforms with applicable Federal, state, and local codes, and costs have not exceeded the amount approved by the lender and the Agency.

(c) Required hazard, flood, liability, worker compensation, and personal life insurance, when required, are in effect.

(d) Truth-in-lending requirements have been met.

(e) All equal credit opportunity requirements have been met.

(f) The loan has been properly closed, and the required security instruments have been obtained or will be obtained on any acquired property that cannot be covered initially under State law.

(g) The borrower has marketable title to the collateral then owned by the borrower, subject to the instrument securing the loan to be guaranteed and to any other exceptions approved in writing by the Agency.

(h) When required, the entire amount of the loan for working capital has been disbursed except in cases where the Agency has approved disbursement over an extended period of time.
(i) When required, personal, partnership, or corporate guarantees have been obtained.

(j) All other requirements of the Conditional Commitment have been met.

(k) Lien priorities are consistent with the requirements of the Conditional Commitment. No claims or liens of laborers, subcontractors, suppliers of machinery and equipment, or other parties have been or will be filed against the collateral and no suits are pending or threatened that would adversely affect the collateral when the security instruments are filed.

(l) The loan proceeds have been or will be disbursed for purposes and in amounts consistent with the Conditional Commitment and Form 4279–1. A copy of the detailed loan settlement of the lender must be attached to support this certification.

(m) There has been neither any material adverse change in the borrower’s financial condition nor any other material adverse change in the borrower, for any reason, during the period of time from the Agency’s issuance of the Conditional Commitment to issuance of the Loan Note Guarantee regardless of the cause or causes of the change and whether or not the change or causes of the change were within the lender’s or borrower’s control. The lender must address any assumptions or reservations in the requirement and must address all adverse changes of the borrower, any parent, affiliate, or subsidiary of the borrower, and guarantors.

(n) None of the lender’s officers, directors, stockholders, or other owners (except stockholders in an institution that has normal stockshare requirements for participation) has a substantial financial interest in the borrower and neither the borrower nor its officers, directors, stockholders, or other owners has a substantial financial interest in the lender. If the borrower is a member of the board of directors or an officer of a Farm Credit System (FCS) institution that is the lender, the lender will certify that an FCS institution on the next highest level will independently process the loan request and act as the lender’s agent in servicing the account.

(o) The Loan Agreement includes all measures identified in the Agency’s environmental impact analysis for this proposal (measures with which the borrower must comply) for the purpose of avoiding or reducing adverse environmental impacts of the proposal’s construction or operation.

§§ 4279.182–4279.185 [Reserved]

§ 4279.186 Issuance of the guarantee.

(a) When loan closing plans are established, the lender will notify the Agency. Coincident with, or immediately after loan closing, the lender will provide the following to the Agency:

(1) Lender’s certifications as required by § 4279.181.

(2) Executed Lender’s Agreement.

(3) Form FmHA 1980–19, “Guaranteed Loan Closing Report,” and appropriate guarantee fee.

(b) When the Agency is satisfied that all conditions for the guarantee have been met, the Loan Note Guarantee and the following documents, as appropriate, will be issued:

(1) Assignment Guarantee Agreement. In the event the lender uses the single note option and assigns the guaranteed portion of the loan to a holder, the lender, holder, and the Agency will execute the Assignment Guarantee Agreement; and

(2) Certificate of Incumbency. If requested by the lender, the Agency will provide the lender with a certification on Form 4279–7, “Certificate of Incumbency and Signature (Business and Industry),” of the signature and title of the Agency official who signs the Loan Note Guarantee, Lender’s Agreement, and Assignment Guarantee Agreement.

(c) The Agency may, at its discretion, request copies of loan documents for its file.

(d) There may be instances when not all of the working capital has been disbursed, and it appears practical to disburse the balance over a period of time. The State Director, after review of a disbursement plan, may amend the Conditional Commitment in accordance with the disbursement plan and issue the guarantee.
§ 4279.187 Refusal to execute Loan Note Guarantee.

If the Agency determines that it cannot execute the Loan Note Guarantee, the Agency will promptly inform the lender of the reasons and give the lender a reasonable period within which to satisfy the objections. If the lender requests additional time in writing and within the period allowed, the Agency may grant the request. If the lender satisfies the objections within the time allowed, the guarantee will be issued.

§§ 4279.188–4279.199 [Reserved]

§ 4279.200 OMB control number.

The information collection requirements contained in this regulation have been approved by OMB and have been assigned OMB control number 0575–0170. Public reporting burden for this collection of information is estimated to vary from 30 minutes to 54 hours per response, with an average of 27 hours per response, including time for reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Officer, OIRM, Stop 7630, Washington, DC 20250. You are not required to respond to this collection of information unless it displays a currently valid OMB control number.

Subpart C—Biorefinery Assistance Loans

SOURCE: 76 FR 8461, Feb. 14, 2011, unless otherwise noted.

§ 4279.201 Purpose and scope.

The purpose and scope of this subpart is to provide financial assistance for the development and construction of commercial-scale biorefineries or for the retrofitting of existing facilities using eligible technology for the development of advanced biofuels.

§ 4279.202 Compliance with §§ 4279.1 through 4279.84.

Except as specified in paragraphs (a) through (l) of this section, all loans guaranteed under this subpart shall comply with the provisions found in §§ 4279.1 through 4279.84 of this title.

(a) Definitions. The terms used in this subpart are defined in either § 4279.2 or in this paragraph. If a term is defined in both § 4279.2 and this paragraph, it will have, for purposes of this subpart only, the meaning given in this section.

Advanced biofuel. Fuel derived from renewable biomass, other than corn kernel starch, to include:

(i) Biofuel derived from cellulose, hemicellulose, or lignin;

(ii) Biofuel derived from sugar and starch (other than ethanol derived from corn kernel starch);

(iii) Biofuel derived from waste material, including crop residue, other vegetative waste material, animal waste, food waste, and yard waste;

(iv) Diesel-equivalent fuel derived from renewable biomass, including vegetable oil and animal fat;

(v) Biogas (including landfill gas and sewage waste treatment gas) produced through the conversion of organic matter from renewable biomass;

(vi) Butanol or other alcohols produced through the conversion of organic matter from renewable biomass; and

(vii) Other fuel derived from cellulosic biomass.

Agricultural producer. An individual or entity directly engaged in the production of agricultural products, including crops (including farming); livestock (including ranching); forestry products; hydroponics; nursery stock; or aquaculture, whereby 50 percent or greater of their gross income is derived from the operations.

Association of agricultural producers. An organization that represents agricultural producers and whose mission includes working on behalf of such producers and the majority of whose membership and board of directors is comprised of agricultural producers.

Bio-based product. A product determined by the Secretary to be a commercial or industrial product (other than food or feed) that is either:

(i) Composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials; or
(ii) An intermediate ingredient or feedstock.

Biofuel. A fuel derived from renewable biomass.

Biorefinery. A facility (including equipment and processes) that converts renewable biomass into biofuels and biobased products and may produce electricity.

Borrower. Any party that borrows or seeks to borrow money from the lender, including any party or parties liable for the guaranteed loan except guarantors.

Business plan. A comprehensive document that includes a clear description of the borrower’s ownership structure and management experience, including, if applicable, discussion of a parent, affiliates, and subsidiaries, and a discussion of how the borrower will operate the proposed project, including, at a minimum, a description of the business and project; the products and services to be provided; the availability of the resources necessary to provide those products and services; and pro forma financial statements for a period of 2 years, including balance sheet, income and expense, and cash flows.

Byproduct. Any and all biobased products generated under normal operations of the proposed project that can be reasonably measured and monitored. Byproducts may or may not have a readily identifiable commercial use or value.

Default. The condition that exists when a borrower is not in compliance with the promissory note, the loan agreement, or other related documents evidencing the loan.

Eligible project costs. Those expenses approved by the Agency for the project.

Eligible technology. Eligible technology is defined as either:
(i) A technology that is being adopted in a viable commercial-scale operation of a biorefinery that produces an advanced biofuel; or
(ii) A technology not described in paragraph (i) of this definition that has been demonstrated to have technical and economic potential for commercial application in a biorefinery that produces an advanced biofuel.

Existing business. A business that has been in operation for at least one full year. Businesses that have undergone mergers, changes in the business name, changes in the legal type of entity, or expansions of product lines are considered to be existing businesses as long as there is not a significant change in operations.

Farm cooperative. A business owned and controlled by agricultural producers that is incorporated, or otherwise recognized by the state in which it operates, as a cooperatively operated business.

Farmer Cooperative Organization. An organization whose membership is composed of farm cooperatives.

Feasibility study. An analysis by an independent qualified consultant of the economic, market, technical, financial, and management feasibility of a proposed project or business in terms of its expectation for success.

Indian tribe. This term has the meaning as defined in 25 U.S.C. 450b.

Institution of higher education. This term has the meaning as defined in 20 U.S.C. 1002(a).

Loan classification. The assigned score or metric reflecting the lender’s analysis of the degree of potential loss in the event of default.

Local owner. An individual who owns any portion of an eligible advanced biofuel biorefinery and whose primary residence is located within a certain distance from the biorefinery as specified by the Agency in a Notice published in the Federal Register.

Market value. The amount for which a property will sell for its highest and best use at a voluntary sale in an arm’s length transaction.

Material adverse change. Any change in the purpose of the loan, the financial condition of the borrower, or the collateral that would likely jeopardize loan performance.

Negligent loan origination. The failure of a lender to perform those services that a reasonably prudent lender would perform in originating its own portfolio of unguaranteed loans. The term includes the concepts of failure to act, not acting in a timely manner, or acting in a manner contrary to the manner in which a reasonably prudent lender would act.

Off-take agreement. The terms and conditions governing the sale and transportation of biofuels, biobased
products, and electricity produced by the borrower to another party.

Project. The facility or portion of a facility producing eligible advanced biofuels and any eligible biobased product receiving funding under this subpart.

Protective advances. Advances made by the lender for the purpose of preserving and protecting the collateral where the debtor has failed to, and will not or cannot, meet its obligations to protect or preserve collateral.

Renewable biomass.

(i) Materials, pre-commercial thinnings, or invasive species from National Forest System land or public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)) that:

(A) Are byproducts of preventive treatments that are removed to reduce hazardous fuels; to reduce or contain disease or insect infestation; or to restore ecosystem health;

(B) Would not otherwise be used for higher-value products; and

(C) Are harvested in accordance with applicable law and land management plans and the requirements for old-growth maintenance, restoration, and management direction of paragraphs (2), (3), and (4) of subsection (e) of section 102 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6512) and large-tree retention of subsection (f) of that section; or

(ii) Any organic matter that is available on a renewable or recurring basis from non-Federal land or land belonging to an Indian or Indian tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States, including:

(A) Renewable plant material, including feed grains; other agricultural commodities; other plants and trees; and algae; and

(B) Waste material, including crop residue; other vegetative waste material (including wood waste and wood residues); animal waste and byproducts (including fats, oils, greases, and manure); and food waste and yard waste.

Retrofitting. The modification of a building or equipment to incorporate functions not included in the original design that allow for the production of advanced biofuels.

Rural or rural area. Any area of a State not in a city or town that has a population of more than 50,000 inhabitants, according to the latest decennial census of the United States, or in the urbanized area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants, and any area that has been determined to be “rural in character” by the Under Secretary for Rural Development, or as otherwise identified in this definition.

(1) An area that is attached to the urbanized area of a city or town with more than 50,000 inhabitants by a contiguous area of urbanized census blocks that is not more than 2 census blocks wide. Applicants from such an area should work with their Rural Development State Office to request a determination of whether their project is located in a rural area under this provision.

(2) For the purposes of this definition, cities and towns are incorporated population centers with definite boundaries, local self government, and legal powers set forth in a charter granted by the State.

(3) For the Commonwealth of Puerto Rico, the island is considered rural and eligible for Business Programs assistance, except for the San Juan Census Designated Place (CDP) and any other CDP with greater than 50,000 inhabitants. CDPs with greater than 50,000 inhabitants, other than the San Juan CDP, may be determined to be eligible if they are “not urban in character.”

(4) For the State of Hawaii, all areas within the State are considered rural and eligible for Business Programs assistance, except for the Honolulu CDP within the County of Honolulu.

(5) For the purpose of defining a rural area in the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands, the Agency shall determine what constitutes rural and rural area based on available population data.

(6) The determination that an area is “rural in character” will be made by
the Under Secretary of Rural Development. The process to request a determination under this provision is outlined in paragraph (6)(ii) of this definition.

(i) The determination that an area is “rural in character” under this definition will apply to areas that are within:

(A) An urbanized area that has two points on its boundary that are at least 40 miles apart, which is not contiguous or adjacent to a city or town that has a population of greater than 150,000 inhabitants or the urbanized area of such a city or town; or

(B) An urbanized area contiguous and adjacent to a city or town of greater than 50,000 inhabitants that is within one-quarter mile of a rural area.

(ii) Units of local government may petition the Under Secretary of Rural Development for a “rural in character” designation by submitting a petition to both the appropriate Rural Development State Director and the Administrator on behalf of the Under Secretary. The petition shall document how the area meets the requirements of paragraph (6)(i)(A) or (B) above and discuss why the petitioner believes the area is “rural in character,” including, but not limited to, the area’s population density, demographics, and topography and how the local economy is tied to a rural economic base. Upon receiving a petition, the Under Secretary will consult with the applicable Governor or leader in a similar position and request comments to be submitted within 5 business days, unless such comments were submitted with the petition. The Under Secretary will release to the public a notice of a petition filed by a unit of local government not later than 30 days after receipt of the petition by way of publication in a local newspaper and posting on the Agency’s Web site, and the Under Secretary will make a determination not less than 15 days, but no more than 60 days, after the release of the notice. Upon a negative determination, the Under Secretary will provide to the petitioner an opportunity to appeal a determination to the Under Secretary, and the petitioner will have 10 business days to appeal the determination and provide further information for consideration.

Semi-work scale. A manufacturing plant operating on a limited commercial scale to provide final tests of a new product or process.

Startup business. A business that has been in operation for less than one full year. Startup businesses include newly formed entities leasing space or constructing facilities in a new market area, even if the owners of the startup business own affiliated businesses doing the same kind of business. Newly formed entities that are buying existing businesses or facilities will be considered an existing business as long as the business or facility being bought remains in operation and there is no significant change in operations.

Tangible net worth. Tangible assets minus liabilities.

Technical and economic potential. A technology not described in paragraph (i) of the definition of “eligible technology” is considered to have demonstrated “technical and economic potential” for commercial application in a biorefinery that produces an advanced biofuel if each of the following conditions is met:

(i) The advanced biofuel biorefinery’s likely financial and production success is evidenced in a thorough evaluation including, but not limited to:

(A) Feedstocks;

(B) Process engineering;

(C) Siting;

(D) Technology;

(E) Energy production; and

(F) Financial and sensitivity review using a banking industry software analysis program with appropriate industry standards.

(ii) The evaluation in paragraph (i) of this definition is completed by an independent third-party expert in a feasibility study, technical report, or other analysis, which must be satisfactory to the Agency, that demonstrates the potential success of the project.

(iii) The advanced biofuel technology has successfully completed at least a 12-month (four seasons) operating cycle at semi-work scale.

Tier 1 capital. This term has the meaning given it under applicable Federal Deposit Insurance Corporation regulations.
Tier 2 capital. This term has the meaning given it under applicable Federal Deposit Insurance Corporation regulations.

Tier 1 leverage capital ratio. This term has the meaning given it under applicable Federal Deposit Insurance Corporation regulations.

Tier 1 risk-based capital ratio. This term has the meaning given it under applicable Federal Deposit Insurance Corporation regulations.

Total project costs. The sum of all costs associated with a completed project.

Total qualifying capital. This term has the meaning given to it under applicable Federal Deposit Insurance Corporation regulations.

Total risk-based capital ratio. This term has the meaning given it under applicable Federal Deposit Insurance Corporation regulations.

Viable commercial-scale operation. An operation is considered to be a viable commercial-scale operation if it demonstrates that:

(i) Its revenue will be sufficient to recover the full cost of the project over the term of the loan and result in an anticipated annual rate of return sufficient to encourage investors or lenders to provide funding for the project;
(ii) It will be able to operate profitably without public and private sector subsidies upon completion of construction (volumetric excise tax is not included as a subsidy);
(iii) Contracts for feedstocks are adequate to address proposed off-take from the biorefinery;
(iv) It has the ability to achieve market entry, suitable infrastructure to transport the advanced biofuel to its market is available, and the advanced biofuel technology and related products are generally competitive in the market;
(v) It can be easily replicated and that replications can be sited at multiple facilities across a wide geographic area based on the proposed deployment plan; and
(vi) The advanced biofuel technology has at least a 12-month (four seasons) successful operating history at semi-work scale, which demonstrates the ability to operate at a commercial scale.

Working capital. Current assets available to support a business’s operations and growth. Working capital is calculated as current assets less current liabilities.

(b) Exception authority. The exception authority provisions of this paragraph apply to this subpart instead of those in §4279.15. The Administrator may, with the concurrence of the Secretary of Agriculture, make an exception, on a case-by-case basis, to any requirement or provision of this subpart that is not inconsistent with any authorizing statute or applicable law, if the Administrator determines that application of the requirement or provision would adversely affect the Federal government’s interest.

(c) Lender eligibility requirements. The requirements specified in §4279.29 do not apply to this subpart. Instead, a lender must meet the requirements specified in paragraphs (c)(1) through (c)(5) of this section in order to be approved for participation in this program.

(1) An eligible lender is any Federal or State chartered bank, Farm Credit Bank, other Farm Credit System institution with direct lending authority, and Bank for Cooperatives. These entities must be subject to credit examination and supervision by either an agency of the United States or a State. Credit unions subject to credit examination and supervision by either the National Credit Union Administration or a State agency, and insurance companies regulated by a State or National insurance regulatory agency are also eligible lenders. The National Rural Utilities Cooperative Finance Corporation is also an eligible lender. Savings and loan associations, mortgage companies, and other lenders as identified in 7 CFR 4279.29(b) are not eligible.

(2) The lender must demonstrate the minimum acceptable levels of capital specified in paragraphs (c)(2)(i) through (c)(2)(iii) of this section at the time of application and at time of issuance of the loan note guarantee. This information may be identified in Call Reports and Thrift Financial Reports. If the information is not identified in the Call Reports or Thrift Financial Reports, the lender will be required to calculate

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its levels and provide them to the Agency.

(i) Total Risk-Based Capital ratio of 10 percent or higher;
(ii) Tier 1 Risk-Based Capital ratio of 6 percent or higher; and
(iii) Tier 1 Leverage Capital ratio of 5 percent or higher.

(3) The lender must not be debarred or suspended by the Federal government.

(4) If the lender is under a cease and desist order from a Federal agency, the lender must inform the Agency. The Agency will evaluate the lender’s eligibility on a case-by-case basis given the risk of loss posed by the cease and desist order.

(5) The Agency, in its sole determination, will approve applications for loan guarantees only from lenders with adequate experience and expertise, from similar projects, to make, secure, service, and collect loans approved under this subpart.

(d) Independent credit risk analysis. The Agency will require an evaluation and either a credit rating or a credit assessment of the total project’s indebtedness, without consideration for a government guarantee, from nationally-recognized rating agency for loans of $125,000,000 or more.

(e) Environmental responsibilities. The provisions of this paragraph shall be used instead of the provisions specified in § 4279.30(c) for determining a lender’s environmental responsibilities under this subpart. Lenders have a responsibility to become familiar with Federal environmental requirements; to consider at the earliest planning stages, in consultation with the prospective borrower, the potential environmental impacts of their proposals; and to develop proposals that minimize the potential to adversely impact the environment.

(1) Lenders must alert the Agency to any controversial environmental issues related to a proposed project or items that may require extensive environmental review.

(2) Lenders must help the borrower prepare Form RD 1940–20, “Request for Environmental Information,” (when required by 7 CFR part 1940, subpart G, or successor regulations); assist in the collection of additional data when the Agency needs such data to complete its environmental review of the proposal; and assist in the resolution of environmental problems.

(3) Lenders must ensure that the borrower has:

(i) Provided the necessary environmental information to enable the Agency to undertake its environmental review process in accordance with 7 CFR part 1940, subpart G, or successor regulations, including the provision of all required Federal, State, and local permits;
(ii) Complied with any mitigation measures required by the Agency; and
(iii) Not taken any actions or incurred any obligations with respect to the proposed project that will either limit the range of alternatives to be considered during the Agency’s environmental review process or which will have an adverse effect on the environment.

(f) Additional lender functions and responsibilities. In addition to the requirements in § 4279.30, the requirements specified in paragraphs (f)(1) through (f)(3) apply.

(1) Any action or inaction on the part of the Agency does not relieve the lender of its responsibilities to originate and service the loan guaranteed under this subpart.

(2) The lender must compile a complete application for each guaranteed loan and maintain such application in its files for at least 3 years after the final loss has been paid.

(3) The lender must report to the Agency all conflicts of interest and appearances of conflicts of interest.

(g) Certified lender program. Section 4279.43 does not apply to this subpart.

(h) Oversight and monitoring. In addition to complying with requirements specified in § 4279.44, the lender will cooperate fully with Agency oversight and monitoring of all lenders involved in any manner with any guarantee under the Biorefinery Assistance program to ensure compliance with this subpart. Such oversight and monitoring will include, but is not limited to, reviewing lender records and meeting with lenders (in accordance with § 4287.107(c)).

(i) Conditions of guarantee. All loan guarantees under this subpart are subject to the provisions of § 4279.72, except
for §4279.72(b), and the provisions specified in paragraphs (1)(1) through (1)(6) of this section.

(1) The entire loan, the guaranteed and unguaranteed portions, must be secured by a first lien on all collateral necessary to run the project. The Agency may consider a subordinate lien position on inventory and accounts receivable for working capital loans provided: The Agency determines the working capital is necessary for the operation; with the subordination, the Agency remains adequately secured; and the subordination is in the best interests of the Government.

(2) The holder of a guaranteed portion shall have all rights of payment, as defined in the loan note guarantee, to the extent of the portion purchased. Even if all or a portion of the loan note guarantee has been sold to a holder, the lender will remain bound by all obligations under the loan note guarantee, Lender’s Agreement, and Agency program regulations.

(3) The lender must be shown as an additional insured on insurance policies (or other risk sharing instruments) that benefit the project and must be able to assume any contracts that are material to running the project, including any feedstock or off-take agreements, as may be applicable.

(4) If a lender does not satisfactorily comply with the provision found in §4279.256(c) and such failure leads to losses, then such losses may not be recoverable under the guarantee.

(5) When a guaranteed portion of a loan is sold to a holder, the holder shall succeed to all rights of the lender under the Loan Note Guarantee to the extent of the portion purchased. The lender will remain bound to all obligations under the Loan Note Guarantee, Lender’s Agreement, and Agency program regulations. A guarantee and right to require purchase will be directly enforceable by a holder notwithstanding any fraud or misrepresentation by the lender or any unenforceability of the guarantee by the lender, except for fraud or misrepresentation of which the holder had actual knowledge at the time it became the holder or in which the holder participates or condones. The lender will reimburse the Agency for any payments the Agency makes to a holder of lender’s guaranteed loan that, under the Loan Note Guarantee, would not have been paid to the lender had the lender retained the entire interest in the guaranteed loan and not conveyed an interest to a holder.

(j) Sale or assignment of guaranteed loan. The provisions of §4279.75 apply to this subpart.

(k) Minimum retention. The provisions of §4279.77 apply to this subpart, except that the lender is required to hold in its own portfolio a minimum of 7.5 percent of the total loan amount.

(l) Replacement of document. Documents must be replaced in accordance with §4279.84, except, in §4279.84(b)(1)(v), a full statement of the circumstances of any defacement or mutilation of the Loan Note Guarantee or Assignment Guarantee Agreement would also need to be provided.


§§ 4279.203–4279.223 [Reserved]

§ 4279.224 Loan processing.

Processing of Biorefinery Assistance Guaranteed loans under this subpart shall comply with the provisions found in §§4279.107 through 4279.187 of this chapter, except as provided in the following sections.

§ 4279.225 Ineligible loan purposes.

For the purposes of this subpart, the ineligible purposes identified in §4279.114(b), (c), and (p) do not apply to this subpart.

§ 4279.226 Fees.

Fees will be determined according to the provisions of this section in lieu of §4279.107.

(a) Guarantee fee. The guarantee fee will be paid to the Agency by the lender and is nonrefundable. The fee may be passed on to the borrower. Issuance of the Loan Note Guarantee is conditioned on payment of the guarantee fee by closing. The guarantee fee will be the percentage specified in paragraphs (a)(1) or (a)(2) of this section, as applicable, unless otherwise specified by the Agency in a notice published in the Federal Register, multiplied by the principal loan amount multiplied by
§ 4279.227 Borrower eligibility.

Borrower eligibility will be determined according to the provisions of this section in lieu of § 4279.108.

(a) Eligible entities. To be eligible, a borrower must meet the requirements specified in paragraphs (a)(1) and (a)(2) of this section, as applicable.

(1) Type of borrower. The borrower must be one of the following:
   (i) An individual;
   (ii) An entity;
   (iii) An Indian tribe;
   (iv) A unit of State or local government;
   (v) A corporation;
   (vi) A farm cooperative;
   (vii) A farmer cooperative organization;
   (viii) An association of agricultural producers;
   (ix) A National Laboratory;
   (x) An institution of higher education;
   (xi) A rural electric cooperative;
   (xii) A public power entity; or
   (xiii) A consortium of any of the above entities.

(b) Annual renewal fee. The annual renewal fee, which may be passed on to the borrower, will be paid to the Agency for as long as the guaranteed loan is outstanding and is payable during the construction period. Unless otherwise specified by the Agency in a notice published in the FEDERAL REGISTER, the annual renewal fee shall be as follows:

(1) One hundred basis points (1 percent) for guarantees on loans that were originally greater than 75 percent of total project costs.

(2) Seventy five basis points (0.75 percent) for guarantees on loans that were originally greater than 65 percent but less than or equal to 75 percent of total project costs.

(3) Fifty basis points (0.50 percent) for guarantees on loans that were originally for 65 percent or less of total project costs.

§ 4279.228 Project eligibility.

In lieu of the requirements specified in § 4279.113, to be eligible for a guaranteed loan under this subpart, at a minimum, a borrower and project, as applicable, must meet each of the requirements specified in paragraphs (a) through (g) of this section.

(a) The project must be located in a State, as defined in § 4279.2.

(b) The project must be for either:

(1) The development and construction of commercial-scale biorefineries using eligible technology or

(2) The retrofitting of existing facilities, including, but not limited to, wood products facilities and sugar mills, with eligible technology.

(c) The project must use an eligible feedstock for the production of advanced biofuels and biobased products. Eligible feedstocks include, but are not
limited to, renewable biomass, including municipal solid waste consisting of renewable biomass, biosolids, treated sewage sludge, and byproducts of the pulp and paper industry. For the purposes of this subpart, recycled paper is not an eligible feedstock.

(d) The majority of the biorefinery production must be an advanced biofuel. Unless otherwise approved by the Agency, and determined to be in the best financial interest of the government, the advanced biofuel must be sold as a biofuel. The following will be considered in determining what constitutes the majority of production:

(1) When the biorefinery produces a biobased product and, if applicable, byproduct that has an established BTU content from a recognized Federal source, majority biofuel production will be based on BTU content of the advanced biofuel, the biobased product, and, if applicable, the byproduct, or

(2) When the biorefinery produces a biobased product or, if applicable, byproduct that does not have an established BTU content, then majority biofuel production will be based on output volume, using parameters announced by the Agency in periodic Notices in the Federal Register, of the advanced biofuel, the biobased product, and, if applicable, the byproduct.

(e) An advanced biofuel that is converted to another form of energy for sale will still be considered an advanced biofuel.

(f) The project must provide funds (e.g., cash, subordinate financing, non-federal grant) of not less than 20 percent of eligible project costs. All projects must meet the equity requirements specified in §4279.234(c)(1).

(g) The Agency will consider refinancing only under either of the two conditions specified in paragraphs (g)(1) and (g)(2) of this section.

(1) Permanent financing used to refinance interim construction financing of the proposed project only if the application for the guaranteed loan under this subpart was approved prior to closing the interim loan for the construction of the facility.

(2) Refinancing that is no more than 20 percent of the loan for which the Agency is guaranteeing and the purpose of the refinance is to enable the Agency to establish a first lien position with respect to pre-existing collateral subject to a pre-existing lien and the refinancing would be in the best financial interests of the Federal Government.

§4279.229 Guaranteed loan funding.

Instead of the provisions found in §4279.119, the provisions of this section apply to loans guaranteed under this subpart.

(a) In administering this program's budgetary authority each fiscal year, the Agency will allocate up to, but no more, than 50 percent of its budgetary authority to fund applications received by the end of the first application window, including those carried over from the previous application period. Any funds not obligated to support applications submitted by the end of the first application window will be available to support applications received by the end of the second window, including those carried over from the previous application period. The Agency, therefore, will have a minimum of 50 percent of each fiscal year's budgetary authority for this program available to support applications received by the end of the second application window.

(b) The amount of a loan guaranteed for a project under this subpart will not exceed 80 percent of total eligible project costs. Total Federal participation will not exceed 80 percent of total eligible project costs. The borrower needs to provide the remaining 20 percent from other non-Federal sources to complete the project. Eligible project costs are specified in paragraph (e) of this section.

(c) The maximum principal amount of a loan guaranteed under this subpart is $250 million to one borrower; there is no minimum amount. If an eligible borrower receives other direct Federal funding (i.e., direct loans and grants) for a project, the amount of the loan that the Agency will guarantee under this subpart must be reduced by the same amount of the other direct Federal funding that the eligible borrower received for the project. For example, an eligible borrower is applying for a loan guarantee on a $1 million project. The borrower provides the minimum matching requirement of 20 percent, or
$200,000. This leaves $800,000 in other funding needed to implement the project. If the borrower receives no other direct Federal funding for this project and requests a guarantee for the $800,000, the Agency will consider a guarantee on the $800,000. However, if this borrower receives $100,000 in other direct Federal funding for this project, the Agency will only consider a guarantee on $700,000.

(d) The maximum guarantee on the principal and interest due on a loan guaranteed under this subpart will be determined as specified in paragraphs (d)(1) through (d)(4) of this section.

(1) If the loan amount is equal to or less than $125 million, 80 percent for the entire loan amount unless all of the conditions specified in paragraphs (d)(1)(i) through (d)(1)(iii) of this section are met, in which case 90 percent for the entire loan amount.

(i) Equity of 40 percent, excluding qualified intellectual property;

(ii) Feedstock and off-take contracts of at least 1 year in duration; and

(iii) Collateral coverage ratio, total discounted collateral value divided by total loan request, exceeding 1.5 to 1.

(2) If the loan amount is more than $125 million and less than $150 million, 80 percent for the entire loan amount.

(3) If the loan amount is equal to or more than $150 million but less than $200 million, 70 percent on the entire loan amount.

(4) If the loan amount is $200 million up to and including $250 million, 60 percent on the entire loan amount.

(e) Eligible project costs are only those costs associated with the items listed in paragraphs (e)(1) through (e)(7) of this section, as long as the items are an integral and necessary part of the total project, as determined by the Agency.

(1) Purchase and installation of equipment (new, refurbished, or remanufactured), except agricultural tillage equipment, used equipment, and vehicles.

(2) Construction or retrofitting.

(3) Permit and license fees.

(4) Working capital.

(5) Land acquisition.

(6) Cost of financing, excluding guarantee and renewal fees.

(7) Any other item identified by the Agency in a notice published in the Federal Register.

(f) Loans made with the proceeds of any obligation the interest on which is excludable from income under the Internal Revenue Code are ineligible. Funds generated through the issuance of tax-exempt obligations cannot be used to purchase the guaranteed portion of any Agency guaranteed loan and an Agency guaranteed loan cannot serve as collateral for a tax-exempt issue. The Agency may guarantee a loan with respect to a project at a facility that has received, or will receive, tax-exempt financing only when the guaranteed loan funds are used to finance a project that is separate and distinct from the activities at the facility that have been or will be financed by the tax-exempt obligation, and the guaranteed loan has at least a parity security position with the tax-exempt obligation.

§ 4279.230 [Reserved]

§ 4279.231 Interest rates.

The provisions found in §4279.125 apply to loans guaranteed under this subpart, except as provided in paragraphs (a) through (c) of this section. Lenders are encouraged to pass interest-rate savings realized through the secondary market on to the borrower.

(a) The rate on the unguaranteed portion of the loan shall not exceed the rate on the guaranteed portion of the loan by more than 500 basis points;

(b) Variable rate loans will not provide for negative amortization nor will they give the borrower the ability to choose its payment among various options.

(c) Both the guaranteed and unguaranteed portions of the loan must be amortized over the same term, as provided in §4279.232(a).

§ 4279.232 Terms of loan.

Instead of the provisions found in §4279.126, the provisions of this section apply to loans guaranteed under this subpart, except as provided in §4279.232(e).

(a) The repayment term for a loan under this subpart will be for a maximum period of 20 years or the useful
life of the project, as determined by the lender and confirmed by the Agency, whichever is less. The length of the loan term shall be the same for both the guaranteed and unguaranteed portions of the loan.

(b) Guarantees shall be provided only after consideration is given to the borrower's overall credit quality and to the terms and conditions of any applicable subsidies, tax credits, and other such incentives.

(c) All loans guaranteed under this subpart must be financially sound and feasible, with reasonable assurance of repayment.

(d) A loan's maturity will take into consideration the use of proceeds, the useful life of assets being financed, and the borrower's ability to repay the loan.

(e) Repayment of the loan shall be in accordance with §4279.125(a) and §4279.126(b) and (c).

§ 4279.234 Credit evaluation.

Instead of the provisions found in §4279.131, the provisions of this section apply to loans guaranteed under this subpart. For all applications for guarantee, the lender must prepare a credit evaluation. An acceptable credit evaluation must:

(a) Use credit documentation procedures and an underwriting process that are consistent with generally accepted commercial lending practices, and

(b) Include an analysis of the credit factors associated with each guarantee application, including consideration of each of the following five elements:

(1) Credit worthiness. Those financial qualities that generally make the borrower more likely to meet its obligations as demonstrated by its credit history.

(2) Cash flow. A borrower's ability to produce sufficient cash to repay the loan as agreed.

(3) Capital. The financial resources that the borrower currently has and those it is likely to have when payments are due. The borrower must be adequately capitalized.

(4) Collateral. The assets pledged by the borrower in support of the loan, including processing technology owned by the borrower and excluding assets acquired with other Federal funds. Collateral must have documented value sufficient to protect the interest of the lender and the Agency, and the discounted collateral value must be at least equal to the loan amount. Lenders will discount collateral consistent with sound loan-to-value policy. The Agency may consider the value of qualified intellectual property, as defined in §4279.2, arrived at in accordance with GAAP standards. The value of the intellectual property may not exceed 30 percent of the total value of all collateral.

(i) If there is an established market for the intellectual property, the value of the intellectual property will be valued according to the lender's standard discounting practice for intellectual property for determining adequacy of collateral.

(ii) If there is no established market for the intellectual property, the value of the intellectual property will be valued not greater than 25 percent, as determined by the Agency, for determining adequacy of collateral.

(5) Conditions. The general business environment and status of the borrower's industry.

(c) When determining the credit quality of the borrower, the lender must include the following in its analysis:

(1) The borrower shall demonstrate that it will be able to provide equity in the project of not less than 20 percent of eligible project costs at the time the loan is closed. For existing biorefineries, the fair market value of project equity (including the guaranteed loan being applied for) in real property and equipment and the value of qualified intellectual property based on the audited financial statements in accordance with Generally Accepted Accounting Principles may be substituted in whole or in part to meet the equity requirement. However, the appraisal completed to establish the fair market value of the real property and equipment must not be more than 1 year old. The Agency may require the lender to provide a more recent appraisal in order to reflect current market conditions. The appraisal used to establish fair market value of the real property
and equipment must conform to the requirements of § 4279.244. Otherwise, equity must be in the form of cash and cannot include other direct Federal funding (i.e., loans and grants).

(2) The credit analysis must also include spreadsheets of the balance sheets and income statements of the borrower for the 3 previous years (for existing businesses), pro forma balance sheets at startup, and projected year-end balance sheets and income statements for a period of not less than 3 years of stabilized operation, with appropriate ratios and comparisons with industrial standards (such as Dun & Bradstreet or Robert Morris Associates) to the extent industrial standards are available.

(3) All data must be shown in total dollars and also in common size form, obtained by expressing all balance sheet items as a percentage of assets and all income and expense items as a percentage of sales.

§§ 4279.235–4279.236 [Reserved]

§ 4279.237 Financial statements.

The provisions of § 4279.137 do not apply to this subpart. Instead, the submission of financial statements with the loan guarantee application must meet the requirements specified in § 4279.261(c).

§§ 4279.238–4279.243 [Reserved]

§ 4279.244 Appraisals.

All appraisals must be in accordance with § 4279.144 and each appraisal must be a complete, self-contained appraisal. Lenders must complete at least a Transaction Screen Questionnaire for any undeveloped sites and a Phase I Environmental Site Assessment on existing business sites in accordance with ASTM International Standards, which should be provided to the appraiser for completion of the self-contained appraisal. Specialized appraisers will be required to complete appraisals under this section. The Agency may approve a waiver of this requirement only if a specialized appraiser does not exist in a specific industry or hiring one will cause an undue financial burden to the borrower.

§§ 4279.245–4279.249 [Reserved]

§ 4279.250 Feasibility studies.

The provisions of § 4279.150 do not apply to this subpart. Instead, feasibility studies must meet the requirements specified in § 4279.261(f).

§§ 4279.251–4279.254 [Reserved]

§ 4279.255 Loan priorities.

The provisions of § 4279.155 do not apply to this subpart.

§ 4279.256 Construction planning and performing development.

The lender must comply with § 4279.156(a) through (c), except as otherwise provided in paragraphs (a) through (f) of this section.

(a) Architectural and engineering practices. Under paragraph § 4279.156(a), the lender must also ensure that all project facilities are designed utilizing accepted architectural and engineering practices that conform to the requirements of this subpart.

(b) Onsite inspector. The lender must provide an onsite project inspector.

(c) Changes and cost overruns. The borrower shall be responsible for any changes or cost overruns. If any such change or cost overrun occurs, then any change order must be expressly approved by the Agency, which approval shall not be unreasonably withheld, and neither the lender nor borrower will divert funds from purposes identified in the guaranteed loan application approved by the Agency to pay for any such change or cost overrun without the express written approval of the Agency. In no event will the current loan be modified or a subsequent guaranteed loan be approved to cover any such changes or costs. In the event of any of the aforementioned increases in cost or expenses, the borrower must provide for such increases in a manner that does not diminish the borrower’s operating capital. Failure to comply with the terms of this paragraph will be considered a material adverse change in the borrower’s financial condition, and the lender must address this matter, in writing, to the Agency’s satisfaction.
(d) **New draw certifications.** The following three certifications are required for each new draw:

1. Certification by the project engineer to the lender that the work referred to in the draw has been successfully completed;
2. Certification from the lender that all debts have been paid and all mechanics’ liens have been waived; and
3. Certification from the lender that the borrower is complying with the Davis-Bacon Act.

(e) **Surety.** Surety, as the term is commonly used in the industry, will be required in cases when the guarantee will be issued prior to completion of construction unless the contractor will receive a lump sum payment at the end of work. Surety will be made a part of the contract if the borrower requests it or if the contractor requests partial payments for construction work. In such cases where no surety is provided and the project involves pre-commercial technology, technology that is first of its type in the U.S., or new designs without sufficient operating hours to prove their merit, a latent defects bond may be required by the Agency to cover the work.

(f) **Reporting during construction.** During the construction of the project, lenders shall submit quarterly construction progress reports to the Agency. These reports must contain, at a minimum, planned and completed construction milestones, loan advances, and personnel hiring, training, and retention. This requirement applies to both the development and construction of commercial-scale biorefineries and to the retrofitting of existing facilities using eligible technology for the development of advanced biofuels. The lender must expeditiously report any problems in project development to the Agency.

§ 4279.260 Guarantee applications—general.

Unless otherwise noted, the provisions of §4279.161 do not apply to this subpart. Instead, the application provisions of this section and §4279.261 apply to the preparation of Biorefinery Assistance Guaranteed loan applications.

(a) **Application submittal.** For each guarantee request, the lender must submit to the Agency an application that is in conformance with §4279.261. The methods of application submittal will be specified in the annual Federal Register notice.

(b) **Application deadline.** Unless otherwise specified by the Agency in a notice published in the Federal Register, complete applications must be received by the Agency on or before May 1 of each year to be considered for funding for that fiscal year. If the application...
deadline falls on a weekend or a Federally observed holiday, the deadline will be the next Federal business day.

(c) Incomplete applications. Incomplete applications will be rejected. Lenders 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.

(d) Application withdrawal. During the period between the submission of an application and the execution of documents, the lender must notify the Agency, in writing, if the project is no longer viable or the borrower is no longer requesting financial assistance for the project. When the lender so notifies the Agency, the selection will be rescinded or the application withdrawn.

§ 4279.261 Application for loan guarantee content.

Approved lenders must submit an Agency-approved application form for each loan guarantee sought under this subpart. Loan guarantee applications from approved lenders must contain the information specified in paragraphs (a) through (n) of this section, organized pursuant to a table of contents in a chapter format, and in paragraph (o) of this section as applicable.

(a) Project Summary. Provide a concise summary of the proposed project and application information, project purpose and need, and project goals, including the following:

(1) Title. Provide a descriptive title of the project.

(2) Borrower eligibility. Describe how the borrower meets the eligibility criteria identified in § 4279.227.

(3) Project eligibility. Describe how the project meets the eligibility criteria identified in paragraph (c) of this section. Clearly state whether the application is for the construction and development of a biorefinery or for the retrofitting of an existing facility. Provide results from demonstration or pilot facilities that prove that the technology proposed to be used meets the definition of eligible technology. Additional project description information will be needed later in the application process.

(4) Matching funds. Submit a spreadsheet identifying sources, amounts, and availability of matching funds. The spreadsheet must also include a directory of matching funds source contact information. Attach any applications, correspondence, or other written communication between borrower and matching fund source.

(b) Lender’s analysis and credit evaluation. This analysis shall conform to § 4279.232(b) and shall include:

(1) A summary of the technology to be used in the project;

(2) The viability of such technology for the particular project application;

(3) The development type (e.g., installation, construction, retrofit);

(4) The credit reports of the borrower, its principals, and any parent, affiliate, or subsidiary as follows:

   (i) A personal credit report from an Agency-approved credit reporting company for individuals who are key employees of the borrower, as determined by the Agency, and for individuals owning 20 percent or more interest in the borrower or any owner with more than 10 percent ownership interest in the borrower if there is no owner with more than 20 percent ownership interest in the borrower, except for when the borrower is a corporation listed on a major stock exchange unless otherwise determined by the Agency; and

   (ii) Commercial credit reports on the borrower and any parent, affiliate, and subsidiary firms;

(5) The credit analysis specified in § 4279.232(b);

(6) For loans of $125 million or more, an evaluation and either a credit rating or a credit assessment of the total project’s indebtedness, without consideration for a government guarantee, from a nationally-recognized rating agency; and

(7) Whether the loan note guarantee is requested prior to construction or after completion of construction of the project.

(c) Financial statements. Financial statements as follows:

(1) For businesses that have been in existence for one or more years,
(i) The most recent audited financial statements of the borrower if the guaranteed loan is $3 million or more, unless alternative financial statements are authorized by the Agency; or

(ii) The most recent audited or Agency-acceptable financial statements of the borrower if the guaranteed loan is less than $3 million.

(2) For businesses that have been in existence for less than one year, the most recent Agency-authorized financial statements of the borrower regardless of the amount of the guaranteed loan request.

(3) For all businesses, a current (not more than 90 days old) balance sheet; a pro forma balance sheet at startup; and projected balance sheets, income and expense statements, and cash flow statements for a period of not less than 3 years of stabilized operation. Projections should be supported by a list of assumptions showing the basis for the projections.

(4) Depending on the complexity of the project and the financial condition of the borrower, the Agency may request additional financial statements and additional related information.

(d) Environmental information. Environmental information required by the Agency to conduct its environmental reviews (as specified in Exhibit H of 7 CFR part 1940, subpart G).

(e) Appraisals. Unless otherwise approved by the Agency, an appraisal conducted as specified under § 4279.244.

(f) Feasibility study. Elements in an acceptable feasibility study include, but are not limited to, the elements outlined in Table 1. In addition, as part of the feasibility study, a technical assessment of the project is required, as specified in paragraph (h) of this section.

<table>
<thead>
<tr>
<th>TABLE 1—FEASIBILITY STUDY COMPONENTS</th>
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<tbody>
<tr>
<td>(A) Executive Summary:</td>
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<tr>
<td>Introduction/Project Overview (Brief general overview of project location, size, etc.).</td>
</tr>
<tr>
<td>Economic feasibility determination.</td>
</tr>
<tr>
<td>Market feasibility determination.</td>
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<tr>
<td>Technical feasibility determination.</td>
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<tr>
<td>Financial feasibility determination.</td>
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<tr>
<td>Management feasibility determination.</td>
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<tr>
<td>Recommendations for implementation.</td>
</tr>
<tr>
<td>(B) Economic Feasibility:</td>
</tr>
<tr>
<td>Information regarding project site;</td>
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<tr>
<td>Availability of trained or trainable labor;</td>
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<tr>
<td>Availability of infrastructure, including utilities, and rail, air and road service to the site.</td>
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<tr>
<td>Feedstock:</td>
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<tr>
<td>Feedstock source management;</td>
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<tr>
<td>Estimates of feedstock volumes and costs;</td>
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<tr>
<td>Collection, Pre-Treatment, Transportation, and Storage; and</td>
</tr>
<tr>
<td>Feedstock risks.</td>
</tr>
<tr>
<td>Documentation that woody biomass feedstock from National Forest system lands or public lands cannot be used for a higher-value product.</td>
</tr>
<tr>
<td>Impacts on existing manufacturing plants or other facilities that use similar feedstock if the borrower’s proposed biofuel production technology is adopted.</td>
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<tr>
<td>Projected impact on resource conservation, public health, and the environment.</td>
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<tr>
<td>Detailed analysis of project costs including:</td>
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<tr>
<td>Project management and professional services;</td>
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<tr>
<td>Resource assessment;</td>
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<tr>
<td>Project design and permitting;</td>
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<tr>
<td>Land agreements and site preparation;</td>
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<tr>
<td>Equipment requirements and system installation;</td>
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<tr>
<td>Startup and shakedown; and</td>
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<tr>
<td>Warranties, insurance, financing, and operation and maintenance costs.</td>
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<tr>
<td>Overall economic impact of the project, including any additional markets created for agricultural and forestry products and agricultural waste material and the potential for rural economic development.</td>
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</table>
TABLE 1—FEASIBILITY STUDY COMPONENTS—Continued

Feasibility/plans of project to work with producer associations or cooperatives, including estimated amount of annual feedstock, biofuel, and byproduct purchased from or sold to producer associations and cooperatives.

(C) Market Feasibility:
Information on the sales organization and management;
Nature and extent of market and market area;
Marketing plans for sale of projected output—principal products and byproducts;
Extent of competition, including other similar facilities in the market area;
Commitments from customers or brokers—principal products and byproducts.
Risks related to the Advanced Biofuel industry, including
Industry status;
Specific market risks; and
Competitive threats and advantages.

(D) Technical Feasibility:
Suitability of the selected site for the intended use.
Scale of development for which the process technology has been proven (i.e., lab or bench, pilot, demonstration, or semi-work scale).
Specific volume of the process (expressed either as volume of feedstock processed [tons per unit of time] or as product [gallons per unit of time]).
Identification and estimation of project operation and development costs. Specify the level of accuracy of these estimates and the assumptions on which these estimates have been based.
Ability of the proposed system to be commercially replicated.
Risks related to:
Construction of the Biorefinery;
Advanced Biofuel production;
Regulation and governmental action; and
Design-related factors that may affect project success.

(E) Financial Feasibility:
Reliability of the financial projections and the assumptions on which the financial statements are based, including all sources and uses of project capital, private or public, such as Federal funds. Provide detailed analysis and description of projected balance sheets, income and expense statements, and cash flow statements over the useful life of the project.
A detailed description of:
Investment incentives;
Productivity incentives;
Loans and grants; and
Other project authorities and subsidies that affect the project.
Any constraints or limitations in the financial projections.
Ability of the business to achieve the projected income and cash flow.
Assessment of the cost accounting system.
Availability of short-term credit or other means to meet seasonal business costs.
Adequacy of raw materials and supplies.
Sensitivity analysis, including feedstock and energy costs and product and byproduct prices.
Risks related to:
The project;
Borrower financing plan;
The operational units; and
Tax issues.

(F) Management Feasibility:
Borrower and/or management’s previous experience concerning:
Biofuel production;
Acquisition of feedstock;
Marketing and sale of off-take; and
The receipt of Federal financial assistance, including amount of funding, date received, purpose, and outcome.
Management plan for procurement of feedstock and labor, marketing of the off-take, and management succession.

Risks related to:
- Borrower as a company (e.g., development-stage);
- Conflicts of interest; and
- Management strengths and weaknesses.

(G) Qualifications:
A resume or statement of qualifications of the author of the feasibility study, including prior experience, must be submitted.

(g) Business plan. The lender must submit a business plan that includes the information specified in paragraphs (g)(1) through (g)(10) of this section. Any or all of this information may be omitted if it is included in the feasibility study specified in paragraph (f) of this section.

(1) The borrower’s experience;
(2) The borrower’s succession planning, addressing both ownership and management;
(3) The names and a description of the relationship of the borrower’s parent, affiliates, and subsidiaries;
(4) The borrower’s business strategy;
(5) Possible vendors and models of major system components;
(6) The availability of the resources (e.g., labor, raw materials, supplies) necessary to provide the planned products and services;
(7) Site location and its relation to product distribution (e.g., rail lines or highways) and any land use or other permits necessary to operate the facility;
(8) The market for the product and its competition, including any and all competitive threats and advantages;
(9) Projected balance sheets, income and expense statements, and cash flow statements for a period of not less than 3 years of stabilized operation; and
(10) A description of the proposed use of funds.

(h) Technical Assessment. As part of the feasibility study required under paragraph (f) of this section, a detailed technical assessment is required for each project. The technical assessment must demonstrate that the design, procurement, installation, startup, operation and maintenance of the project will permit it to operate or perform as specified over its useful life in a reliable and a cost effective manner, and must identify what the useful life of the project is. The technical assessment must also identify all necessary project agreements, demonstrate that those agreements will be in place at or before the time of loan closing, and demonstrate that necessary project equipment and services will be available over the useful life of the project. The technical assessment must be based upon verifiable data and contain sufficient information and analysis so that a determination can be made on the technical feasibility of achieving the levels of income or production that are projected in the financial statements. All technical information provided must follow the format specified in paragraphs (h)(1) through (h)(9) of this section. Supporting information may be submitted in other formats. Design drawings and process flow charts are required as exhibits. A discussion of a topic identified in paragraphs (h)(1) through (h)(9) of this section is not necessary if the topic is not applicable to the specific project. Questions identified in the Agency’s technical review of the project must be answered to the Agency’s satisfaction before the application will be approved. All projects require the services of an independent, third-party professional engineer.

(1) Qualifications of project team. The project team will vary according to the complexity and scale of the project. The project team must have demonstrated expertise in similar advanced biofuel technology development, engineering, installation, and maintenance. Authoritative evidence that project
team service providers have the necessary professional credentials or relevant experience to perform the required services for the development, construction, and retrofitting, as applicable, of technology for producing advanced biofuels must be provided. In addition, authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the biorefinery to operate over its useful life must be provided.

The application must:

(i) Discuss the proposed project delivery method. Such methods include a design-bid-build method, where a separate engineering firm may design the project and prepare a request for bids and the successful bidder constructs the project at the borrower’s risk, and a design-build method, often referred to as “turnkey,” where the borrower establishes the specifications for the project and secures the services of a developer who will design and build the project at the developer’s risk;

(ii) Discuss the manufacturers of major components of advanced biofuels technology equipment being considered in terms of the length of time in business and the number of units installed at the capacity and scale being considered;

(iii) Discuss the project team members’ qualifications for engineering, designing, and installing advanced biofuels refineries, including any relevant certifications by recognized organizations or bodies. Provide a list of the same or similar projects designed, installed, or supplied and currently operating, with references if available; and

(iv) Describe the advanced biofuels refinery operator’s qualifications and experience for servicing, operating, and maintaining such equipment or projects. Provide a list of the same or similar projects designed, installed, or supplied and currently operating, with references if available.

(2) Agreements and permits. The application must identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (h)(2)(i) through (h)(2)(vi) of this section.

(i) Advanced biofuels refineries must be installed in accordance with applicable local, State, and national codes and applicable local, State, and Federal regulations. Identify zoning and code requirements and necessary permits and the schedule for meeting those requirements and securing those permits.

(ii) Identify licenses where required and the schedule for obtaining those licenses.

(iii) Identify land use agreements required for the project, the schedule for securing those agreements, and the term of those agreements.

(iv) Identify any permits or agreements required for solid, liquid, and gaseous emissions or effluents and the schedule for securing those permits and agreements.

(v) Identify available component warranties for the specific project location and size.

(vi) Identify all environmental issues, including environmental compliance issues, associated with the project.

(3) Resource assessment. The application must provide adequate and appropriate evidence of the availability of the feedstocks required for the advanced biofuels refinery to operate as designed. Indicate the type and quantity of the feedstock, and discuss storage of the feedstock, where applicable, and competing uses for the feedstock. Indicate shipping or receiving methods and required infrastructure for shipping, and other appropriate transportation mechanisms. For proposed projects with an established resource, provide a summary of the resource.

(4) Design and engineering. The application must provide authoritative evidence that the advanced biofuels refinery will be designed and engineered so as to meet its intended purposes, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. Projects shall be engineered by a qualified entity. Each biorefinery must be engineered as a complete, integrated facility. The engineering must be comprehensive, including site selection, systems and component selection, and
systems monitoring equipment. Bio-
refineries must be constructed by a
qualified entity.

(i) The application must include a
concise but complete description of the
project, including location of the
project; resource characteristics, in-
cluding the kind and amount of feed-
stocks; biorefinery specifications; kind,
amount, and quality of the output; and
monitoring equipment. Address per-
formance on a monthly and annual
basis. Describe the uses of or the mar-
et for the advanced biofuels produced
by the biorefinery. Discuss the impact
of reduced or interrupted feedstock
availability on the biorefinery’s oper-
ations.

(ii) The application must include:
(A) A description of the project site
that addresses issues such as site ac-
cess, foundations, and backup equip-
ment when applicable;
(B) A completed Form RD 1940–20 and
an environmental assessment prepared
in accordance with Exhibit H of 7 CFR
part 1940, subpart G; and
(C) Identification of any unique con-
struction and installation issues.

(iii) Sites must be controlled by the
eligible borrower for at least the fi-
nancing term of the loan note guar-
antee.

(5) Project development schedule. The
application must describe each signifi-
cant task, its beginning and end, and
its relationship to the time needed to
initiate and carry the project through
startup and shakedown. Provide a de-
tailed description of the project
timeline including resource assess-
ment, project and site design, permits
and agreements, equipment procure-
ment, and project construction from
excavation through startup and shake-
down.

(6) Equipment procurement. The appli-
cation must demonstrate that equip-
ment required by the biorefinery is
available and can be procured and de-
ivered within the proposed project de-
velopment schedule. Biorefineries may
be constructed of components manu-
factured in more than one location.

(warranties, shipping, receiving, and on-
site storage or inventory.

(7) Equipment installation. The appli-
cation must provide a full description
of the management of and plan for site
development and systems installation,
details regarding the scheduling of
major installation equipment needed
for project construction, and a descrip-
tion of the startup and shakedown
specification and process and the con-
ditions required for startup and shake-
down for each equipment item individ-
ually and for the biorefinery as a
whole.

(8) Operations and maintenance. The
application must provide the oper-
ations and maintenance requirements
of the biorefinery necessary for the bio-
refinery to operate as designed over its
useful life. The application must also
include:

(i) Information regarding available
biorefinery and component warranties
and availability of spare parts;
(ii) A description of the routine oper-
ations and maintenance requirements
of the proposed biorefinery, including
maintenance schedules for the mechan-
ical, piping, and electrical systems and
system monitoring and control require-
ments, as well as provision of informa-
tion that supports expected useful life
of the biorefinery and timing of major
component replacement or rebuilds;
(iii) A discussion of the costs and
labor associated with operating and
maintaining the biorefinery and plans
for in-sourcing or outsourcing. A de-
scription of the opportunities for tech-
nology transfer for long-term project
operations and maintenance by a local
entity or owner/operator; and
(iv) Provision and discussion of the
risk management plan for handling
large, unanticipated failures of major
components.

(9) Decommissioning. A description of
the decommissioning process, when the
project must be uninstalled or re-
moved. A description of any issues, re-
quirements, and costs for removal and
disposal of the biorefinery.

(i) Scoring information. The applica-
tion must contain information in a for-
mat that is responsive to the scoring
criteria specified in §4279.265(d).

(j) Loan Agreement. A proposed loan
agreement or a sample loan agreement

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with an attached list of the proposed loan agreement provisions as specified in §4279.161(b)(11).

(k) Lender certifications. The lender must provide certification in accordance with §4279.161(b)(16). In addition, the lender must certify that the lender concludes that the project has technical merit.

(l) Intergovernmental consultation. Intergovernmental consultation comments in accordance with RD Instruction 1940–J and 7 CFR part 3015, subpart V.

(m) DUNS Number. For borrowers other than individuals, a Dun and Bradstreet Universal Numbering System (DUNS) number, which can be obtained online at http://fedgov.dnb.com/webform.

(n) Bioenergy experience. Identify borrower’s, including its principals’, prior experience in bioenergy projects and the receipt of Federal financial assistance, including the amount of funding, date received, purpose, and outcome, for such projects.

(o) Other information. Any other information determined by the Agency to be necessary to evaluate the application.


§§ 4279.262–4279.264 [Reserved]

§ 4279.265 Guarantee application evaluation.

Instead of evaluating applications using the provisions of §4279.165, the Agency will evaluate and award applications according to the provisions specified in paragraphs (a) through (h) of this section.

(a) Application processing. Upon receipt of a complete application, the Agency will conduct a review to determine if the borrower, lender, and project are eligible; if the project has technical merit as determined under paragraph (b) of this section; and if the minimum financial metric criteria under paragraph (c) of this section are met.

(1) If the borrower, lender, or the project is determined to be ineligible for any reason, the Agency will inform the lender, in writing, of the reasons.

No further evaluation of the application will occur.

(2) If the Agency determines it is unable to guarantee the loan, the lender will be informed in writing. Such notification will include the reasons for denial of the guarantee.

(b) Technical merit determination. The Agency’s determination of a project’s technical merit will be based on the information in the application. Projects determined by the Agency to be without technical merit will not be selected for funding.

(c) Financial metric criteria. The borrower must meet the financial metric criteria specified in paragraphs (c)(1) through (c)(3) of this section. These financial metric criteria shall be calculated from the realistic information in the pro forma statements or borrower financial statements, submitted in accordance with §4279.261(c), of a typical operating year after the project is completed and stabilized.

(1) A debt coverage ratio of 1.0 or higher.

(2) A debt-to-tangible net worth ratio of 4:1 or lower for startup businesses and of 9:1 or lower for existing businesses.

(3) A discounted loan-to-value ratio of no more than 1.0.

(d) Scoring applications. The Agency will score each complete and eligible application it receives on or before May 1 in the fiscal year in which it was received. The Agency will score each eligible application that meets the minimum requirements for financial and technical feasibility using the evaluation criteria identified below. A maximum of 100 points is possible.

(1) Whether the borrower has established a market for the advanced biofuel and the byproducts produced and whether the advanced biofuel meets an applicable renewable fuel standard. A maximum of 10 points can be awarded. Points to be awarded will be determined as follows:

(i) If the business has less than or equal to a 50 percent commitment for each of the following: feedstocks, marketing agreements for the advanced biofuel, and the byproducts produced or
if the project does not produce an advanced biofuel that meets an applicable renewable fuel standard, 0 points will be awarded.

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

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

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

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

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

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

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

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

(4) Whether the borrower is proposing to work with producer associations or cooperatives. A maximum of 5 points can be awarded. Points to be awarded will be determined as follows:

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

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

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

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

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

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

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

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

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

(5) The level of financial participation by the borrower, including support from non-Federal government sources
and private sources. Other direct Federal funding (i.e., direct loans and grants) will not be considered as part of the borrower’s equity participation. A maximum of 15 points can be awarded. Points to be awarded will be determined as follows:

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

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

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

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

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

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

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

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

(7) Whether the borrower can establish that, if adopted, the biofuels production technology proposed in the application will not have any economically significant negative impacts on existing manufacturing plants or other facilities that use similar feedstocks. A maximum of 10 points can be awarded. Points to be awarded will be determined as follows:

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

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

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

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

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

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

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

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

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

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

(11) If the project uses a particular technology, system, or process that is not currently operating in the advanced biofuel market as of October 1
of the fiscal year for which the funding is available, 5 points will be awarded.

(12) The Administrator can award up to a maximum of 10 bonus points to applications that promote partnerships and other activities that assist in the development of new and emerging technologies for the development of advanced biofuels so as to increase the energy independence of the United States; promote resource conservation, public health, and the environment; diversify markets for agricultural and forestry products and agriculture waste material; and create jobs and enhance the economic development of the rural economy. These partnerships and other activities will be identified in a FEDERAL REGISTER notice each fiscal year. However, the Administrator’s bonus points may not raise an applicant’s score to more than 100 points.

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

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

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

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

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

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

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

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

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

(g) Ranked applications not funded. A ranked application that is not funded in the application cycle in which it was submitted will be carried forward one additional application cycle, which may be in the next fiscal year. The
Agency will notify the lender in writing. If an application has been selected for funding, but has not been funded because additional information is needed, the Agency will notify the lender of what information is needed, including a timeframe for the lender to provide the information. If the lender does not provide the information within the specified timeframe, the Agency will remove the application from further consideration and will so notify the lender.

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

§§ 4279.266–4279.278 [Reserved]

§ 4279.279 Domestic lamb industry adjustment assistance program.

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

§ 4279.280 Changes in borrowers.

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

§ 4279.281 Conditions precedent to issuance of loan note guarantee.

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

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

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

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

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

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

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

(e) The lender certifies that it has reviewed all contract documents and verified compliance with Sections 3141 through 3144, 3146, and 3147 of title 40 U.S.C., and title 29 of the Code of Federal Regulations. The lender will certify that the same process will be completed for all future contracts and any changes to existing contracts.

(f) The lender certifies that the proposed facility complies with all Federal, State, and local laws and regulatory rules that are in existence and that affect the project, the borrower, or lender activities.

(g) The lender will notify the Agency in writing whenever there has been a change in the classification of a loan within 15 calendar days of such change.

(h) The lender certifies that the borrower has provided the equity in the project identified in the Conditional Commitment.

§§ 4279.282–4279.289 [Reserved]

§ 4279.290 Requirements after project construction.

Once the project has been constructed, the lender must:

(a) Provide the Agency annual reports from the borrower commencing the first full calendar year following the year in which project construction was completed and continuing for the life of the guaranteed loan. The borrower’s reports will include, but not be limited to, the information specified in the following paragraphs, as applicable.

(1) The actual amount of advanced biofuels, biobased products, and, if applicable, byproducts produced in order to assess whether project goals related to majority production are being met;

(2) If applicable, documentation that identified health and/or sanitation problems have been solved;

(3) A summary of the cost of operating and maintaining the facility;

(4) A description of any maintenance or operational problems associated with the facility;

(5) Certification that the project is and has been in compliance with all applicable State and Federal environmental laws and regulations;

(6) The number of jobs created;

(7) A description of the status of the project’s feedstock including, but not limited to, the feedstock being used, outstanding feedstock contracts, feedstock changes and interruptions, and quality of the feedstock;

(8) The results of the annual inspections conducted under paragraph (b) of this section; and

(b) For the life of the guaranteed loan, conduct annual inspections.

§§ 4279.291–4279.300 [Reserved]

PART 4280—LOANS AND GRANTS

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SOURCE: 70 FR 41303, July 18, 2005, unless otherwise noted.

Subpart A—Rural Economic Development Loan and Grant Programs

SOURCE: 72 FR 29843, May 30, 2007, unless otherwise noted.

§ 4280.1 Purpose.

The Rural Economic Development Loan (REDL) and Grant (REDG) Programs provide financing to eligible Rural Utilities Service (RUS) electric or telecommunications borrowers (Intermediaries) to promote rural economic development and job creation projects.

§ 4280.2 Policy.

(a) REDL Program. REDL Zero-Interest Loans are made to Intermediaries, to re lend, at a zero-interest rate, to Ultimate Recipients. Ultimate Recipients are responsible for repayment to the Intermediary. The Intermediary must
transmit Ultimate Recipient loan repayments to Rural Development.

(b) REDG Program. Grants are made to Intermediaries to establish Revolving Loan Funds. REDG Zero-Interest Loans are made by the Intermediary from the Revolving Loan Fund to Ultimate Recipients for the purpose of financing specific, approved Projects. Ultimate Recipients are responsible for repayment to the Intermediary. The Ultimate Recipient’s loan repayments are to be retained in the Revolving Loan Fund, which is maintained by the Intermediary, to finance other rural economic development Projects. Only the initial loan made by the Intermediary from the Revolving Loan Fund has to be at zero interest.

§ 4280.3 Definitions.

The following definitions are applicable to this subpart:

Advanced Telecommunications. Using communications equipment for purposes, such as the simultaneous transmission of images and voice or the electronic transmission of data between multiple sites that do not consist primarily of providing local exchange voice or other routine communications.

Agricultural Production. The cultivation, production, growing, raising, feeding, housing, breeding, hatching, or managing of crops, plants, animals, fish, or birds, either for fiber, food for human consumption, or livestock feed.

Business Incubator. A facility in which small businesses can share premises, support staff, computers, software or hardware, telecommunications terminal equipment, machinery, janitorial services, utilities, or other overhead expenses, and where such businesses can receive Technical Assistance, financial advice, business planning services or other support.

Community Facilities Project. An eligible community facility under the Community Facility Direct or Guaranteed programs.

Cushion of Credit. The amount contributed by the Intermediary pursuant to 7 U.S.C. 940c.

Direct Job. A job that is created or saved by an Ultimate Recipient employer as a result of funding received from these Programs.

Established Operation. An entity that has engaged in the nature of the Project for more than one year.

Full-Time Job. A job for which a worker is scheduled to work 35 hours per week, or more, on a regular basis.

Grant. For the REDG Program only: a transfer of monies other than a loan, from Rural Development to an Intermediary for specific use in funding a Revolving Loan Fund from which loans are made to Ultimate Recipients. Grant funds must be repaid by the Intermediary to Rural Development in the event the Fund is unused for more than one year, misused, no longer needed for its intended purposes, or the Grant is terminated.

Independent Provider. An entity or individual, other than the Intermediary or the Ultimate Recipient that is not owned by a subsidiary or an affiliate of the Intermediary or Ultimate Recipient or would otherwise have an interest in the Intermediary or Ultimate Recipient that would be a conflict of interest or have the appearance of a conflict of interest.

Indirect Job. A job that is created or saved as a result of a funded Project, but is not with the Ultimate Recipient.

Infrastructure. Facilities required to support private sector economic activity such as: Highways, streets, roads, and bridges; public transit; water supply; wastewater treatment; water resources; solid waste; and hazardous waste services.

Intermediary. An entity that is identified by RUS as an eligible borrower under the Rural Electrification Act and obtains a REDG Grant or a REDL Loan.

Part-Time Job. A job for which a worker is scheduled to work less than 35 hours per week, on a regular basis.

Programs. The Rural Economic Development Loan (REDL) and the Rural Economic Development Grant (REDG) Programs.

Project. The facility, equipment, or activity of the Ultimate Recipient that is funded under one of the Programs.

REDG. The Rural Economic Development Grant Program.

REDL. The Rural Economic Development Loan Program.

Revolving Loan Fund (or Fund). A revolving loan fund that is created with
RBS and RUS, USDA

§ 4280.15

Grant funds and the Intermediary’s supplemental contribution under the REDG Program that makes loans and uses the loan repayments and interest earnings to make subsequent loans until the Fund is terminated.

Revolving Loan Fund Plan. A plan developed by the Intermediary and approved by Rural Development that governs the use of the Revolving Loan Fund. The plan must at least include a detailed explanation of the Intermediary’s Fund administration policies and procedures and planned Fund use after the funds in the Revolving Loan Fund have revolved. Fund administration policies and procedures must at least include information regarding the review and approval of loans from the Fund.

Rural Area. This information will be taken from the most recent census data. Any area other than:

(1) A city or town that has a population of greater than 50,000 inhabitants; and

(2) The urbanized area contiguous and adjacent to such a city or town.

Rural Business-Cooperative Service (RBS). The Rural Business-Cooperative Service, an agency within the Rural Development mission area of the USDA.

Rural Development. For purposes of this regulation, The Rural Business-Cooperative Service (RBS), an Agency of the United States Department of Agriculture, or a successor Agency, will be referred to as Rural Development.

Rural Utilities Service (RUS). The Rural Utilities Service, an Agency within the Rural Development mission area of the USDA.

Seasonal Job. A job whether Part-Time or Full-Time that begins and ends in accordance with a specified time period of less than a year and generally within a range less than four months.

Start-Up Venture(s). An entity that has engaged in the nature of the Project for less than one year. An entity that has operated in excess of one year, but which is about to enter into a new line of business, would be considered a Start-Up Venture.

State. Any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States 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.

Technical Assistance. Managerial, financial and operational analysis and consultation by Independent Providers to assist Project owners in identifying and evaluating problems or potential problems and to provide training that enables Project owners to successfully implement, manage, operate and maintain viable Projects.

Ultimate Recipient. An entity or individual that receives a loan from an Intermediary. The Ultimate Recipient may be a for profit or not-for-profit entity such as, but not limited to, a sole proprietorship, a corporation, a cooperative, a partnership, or a Limited Liability Company. The Ultimate Recipient may also be a public body, such as, but not limited to, a political subdivision of a State or locality, or a Federally-recognized Indian tribe.


USDA. The United States Department of Agriculture.

Zero-Interest Loan. A loan made by the Intermediary to the Ultimate Recipient with no interest and which will be repaid to the Intermediary by the Ultimate Recipient.

§§ 4280.4–4280.12 [Reserved]

§ 4280.13 Applicant eligibility.

Applicants that are not delinquent on any Federal debt or otherwise disqualified from participation in these Programs are eligible to apply. An applicant must be eligible under 7 U.S.C. 940c.

§ 4280.14 [Reserved]

§ 4280.15 Ultimate Recipient Projects eligible for Rural Economic Development Loan funding.

An Intermediary may receive REDL funds only when it has a pre-approved Ultimate Recipient and Project that have an immediate need for the Zero-Interest Loan. REDL funds may only be used by the Intermediary to make a
§ 4280.16  
Zero-Interest Loan to the Ultimate Recipient to finance financially viable economic development or job creation Projects in a Rural Area. Funds may only be used to provide the following assistance:
(a) Start-Up Venture costs, including, but not limited to financing fixed assets such as real estate, buildings (new or existing), equipment, or working capital;
(b) Business expansion;
(c) Business Incubators;
(d) Technical Assistance;
(e) Project feasibility studies;
(f) Advanced Telecommunications services and computer networks for medical, educational, and job training services;
(g) Other Projects eligible under § 4280.21; or
(h) Community Facilities Projects.

§ 4280.16 REDL and REDG Loan terms.  
REDL and REDG loans made by the Intermediary are governed by the following terms:
(a) The maximum term of a loan is 10 years, including any principal deferment period. The Intermediary may choose a shorter term if desired.
(b) Deferments on Zero-Interest Loans will automatically be granted by Rural Development upon request of the Intermediary as follows:
(1) A deferral for up to 1 year for Projects involving an Established Operation;
(2) A deferral for up to 2 years for Projects involving a Start-Up venture or a Community Facilities Project whether or not such Project also receives funding under USDA Community Facilities funding programs.
(c) The Intermediary must provide the Ultimate Recipient with the same loan terms as the Intermediary receives from Rural Development.
(d) The Intermediary is solely responsible for the financial approval of Fund loans and all other Fund decisions and actions.

§ 4280.17 Additional REDL terms.  
(a) The Intermediary is responsible for fully repaying the Zero-Interest Loan to RBS even if the Ultimate Recipient does not repay the Intermediary.
(b) The Intermediary is responsible for remitting any partial or full payment to RBS at the time the Ultimate Recipient pays the Intermediary.
(c) Unless deferred pursuant to § 4280.16(b) of this subpart, loan payments to Rural Development under the REDL Program are due monthly.
(d) If the Intermediary does not have an outstanding loan with RUS, the Intermediary must immediately provide, as security for any REDL loan it receives, a Rural Development-approved irrevocable letter of credit that remains in effect until the loan is repaid.

§ 4280.18 [Reserved]

§ 4280.19 REDG Grants.  
Intermediaries receiving Grants must partially finance a Revolving Loan Fund that the Intermediary will operate and administer, by providing supplemental funds of at least 20 percent of the Grant. Grants are subject to 7 CFR parts 3015, 3019, and 3052, as applicable.

§ 4280.20 [Reserved]

§ 4280.21 Eligible REDG Ultimate Recipients and Projects.  
The Intermediary may only make loans from the Revolving Loan Fund to entities located in a Rural area of a State. Eligible entities are as follows:
(a) Non-profit entities, public bodies, or Federally-recognized Indian tribes Ultimate Recipients for:
(1) Community development or Community Facility Projects that:
(i) will create or save employment; and
(ii) are open to and serve all Rural residents, and are owned by the Ultimate Recipient;
(2) Business Incubators;
(3) Facilities and equipment to provide education and training to residents of Rural Areas that will facilitate economic development;
(4) Facilities and equipment to provide medical care to residents of Rural Areas. Equipment and facilities may be funded to enable eligible entities to provide medical training and related professional health care skills to rural health care providers;
§ 4280.24 Revolved funds.

Rural Development and the Intermediary’s supplemental funds will be considered revolved after they have been loaned to Ultimate Recipients and subsequently repaid. Loans made from revolved funds will not require prior approval of Rural Development for creditworthiness or environmental clearance purposes. All other Federal compliance requirements, including those in this subpart, remain in effect.
§ 4280.25 Revolving Loan Fund Plan.

Each REDG Intermediary must adopt a Rural Development-approved plan that specifies that:

(a) The initial loan made from the Fund will be at zero percent interest and have a maximum term of 10 years;

(b) Loans made from loan repayments may carry an interest rate less than, or equal to, the prevailing prime rate. The Intermediary determines repayment terms and security arrangements on these loans.

(c) Loans made from repayments of REDG loans must be for eligible Program purposes;

(d) The Intermediary is solely responsible for the financial approval of Fund loans and all other Fund decisions and actions; and

(e) No changes will be made to a Rural Development-approved Revolving Loan Fund Plan without the prior written approval of Rural Development.

§ 4280.26 Administration and operation of the Revolving Loan Fund.

(a) The Intermediary will operate and administer the Revolving Loan Fund. The Intermediary may contract with a third party for administrative services regarding the Fund. However, the Intermediary must permanently retain all Project review, approval, and monitoring authority and responsibility. This authority and responsibility cannot be delegated to any other person or entity.

(b) Up to 10 percent of Rural Development Grant funds may be applied toward operating expenses over the life of the Fund. Operating expenses include the costs of administering the Fund and Technical Assistance provided to Project owners by Independent Providers.

(c) In cases where the Intermediary uses its supplemental contribution to the Revolving Loan Fund for a Project other than the Project that resulted in the Intermediary being awarded the Grant, the loan terms must not exceed 10 years and the interest rate must be less than, or equal to, the prevailing prime rate.

§ 4280.27 Ineligible purposes.

Zero-Interest Loans may not be used:

(a) For activities that would adversely affect the environment, or activities that limit the choice of reasonable alternatives prior to satisfying Rural Development environmental requirements;

(b) To pay off or refinance any existing indebtedness or costs of the Project that were incurred prior to Rural Development receipt of the Intermediary’s completed application;

(c) For any electric or telecommunications purpose or for the Intermediary’s electric or telecommunications operations, for affiliated operations of the Intermediary, or for the benefit of other Intermediaries or their affiliated operations, except those purposes contained in § 4280.15(f);

(d) To pay the salaries of any employee or owner of the Intermediary, its subsidiaries, or affiliates, except for salaries incurred in administering a Revolving Loan Fund established under the REDG Program;

(e) For community antenna or cable television systems or facilities;

(f) For residential purposes such as residential dwellings and land sites; facilities to provide entertainment television; to transfer property between owners without making improvements that will promote or sustain economic development in Rural Areas; or for personal, non-business related vehicles;

(g) Where there is directly or indirectly a conflict of interest or the appearance of a conflict of interest in the Project; for Intermediaries this would include a situation in which the Intermediary, its officers, managers, Board of Directors, employees, their spouses, children, or close relatives, have a financial or ownership interest in the Project being funded, including its construction or development;

(h) For any purpose when receipt of loan funds is conditioned upon the requirement that the Ultimate Recipient acquire electric or telecommunications service from the Intermediary or its affiliates;

(i) For any gambling activity;

(j) For a Project that would result in the transfer of existing employment or business activity more than 25 miles from its existing location;
(k) For proposed Projects located in areas covered by the Coastal Barrier Resources Act (16 U.S.C. 3501–3510);

(l) For any illegal activity or any activity involving prostitution;

(m) For Agricultural Production, except where the Project is a farmer-owned cooperative or similar organization where the benefits of the Project are passed on to the farmer-owners, and the Agricultural Production is part of an integrated business that processes the agricultural products, and the Agricultural Production portion of the loan will not exceed 50% of the loan amount;

(n) For any pass-through Grant funding activity (a Grant by the Intermediary to the Ultimate Recipient);

(o) Provision of only local exchange voice telephone service; or

(p) for any other purpose announced in a notice by Rural Development. This will not affect Grants that have already been awarded.

§ 4280.28 [Reserved]

§ 4280.29 Supplemental financing required for the Ultimate Recipient Project.

(a) For REDL loans, either the Ultimate Recipient or the Intermediary must provide supplemental funds for the Project equal to at least 20 percent of the loan to the Intermediary. For REDG grants, the Intermediary must provide supplemental funds, to capitalize the Revolving Loan Fund, equal to at least 20 percent of the Grant to the Intermediary.

(b) Funds provided by the Ultimate Recipient must be:

(1) Cash or its equivalent;

(2) Provided after Rural Development receives the completed application; and

(3) Disbursed for an eligible Project within a three year period that begins on the day the Intermediary signs the Grant agreement.

(c) Satisfactory evidence of the Ultimate Recipient’s funds must be provided to Rural Development before it will advance any funds to the Intermediary.

§ 4280.30 Restrictions on the use of REDL or REDG funds.

(a) Conflict of interest. The Intermediary must not own or manage any Ultimate Recipient Project, unless the Project is acquired as a result of servicing a loan made from the Revolving Loan Fund. Conflicts of interest and all appearances of a conflict of interest are not permitted.

(b) Fees. The Intermediary may charge reasonable loan servicing fees, which are limited to one percent per year of the principal amount outstanding on the loan; reasonable professional service fees that are customary for the service being provided and in accordance with any standard fee schedules that have been established for the service; and reasonable expenses the Intermediary has incurred from Independent Providers.

(c) Interest earnings. Any interest earned by the Intermediary on advances of Rural Development REDG or REDL funds prior to the disbursement for the Project, must be returned to Rural Development.

§§ 4280.31–4280.35 [Reserved]

§ 4280.36 Other laws that contain compliance requirements for these Programs.

(a) Equal employment opportunity. For all construction contracts and Grants in excess of $10,000, the contractor must comply with Executive Order 11246, as amended by Executive Order 11375, and as supplemented by applicable Department of Labor regulations (41 CFR part 60). The applicant is responsible for ensuring that the contractor complies with these requirements.

(b) Equal opportunity and nondiscrimination. Rural Development will ensure that equal opportunity and nondiscriminatory requirements are met in accordance with the Equal Credit Opportunity Act and 7 CFR part 15d, conducted by USDA. Rural Development will not discriminate against applicants on the bases of race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to contract); to the fact that all or part of the applicant’s income derives from public assistance program; or to the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act.
(c) Civil rights compliance. Recipients of Grants must comply with the Americans with Disabilities Act of 1990, Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973. This includes collection and maintenance of data on the 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, §1901.204. Initial compliance reviews will be conducted with the Intermediary when Form RD 400–4, “Assurance Agreement,” is signed. For each loan or Grant an Intermediary receives, a new Form RD 400–4 must be completed. Each Ultimate Recipient must go through the same pre-award compliance review process and must also sign Form RD 400–4. For loans and Grants, a pre-award review is required before loan or Grant approval or any disbursement of funds. For Intermediaries, a post-award compliance review is required 90 days after closing the loan or Grant. This review is not required for Ultimate Recipients. Subsequent compliance reviews will be conducted 3 years from the date the post-award compliance review is completed for Intermediaries and 3 years from the date the pre-award compliance review is completed for Ultimate Recipients. Where Grant funds are used for a Revolving Loan Fund, compliance reviews are required for Intermediaries and 3 years from the date the pre-award compliance review is completed for Ultimate Recipients. Where Grant funds are used for a Revolving Loan Fund, compliance reviews are required for the Intermediaries for as long as the Fund is in operation. For Ultimate Recipients, compliance reviews are conducted until the loan is repaid to the Fund.

(d) Architectural barriers. All facilities financed with Zero-Interest Loans that are open to the public or in which persons may be employed or reside must be designed, constructed, or altered to be readily accessible to and usable by disabled persons. Standards for these facilities must comply with the Architectural Barriers Act of 1968 (42 U.S.C. 4151–4157) and the “Uniform Federal Accessibility Standards”, (41 CFR part 101–19.6, Appendix A).

(e) Uniform relocation assistance. Relocations in connection with these Programs are subject to 49 CFR part 21 except that the provisions in title III of the Uniform Act do not apply to these Programs.

(f) Drug-free workplace. Grants made under these Programs are subject to the requirements contained in 7 CFR part 3021 which implements the Drug-Free Workplace Act of 1988 (41 U.S.C. 701–706). An Intermediary requesting a REDG Grant will be required to certify that it will establish and make a good faith effort to maintain a drug-free workplace program.

(g) Debarment and suspension. The requirements of 7 CFR part 3017 are applicable to these Programs.

(h) Intergovernmental review of Federal programs. These Programs are subject to the requirements of Executive Order 12372 (3 CFR 1982 Comp., p. 197) and 7 CFR part 3015, subpart V which implements Executive Order 12372. Proposed Projects are subject to the State and local government review process contained in 7 CFR part 3015.

(i) Restrictions on lobbying. The restrictions and requirements imposed by 31 U.S.C. 1332, and 7 CFR part 3018, are applicable to these Programs.

(j) Earthquake hazards. These Programs are subject to the seismic requirements of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701–7706).

(k) Environmental requirements. The requirements of 7 CFR part 1940, subpart G, are applicable to these Programs and to the loans made from the Revolving Loan Fund using Rural Development funds. Financial assistance from the Revolving Loan Fund, when funds are derived from repayments by third parties, is not considered Federal assistance for purposes of meeting the compliance requirements of 7 CFR part 1940, subpart G.

(l) Affirmative fair housing. If applicable, the Intermediary will be required to comply with the Affirmative Fair Housing Act (42 U.S.C. 3601–3631).

(m) Flood hazard insurance. These Programs are subject to the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended by 42 U.S.C. 4001–4129.

(n) Audits. These Programs are subject to 7 CFR part 3052.
§ 4280.37 Application forms and filing dates.

(a) The Intermediary may obtain forms that supplement the written narrative sections of its application from the Rural Development State Office for the State where the Intermediary is located.

(b) An original copy only of the application is to be filed with the Rural Development State Office. No other copies are required.

§ 4280.38 Maximum amount of loans or Grants.

During any given fiscal year, Rural Development will publish an announcement of available loan and Grant funds and will indicate the maximum loan and Grant amounts for which an Intermediary or prospective Intermediary may apply. This announcement will also include contact information and application deadlines. All pending applications on file at RBS, including both loan and Grant applications, from the same Intermediary or prospective Intermediary for the same Project will be considered to be one application in determining that the maximum size of the application is in accordance with this section.

§ 4280.39 Contents of an application.

An application for a loan or a Grant must contain the following:

(a) Required forms and certifications:


2. A Resolution of the Board of Directors signed by the directors and certified by the Intermediary’s board secretary. The board resolution must indicate whether the Intermediary is requesting a loan or Grant, agree to the provisions of this subpart and the loan or Grant agreement including the Intermediary’s 20 percent Fund contribution, and state that the Intermediary has the legal authority to enter into a loan or Grant agreement under these Programs.


4. Assurance statement for the Uniform Act signed by the Ultimate Recipient. This statement provides Rural Development with the required assurance statement that any relocations of persons or acquisitions of real property, as part of completing the Ultimate Recipient Project, will be handled in accordance with this statute.

5. RD Instruction 1940–Q, Exhibit A–1, applies if the loan is greater than $150,000 or the Grant is greater than $100,000;

6. SF LLL, “Disclosure of Lobbying Activities,” (if the Intermediary or the Ultimate Recipient engages in lobbying activities);

7. Form AD 1049, “Certification Regarding Drug-Free Workplace Requirements,” for Grants only;

8. Seismic certification if construction of a building is proposed. The Project owner certifies that any building constructed will comply with standards that reduce the damage caused by earthquakes;

9. Form RD 1940–20, “Request for Environmental Information”; and

10. RUS Form 7, “Financial and Statistical Report” and RUS Form 7a “Investments, Loan Guarantees, and Loans,” or similar information.

(b) A written narrative section must be provided. This section consists of the following:

1. A Project description, including details of the work to be performed with Rural Development funds, and a business plan, including a discussion of management and prior experience of the Ultimate Recipient.

2. A discussion of how the Project meets each selection factor in § 4280.42(b).

3. A Revolving Loan Fund Plan is required if the Intermediary is applying for a Grant to establish a Revolving Loan Fund.
§ 4280.40 [Reserved]

§ 4280.41 Environmental review of the application.

(a) Rural Development will conduct a review for the potential of any environmental impacts resulting from the proposed Project identified in the application and inform the Intermediary of any additional information Rural Development needs and any subsequent environmental requirements necessary for Rural Development to make a finding.

(b) Rural Development will conduct all necessary environmental reviews as prescribed in 7 CFR part 1940, subpart G. These reviews must be completed before the application can be considered for approval.

§ 4280.42 Application evaluation and selection.

(a) Rural Development will evaluate the application and score it based on the selection factors in this section. All applications will be ranked on a nationwide basis, based on the total points scored.

(b) The application will be evaluated and scored using the information provided in accordance with §4280.39(b)(2) of this subpart.

(1) Nature of the Project. Rural Development will award up to 60 points based on whether the Project:

(i) Is a for-profit business, Business Incubator, industrial building or park, or an infrastructure connection project (such as streets or utilities)—20 points;

(ii) Provides Technical Assistance to rural businesses or rural residents, or educates or provides medical care to rural residents—20 points;

(iii) Will enhance rural economic development by providing Advanced Telecommunications services and computer networks for medical, educational, and job training services. This review will be based on the application’s telecommunications design—20 points.

(2) Number of direct full-time equivalent jobs created or saved within a 3-year period. To calculate full-time equivalent Direct-Jobs, count two part-time jobs as one full-time job or three part-time or seasonal jobs as one full-time job. If the total numbers of part-time and seasonal jobs add up to a fraction, round up to the next whole number after combining same. Indirect-Jobs or non-Rural jobs cannot be used for this calculation.

<table>
<thead>
<tr>
<th>If the number of Rural full-time equivalent direct-jobs jobs created or saved per $100,000 of total, Project cost is:</th>
<th>Then Rural Development will award:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Greater than five</td>
<td>25 points.</td>
</tr>
<tr>
<td>(ii) From one to five</td>
<td>15 points.</td>
</tr>
</tbody>
</table>

(3) Supplemental funds for the Project. Points will be based on a calculation of the amount of supplemental funds to be provided to the Project. All supplemental funds used in the following calculation must be disbursed to the Project between the date of Rural Development receipt of the application and 1 year after the first advance of funds by Rural Development:

<table>
<thead>
<tr>
<th>If supplemental funds as a percentage of the Rural Development loan or grant to be provided to the Project are:</th>
<th>Then Rural Development will award:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Greater than 200%</td>
<td>20 points.</td>
</tr>
<tr>
<td>(ii) From 100% to 200%</td>
<td>10 points.</td>
</tr>
<tr>
<td>(iii) From 50% to less than 100%</td>
<td>5 points.</td>
</tr>
</tbody>
</table>

(4) Unemployment rate for the county(ies) where the Project is physically located. Rural Development will compare the current unemployment rate(s) in the county(ies) to the State and national unemployment rates, and, if applicable, award points under the following categories, whichever is greater:
If the unemployment rate(s) in the county(ies) where the Project will be located:

<table>
<thead>
<tr>
<th>Condition</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exceeds the national unemployment rate by 30% or more</td>
<td>15</td>
</tr>
<tr>
<td>Is greater than the national unemployment rate, but exceeds it by less than 30%</td>
<td>5</td>
</tr>
<tr>
<td>Exceeds the State unemployment rate by 30% or more</td>
<td>10</td>
</tr>
<tr>
<td>Is greater than the State unemployment rate but exceeds it by less than 30%</td>
<td>5</td>
</tr>
</tbody>
</table>

(5) Per capita personal income for the county(ies) where the Project is physically located. Rural Development will compare the per capita personal income in the county(ies) where the Project will be located to the national and State per capita personal income levels, and, if applicable, award points under the following categories, whichever is greater:

<table>
<thead>
<tr>
<th>Income Level</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than or equal to 90% of the national level</td>
<td>15</td>
</tr>
<tr>
<td>Between 90 and 100% of the national level</td>
<td>5</td>
</tr>
<tr>
<td>Less than or equal to 90% of the State level</td>
<td>10</td>
</tr>
<tr>
<td>Between 90 and 100% of the State level</td>
<td>5</td>
</tr>
</tbody>
</table>

(6) Rural Area location. (i) If the Project is physically located in an incorporated city or town or equivalent having a population of 1,249 or less, or if it is physically located in an unincorporated area, Rural Development will award 20 points.
(ii) If the Project is physically located in an incorporated area having a population of 1,250 to 2500, Rural Development will award 10 points.

(7) Decline in population for the county where the Project is physically located.

<table>
<thead>
<tr>
<th>Population Change</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>There has been a decline in population in the county where the Project will be located over the time period covered by the two most recent decennial censuses of the United States to the present</td>
<td>10</td>
</tr>
</tbody>
</table>

(8) Cushion of Credit Payments. Rural Development will determine the level of Cushion of Credit Payments on deposit by the Intermediary, as follows:

<table>
<thead>
<tr>
<th>Cushion of Credit Account Level</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>In excess of $300,000, or a dollar amount in excess of 3 percent of the Intermediary’s total assets, whichever is less.</td>
<td>15</td>
</tr>
<tr>
<td>Within the range of $100,000 to $299,999.99, or a dollar amount that is within the range of one percent to 2.99 percent of Intermediary’s total assets, whichever is less.</td>
<td>10</td>
</tr>
<tr>
<td>Within the range of $10,000 to $99,999.99, or a dollar amount that is within the range of 0.5 percent to 0.99 percent of Intermediary’s total assets, whichever is less.</td>
<td>5</td>
</tr>
</tbody>
</table>

(9) Initial loan and Grant. If the loan or Grant application will result in the first award to an Intermediary under these Programs, Rural Development will award 10 points.

(10) County participation. If the Project will be the first REDLG Project financed in a county Rural Development will award 10 points.

(11) The business plan for the Applicant’s Ultimate Recipient will be evaluated by Rural Development and must include:
(i) A description of the business or Project plans, its management, and, if applicable, its products and operating plans. (The business plan evaluated by Rural Development for Advanced Telecommunications will be its telecommunications and engineering design)—up to 15 points; and
§ 4280.43  
(ii) An appropriate financial plan, including actual balance sheets and income statements covering the most recent 3-year period (for applicants who have been in business this long), and projected balance sheets, income statements, and cash flow statements for the ensuing 3-year period, supported by assumptions showing the basis for the projections—up to 20 points.

§ 4280.43  Discretionary points.

The RBS Administrator has the discretion to designate up to 25 points (no more than 5 points for each of the following elements) based on whether the Project:

(a) Is located in a Rural Empowerment Zone, Rural Economic Area Partnership Zone, Rural Enterprise Community, or Champion Community;

(b) Is located in a county that has experienced the loss, removal, or closing of a major source or sources of employment in the last 3 years which causes an increase of 2 percentage points or more in the county’s most recent unemployment rate compared with the same period immediately before the dislocation;

(c) Is located in a county that has experienced chronic or long-term economic deterioration;

(d) Is located in a county that was designated a disaster area by the President of the United States that significantly affected rural economic development and job creation. The county must have been designated within 3 years prior to filing of the completed application with Rural Development; or

(e) Is consistent with the Rural Development State Office’s approved strategic plan and mission area objectives and is identified as a priority area for assistance in the States’ plan.

§ 4280.44  Limitation on number of loans or Grants to an Intermediary.

Depending on the amount of funds available, Rural Development may publish an announcement limiting an Intermediary to one selected Grant application and two selected loan applications in a fiscal year.

§§ 4280.45–4280.46  [Reserved]

§ 4280.47  Non-selection of applications.

Provided the application requirements have not changed, an application not selected will be reconsidered in 3 subsequent funding competitions for a total of four funding competitions. If an application is withdrawn, it can be resubmitted and will be evaluated as a new application.

§ 4280.48  Post selection period.

Rural Development will notify the Intermediary in writing if the application is selected. The documents to be executed by the Intermediary will include:

(a) For a loan:

(1) A Letter of Conditions with Project-specific terms and conditions;

(2) A loan agreement with general terms and conditions;

(3) A note covering the repayment terms of the loan; and

(4) A legal opinion concerning the authority of the Intermediary to engage in the Project.

(b) For a Grant:

(1) A Letter of Conditions with Project-specific terms and conditions;

(2) A Grant agreement with general terms and conditions; and

(3) A legal opinion concerning the authority of the Intermediary to participate in the Revolving Loan Fund and to engage in the Project.

§ 4280.49  [Reserved]

§ 4280.50  Disbursement of Zero-Interest Loan funds.

(a) For a REDL loan, Rural Development will disburse Zero-Interest Loan funds to the Intermediary in accordance with the terms of the executed loan agreement. All loan funds will be disbursed either as an advance to the Intermediary, in multiple advances, or as a reimbursement for eligible project costs, once the Intermediary has complied with Rural Development requirements.

(b) The Intermediary must provide to the Ultimate Recipient all loan funds that the Intermediary receives from Rural Development within one year of receiving them. If the Intermediary does not re-lend Rural Development...
funds within one year, the loan funds, and all interest earned on the loan funds, must be returned to the Agency.

(c) For a REDG loan, Rural Development will disburse Grant funds to the Intermediary in accordance with 7 CFR parts 3015 and 3019, as applicable. Specifically, Rural Development will disburse the Grant funds in advance if the following requirements are met:

(1) The Intermediary has established written procedures that will minimize the time elapsing between the transfer of funds from Rural Development and their disbursement to the Ultimate Recipient;

(2) The management system of the Intermediary meets the requirements of 7 CFR parts 3015 and 3019, as applicable;

(3) All necessary supplemental funds for the Project have been obligated or committed to the Revolving Loan Fund; and

(4) The requests for cash advances made by the Intermediary are limited to the minimum amounts needed and timed to be in accordance with the actual immediate cash needs of the Ultimate Recipient for carrying out the Project.

§§ 4280.51–4280.52 [Reserved]

§ 4280.53 Loan payments.

The Intermediary must make all REDL payments to Rural Development by electronic funds transfer or other means as specified in the loan documents.

§ 4280.54 Construction procurement requirements.

Construction, including bidding and awarding of contracts, must be conducted in a manner that provides maximum open and free competition.

§ 4280.55 Monitoring responsibilities.

(a) The Intermediary must monitor the Project to ensure that:

(1) Funds are used only for the approved purposes as specified in the legal documents;

(2) Disbursements and expenditures of funds are properly supported with certifications, invoices, contracts, bills of sale, or other forms of evidence, which are maintained on the premises of the Intermediary;

(3) Project time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved; and

(4) The Project is in compliance with all applicable regulations.

(b) Rural Development may inspect and copy records and documents that pertain to the Project. The Intermediary must retain these records for the term of the Project loan plus 2 years. In addition, Rural Development may also perform Project site visits and reviews of the use of loan or Grant proceeds.

(c) Rural Development will review and monitor Grants in accordance with 7 CFR parts 3015, 3017, 3018, 3019, 3021, and 3052.

§ 4280.56 Submission of reports and audits.

(a) In addition to any reports required by 7 CFR parts 3015 and 3019, the Intermediary must submit the following monitoring reports to Rural Development:

(1) Loan. The Intermediary must submit Form RD 4280–1 “Survey of Recipients of Rural Economic Development Loan and Grant Program” to Rural Development on an annual basis until it no longer owes money to USDA under the REDLG Program.

(2) Grant (Revolving Loan Fund). The Intermediary must submit the Form RD 4280–1 to Rural Development on an annual basis until all projects financed with Rural Development Grant proceeds have been repaid or are otherwise retired, whichever occurs last. Thereafter, on a triennial basis until the fund is terminated, the Intermediary will submit to Rural Development the Form RD 4280–1, reporting on the activity of all loans made from the Revolving Loan Fund.

(b) If the Intermediary does not have an existing loan with RUS, the Intermediary will submit a copy of its annual audit to Rural Development within 90 days of its completion. All REDL audits must be conducted in accordance with Generally Accepted Government Auditing Standards or Generally Accepted Accounting Principles and
REDG audits in accordance with 7 CFR part 3052.

(c) Rural Development may require Ultimate Recipients that receive loans financed with Grant funds provided under the REDG Program to submit annual audits to comply with Federal audit regulations. In accordance with 7 CFR part 3052, Ultimate Recipients that are nonprofit entities, or a State or local government, may be required to submit an audit subject to the threshold established in OMB Circular No. A–133.

§§ 4280.57–4280.61 [Reserved]

§ 4280.62 Appeals.

An Intermediary may appeal any appealable adverse decision made by Rural Development that affects the Intermediary in accordance with 7 CFR part 11.

§ 4280.63 Exception authority.

Except as specified in paragraphs (a) through (c) of this section, the RBS Administrator may, on a case-by-case basis, 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 when such an exception is in the best interests of the Federal Government and is otherwise not in conflict with applicable law.

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

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

(c) Rural area definition. No exception to the definition of rural area, as defined, can be made.

§§ 4280.64–4280.99 [Reserved]

§ 4280.100 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0035. A person is not required to respond to this collection of information unless it displays a currently valid OMB control number.
(c) Sections 4280.122 through 4280.160 discuss the requirements specific to renewable energy system and energy efficiency improvement guaranteed loans. Sections 4280.122 through 4280.127 discuss eligibility and requirements for making and processing loans guaranteed by the Agency. Section 4280.128 addresses the application and documentation requirements, separating the requirements for loans over $600,000 and for loans of $600,000 or less. Section 4280.129 addresses the evaluation of guaranteed loan applications. Sections 4280.130 through 4280.160 provide guaranteed loan origination and servicing requirements. These requirements apply to lenders, holders, and other parties involved in making, guaranteeing, holding, servicing, or liquidating such loans.

(d) Section 4280.165 presents the process by which the Agency will make combined loan guarantee and grant funding available for renewable energy system and energy efficiency improvement projects.

(e) Sections 4280.170 through 4280.182 presents the process by which the Agency will make renewable energy system feasibility study grant funding available. These sections cover applicant, project, and application eligibility; grant funding; application content, evaluation, scoring, and selection for award; and grant award, administration, and servicing.

(f) Sections 4280.186 through 4280.196 present the process by which the Agency will make energy audit and renewable energy development assistance grant funding available. These sections cover applicant and project eligibility; grant funding; application content, evaluation, scoring, and selection for award; and grant award, administration, and servicing.

(g) Appendices A through D of this subpart cover technical report requirements. Appendix A applies to projects with total eligible project costs of $200,000 or less; Appendix B applies projects with total eligible project costs greater than $200,000; Appendix C applies to hydropower projects; and Appendix D applies to flexible fuel pumps. Appendix E identifies the contents of the feasibility study that will be required to be submitted to the Agency if funding is provided under §§ 4280.170 through 4280.182.

§ 4280.103 Definitions.

Terms used in this subpart are defined in either § 4279.2 of this chapter or in this section. If a term is defined in both § 4279.2 and this section, it will have, for purposes of this subpart only, the meaning given in this section.


Agency. The Rural Business-Cooperative Service or successor Agency assigned by the Secretary of Agriculture to administer the Rural Energy for America Program. References to the National Office, Finance Office, State Office, or other Agency offices or officials should be read as prefaced by “Agency” or “Rural Development” as applicable.

Agricultural producer. An individual or entity directly engaged in the production of agricultural products, including crops (including farming); livestock (including ranching); forestry products; hydroponics; nursery stock; or aquaculture, whereby 50 percent or greater of their gross income is derived from the operations.

Anaerobic digester project. A renewable energy system that uses animal waste and other organic substrates, via anaerobic digestion, to produce bio-methane that is used to produce thermal or electrical energy or converted to a compressed gaseous or liquid state.

Annual receipts. The total income or gross income (sole proprietorship) plus cost of goods sold.

Applicant. The agricultural producer or rural small business that is seeking a grant, guaranteed loan, or a combination of a grant and loan, under this subpart.

Assignment Guarantee Agreement (Form RD 4279-6) or successor form. A signed agreement between the Agency, the lender, and the holder containing the terms and conditions of an assignment of a guaranteed portion of a loan.

Bioenergy project. A renewable energy system that produces fuel, thermal energy, or electric power from a biomass...
source, other than an anaerobic digester project.

**Biogas.** Renewable biomass converted to gaseous fuels.

**Blended liquid transportation fuel.** A fuel used for transportation that:

1. Is composed of one or more fuel types, at least one of which must meet the Renewable Fuel Standard, and
2. Results in a blended fuel that exceeds the highest requirement for the percentage volume for a renewable fuel.

**Borrower.** Any party or parties liable for a guaranteed loan made under this subpart except guarantors.

**Capacity.** The maximum load that an apparatus or heating unit is able to meet on a sustained basis as rated by the manufacturer.

**Commercially available.** A system that has a proven operating history specific to the proposed application. Such a system is based on established design, and installation procedures and practices. Professional service providers, trades, large construction equipment providers, and labor are familiar with installation procedures and practices. Proprietary and balance of system equipment and spare parts are readily available. Service is readily available to properly maintain and operate the system. An established warranty exists for parts, labor, and performance.

**Conditional Commitment (Form RD 4279–3) or successor form.** Agency notice to the lender that the loan guarantee is approved subject to the completion of all conditions and requirements set forth by the Agency.

**Default.** The condition where a borrower or grantee is not in compliance with one or more loan covenants or grant conditions as stipulated in the Letter of Conditions, Conditional Commitment, or loan or grant agreement.

**Departmental regulations.** The regulations of the Department of Agriculture’s Office of Chief Financial Officer (or successor office) as codified in 2 CFR part 417 and 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.

**Design/build method.** A method of project development whereby all design, engineering, procurement, construction, and other related project activities are performed under a single contract. The prime contractor is solely responsible and accountable for successful delivery of the project to the owner.

**Eligible project costs.** The total project costs that are eligible to be paid with program funds.

**Energy assessment.** A report conducted by an experienced energy assessor, certified energy manager or professional engineer assessing energy cost and efficiency by analyzing energy bills and briefly surveying the target building, machinery, or system. The report identifies and provides a savings and cost analysis of low-cost/no-cost measures. The report will estimate the overall costs and expected energy savings from these improvements, and dollars saved per year. The report will estimate weighted-average payback period in years.

**Energy assessor.** An individual or entity that conducts an energy assessment.

**Energy audit.** An audit conducted by a certified energy manager or professional engineer that focuses on potential capital-intensive projects and involves detailed gathering of field data and engineering analysis. The audit will provide detailed project costs and savings information with a high level of confidence sufficient for major capital investment decisions.

**Energy auditor.** An individual or entity that conducts an energy audit.

**Energy efficiency improvement (EEI).** Improvements to a facility, building, or process that reduce energy consumption, or reduce energy consumed per square foot.

**Existing business.** A business that has completed at least one full business cycle.

**Fair market value of equity in real property.** Fair market value of real property, as established by an appraisal, less the outstanding balance of any mortgages, liens, or encumbrances.

**Feasibility study.** An analysis of the economic, market, technical, financial, and management feasibility of a proposed project or business.

**Financial feasibility.** The ability of a project or business to achieve the income, credit, and cash flows to financially sustain a project over the long
term. The concept of financial feasibility includes assessments of the cost-accounting system, the availability of short-term credit for seasonal businesses, and the adequacy of raw materials and supplies.

**Flexible fuel pump.** A retail pump that combines and dispenses a blended liquid transportation fuel or dispenses a blended liquid transportation fuel. If a flexible fuel pump dispenses more than one blend of liquid transportation fuel, at least one of the blends must meet the definition of blended liquid transportation fuel found in this section.

**Geothermal, direct use.** A system that uses thermal energy directly from a geothermal source.

**Geothermal, electric generation.** A system that uses geothermal energy to produce high pressure steam for electric power production.

**Holder.** A person or entity, other than the lender, who owns all or part of the guaranteed portion of the loan with no servicing responsibilities. When the single note option is used and the lender assigns a part of the guaranteed note to an assignee, the assignee becomes a holder only when the Agency receives notice and the transaction is completed through the use of Form RD 4279–6.

**Hydroelectric energy.** Energy created from various hydroelectric sources including, but not limited to, diverted run-of-river water, in-stream run-of-river water, and in-conduit water.

**Hydrogen project.** A renewable energy system that produces hydrogen or, a renewable energy system that uses mechanical or electric power or thermal energy from a renewable resource using hydrogen as an energy transport medium.

**Hydropower.** Energy created by hydroelectric or ocean energy.

**Institution of higher education.** As defined in 20 U.S.C. 1002(a).

**Instrumentality.** An organization recognized, established, and controlled by a State, tribal, or local government, for a public purpose or to carry out special purposes.

**Interconnection agreement.** The terms and conditions governing the interconnection and parallel operation of the grantee’s or borrower's electric generation equipment and the utility’s electric power system.

**Interim financing.** A temporary or short-term loan made with the clear intent that it will be repaid through another loan, cash, or other financing mechanism. Interim financing is frequently used to pay construction and other costs associated with a planned project, with permanent financing to be obtained after project completion.

**Large solar, electric.** Large solar electric systems are those for which the rated power of the system is larger than 10 kilowatts (kW). Large solar electric systems are either stand-alone (off grid) or interconnected to the grid (on grid).

**Large solar, thermal.** Large solar thermal systems are those for which the rated storage volume of the system is greater than 240 gallons or that have a collector area of more than 1,000 square feet.

**Large wind system.** A wind energy project for which the rated power of the individual wind turbine(s) is larger than 100kW.

**Lender.** The organization making, servicing, and collecting the loan that is guaranteed under the provisions of this subpart.

**Lender’s Agreement (Form RD 4279–4) or successor form.** Agreement between the Agency and the lender setting forth the lender’s loan responsibilities.

**Loan Note Guarantee (Form RD 4279–5) or successor form.** Instrument issued and executed by the Agency containing the terms and conditions of the guarantee.

**Matching funds.** The funds needed to pay for the portion of the eligible project costs not funded or guaranteed by the Agency through a grant or guaranteed loan under this program. Unless authorized by statute, other Federal grant funds cannot be used to meet a matching funds requirement.

**Necessary capital improvement.** A capital improvement required to keep an existing system in compliance with regulations or to maintain technical or operational feasibility.

**Ocean energy.** Energy created by use of various types of moving water including, but not limited to, tidal, wave, current, and thermal changes.

**Participation.** The sale of interest in a loan by the lender wherein the lender
retains the note, collateral securing
the note, and all responsibility for loan
servicing and liquidation.

Passive investor. An equity investor
that does not actively participate in
management and operation decisions of
the business entity as evidenced by a
contractual arrangement.

Post-application. The period of time
after the Agency has received a com-
plete application, which contains all
parts necessary for the Agency to de-
termine applicant and project eligi-
bility, to score the application, and to
conduct the technical evaluation.

Power purchase agreement. The terms
and conditions governing the sale and
transportation of electricity produced
by the grantee or borrower to another
party.

Pre-commercial technology. Tech-
nology that has emerged through the
research and development process and
has technical and economic potential
for commercial application, but is not
yet commercially available.

Promissory Note. Evidence of debt. A
note that a borrower signs promising
to pay a specific amount of money at a
stated time or on demand.

Public power entity. Is defined using
the definition of state utility as de-
 fined in section 217(A)(4) of the Federal
Power Act (16 U.S.C. 824q(a)(4)). As of
this writing, the definition “means a
State or any political subdivision of a
State, or any agency, authority, or in-
strumentality of any one or more of
the foregoing, or a corporation that is
wholly owned, directly or indirectly,
by any one or more of the foregoing,
competent to carry on the business of
developing, transmitting, utilizing, or
distributing power.”

Qualified consultant. An entity pos-
sessing the knowledge, expertise, and
experience to perform a specific task.

Qualified party. An independent third
party entity possessing the knowledge,
expertise, and experience to perform in
an efficient, effective, and authori-
tative manner the specific task re-
quired.

Rated power. The maximum amount
of energy that can be created at any
given time.

Renewable biomass.
(1) Materials, pre-commercial
thinnings, or invasive species from Na-
tional Forest System land and public
lands (as defined in section 103 of the
Federal Land Policy and Management
Act of 1976 (43 U.S.C. 1702)) that:
(i) Are byproducts of preventive
treatments that are removed to reduce
hazardous fuels; to reduce or contain
disease or insect infestation; or to re-
store ecosystem health;
(ii) Would not otherwise be used for
higher-value products; and
(iii) Are harvested in accordance with
applicable law and land management
plans and the requirements for old-
growth maintenance, restoration, and
management direction of paragraphs
(e)(2), (e)(3), and (e)(4) and large-tree
retention of subsection (f) of section
102 of the Healthy Forests Restoration
Act of 2003 (16 U.S.C. 6512); or
(2) Any organic matter that is avail-
able on a renewable or recurring basis
from non-Federal land or land belong-
ing to an Indian or Indian tribe that is
held in trust by the United States or
subject to a restriction against alien-
ation imposed by the United States, in-
cluding:
(i) Renewable plant material, includ-
ing feed grains; other agricultural com-
modities; other plants and trees; and
algae; and
(ii) Waste material, including crop
residue; other vegetative waste mate-
rial (including wood waste and wood
residues); animal waste and byproducts
(including fats, oils, greases, and ma-
nure); and food waste and yard waste.

Renewable energy. Energy derived
from:
(1) A wind, solar, renewable biomass,
ocean (including tidal, wave, current,
and thermal), geothermal or hydro-
electric source; or
(2) Hydrogen derived from renewable
biomass or water using wind, solar,
ocean (including tidal, wave, current,
and thermal), geothermal or hydro-
electric energy sources.

Renewable Energy Development Assist-
ance. Assistance provided by eligible
grantees to agricultural producers and
rural small businesses to become more
energy efficient and to use renewable
energy technologies and resources. The
renewable energy development assist-
ance may consist of renewable energy
site assessment and/or renewable en-
ergy technical assistance.
Renewable energy site assessment. A report provided to an agricultural producer or rural small business providing recommendations and information regarding the use of renewable energy technologies in its operation. The report shall be prepared by a qualified consultant and evaluate a specific site or geographic area for potential use of one or more renewable energy technologies. Typically, the report will evaluate a potential renewable energy project with an estimated total cost of construction of less than $200,000. The evaluation shall be based on existing data, which may include data regarding existing and/or proposed structures, commercially available technologies, feed-stocks, and other renewable energy resources. The report will consider factors such as the site and the potential uses of renewable energy technology at the site. The report will not include information about any residential dwelling(s).

Renewable energy system (RES). A system that produces or produces and delivers usable energy from a renewable energy source, or is a flexible fuel pump.

Renewable energy technical assistance. Assistance provided to agricultural producers and rural small businesses on how to use renewable energy technologies and resources in their operations.

Rural or rural area. Any area of a State not in a city or town that has a population of more than 50,000 inhabitants, according to the latest decennial census of the United States, or in the urbanized area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants, and any area that has been determined to be “rural in character” by the Under Secretary for Rural Development, or as otherwise identified in this definition.

(1) An area that is attached to the urbanized area of a city or town with more than 50,000 inhabitants by a contiguous area of urbanized census blocks that is not more than 2 census blocks wide. Applicants from such an area should work with their Rural Development State Office to request a determination of whether their project is located in a rural area under this provision.

(2) For the purposes of this definition, cities and towns are incorporated population centers with definite boundaries, local self government, and legal powers set forth in a charter granted by the State.

(3) For the Commonwealth of Puerto Rico, the island is considered rural and eligible for Business Programs assistance, except for the San Juan Census Designated Place (CDP) and any other CDP with greater than 50,000 inhabitants. CDPs with greater than 50,000 inhabitants, other than the San Juan CDP, may be determined to be eligible if they are “not urban in character.”

(4) For the State of Hawaii, all areas within the State are considered rural and eligible for Business Programs assistance, except for the Honolulu CDP within the County of Honolulu.

(5) For the purpose of defining a rural area in the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands, the Agency shall determine what constitutes rural and rural area based on available population data.

(6) The determination that an area is “rural in character” will be made by the Under Secretary of Rural Development. The process to request a determination under this provision is outlined in paragraph (6)(ii) of this definition.

(i) The determination that an area is “rural in character” under this definition will apply to areas that are within:

(A) An urbanized area that has two points on its boundary that are at least 40 miles apart, which is not contiguous or adjacent to a city or town that has a population of greater than 150,000 inhabitants or the urbanized area of such a city or town; or

(B) An urbanized area contiguous and adjacent to a city or town of greater than 50,000 inhabitants that is within one-quarter mile of a rural area.

(ii) Units of local government may petition the Under Secretary of Rural Development for a “rural in character” designation by submitting a petition to both the appropriate Rural Development State Director and the Administrator on behalf of the Under Secretary. The petition shall document how the area meets the requirements
of paragraph (6)(i)(A) or (B) of this definition and discuss why the petitioner believes the area is "rural in character," including, but not limited to, the area’s population density, demographics, and topography and how the local economy is tied to a rural economic base. Upon receiving a petition, the Under Secretary will consult with the applicable Governor or leader in a similar position and request comments to be submitted within 5 business days, unless such comments were submitted with the petition. The Under Secretary will release to the public a notice of a petition filed by a unit of local government not later than 30 days after receipt of the petition by way of publication in a local newspaper and posting on the Agency’s Web site, and the Under Secretary will make a determination not less than 15 days, but no more than 60 days, after the release of the notice. Upon a negative determination, the Under Secretary will provide to the petitioner an opportunity to appeal a determination to the Under Secretary, and the petitioner will have 10 business days to appeal the determination and provide further information for consideration.

Rural Energy for America Program Grant Agreement (Form RD 4280–2) or successor form. An agreement between the Agency and the grantee setting forth the provisions under which the grant will be administered. 

Simple payback. The estimated simple payback of a project funded under this subpart as calculated using paragraph (1), (2), or (3), as applicable, of this definition.

(1) For energy generation projects, simple payback is calculated as follows:

(i) Simple payback = (Total Project Costs (including REAP Grant))/\(\text{Average Net Income} + \text{Interest Expense} + \text{Depreciation Expense (for the project)})

(ii) Average net income:

(A) Is based on all energy related revenue streams which include monetary benefits from Production Tax Credit (PTC), Renewable Energy Credit, Carbon Credits, revenue from byproducts produced by the energy system, fair market value of byproducts produced by and used in the project or related enterprises, and other incentives that can be annualized.

(B) Is based on income remaining after all project obligations are paid (operating and maintenance), except interest and depreciation as noted above.

(C) Is based on the Agency’s review and acceptance of the project’s typical year income (which is after the project is operating and stabilized) projections at the time of application submittal.

(D) Does not allow Investment Tax Credits, State tax incentives, or other one-time construction and investment related benefits that cannot be annualized to be included as income or reduce total eligible project costs.

(2) For energy replacement and energy efficiency improvement projects, simple payback is calculated as follows:

(i) Simple payback = (Total Project Costs (including REAP Grant))/\(\text{Dollar Value of Energy Generated or Saved (as applicable)})

(ii) Dollar value of energy generated or saved incorporates the following:

(A) All energy related revenue streams, which include monetary benefits from PTC, Renewable Energy Credit, Carbon Credits, revenue from byproducts produced by the energy system, and other monetary incentives that can be annualized.

(B) Energy saved or replaced shall be calculated on the quantity of energy saved or replaced (e.g., BTU) and converted to a monetary value using a constant value or price of energy as determined under paragraph (2)(ii)(B)(3) of this definition.

(3) The actual total quantity of energy used (BTU) in the original building and equipment in the 12 months prior to the RES or EEI project application.

(2) Projected energy usage after the RES or EEI project shall be the projected total quantity of energy used (BTU) on an annual basis for the same size or capacity as the original building or equipment. For energy efficiency improvement to equipment, if the new piece of equipment has a different capacity than the piece of equipment being replaced, the projected total quantity of energy used for the new piece of equipment shall be adjusted.
based on the ratio of the capacity of the replaced piece of equipment to the capacity of the new piece of equipment.

(3) Value or price of energy shall be the actual average price paid over the last year and used as a constant for all calculations of the value of energy.

(C) Does not allow energy efficiency improvements to monetize benefits other than the dollar amount of the energy savings the agricultural producer or rural small business realizes as a result of the improvement.

(D) Does not allow Investment Tax Credits, State tax incentives, or other one-time construction and investment related benefits that cannot be annualized to be included as income or reduce total project costs.

(3) For flexible fuel pumps, the calculation for simple payback is as follows:

(i) Simple payback = (Total Project Costs (including REAP Grant))/(Increase in Net Income + Interest Expense + Depreciation Expense (for the project))

(ii) Increase in income:

(A) Is based on all flexible fuel pump related net income (the projected increase in annual net income resulting by the installation of the project), which includes monetary benefits from Tax Credits and other credits or incentives that can be annualized.

(B) Is based on income remaining after all project obligations are paid (operating and maintenance), except interest and depreciation as noted above.

(C) Is based on the Agency’s review and acceptance of the project’s typical year income (which is after the project is operating and stabilized) projections at the time of application submittal.

(D) Does not allow State tax incentives or other one-time construction and investment related benefits that cannot be annualized to be included as income or reduce total eligible project costs.

Simplified application. An application that conforms to the criteria and procedures specified in § 4280.114.

Small business. An entity is considered a small business in accordance with the Small Business Administration’s (SBA) small business size standards by the North American Industry Classification System (NAICS) found in 13 CFR part 121. A private entity, including a sole proprietorship, partnership, corporation, cooperative (including a cooperative qualified under section 501(c)(12) of the Internal Revenue Code), and an electric utility, including a Tribal or governmental electric utility, that provides service to rural consumers on a cost-of-service basis without support from public funds or subsidy from the Government authority establishing the district, provided such utilities meet SBA’s definition of small business. These entities must operate independent of direct Government control except for Tribal business entities formed as Section 17 Corporations as determined by the Secretary of the Interior or other Tribal business entities that have similar structures and relationships with their Tribal governments as determined by the Agency. The Agency shall determine the small business status of such a Tribal entity without regard to the resources of the Tribal government. With the exception of the entities described above, all other non-profit entities are excluded.

Small hydropower. A hydropower project for which the rated power of the system is 30 megawatts or less.

Small solar, electric. Small solar electric projects are those for which the rated power of the system is 10kW or smaller. Small solar electric projects are either stand-alone (off grid) or interconnected to the grid at less than 600 volts (on grid).

Small solar, thermal. Small solar thermal projects are those for which the rated storage volume of the system is 240 gallons or smaller or that have a collector area of 1,000 square feet or less.

Small wind system. Wind energy system for which the rated power of the wind turbine is 100kW or smaller and with a generator hub height of 120 feet or less. A small wind system is either stand-alone or connected to the local electrical system at less than 600 volts.

Spreadsheet. A table containing data from a series of financial statements of a business over a period of time. Financial statement analysis normally contains spreadsheets for balance sheets and income statements and may include cash flow statement data and
commonly used ratios. The spreadsheets enable a reviewer to easily scan the data, spot trends, and make comparisons.

State. Any of the 50 states of the United States, the Commonwealth of Puerto Rico, the District of Columbia, 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.

Total project costs. The sum of all costs associated with a completed project.

Used equipment. Any equipment that has been used in any previous application and is provided in an "as is" condition.

Very small business. A business with fewer than 15 employees and less than $1 million in annual receipts.

§ 4280.104 Exception authority.

The Administrator may, with the concurrence of the Secretary of Agriculture, make an exception, on a case-by-case basis, to any requirement or provision of this subpart that is not inconsistent with any authorizing statute or applicable law, if the Administrator determines that application of the requirement or provision would adversely affect the Federal government’s interest.

§ 4280.105 Appeals.

Only the grantee, borrower, lender, or holder can appeal an Agency decision made under this subpart. In cases where the Agency has denied or reduced the amount of final loss payment to the lender, the adverse decision may be appealed by the lender only. An adverse decision that only impacts the holder may be appealed by the holder only. A decision by a lender adverse to the interest of the borrower is not a decision by the Agency, whether or not concurred in by the Agency. An adverse decision regarding a grant application may be appealed by the applicant only. Appeals will be handled in accordance with 7 CFR part 11 of this title.

§ 4280.106 Conflict of interest.

(a) No conflict of interest or appearance of conflict of interest will be allowed. For purposes of this subpart, conflict of interest includes, but is not limited to, distribution or payment of grant and guaranteed loan funds or award of project contracts to an individual owner, partner, stockholder, or beneficiary of the applicant or borrower or a close relative of such an individual when such individual will retain any portion of the ownership of the applicant or borrower.

(b) No member of or delegate to Congress shall receive any share or part of this grant or any benefit that may arise there from; but this provision shall not be construed to bar as a contractor under the grant a publicly held corporation whose ownership might include a member of Congress.

§ 4280.107 USDA Departmental Regulations.

All projects funded under this subpart are subject to the provisions of the Departmental regulations (7 CFR subtitle A), as applicable.

§ 4280.108 Laws that contain other compliance requirements.

(a) Equal employment opportunity. For all construction contracts and grants in excess of $10,000, the contractor must comply with Executive Order 11246, as amended by Executive Order 11375, and as supplemented by applicable Department of Labor regulations (41 CFR part 60). The applicant or the lender and borrower, as applicable, is responsible for ensuring that the contractor complies with these requirements.

(b) Equal opportunity and nondiscrimination. The Agency will ensure that equal opportunity and nondiscrimination requirements are met in accordance with the Equal Credit Opportunity Act and 7 CFR part 15d. Nondiscrimination in Programs and Activities Conducted by USDA. The Agency will not discriminate against applicants on the basis of race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to contract); the fact that all or part of the applicant’s
income derives from any public assistance program; or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act. Lenders will comply with the requirements of the Equal Credit Opportunity Act (see 12 CFR part 202). Such compliance will be accomplished prior to loan closing.

(c) Civil rights compliance. Recipients of grants must comply with the Americans with Disabilities Act of 1990, Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973. This may include collection and maintenance of data on the 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, §1901.204 of this title. Grants will require one subsequent compliance review after the last disbursement of grant funds has been made, and the facility has been in full operation for 90 days.

(d) Americans with Disabilities Act (ADA). Guaranteed loans that involve the construction of or addition to facilities that accommodate the public and commercial facilities, as defined by the ADA, must comply with the ADA. The lender and borrower are responsible for compliance.

(e) Environmental analysis. Subpart G of part 1940 of this title outlines environmental procedures and requirements for this subpart. Prospective applicants are advised to contact the Agency to determine environmental requirements as soon as practicable after they decide to pursue any form of financial assistance directly or indirectly available through the Agency.

(1) Any required environmental review must be completed by the Agency prior to the Agency obligating any funds.

(2) The applicant will be notified of all specific compliance requirements, including, but not limited to, the publication of public notices, and consultation with State Historic Preservation Offices and the U.S. Fish and Wildlife Service.

(3) A site visit by the Agency may be scheduled, if necessary, to determine the scope of the review.

(4) The applicant taking any actions or incurring any obligations during the time of application or application review and processing that would either limit the range of alternatives to be considered or that would have an adverse effect on the environment, such as the initiation of construction, will result in project ineligibility.

(f) Executive Order 12898. When a project is proposed and financial assistance 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, “Civil Rights Impact Analysis Certification.” This certification must be done prior to loan approval, obligation of funds, or other commitments of Agency resources, including issuance of a Letter of Conditions or Form RD 4279–3, whichever occurs first.

(g) Discrimination complaints. The regulations contained in 7 CFR part 1901, subpart E of this title apply to this program, with the exception of guaranteed loans. Any person or any specific class of person, believing they have been subjected to discrimination may file a complaint within 180 days of an alleged act of discrimination or from the time discrimination is known, or should have been known, with the USDA Director, Office of Adjudication, Room 3326–W, Whitten Building, 1400 Independence Avenue, SW., Washington, DC 20250–9410.

§ 4280.109 Ineligible applicants, borrowers, and owners.

Applicants, borrowers, and owners will be ineligible to receive funds under this subpart as discussed in paragraphs (a) and (b) of this section.

(a) If an applicant, borrower, or owner has an outstanding judgment obtained by the U.S. in a Federal Court (other than in the United States Tax Court), is delinquent in the payment of Federal income taxes, or is delinquent on a Federal debt, the applicant is not eligible to receive a grant or guaranteed loan until the judgment is paid in full or otherwise satisfied or the delinquency is resolved.
§ 4280.110 General applicant and application provisions.

(a) Complete applications. Applicants must submit complete applications in order to be considered. If an application is incomplete, the Agency will identify those parts of the application that are incomplete and provide a written explanation to the applicant for possible future resubmission. Upon receipt of a complete application by the appropriate Agency office and by the applicable application deadline, the Agency will complete its evaluation.

(b) Application withdrawal. During the period between the submission of an application and the execution of loan and/or grant 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 so notifies the Agency, the selection will be rescinded or the application withdrawn.

(c) Satisfactory progress. An applicant that has received one or more grants and/or guaranteed loans under this program must make satisfactory progress, as determined by the Agency, toward completion of any previously funded projects before the applicant will be considered for subsequent funding under this subpart.

§ 4280.111 Notifications.

(a) Eligibility. If an applicant is determined by the Agency to be eligible for participation, the Agency will notify the applicant or lender, as applicable, in writing. If the applicant or the project is ineligible, the Agency will inform the applicant or lender, as applicable, in writing of the decision, reasons therefore, and any appeal rights. No further evaluation of the application will occur.

(b) Ineligible applications. If an application is determined to be ineligible at any time, the Agency will inform the applicant in writing of the decision, reasons therefore, and any appeal rights. No further evaluation of the application will occur.

(c) Award. Each applicant will be notified of the Agency’s decision on their application.

§ 4280.112 Applicant eligibility.

To receive a RES or EEI grant under this subpart, an applicant must be an agricultural producer or rural small business, as defined in § 4280.103.

§ 4280.113 Project eligibility.

For a renewable energy system or energy efficiency improvement project to be eligible to receive a RES or EEI grant under this subpart, the proposed project must meet each of the criteria, as applicable, in paragraphs (a) through (j), as applicable, of this section, and is subject to the limitations specified in paragraph (k) of this section.

(a) The project must be for the purchase of a renewable energy system or to make energy efficiency improvements. Energy efficiency improvements to existing renewable energy systems are eligible energy efficiency improvement projects.

(b) The project must be for a pre-commercial or commercially available, and replicable technology.

(c) The project must have technical merit, as determined using the procedures specified in § 4280.117(b).

(d) The facility for which the project is being proposed must be located in a rural area, as defined in § 4280.103, in a State if the type of applicant is a rural small business, or in a rural or non-rural area in a State if the type of applicant is an agricultural producer. If the agricultural producer’s facility is in a non-rural area, then the application can only be for renewable energy systems or energy efficiency improvements on integral components of or that are directly related to the facility, such as vertically integrated operations, and are part of and co-located with the agriculture production operation.

(e) The applicant must have a place of business in a State.
§ 4280.114 Qualification for simplified applications.

When applying for a RES or EEI grant, applicants may qualify for the simplified application process. In order to use the simplified application process, each of the conditions specified in paragraphs (a)(1) through (a)(8) of this section must be met.

(a) Simplified application criteria.

(1) The applicant must be eligible in accordance with §4280.112.
(2) The project must be eligible in accordance with §4280.113.
(3) Total eligible project costs must be $200,000 or less.
(4) The proposed project must use commercially available renewable energy systems or energy efficiency improvements.
(5) Construction planning and performing development must be performed in compliance with §4280.119. The applicant or the applicant’s prime contractor must assume all risks and responsibilities of project development.
(6) The applicant or the applicant’s prime contractor is responsible for all interim financing.
(7) The proposed project is scheduled to be completed within 2 years after entering into a grant agreement. The Agency may extend this period if the Agency determines, at its sole discretion, that the applicant is unable to complete the project for reasons beyond the applicant’s control.
(8) The applicant agrees not to request reimbursement from funds obligated under this program until after project completion, including all operational testing and certifications acceptable to the Agency.

(b) Application processing and administration.

(1) Application documents. Application documents shall be submitted in accordance with §4280.116 or, if applying for a combined grant and loan, also in accordance with §4280.165(c).

(2) Project development. Section 4280.119 applies, except as follows:

(i) Any grantee may participate in project development without direct compensation subject to the approval in writing by the prime contractor, provided that all applicable construction practices, manufacturer instructions, and all safety codes and standards are followed during construction and testing, and the work product meets all applicable manufacturer specifications, and all applicable codes and standards. The prime contractor remains responsible for the overall successful completion of the project, including any work done by the grantee, or
(ii) A grantee who can demonstrate to the Agency that the grantee has the necessary experience and other resources to successfully complete the project may serve as the prime contractor/installer. Projects where the grantee serves as the prime contractor...
will need to secure the services of an independent, professionally responsible, qualified consultant to certify testing specifications, procedures, and testing results.

(3) **Project completion.** The project is complete when the applicant has provided a written final project development, testing, and performance report acceptable to the Agency. Upon notification of receipt of an acceptable project completion report, the applicant may request grant reimbursement. The Agency reserves the right to observe the testing.

(4) **Insurance.** Section 4280.118 applies, except business interruption insurance is not required.

§ 4280.115 RES and EEI grant funding.

(a) The amount of grant funds that will be made available to an eligible RES or EEI project under this subpart will not exceed 25 percent of total eligible project costs. Eligible project costs are specified in paragraph (c) of this section.

(b) The applicant is responsible for securing the remainder of the total eligible project costs not covered by grant funds. The amount secured by the applicant must be the remainder of total eligible project costs.

(1) Without specific statutory authority, other Federal grant funds cannot be used to meet the matching fund requirement.

(2) Passive third-party equity contributions are acceptable for renewable energy system projects, including those that are eligible for Federal production tax credits, provided the applicant meets the requirements of §4280.112.

(c) Eligible project costs are only those costs associated with the items identified in paragraphs (c)(1) through (c)(10) of this section, as long as the items are an integral and necessary part of the renewable energy system or energy efficiency improvement.

(1) Post-application purchase and installation of equipment (new, refurbished, or remanufactured), except agricultural tillage equipment, used equipment, and vehicles.

(2) Post-application construction or improvements, except residential.

(3) Energy audits or assessments.

(4) Permit and license fees.

(5) Professional service fees, except for application preparation.

(6) Feasibility studies and Technical reports.

(7) Business plans.

(8) Retrofitting.

(9) Construction of a new energy efficient facility only when the facility is used for the same purpose, is approximately the same size, and, based on the energy assessment or audit, will provide more energy savings than improving an existing facility. Only costs identified in the energy assessment or audit for energy efficiency improvements are allowed.

(10) Energy efficiency improvements are limited to only improvements identified in the energy assessment or audit. Equipment identified by the assessment or audit to be replaced shall be replaced with equipment similar in capacity. If the energy efficiency improvement has a greater capacity than the existing equipment, the Agency will pro-rate the energy efficiency improvement’s total eligible project costs based on the capacity of the existing equipment. A calculation shall be performed by dividing the capacity of the existing equipment by the capacity of the proposed equipment to determine the percentage of the energy efficiency improvement’s eligible project costs that the Agency will use in determining the maximum grant assistance under this subpart (see example).

Example. A business plans to build a new production line with a capacity of 625 units per hour to replace an existing production line that produces 500 units per hour. The total project costs of the new production line is $20,000, of which $15,000 would otherwise qualify as eligible project costs. However, because the new production line has a greater production capacity than the existing line (625 units per hour versus 500 units per hour), only a portion of the $15,000 of otherwise eligible project costs would be used in determining the maximum grant assistance available. In this example, because the original capacity (500 units per hour) is 80 percent of the new capacity (625 units per hour), only 80 percent of the $15,000 of otherwise eligible project costs associated with the new production line (i.e., $12,000) will be considered as total eligible
project cost to be financed under this subpart. The maximum grant award in this example would be $3,000, which is equal to $12,000 \times 25\%.

(d) The maximum amount of grant assistance to one individual or entity will not exceed $750,000 per Federal fiscal year. For those applicants that have not received a grant award during the previous 2 Federal fiscal years, additional points will be added to their priority score.

(e) Applications for renewable energy system grants will be accepted for a minimum grant request of $2,500 up to a maximum of $500,000.

(f) Applications for energy efficiency improvement grants will be accepted for a minimum grant request of $1,500 up to a maximum of $250,000.

(g) In determining the amount of a RES or EEI grant awarded, the Agency will take into consideration the following six criteria:

1. The type of renewable energy system to be purchased;
2. The estimated quantity of energy to be generated by the renewable energy system;
3. The expected environmental benefits of the renewable energy system;
4. The quantity of energy savings expected to be derived from the activity, as demonstrated by an energy audit;
5. The estimated period of time for the energy savings generated by the activity to equal the cost of the activity; and
6. The expected energy efficiency of the renewable energy system.

(h) Time limit. Unless otherwise agreed to by the Agency, any renewable energy system or energy efficiency improvement grant agreement under this subpart will terminate 2 years from the date the Agency signs the agreement.

§ 4280.116 Application and documentation.

The requirements in this section apply to RES and EEI grant applications under this subpart.

(a) General. To ensure that projects are accurately scored by the Agency, applicants are requested to number each evaluation criterion and include, in that section, its corresponding supporting documentation and calculations according to § 4280.117.

(1) One funding type applications. Only one type of funding application (grant-only, guaranteed loan-only, or guaranteed loan/grant combination) for each project can be submitted under this subpart per Federal fiscal year.

(2) Environmental information. Each application must include all environmental review documents with supporting documentation in accordance with 7 CFR part 1940, subpart G.

(3) Foreign technology. As stated in § 4280.113(b), projects must be for a pre-commercial or commercially available technology. The Agency’s position is that if the system is currently commercially available outside the United States (U.S.), then applicants must provide authoritative evidence of the foreign operating history, performance, and reliability in order to address the proven operating history identified in the definition. “Commercial” applicants must provide evidence that professional service providers, trades, large construction equipment providers and labor are readily available domestically and familiar with installation procedures and practices, and spare parts and service are readily available in the U.S. to properly maintain and operate the system. All warranties must be valid in the U.S.

(4) Commercial application demonstration of pre-commercial technologies. In accordance with the definition of “pre-commercial” technology found in § 4280.103, technical and economic potential for commercial application must be demonstrated to the Agency. In order to demonstrate the system has emerged through research and development as well as the demonstration process, applicants must provide authoritative evidence of the operating history, performance, and reliability past completion of start-up, shake-down, and commissioning. Typically, and in line with financial and operating performance evaluation protocol, the documented operating history, which may be established domestically or outside the U.S., should provide performance data for a minimum of 12 months. The time period will address the economic and technical performance potential of the pre-commercial
technology, as defined in §4280.103. Lastly, in accordance with demonstrating the potential for commercial application, applicants must provide evidence that professional service providers, trades, large construction equipment providers, and labor are readily available domestically and sufficiently familiar with installation procedures and practices, and spare parts and service are available in the U.S. to properly maintain and operate the system. Any warranties have to be valid in the U.S.

(b) Grant application content. Applications and documentation for projects using the simplified application process, as described in §4280.114, must provide the required information organized pursuant to the Table of Contents in a chapter format presented in the order shown in paragraphs (b)(1) through (b)(3) and (b)(5) through (b)(7) of this section; paragraph (b)(4) of this section does not apply for projects using the simplified application process. Applications and documentation for projects not using the simplified application process must provide the required information organized pursuant to the Table of Contents in a chapter format presented in the order shown in paragraphs (b)(1) through (b)(8) of this section.

(1) Forms, certifications, and organizational documents. Each application must contain the items identified in paragraphs (b)(1)(i) through (b)(1)(iv) in this section.

(i) Project specific forms.

(A) Form SF–424, “Application for Federal Assistance.”


(C) Form SF–424D, “Assurances-Construction Programs.”

(D) Form RD 1940–20, “Request for Environmental Information.”

(ii) Forms and certifications.

(A) AD–1049, “Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative I—For Grantees Other than Individuals.”

(B) Form AD–1048, “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions.”

(C) Exhibit A–1 of RD Instruction 1940–Q, “Certification for Contracts, Grants and Loans,” required by 7 CFR 3018.110 if the grant exceeds $100,000.

(D) Form SF–LLL, “Disclosure of Lobbying Activities,” must be completed if the applicant or borrower has made or agreed to make payment using funds other than Federal appropriated funds to influence or attempt to influence a decision in connection with the application.

(E) AD–1047, “Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions.”

(F) Form RD 400–1, “Equal Opportunity Agreement.”

(G) Form RD 400–4, “Assurance Agreement.”

(H) Applicants and borrowers must provide a certification indicating whether or not there is a known relationship or association with an Agency employee.

(iii) Organizational documents. Except for sole proprietorships, each applicant must submit, with the application, a copy of the legal organizational documents.

(iv) The applicant’s Dun and Bradstreet Data Universal Numbering System (DUNS) number (except for individuals).

(2) Table of Contents. Include page numbers for each component of the application in the table of contents. Begin pagination immediately following the Table of Contents.

(3) Project Summary. Provide a concise summary of the project proposal and applicant information, project purpose and need, and project goals that includes the following:

(i) Title. Provide a descriptive title of the project (identified on SF 424).

(ii) Applicant eligibility. Describe how each of the applicable criteria identified in §§4280.109 and 4280.112 is met.

(iii) Project eligibility. Describe how each of the criteria in §4280.113(a) through (j), as applicable, is met. Clearly state whether the application is for the purchase of a renewable energy system or to make energy efficiency improvements. The response to
§ 4280.113(a) must include a brief description of the system or improvement. This description must be sufficient to provide the reader with a frame of reference when reviewing the rest of the application. Additional project description information may be needed later in the application.

(iv) Operation description. Describe the applicant’s total farm/ranch/business operation and the relationship of the proposed project to the applicant’s total farm/ranch/business operation. Provide a description of the ownership of the applicant, including a list of individuals and/or entities with ownership interest, names of any corporate parents, affiliates, and subsidiaries, as well as a description of the relationship, including products, between these entities.

(v) Financial information for gross income or size determination. Provide financial information to allow the Agency to determine the agricultural producer’s percent of gross income derived from agricultural operations or the rural small business’ size, as applicable. All information submitted under this paragraph must be substantiated by authoritative records.

(A) Rural small businesses. Provide sufficient information to determine total annual receipts for and number of employees of the business and any parent, subsidiary, or affiliates at other locations. Voluntarily providing tax returns is one means of satisfying this requirement. The information provided must be sufficient for the Agency to make a determination of business size as defined by SBA.

(B) Agricultural producers. Provide the gross market value of your agricultural products, gross agricultural income, and gross nonfarm income of the applicant for the calendar year preceding the year in which you submit your application.

(4) Financial information. Financial information is required on the total operation of the agricultural producer/rural small business and its parent, subsidiary, or affiliates at other locations. All information submitted under this paragraph must be substantiated by authoritative records.

(i) Historical financial statements. Provide historical financial statements prepared in accordance with Generally Accepted Accounting Practices (GAAP) for the past 3 years, including income statements and balance sheets. If agricultural producers are unable to present this information in accordance with GAAP, they may instead present financial information for the past years in the format that is generally required by commercial agriculture lenders.

(ii) Current balance sheet and income statement. Provide a current balance sheet and income statement prepared in accordance with GAAP and dated within 90 days of the application. Agricultural producers should present financial information in the format that is generally required by commercial agriculture lenders.

(iii) Pro forma financial statements. Provide pro forma balance sheet at start-up of the agricultural producer’s/rural small business’ business that reflects the use of the loan proceeds or grant award; and 3 additional years indicating the necessary start-up capital, operating capital, and short-term credit; and projected cash flow and income statements for 3 years supported by a list of assumptions showing the basis for the projections.

(5) Matching funds. Submit a spreadsheet identifying sources of matching funds, amounts, and status of matching funds. The spreadsheet must also include a directory of matching funds source contact information. Attach any applications, correspondence, or other written communication between applicant and matching fund source.

(6) Self-evaluation score. Self-score the project using the evaluation criteria in § 4280.117(c). To justify the score, submit the total score along with appropriate calculations and attached documentation, or specific cross-references to information elsewhere in the application.

(7) Renewable Energy System and Energy Efficiency Improvements Technical Report. A Technical Report must be submitted as part of the application to allow the Agency to determine the overall technical merit of the renewable energy system or energy efficiency improvement project.

(i) Simplified applications. Simplified applications, which are submitted for
renewable energy system projects or energy efficiency improvement projects with total eligible project costs of $200,000 or less, must include a Technical Report prepared in accordance with the requirements specified in paragraphs (b)(7)(i)(A) through (b)(7)(i)(C) of this section.

(A) The Technical Report must be prepared in accordance with Appendix A, C, or D, as applicable, of this subpart. If a renewable energy system project does not fit one of the technologies identified in Appendices A, C, and D, the applicant must submit a Technical Report in accordance with paragraph (b)(7)(ii) of this section. The information in all Technical Reports must be of sufficient detail to allow the Agency to score the project and evaluate its technical feasibility.

(B) Either an energy assessment or an energy audit is required for energy efficiency improvement projects. For energy efficiency improvement projects with total eligible project costs greater than $50,000, an energy audit must be conducted; it must be conducted by or reviewed and certified by an energy auditor. For energy efficiency improvement projects with total eligible project costs of $50,000 or less, an energy assessment or an energy audit may be conducted by either an energy assessor or an energy auditor.

(C) Technical Reports prepared prior to the applicant’s selection of a prime contractor may be modified after selection, pursuant to input from the prime contractor, and submitted to the Agency, provided the overall scope of the project is not materially changed as determined by the Agency. Changes in the report must be accompanied by an updated Form RD 1940–20.

(ii) Full applications. Full applications, which must be submitted for applications for renewable energy system projects or energy efficiency improvement projects with total eligible project costs greater than $200,000, must include a Technical Report prepared in accordance with Appendix B, C, or D, as applicable, of this subpart and with paragraphs (b)(7)(i)(A) through (b)(7)(i)(G) of this section, as applicable.

(A) The Technical Report must demonstrate that the renewable energy system or energy efficiency improvement project can be installed and perform as intended in a reliable, safe, cost-effective, and legally compliant manner.

(B) Either an energy assessment or an energy audit is required for energy efficiency improvement projects. For energy efficiency improvement projects with total eligible project costs greater than $50,000, an energy audit must be conducted; it must be conducted by or reviewed and certified by an energy auditor. For energy efficiency improvement projects with total eligible project costs of $50,000 or less, an energy assessment or an energy audit may be conducted by either an energy assessor or an energy auditor.

(C) For renewable energy system projects with total eligible project costs greater than $400,000 and for energy efficiency improvement projects with total eligible project costs greater than $200,000, the design review, installation monitoring, testing prior to commercial operation, and project completion certification will require the services of a licensed professional engineer (PE) or team of licensed PEs.

(D) For projects with total eligible project costs greater than $1,200,000, the Technical Report must be reviewed and include an opinion and recommendation by an independent qualified consultant.

(E) Technical Reports prepared prior to the applicant’s selection of a final design, equipment vendor, or prime contractor, or other significant decision may be modified and resubmitted to the Agency, provided the overall scope of the project is not materially changed as determined by the Agency. Changes in the Technical Report must be accompanied by an updated Form RD 1940–20.

(F) All information provided in the Technical Report will be evaluated against the requirements provided in Appendix B, C, or D, as applicable, of this subpart. Any Technical Report not prepared in the following format and in accordance with Appendix B, C, or D, where applicable, will be penalized under scoring for technical merit.
(G) All Technical Reports shall follow the outline presented below and shall contain the information described in paragraphs (b)(7)(i)(G)(1) through (b)(7)(i)(G)(10) of this section and Appendix B, C, or D, as applicable, of this subpart if the technology is identified in Appendix B, C, or D for the particular project. If none of the Technical Reports in Appendix B apply to the proposed technology, the applicant may submit a Technical Report that conforms to the overall outline and subjects specified in paragraph (b)(7)(i)(G) of this section. For Technical Reports prepared for technologies not identified in Appendices B, C, and D, the Agency will review the reports and notify, in writing, the applicant of the changes to the report required in order for the Agency to accept the report.

(1) Qualifications of the project team. Describe the project team, their professional credentials, and relevant experience. The description must support that the project team service, equipment, and installation providers have the necessary professional credentials, licenses, certifications, or relevant experience to develop the proposed project.

(2) Agreements and permits. Describe the necessary agreements and permits required for the project and the anticipated schedule for securing those agreements and permits. For example, interconnection agreements and purchase power agreements are necessary for all renewable energy projects electrically interconnected to the utility grid. The applicant must demonstrate that the applicant is familiar with the regulations and utility policies and that these arrangements will be secured in a reasonable timeframe.

(3) Energy or resource assessment. Describe the quality and availability of the renewable resource, and an assessment of expected energy savings through the deployment of the proposed system or increased production created by the system.

(4) Design and engineering. Describe the intended purpose of the project and the design, engineering, testing, and monitoring needed for the proposed project. The description must support that the system will be designed, engineered, tested, and monitored so as to meet its intended purpose, ensure public safety, and comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, the applicant must identify all the major equipment that is proprietary equipment and justify how this unique equipment is needed to meet the requirements of the proposed design.

(5) Project development. Describe the overall project development method, including the key project development activities and the proposed schedule for each activity. The description must identify each significant historical and projected activity, its beginning and end, and its relationship to the time needed to initiate and carry the activity through to successful project completion. The description must address applicant project development cash flow requirements. Details for equipment procurement and installation shall be addressed in paragraphs (b)(7)(i)(G)(7) and (b)(7)(i)(G)(8) of this section.

(6) Project economic assessment. Describe the financial performance of the proposed project. The description must address project costs, energy savings, and revenues, including applicable investment and production incentives. Cost centers include, but are not limited to, administrative and general, fuel supply, operations and maintenance, product delivery and debt service. Revenues to be considered must accrue from the sale of energy, offset or savings in energy costs, byproducts, and green tags. Incentives to be considered must accrue from government entities.

(7) Equipment procurement. Describe the availability of the equipment required by the system. The description must support that the required equipment is available and can be procured and delivered within the proposed project development schedule.

(8) Equipment installation. Describe the plan for site development and system installation, including any special equipment requirements. In all cases,
§ 4280.117 Evaluation of RES and EEI grant applications.

(a) General review. The Agency will evaluate each RES and EEI application and make a determination as to whether the applicant is eligible, the proposed grant is for an eligible project, and the proposed grant complies with all applicable statutes and regulations.

(b) Technical merit. The Agency’s determination of a project’s technical merit will be based on the information provided by the applicant. The Agency may engage the services of other government agencies or other recognized industry experts in the applicable technology field, at its discretion, to evaluate and rate the application. The Agency may use this evaluation and rating to determine the level of technical merit of the proposed project. Projects that the Agency determines are without technical merit shall be deemed ineligible.

(c) Evaluation criteria. Agency personnel will score each application based on the evaluation criteria specified in paragraphs (c)(1) through (c)(10) of this section.

(1) Quantity of energy replaced, produced, or saved, and flexible fuel pumps. Points may only be awarded for energy replacement, energy savings, or energy generation, or for flexible fuel pumps. Points will not be awarded for more than one category.

(i) Energy replacement. If the proposed renewable energy system is intended primarily for self-use by the agricultural producer or rural small business and will provide energy replacement of greater than zero, but equal to or less than 25 percent, 5 points will be awarded; greater than 25 percent, but equal to or less than 50 percent, 10 points will be awarded; or greater than 50 percent, 15 points will be awarded. Energy replacement is to be determined by dividing the estimated quantity of renewable energy to be generated over a 12-month period by the estimated quantity of energy consumed over the same 12-month period during the previous year by the applicable energy application. The estimated quantities of energy must be converted to either British thermal units (BTUs), Watts, or similar energy equivalents to facilitate scoring. If the estimated energy produced equals more than 150 percent of the energy requirements of the applicable process(es), the project will be scored as an energy generation project.

(ii) Energy savings. If the estimated energy expected to be saved by the installation of the energy efficiency improvements will be from 20 percent up to, but not including 30 percent, 5 points will be awarded; 30 percent up to, but not including 35 percent, 10 points will be awarded; or, 35 percent or greater, 15 points will be awarded. Energy savings will be determined by...
the projections in an energy assessment or audit. Projects with total eligible project costs of $50,000 or less that opt to obtain a professional energy audit will be awarded an additional 5 points.

(ii) Energy generation. If the proposed renewable energy system is intended primarily for production of energy for sale, 10 points will be awarded.

(iv) Flexible fuel pump(s). (A) If the proposed project is for one or more flexible fuel pumps, points will be awarded based on the overall percentage of proposed flexible fuel pumps to the applicant’s total retail pump inventory at the facility. The percentage of proposed flexible fuel pumps shall be calculated using the following equation.

Equation: FFP% = (FFPx/TP) × 100

where:
FFP% = Proposed flexible fuel pump(s), percentage.
FFPx = Number of proposed flexible fuel pumps to be installed at applicant’s facility.
TP = Number of proposed pumps to be installed plus the number of pumps installed and operating at the facility.

(B) If the proposed flexible fuel pump percentage calculated is 5 percent or below, 5 points will be awarded; above 5 percent and up to, but not including, 10 percent, 10 points will be awarded; or 10 percent and above, 15 points will be awarded.

(2) Environmental benefits. If the purpose of the proposed system contributes to the environmental goals and objectives of other Federal, State, or local programs, 10 points will be awarded. Points will only be awarded for this paragraph if the applicant is able to provide documentation from an appropriate authority supporting this claim.

(3) Commercial availability. If the proposed system or improvement is currently commercially available and replicable, 5 points will be awarded. If the proposed system or improvement is commercially available and replicable and is also provided with a 5-year or longer warranty providing the purchaser protection against system degradation or breakdown or component breakdown, 10 points will be awarded.

(4) Technical Merit. The Technical Merit of each project will be determined using the procedures specified in paragraphs (c)(4)(i) and (c)(4)(ii) of this section. The procedures specified in paragraph (c)(4)(i) will be used to score paragraphs (c)(4)(i)(A) through (c)(4)(i)(J) of this section. The final score awarded will be calculated using the procedures described in paragraph (c)(4)(ii) of this section.

(i) Technical merit. Each subparagraph has its own maximum possible score and will be scored according to the following criteria: If the description in the subparagraph has no significant weaknesses and exceeds the requirements of the subparagraph, 100 percent of the total possible score for the subparagraph will be awarded. If the description has one or more significant strengths and meets the requirements of the subparagraph, 80 percent of the total possible score will be awarded; above 5 percent and up to, but not including, 10 percent, 10 points will be awarded; or 10 percent and above, 15 points will be awarded.

(A) Qualifications of the project team (maximum score of 10 points). The applicant has described the project team service providers, their professional credentials, and relevant experience. The description supports that the project team service, equipment, and installation providers have the necessary professional credentials, licenses, certifications, or relevant experience to develop the proposed project.

(B) Agreements and permits (maximum score of 5 points). The applicant has described the necessary agreements and permits required for the project and the schedule for securing those agreements and permits.
(C) Energy or resource assessment (maximum score of 10 points). The applicant has described the quality and availability of a suitable renewable resource or an assessment of expected energy savings for the proposed system.

(D) Design and engineering (maximum score of 30 points). The applicant has described the design, engineering, and testing needed for the proposed project. The description supports that the system will be designed, engineered, and tested so as to meet its intended purpose, ensure public safety, and comply with applicable laws, regulations, agreements, permits, codes, and standards.

(E) Project development schedule (maximum score of 5 points). The applicant has described the development method, including the key project development activities and the proposed schedule for each activity. The description identifies each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through to successful completion. The description addresses grantee or borrower project development cash flow requirements.

(F) Project economic assessment (maximum score of 20 points). The applicant has described the financial performance of the proposed project, including the calculation of simple payback. The description addresses project costs and revenues, such as applicable investment and production incentives, and other information to allow the assessment of the project’s cost effectiveness.

(G) Equipment procurement (maximum score of 5 points). The applicant has described the availability of the equipment required by the system. The description supports that the required equipment is available, and can be procured and delivered within the proposed project development schedule.

(H) Equipment installation (maximum score of 5 points). The applicant has described the plan for site development and system installation.

(I) Operation and maintenance (maximum score of 5 points). The applicant has described the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life.

(J) Dismantling and disposal of project components (maximum score of 5 points). The applicant has described the requirements for dismantling and disposing of project components at the end of their useful life and associated wastes.

(1) Calculation of Technical Merit Score. To determine the actual points awarded a project for Technical Merit, the following procedure will be used: The score awarded for paragraphs (c)(4)(i)(A) through (c)(4)(i)(J) of this section will be added together and then divided by 100, the maximum possible score, to achieve a percentage. This percentage will then be multiplied by the total possible points of 35 to achieve the points awarded for the proposed project for Technical Merit.

(5) Readiness. If the applicant has written commitments from the source(s) confirming commitment of 50 percent up to but not including 75 percent of the matching funds prior to the Agency receiving the complete application, 5 points will be awarded. If the applicant has written commitments from the source(s) confirming commitment of 75 percent up to but not including 100 percent of the matching funds prior to the Agency receiving the complete application, 10 points will be awarded. If the applicant has written commitments from the source(s) of matching funds confirming commitment of 100 percent of the matching funds prior to the Agency receiving the complete application, 15 points will be awarded.

(6) Small agricultural producer/very small business. If the applicant is an agricultural producer producing agricultural products with a gross market value of less than $600,000 in the preceding year, 5 points will be awarded. If the applicant is an agricultural producer producing agricultural products with a gross market value of less than $200,000 in the preceding year or is a very small business, as defined in §4280.103, 10 points will be awarded.

(7) Simplified application/low cost projects. If the applicant is eligible for and uses the simplified application process or the project has total eligible project costs of $200,000 or less, 5 points will be awarded.
§ 4280.118 Insurance requirements.

Agency approved insurance coverage must be maintained for the life of the RES or EEI grant unless this requirement is waived or modified by the Agency in writing.

(a) National flood insurance is required in accordance with 7 CFR part 1806, subpart B, of this title, if applicable.

(b) Business interruption insurance is required except for projects with total eligible project costs of $200,000 or less.

§ 4280.119 Construction planning and performing development.

The requirements of this section apply for planning, designing, bidding, contracting, and constructing renewable energy systems and energy efficiency improvement projects as applicable. For contracts of $200,000 or less, the simple contract method, as specified in paragraph (g) of this section, may be used. Contracts greater than $200,000 shall use the contract method specified in paragraph (g) of this section.

(a) Technical services. Applicants are responsible for providing the engineering, architectural, and environmental services necessary for planning, designing, bidding, contracting, inspecting, and constructing their facilities. Services may be provided by the applicant’s “in-house” engineer or architect or through contract, subject to Agency concurrence. Engineers and architects must be licensed in the State where the facility is to be constructed.

(b) Design policies. Facilities funded by the Agency will meet the requirements of §1780.57(b), (c), (d), and (o) of this title. Final plans and specifications must be reviewed by the Agency and approved prior to the start of construction.

(c) Owners accomplishing work. In some instances, owners may wish to perform a part of the work themselves. For an owner to perform project development work, the owner must meet the experience requirements of §1780.67 of this title. For an owner to provide a portion of the work, with the remainder to be completed by a contractor, a clear understanding of the division of work must be established and delineated in the contract. In such cases, the contractor will be required to inspect the owner’s work and accept it. Owners are not eligible for payment for their own work as it is not an eligible project cost. See §4280.115(c) of this subpart for further details on eligible project costs.

(d) Equipment purchases. Equipment purchases of less than $200,000 will not require a performance and payment
bond, unless required by the applicant, as long as the contract purchase is a lump sum payment and the manufacturer provides the required warranties on the equipment as outlined in paragraph (i) in the applicable section found in Appendices A, B, C, and D of this subpart. Payment shall be certified by copies of the Manufacturer's paid invoices and warranty documents.

(e) **Simple contract method.** The simple contract method may be used for small projects with a contract not greater than $200,000. In smaller projects, Agency funds will typically be used to reimburse project costs upon completion of the work as a lump sum payment. Partial payments will be made in accordance with Form RD 4280–2 and Form RD 1924–6, “Construction Contract,” or other Agency approved contract. All construction work will be performed under a written contract, as described below. A design/build method, where the same person or entity provides design and engineering work, as well as construction or installation, may be used under this method.

1. **Contracting requirements threshold.** For contracts above $100,000, certain Federal requirements, including surety, must be met. An attachment to the contract may be used to incorporate language for these requirements.

2. **Forms used.** Form RD 1924–6 or other Agency approved contract must be used. Other contracts must be approved by the Agency and may be used only if they are customarily used in the area and protect the interest of the applicant and the Government with respect to compliance with items such as the drawings, specifications, payments for work, inspections, completion, non-discrimination in construction work and acceptance of the work. The Agency will not become a party to a construction contract or incur any liability under it. No contract shall become effective until concurred in writing by the Agency. Such concurrence statement shall be attached to and made a part of the contract.

3. **Contract provisions.** Contracts will have a listing of attachments and the minimum provisions of the contract will include:

   (i) **The contract sum;**
   
   (ii) **The dates for starting and completing the work;**
   
   (iii) **The amount of liquidated damages to be charged;**
   
   (iv) **The amount, method, and frequency of payment;**
   
   (v) **Whether or not surety bonds will be provided.** If not, a latent defects bond may be required, as described in paragraph (e)(4) of this section;
   
   (vi) **The requirement that changes or additions must have prior written approval of the Agency; and**
   
   (vii) **The warranty period to be provided in accordance with Appendices A and B, sections 1 through 10, paragraph (i)(1) and in Appendices C and D, paragraph (i)(1).**

4. **Surety.** Surety per 7 CFR part 1780, subpart C, §1780.75(c) of this title will be required, and made a part of the contract, if the applicant requests it, or if the contractor requests partial payments for construction work. If the contractor will receive a lump sum payment at the end of work, the Agency will not require surety. In such cases where no surety is provided and the project involves pre-commercial technology, first of its type in the U.S., or new designs without sufficient operating hours to prove their merit, a latent defects bond may be required to cover the work.

5. **Equal opportunity.** Section 1901.205 of 7 CFR part 1901, subpart E of this title applies to all financial assistance involving construction contracts and subcontracts in excess of $10,000. Language for this requirement is included in Form RD 1924–6. If this form is not used, such language must be made a part of the Agency approved contract.

6. **Obtaining bids and selecting a contractor.**

   (i) **The applicant may select a contractor and negotiate a contract or contact several contractors and request each to submit a bid.** The applicant will provide a statement to the Agency describing the process for obtaining the bid(s) and what alternatives were considered.

   (ii) **When a price has already been negotiated by an applicant and a contractor, the Agency will review the proposed contract.** If the contractor is qualified to perform the development and provide a warranty of the work and
the price compares favorably with the cost of similar construction in the area, further negotiation is unnecessary. If the Agency determines the price is too high or otherwise unreasonable, the applicant will be required to negotiate further with the contractor. If a reasonable price cannot be negotiated or if the contractor is not qualified, the applicant will be required to negotiate with another contractor.

(iii) When an applicant has proposed development with no contractor in mind, competition will be required. The applicant must obtain bids from as many qualified contractors, dealers, or trades people as feasible depending on the method and type of construction.

(iv) If the award of the contract is by competitive bidding, Form RD 1924–5, “Invitation for Bid (Construction Contract),” or another similar Agency approved invitation bid form containing the requirements of subpart E of part 1901 of this title may be used. All contractors from whom bids are requested should be informed of all conditions of the contract, including the time and place of opening bids. Conditions shall not be established which would give preference to a specific bidder or type of bidder. When applicable, copies of Forms RD 1924–6 and RD 400–6, “Compliance Statement,” also should be provided to the prospective bidders.

(7) Awarding the contract. The applicant, with the concurrence of the Agency, will consider the amount of the bids or proposals, and all conditions listed in the invitation. On the basis of these considerations, the applicant will select and notify the lowest responsible bidder. The contract will be awarded using Form RD 1924–6 or similar Agency approved document as described in this section.

(8) Final payments. Prior to making final payment on the contract when a surety bond is not used, the Agency will be provided with Form RD 1924–9, “Certificate of Contractor’s Release,” and Form RD 1924–10, “Release by Claimants,” executed by all persons who furnished materials or labor in connection with the contract. The applicant should furnish the contractor with a copy of Form RD 1924–10 at the beginning of the work in order that the contractor may obtain these releases as the work progresses.

(f) Design/build contracts. The design/build method, where the same person or entity provides design and engineering work, as well as construction or installation, may be used with Agency written approval. If the design/build contract amount is $200,000 or less, development and contracting will follow paragraph (e) of this section. If the design/build contract amount is greater than $200,000, Agency prior concurrence must be obtained as described below, and the remaining requirements of this section apply.

(1) Concurrence information. The applicant will request Agency concurrence by providing the Agency at least the information specified in paragraphs (f)(1)(i) through (f)(1)(viii) of this section.

(i) The owner’s written request to use the design/build method with a description of the proposed method.

(ii) A proposed scope of work describing in clear, concise terms the technical requirements for the contract. It should include a nontechnical statement summarizing the work to be performed by the contractor and the results expected, and a proposed construction schedule showing the sequence in which the work is to be performed.

(iii) A proposed firm-fixed-price contract for the entire project which provides that the contractor shall be responsible for any extra cost which may result from errors or omissions in the services provided under the contract, as well as compliance with all Federal, State, and local requirements effective on the contract execution date.

(iv) Where noncompetitive negotiation is proposed, an evaluation of the contractor’s performance on previous similar projects in which the contractor acted in a similar capacity.

(v) A detailed listing and cost estimate of equipment and supplies not included in the construction contract but which are necessary to properly operate the facility.

(vi) Evidence that a qualified construction inspector who is independent of the contractor has or will be hired.
specifications must be completed and reviewed by the Agency prior to the start of construction.

(viii) The owner’s attorney’s opinion and comments regarding the legal adequacy of the proposed contract documents and evidence that the owner has the legal authority to enter into and fulfill the contract.

(2) Agency concurrence of design/build method. The Agency shall review the material submitted by the applicant. When all items are acceptable, the loan approval official will concur in the use of the design/build method for the proposal.

(3) Forms used. American Institute of Architects (AIA) contract forms between the owner and design-builder that are approved by the Agency should be used. Other Agency approved contract documents may be used provided they are customarily used in the area and protect the interest of the applicant and the Agency with respect to compliance with items such as the drawings, specifications, payments for work, inspections, completion, non-discrimination in construction work, and acceptance of the work. The Agency will not become a party to a construction contract or incur any liability under it. No contract shall become effective until concurred in writing by the Agency. Such concurrence statement shall be attached to and made a part of the contract.

(4) Contract provisions. Contracts will have a listing of attachments and shall meet the following requirements:

(i) The contract sum;

(ii) The dates for starting and completing the work;

(iii) The amount of liquidated damages, if any, to be charged;

(iv) The amount, method, and frequency of payment;

(v) Surety provisions that meet the requirements of §1780.75(c) of this title;

(vi) The requirement that changes or additions must have prior written approval of the Agency;

(vii) The warranty period to be provided in accordance with Appendices A and B, sections 1 through 10, paragraph (i) and Appendices C and D, paragraph (i);

(viii) Contract review and concurrence in accordance with §1780.61(b) of this title;

(ix) Owner’s contractual responsibility in accordance with §1780.68 of this title; and

(x) Further contract provisions concerning remedies, termination, surety, equal employment opportunity, anti-kickback, records, State energy conservation plan, change orders, Agency concurrence, retainage, and other compliance requirements must be met in accordance with 7 CFR part 1780, subpart C, §1780.75 of this title.

(5) Obtaining bids and selecting a contractor. The applicant may select a contractor based on competitive sealed bids, competitive negotiation, or non-competitive negotiation as described in §1780.72(b), (c), or (d) of this title.

(g) Contract method. If the contract amount is greater than $200,000 and is not of the design/build method, the following conditions must be met:

(1) Procurement method. Procurement method shall comply with the requirements of §§1780.72, 1780.75, and 1780.76 of this title.

(2) Forms used. The AIA Form A101, “Standard Form of Agreement Between Owner and Contractor,” or Engineering Joint Counsel Document Committee (EJCDC) Form C-521, “Suggested Form of Agreement Between Owner and Contractor (Stipulated Price) Funding Agency Edition,” should be used. Other Agency approved contract documents may be used provided they are customarily used in the area and protect the interest of the applicant and the Agency with respect to compliance with items such as the drawings, specifications, payments for work, inspections, completion, non-discrimination in construction work, and acceptance of the work. The Agency will not become a party to a construction contract or incur any liability under it. No contract shall become effective until concurred in writing by the Agency. Such concurrence statement shall be attached to and made a part of the contract.

(3) Contract provisions. Contracts will have a listing of attachments and shall meet the requirements of §1780.75 of this title and the following requirements:
(i) The contract sum;
(ii) The dates for starting and completing the work;
(iii) The amount of liquidated damages, if any, to be charged;
(iv) The amount, method, and frequency of payment;
(v) Surety provisions that meet the requirements of §1780.75(c) of this title;
(vi) The requirement that changes or additions must have prior written approval of the Agency;
(vii) The warranty period to be provided in accordance with Appendices A and B, sections 1 through 10, paragraph (i) and with Appendices C and D, paragraph (i);
(viii) Contract review and concurrence in accordance with §1780.61(b) of this title;
(ix) Owner’s contractual responsibility in accordance with §1780.68 of this title; and
(x) Further contract provisions concerning remedies, termination, surety, equal employment opportunity, anti-kickback, records, State energy conservation plan, change orders, Agency concurrence, retainage, and other compliance requirements must be met in accordance with §1780.75 of this title.

(4) Obtaining bids and selecting a contractor. The applicant may select a contractor based on competitive sealed bids, competitive negotiation, or non-competitive negotiation as described in §1780.72(b), (c), or (d) of this title.

(5) Contract award. Applicants awarding contracts must comply with §1780.70(h) of this title.

(6) Contracts awarded prior to applications. Applicants awarding contracts prior to filing an application must comply with §1780.74 of this title.

(7) Contract administration. Contract administration must comply with §1780.76 of this title. If another authority, such as a Federal or State agency, is providing funding and requires oversight of inspections, change orders, and pay requests, the Agency may accept copies of their reports or forms as meeting oversight requirements of the Agency.

§ 4280.120 RES and EEI grantee requirements.

(a) A Letter of Conditions will be prepared by the Agency, establishing conditions that must be understood and agreed to by the applicant before any obligation of funds can occur. The applicant must sign Form RD 1942-46, “Letter of Intent to Meet Conditions” and Form RD 1940-1, “Request for Obligation of Funds,” if they accept the conditions of the grant.

(b) The applicant must complete, sign, and return the Form RD 4280-2. The grantee must abide by all requirements contained in Form RD 4280-2. The grantee must adhere to all applicable Federal statutes or regulations. Failure to follow these requirements may result in termination of the grant and adoption of other available remedies.

(c) Where applicable, the grantee shall provide to the Agency a copy of the executed power purchase agreement within 12 months from the date that the grant agreement is executed, unless otherwise approved by the Agency.

§ 4280.121 Servicing grants.

(a) General. RES and EEI grants will be serviced in accordance with the Departmental Regulations, 7 CFR part 1951, subparts E and O of this title, and Form RD 4280-2.

(b) Change of contractor or vendor. After an award has been made, the recipient of the award can request to change a contractor or vendor if the technical merit score for the project remains the same or is higher. Prior to changing a contractor or vendor, the recipient must submit to the Agency a written request providing information that allows the Agency to re-score the project’s technical merit. If the Agency determines that the project achieves the same or higher technical merit score, the recipient may make the change. No additional funding will be available from the Agency if costs for the project have increased. If the Agency determines that the project does not achieve the same or higher technical merit score, the change will not be approved.
§ 4280.122 Borrower eligibility.

To receive a RES or EEI guaranteed loan under this subpart, a borrower must meet the criteria specified in §§ 4280.109 and 4280.112.

§ 4280.123 Project eligibility.

For a RES or EEI project to be eligible to receive a guaranteed loan under this subpart, the project must meet each of the criteria, as applicable, specified in §4280.113(a) through (j). In addition, guaranteed loan funds may be used for necessary capital improvements to an existing renewable energy system.

§ 4280.124 Guaranteed loan funding.

(a) The amount of the loan that will be made available to an eligible project under this subpart will not exceed 75 percent of total eligible project costs. Eligible project costs are specified in paragraph (e) of this section.

(b) The minimum amount of a guaranteed loan made to a borrower will be $5,000, less any program grant amounts. The maximum amount of a guaranteed loan made to a borrower is $25 million.

(c) The percentage of guarantee, up to the maximum allowed by this section, will be negotiated between the lender and the Agency. The maximum percentage of guarantee is 85 percent for loans of $600,000 or less; 80 percent for loans greater than $600,000 up to and including $5 million; 70 percent for loans greater than $5 million up to and including $10 million; and 60 percent for loans greater than $10 million.

(d) The total amount of the loans guaranteed by the Agency under this program to one borrower, including the outstanding principal and interest balance of any existing loans guaranteed by the Agency under this program, and new loan request, must not exceed $25 million.

(e) Eligible project costs are only those costs associated with the items identified in paragraphs (e)(1) through (e)(12) of this section, as long as the items are an integral and necessary part of the renewable energy system or energy efficiency improvement.

(1) Post-application purchase and installation of equipment (new, refurbished, or remanufactured), except agricultural tillage equipment, used equipment, and vehicles.

(2) Post-application construction or improvements, except residential.

(3) Energy audits or assessments.

(4) Permit and license fees.

(5) Professional service fees, except for application preparation.

(6) Feasibility studies and technical reports.

(7) Business plans.

(8) Retrofitting.

(9) Construction of a new energy efficient facility only when the facility is used for the same purpose, is approximately the same size, and, based on the energy assessment or audit, will provide more energy savings than improving an existing facility. Only costs identified in the energy assessment or audit for energy efficiency improvements are allowed.

(10) Energy efficiency improvements are limited to only improvements identified in the energy assessment or audit. Equipment identified by the audit to be replaced shall be replaced with equipment similar in capacity. If the energy efficiency improvement has a greater capacity than the existing equipment, the Agency will prorate the energy efficiency improvement’s total eligible project costs based on the capacity of the existing equipment. A calculation shall be performed by dividing the capacity of the existing equipment by the capacity of the proposed equipment to determine the percentage of the energy efficiency improvement’s eligible project costs that the Agency will use in determining the maximum guaranteed loan assistance under this subpart (see example).

Example. A business plans to build a new production line with a capacity of 625 units per hour to replace an existing production line that produces 500 units per hour. The total project costs of the new production line is $20,000, of which $15,000 would otherwise qualify as eligible project costs. However, because the new production line has a greater production capacity than the existing line (625 units per hour versus 500 units per hour), only a portion of the $15,000 otherwise eligible project costs (15,000 x 625/500) = $18,750 would qualify.
costs would be used in determining total eligible project cost and the maximum guaranteed loan assistance available. In this example, because the original capacity (500 units per hour) is 80 percent of the new capacity (625 units per hour), only 80 percent of the $15,000 of otherwise eligible project costs associated with the new production line (i.e., $12,000) will be considered as total eligible project cost to be financed under this subpart. The maximum guaranteed loan award in this example would be $9,000, which is equal to $12,000 x 75 percent.

12) Land acquisition.

(f) In determining the amount of a loan awarded, the Agency will take into consideration the following six criteria:

1) The type of renewable energy system to be purchased;
2) The estimated quantity of energy to be generated by the renewable energy system;
3) The expected environmental benefits of the renewable energy system;
4) The quantity of energy savings expected to be derived from the activity, as demonstrated by an energy audit;
5) The estimated period of time it would take for the energy savings generated by the activity to equal the cost of the activity; and
6) The expected energy efficiency of the renewable energy system.

§ 4280.125 Interest rates.

(a) The interest rate for the guaranteed loan will be negotiated between the lender and the applicant and may be either fixed or variable as long as it is a legal rate. The variable rate must be based on published indices, such as money market indices. In no case, however, shall the rate be more than the rate customarily charged borrowers in similar circumstances in the ordinary course of business. The interest rate charged is subject to Agency review and approval.

(b) Comply with § 4279.125(a), (b), and (d) of this chapter.

§ 4280.126 Terms of loan.

(a) The repayment term for a loan for:

(1) Real estate must not exceed 30 years;
(2) Machinery and equipment must not exceed 20 years, or the useful life, including major rebuilds and component replacement, whichever is less;
(3) Combined loans on real estate and equipment must not exceed 30 years; and
(4) Working capital loans must not exceed 7 years.

(b) The first installment of principal and interest will, if possible, be scheduled for payment after the project is operational and has begun to generate income.

(c) Payment terms must comply with § 4279.126(c) of this chapter.

(d) The maturity of a loan will be based on the use of proceeds, the useful life of the assets being financed, and the borrower’s ability to repay.

(e) All loans guaranteed through this program must be sound, with reasonably assured repayment.

(f) Guarantees must be provided only after consideration is given to the borrower’s overall credit quality and to the terms and conditions of renewable energy and energy efficiency subsidies, tax credits, and other such incentives.

(g) A principal plus interest repayment schedule is permissible.

§ 4280.127 Guarantee/annual renewal fee percentages.

(a) Fee ceilings. The maximum guarantee fee that may be charged is 1 percent. The maximum annual renewal fee that may be charged is 0.5 percent. The Agency will establish each year the guarantee fee and annual renewal fee and a notice will be published annually in the Federal Register.

(b) Guarantee fee. The guarantee fee will be paid to the Agency by the lender and is nonrefundable. The guarantee fee may be passed on to the borrower. The guarantee fee must be paid at the time the Loan Note Guarantee is issued.

(c) Annual renewal fee. The annual renewal fee will be calculated on the unpaid principal balance as of close of business on December 31 of each year. It will be calculated by multiplying the outstanding principal balance times the percent of guarantee times the annual renewal fee. The fee will be billed...
to the lender in accordance with the Federal Register publication. The annual renewal fee may not be passed on to the borrower.

§ 4280.128 Application and documentation.

The requirements in this section apply to guaranteed loan applications for RES and EEI projects under this subpart.

(a) General. Applications must be submitted in accordance with the requirements specified in § 4280.116(a).

(b) Application content for guaranteed loans greater than $600,000. Applications and documentation for guaranteed loans greater than $600,000 must provide the required information organized pursuant to a Table of Contents in a chapter format presented in the order shown in paragraphs (b)(1) and (b)(2) of this section.

(1) Guaranteed loan application content.

(i) Table of contents. Include page numbers for each component of the application in the table of contents. Begin pagination immediately following the Table of Contents.

(ii) Project summary. Provide a concise summary of the proposed project and applicant information, project purpose and need, and project goals, including the following:

(A) Title. Provide a descriptive title of the project.

(B) Borrower eligibility. Describe how each of the criteria identified in §§ 4280.109 and 4280.112 is met.

(C) Project eligibility. Describe how each of the criteria, as applicable, in § 4280.118(a) through (j) is met. Clearly state whether the application is for the purchase of a renewable energy system (including making necessary capital improvements to an existing renewable energy system) or to make energy efficiency improvements. The response to § 4280.118(a) must include a brief description of the system or improvement. This description is to provide the reader with a frame of reference for reviewing the rest of the application. Additional project description information will be needed later in the application.

(D) Operation description. Describe the applicant’s total farm/ranch/business operation and the relationship of the proposed project to the applicant's total farm/ranch/business operation as specified in § 4280.116(b)(3)(iv).

(iii) Financial information for gross income or size determination. Provide financial information to allow the Agency to determine the agricultural producer's percent of gross income derived from agricultural operations or the rural small business' size, as applicable, as specified in § 4280.116(b)(3)(v).

(iv) Matching funds. Submit a spreadsheet identifying sources, amounts, and status of matching funds as specified in § 4280.116(b)(5).

(v) Self-evaluation score. Self-score the project using the evaluation criteria in § 4280.117(c) as specified in § 4280.116(b)(6).

(vi) Renewable energy and energy efficiency technical report. For both renewable energy system projects and energy efficiency improvement projects, submit a Technical Report in accordance with applicable provisions of Appendix B, C, or D as applicable, of this subpart and as specified in § 4280.116(b)(7)(i). For loan requests in excess of $600,000, the services of a licensed PE or a team of licensed PEs is required. If none of the Technical Reports in Appendices B, C, and D apply to the proposed technology, the applicant may submit a Technical Report that conforms to the overall outline and subjects specified in applicable provisions of § 4280.116(b)(7)(i)(A) through (G).

(vii) Business-level feasibility study for renewable energy systems. For each application for a renewable energy system project submitted by a start-up or existing business, a business-level feasibility study by an independent qualified consultant will be required by the Agency. An acceptable business-level feasibility study must conform to the requirements of an acceptable feasibility study as specified in Appendix E of this subpart.

(2) Lender forms, certifications, and agreements. Each application submitted under paragraph (b)(1) of this section must contain applicable items described in paragraphs (b)(2)(i) through (b)(2)(xi) of this section.

(i) A completed Form RD 4279–1, “Application for Loan Guarantee.”
(ii) Form RD 1940–20.

(iii) A personal credit report from an Agency approved credit reporting company for each owner, partner, officer, director, key employee, and stockholder owning 20 percent or more interest in the borrower’s business, except passive investors and those corporations listed on a major stock exchange.

(iv) Appraisals completed in accordance with §4280.141. Completed appraisals should be submitted when the application is filed. If the appraiser has not been completed when the application is filed, the applicant must submit an estimated appraisal. In all cases, a completed appraisal must be submitted prior to the loan being closed.

(v) Commercial credit reports obtained by the lender on the borrower and any parent, affiliate, and subsidiary firms.

(vi) Current personal and corporate financial statements of any guarantors.

(vii) Financial statements as specified in §4280.116(b)(4)(i) through (iii). Financial information is required on the total operation of the agricultural producer/rural small business and its parent, subsidiary, or affiliates at other locations. All information submitted under this paragraph must be substantiated by authoritative records.

(viii) Business-level feasibility study.

(ix) Lender’s complete comprehensive written analysis in accordance with §4280.139.

(x) A certification by the lender that it has completed a comprehensive written analysis of the proposal, the borrower is eligible, the loan is for authorized purposes with technical merit, and there is reasonable assurance of repayment ability based on the borrower’s history, projections, equity, and the collateral to be obtained.

(xi) A proposed loan agreement or a sample loan agreement with an attached list of the proposed loan agreement provisions. The following requirements must be addressed in the proposed or sample loan agreement:

(A) Prohibition against assuming liabilities or obligations of others;

(B) Restriction on dividend payments;

(C) Limitation on the purchase or sale of equipment and fixed assets;

(D) Limitation on compensation of officers and owners;

(E) Minimum working capital or current ratio requirement;

(F) Maximum debt-to-net worth ratio;

(G) Restrictions concerning consolidations, mergers, or other circumstances;

(H) Limitations on selling the business without the concurrence of the lender;

(I) Repayment and amortization of the loan;

(J) List of collateral and lien priority for the loan, including a list of persons and corporations guaranteeing the loan with a schedule for providing the lender with personal and corporate financial statements. Financial statements for corporate and personal guarantors must be updated at least annually once the guarantee is provided;

(K) Type and frequency of financial statements to be required from the borrower for the duration of the loan;

(L) The addition of any requirements imposed by the Agency in Form RD 4279–3;

(M) A reserved section for any Agency environmental requirements; and

(N) A provision for the lender or the Agency to have reasonable access to the project and its performance information during its useful life or the term of the loan, whichever is longer, including the periodic inspection of the project by a representative of the lender or the Agency.

(c) Application content for guaranteed loans of $600,000 or less. Applications and documentation for guaranteed loans $600,000 or less must comply with paragraphs (c)(1) and (c)(2) of this section.

(1) Application Contents. Applications and documentation for guaranteed loans $600,000 or less must provide the required information organized pursuant to a Table of Contents in a chapter format presented in the order shown in §4280.116(b)(2) through (8), except as specified in paragraphs (c)(1)(i) through (c)(1)(iii) of this section.

(i) Section 4280.116(b)(7)(i) does not apply.

(ii) Technical Reports must be submitted according to paragraph
(c)(1)(ii)(A) or (B) of this section, as applicable.

(A) For renewable energy system projects and energy efficiency improvement projects utilizing commercially available systems or improvements and with total eligible project costs of $200,000 or less, submit a Technical Report as described in Appendix A, C, or D, as applicable, of this subpart. If a renewable energy project does not fit one of the technologies identified in Appendices A, C, and D, the applicant must submit a Technical Report that conforms to the overall outline and subjects specified in §4280.116(b)(7)(ii)(G).

(B) For renewable energy projects and energy efficiency projects utilizing pre-commercial technology or with total eligible project costs greater than $200,000, submit a Technical Report as described in Appendix B, C, or D, as applicable, of this subpart and as specified in §4280.116(b)(7)(ii)(G)(1) through (10), as applicable.

(iii) Business-level feasibility study for renewable energy systems. For each application for a renewable energy system project submitted by a start-up or existing business, a business-level feasibility study by an independent qualified consultant will be required by the Agency. An acceptable business-level feasibility study must conform to the requirements of an acceptable feasibility study as specified in Appendix E of this subpart. Renewable energy projects with total eligible project costs of $200,000 or less are exempt from the feasibility study requirement.

(2) Lender forms, certifications, and agreements. Applications submitted under paragraph (c) of this section must use Form RD 4279-1A, "Application for Loan Guarantee, Short Form," and include the documentation contained in paragraphs (b)(2)(ii), (b)(2)(vii), (b)(2)(viii), (b)(2)(ix), and (b)(2)(xi) of this section. The lender must have the documentation contained in paragraphs (b)(2)(iii), (b)(2)(iv), (b)(2)(v), (b)(2)(vi), and (b)(2)(x) available in its files for the Agency’s review.

§4280.129 Evaluation of RES and EEI guaranteed loan applications.

(a) General review. The Agency will evaluate each application and make a determination as to whether the borrower and project are eligible, the project has technical merit, there is reasonable assurance of repayment, there is sufficient collateral and equity, and the proposed loan complies with all applicable statutes and regulations. If the Agency determines it is unable to guarantee the loan, the lender will be informed in writing. Such notification will include the reasons for denial of the guarantee.

(b) Technical merit determination. The Agency’s determination of a project’s technical merit will be based on the information provided by the applicant. The Agency may engage the services of other government agencies or recognized industry experts in the applicable technology field, at its discretion, to evaluate and rate the application. The Agency may use this evaluation and rating to determine the level of technical merit of the proposed project. Projects determined by the Agency to be without technical merit shall be deemed ineligible.

(c) Evaluation criteria. The Agency will score each application based on the evaluation criteria specified in §4280.117(c) (except for the criteria specified in §4280.117(c)(5)) and in paragraphs (c)(1) and (c)(2) of this section. Points will be awarded for either paragraph (c)(1) or (c)(2) of this section, but not both.

(1) If the interest rate on the loan is to be below the prime rate (as published in The Wall Street Journal) plus 1.5 percent, 5 points will be awarded.

(2) If the interest rate on the loan is to be below the prime rate (as published in The Wall Street Journal) plus 1 percent, 10 points will be awarded.

§4280.130 Eligible lenders.

Eligible lenders are those identified in §4279.29 of this chapter, excluding mortgage companies that are part of a bank-holding company.

§4280.131 Lender’s functions and responsibilities.

(a) General. Lenders are responsible for implementing the guaranteed loan program under this subpart. All lenders requesting or obtaining a loan guarantee must comply with §4279.30(a)(1)(i) through (ix) of this chapter.
(b) Credit evaluation. The lender’s credit evaluation must comply with § 4279.30(b) of this chapter.

(c) Environmental information. Lenders must ensure that borrowers furnish all environmental information required under 7 CFR part 1940, subpart G, and must comply with § 4279.30(c) of this chapter.

(d) Construction planning and performing development. The lender must comply with § 4279.156(a) and (b) of this chapter, except under § 4279.156(a) of this chapter, the lender must also ensure that all project facilities are designed utilizing accepted architectural and engineering practices that conform to the requirements of this subpart.

(e) Loan closing. The loan closing must be in compliance with § 4279.30(d) of this chapter.

§ 4280.132 Access to records.

Both the lender and borrower must permit representatives of the Agency (or other agencies of the U.S.) to inspect and make copies of any records pertaining to any Agency guaranteed loan during regular office hours of the lender or borrower or at any other time upon agreement between the lender, the borrower, and the Agency, as appropriate.

§ 4280.133 Conditions of guarantee.

All loan guarantees will be subject to § 4279.72 of this chapter.

§ 4280.134 Sale or assignment of guaranteed loan.

Any sale or assignment of the guaranteed loan must be in accordance with § 4279.75 of this chapter.

§ 4280.135 Participation.

All participation must be in accordance with § 4279.76 of this chapter.

§ 4280.136 Minimum retention.

Minimum retention must be in accordance with § 4279.77 of this chapter.

§ 4280.137 Repurchase from holder.

Any repurchase from a holder must be in accordance with § 4279.78 of this chapter.

§ 4280.138 Replacement of document.

Documents must be replaced in accordance with § 4279.84 of this chapter, except in § 4279.84(b)(1)(v), a full statement of the circumstances of any defacement or mutilation of the Loan Note Guarantee or Assignment Guarantee Agreement would also need to be provided.

§ 4280.139 Credit quality.

The lender must determine credit quality and must address all of the elements of credit quality in a written credit analysis, including adequacy of equity, cash flow, collateral, history, management, and the current status of the industry for which credit is to be extended.

(a) Cash flow. All efforts will be made to structure debt so that the business has adequate debt coverage and the ability to accommodate expansion.

(b) Collateral. Collateral must have documented value sufficient to protect the interest of the lender and the Agency. The discounted collateral value will normally be at least equal to the loan amount. Lenders will discount collateral consistent with sound loan-to-value policy. Guaranteed loans made under this subpart shall have at least parity position with guaranteed loans made under 7 CFR part 4279, subpart B of this title.

(c) Industry. The current status of the industry will be considered. Borrowers developing well established commercially available renewable energy systems with significant support infrastructure may be considered for better terms and conditions than those borrowers developing systems with limited infrastructure.

(d) Equity. In determining the adequacy of equity, the lender must meet the criteria specified in paragraph (d)(1) of this section for loans over $600,000 and the criteria in paragraph (d)(2) of this section for loans of $600,000 or less. Cash equity injection, as discussed in paragraphs (d)(1) and (d)(2) of this section, must be in the form of cash. Federal grant funds may be counted as cash equity.

(1) For loans over $600,000, borrowers shall demonstrate evidence of cash equity injection in the project of not less than 25 percent of eligible project...
§ 4280.140 Financial statements.

(a) The financial information required in §4280.116(b)(3)(v) and (b)(4) is required for the guaranteed loan program.

(b) If the proposed guaranteed loan exceeds $3 million, the Agency may require annual audited financial statements, at its sole discretion when the Agency is concerned about the applicant’s credit risk.

§ 4280.141 Appraisals.

(a) Conduct of appraisals. All appraisals must be in accordance with §4279.144 of this chapter.

(1) For loans of $600,000 or more, a complete self-contained appraisal must be conducted. Lenders must complete at least a Transaction Screen Questionnaire for any undeveloped sites and a Phase I environmental site assessment on existing business sites, which should be provided to the appraiser for completion of the self-contained appraisal.

(2) For loans for less than $600,000, a complete summary appraisal may be conducted in lieu of a complete self-contained appraisal as required under paragraph (a)(1) of this section. Summary appraisals must be conducted in accordance with Uniform Standards of Professional Appraisal Practice (USPAP).

(b) Specialized appraisers. Specialized appraisers will be required to complete appraisals in accordance with paragraphs (a)(1) and (a)(2) of this section. The Agency may approve a waiver of this requirement only if a specialized appraiser does not exist in a specific industry or hiring one would cause an undue financial burden to the borrower.

§ 4280.142 Personal and corporate guarantees.

(a) All personal and corporate guarantees must be in accordance with §4279.149(a) of this chapter.

(b) Except for passive investors, unconditional personal and corporate guarantees for those owners with a beneficial interest at least 20 percent of the borrower will be required where legally permissible.

§ 4280.143 Loan approval and obligation of funds.

The lender and applicant must comply with §4279.173 of this chapter, except that it will be the Agency rather than the loan approval official who may approve the substitution of a new eligible lender.

§ 4280.144 Transfer of lenders.

All transfers of lenders must be in accordance with §4279.174 of this chapter, except that it will be the Agency rather than the loan approval official who may approve the substitution of a new eligible lender.

§ 4280.145 Changes in borrower.

All changes in borrowers must be in accordance with §4279.180 of this chapter, but the eligibility requirements of this program apply.
§ 4280.146 Conditions precedent to issuance of Loan Note Guarantee.

(a) The Loan Note Guarantee will not be issued until the lender certifies to the conditions identified in paragraphs § 4279.181(a) through (o) of this chapter and paragraphs (b) and (c) of this section.

(b) All planned property acquisitions and development have been performing at a steady state operating level in accordance with the technical requirements, plans, and specifications, conforms with applicable Federal, State, and local codes, and costs have not exceeded the amount approved by the lender and the Agency.

(c) Where applicable, the lender shall provide to the Agency a copy of the executed power purchase agreement.

§ 4280.147 Issuance of the guarantee.

(a) When loan closing plans are established, the lender must notify the Agency in writing. At the same time, or immediately after loan closing, the lender must provide the following to the Agency:

(1) Lender’s certifications as required by § 4280.146;

(2) An executed Form RD 4279-4; and


(b) When the Agency is satisfied that all conditions for the guarantee have been met, the Loan Note Guarantee and the following documents, as appropriate, will be issued:

(1) Assignment Guarantee Agreement. If the lender assigns the guaranteed portion of the loan to a holder, the lender, holder, and the Agency must execute the Assignment Guarantee Agreement;

(2) Certificate of Incumbency. If requested by the lender, the Agency will provide the lender with a copy of Form RD 4279-7, “Certificate of Incumbency and Signature,” with the signature and title of the Agency official responsible for signing the Loan Note Guarantee, Lender’s Agreement, and Assignment Guarantee Agreement;

(3) Copies of legal loan documents; and

(4) Disbursement plan, if working capital is a purpose of the project.

§ 4280.148 Refusal to execute Loan Note Guarantee.

If the Agency determines that it cannot execute the Loan Note Guarantee, § 4279.187 of this chapter will apply.

§ 4280.149 Requirements after project construction.

Once the project has been constructed, the lender must provide the Agency periodic reports from the borrower. The borrower’s reports will include the information specified in paragraphs (a) and (b) of this section, as applicable.

(a) Renewable energy projects. For renewable energy projects, commencing the first full calendar year following the year in which project construction was completed and continuing for 3 full years, provide a report detailing the information specified in paragraphs (a)(1) through (a)(7) of this section.

(1) The actual amount of energy produced in BTUs, kilowatt-hours, or similar energy equivalents.

(2) If applicable, documentation that any identified health and/or sanitation problem has been solved.

(3) The annual income and/or energy savings of the renewable energy system.

(4) A summary of the cost of operating and maintaining the facility.

(5) A description of any maintenance or operational problems associated with the facility.

(6) Recommendations for development of future similar projects.

(7) Actual jobs created or saved.

(b) Energy efficiency improvement projects. For energy efficiency improvement projects, commencing the first full calendar year following the year in which project construction was completed and continuing for 2 full years, provide a report detailing the actual amount of energy saved due to the energy efficiency improvements.

§ 4280.150 Insurance requirements.

Each borrower must obtain the insurance required in § 4280.118. The coverage required by this section must be maintained for the life of the loan unless this requirement is waived or modified by the Agency in writing.
§ 4280.152 Servicing guaranteed loans.

The lender must service the entire loan and must remain mortgagee and secured party of record notwithstanding the fact that another party may hold a portion of the loan. The entire loan must be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of a loan will neither be paid first nor given any preference or priority over the guaranteed portion of the loan.

(a) Routine servicing. Comply with § 4287.107 of this chapter, except that all notifications from the lender to the Agency shall be in writing and all actions by the lender in servicing the entire loan must be consistent with the servicing actions that a reasonable, prudent lender would perform in servicing its own portfolio.

(b) Interest rate adjustments. Comply with § 4287.112 of this chapter, except that under § 4287.112(a)(3) of this chapter the interest rates, after adjustments, must comply with the requirements for interest rates on new loans as established by § 4280.125.

(c) Release of collateral. (1) Collateral may only be released in accordance with § 4287.113(a) and (b) of this chapter and paragraph (c)(2) of this section.

(2) Within the parameters of paragraph (c)(1) of this section, lenders may, over the life of the loan, release collateral (other than personal and corporate guarantees) with a cumulative value of up to 20 percent of the original loan amount without Agency concurrence, if the proceeds generated are used to reduce the guaranteed loan or to buy replacement collateral or real estate equal to or greater than the collateral being replaced.

(d) Subordination of lien position. All subordinations of the lender’s lien position must comply with § 4287.123 of this chapter.

(e) Alterations of loan instruments. All alterations of loan instruments must comply with § 4287.124 of this chapter.

(f) Loan transfer and assumption. All loan transfers and assumptions must comply with § 4287.134(c), (d), (f), (g), and (i) through (k) of this chapter in addition to the following:

(1) Documentation of request. All transfers and assumptions must be approved in writing by the Agency and must be to eligible applicants in accordance with § 4280.122. An individual credit report must be provided for transferee proprietors, partners, offices, directors, and stockholders with 20 percent or more interest in the business, along with such other documentation as the Agency may request to determine eligibility.

(2) Terms. Loan terms must not be changed unless the change is approved in writing by the Agency with the concurrence of any holder and the transferor (including guarantors), if they have not been or will not be released from liability. Any new loan terms must be within the terms authorized by § 4280.126. The lender’s request for approval of new loan terms will be supported by an explanation of the reasons for the proposed change in loan terms.

(3) Additional loans. Loans to provide additional funds in connection with a transfer and assumption must be considered as a new loan application under § 4280.128.

(4) Loss resulting from transfer. If a loss should occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor (including personal guarantors) is released from liability, the lender, if it holds the guaranteed portion, may file Form RD 449–30, “Loan Note Guarantee Report of Loss,” to recover its pro rata share of the actual loss. If a holder owns any of the guaranteed portion, such portion must be repurchased by the lender or the Agency in accordance with § 4279.78(c) of this chapter. In completing the report of loss, the amount of the debt assumed will be entered as net collateral (recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption will be included in the calculations.

§ 4280.153 Substitution of lender.

(a) All substitutions of lenders must comply with § 4287.135(a)(2) and (b) of this chapter and paragraph (b) of this section.
§ 4280.165 Combined funding for renewable energy systems and energy efficiency improvements.

The requirements for a RES or EEI project for which an applicant is seeking a combined grant and guaranteed loan are defined as follows:

(a) Eligibility. Applicants must meet the applicant eligibility requirements specified in §§ 4280.109 and 4280.112 and the borrower eligibility requirements specified in § 4280.122. Projects must meet the project eligibility requirements specified in §§ 4280.113 and 4280.123. Applicants may submit simplified applications if the project meets the requirements specified in § 4280.114.

(b) Funding. Funding provided under this section is subject to the limits described in paragraphs (b)(1) through (b)(3) of this section.

(1) The amount of any combined grant and guaranteed loan must not exceed 75 percent of total eligible project costs. For purposes of combined funding requests, total eligible project costs are based on the total costs associated with those items specified in §§ 4280.113(e) and 4280.124(e). The applicant must provide the remaining total funds needed to complete the project.

(2) The minimum combined funding request allowed is $5,000, with the grant portion of the funding request being at least $1,500.

(3) Applicants whose combination applications are approved for funding must utilize both the loan guarantee and the grant. The Agency reserves the right to reduce the total loan guarantee and grant award as appropriate.

(c) Application and documentation. When applying for combined funding, the applicant must submit separate applications for both types of assistance (grant and guaranteed loan). Each application must meet the requirements, including the requisite forms and certifications, specified in §§ 4280.116 and 4280.128. The separate applications must be submitted simultaneously. The applicant must submit at least one set of documentation, but does not
need to submit duplicate forms or certifications.

(d) Evaluation. The Agency will evaluate each application according to applicable procedures specified in §§4280.117 and 4280.129.

(e) Interest rate and terms of loan. The interest rate and terms of the loan for the loan portion of the combined funding request will be determined based on the procedures specified in §§4280.125 and 4280.126 for guaranteed loans.

(f) Other provisions. In addition to the requirements specified in paragraphs (a) through (e) of this section, the combined funding request shall be subject to the other requirements specified in this subpart, including, but not limited to, processing and servicing requirements, as applicable, as described in paragraphs (f)(1) through (f)(3) of this section.

(1) All other provisions of §§4280.101 through 4280.111 apply to the combined funding request.

(2) All other provisions of §§4280.112 through 4280.121 apply to the grant portion of the combined funding request.

(3) All other provisions of §§4280.122 through 4280.160 apply to the guaranteed loan portion of the combined funding request.

§§4280.166–4280.169 [Reserved]

§4280.170 Applicant eligibility.

To be eligible for a renewable energy system feasibility study grant under this subpart, the applicant must be an agricultural producer or a rural small business, as defined in §4280.103, and must be the prospective owner of the renewable energy system for which the feasibility study grant is sought.

§4280.171 Project eligibility.

Only renewable energy system projects that meet the requirements specified in this section are eligible for feasibility study grants under this subpart. The project for which the feasibility study grant is sought shall:

(a) Be for the purchase, installation, expansion, or other energy-related improvement of a renewable energy system located in a State, as defined in §4280.103;

(b) Be for a facility located in a rural area if the applicant is a rural small business, or in a rural or non-rural area if the applicant is an agricultural producer. If the agricultural producer’s facility is in a non-rural area, then the feasibility study can only be for a renewable energy system on integral components of or directly related to the facility, such as vertically integrated operations, and are part of and co-located with the agriculture production operation;

(c) Be for technology that is pre-commercial or commercially available, and that is replicable;

(d) Not have had a feasibility study already completed for it with Federal and/or State assistance; and

(e) The applicant has a place of business in a State.

§4280.172 Application eligibility provisions.

(a) Applications for industry-level feasibility studies, also known as feasibility study templates or guides, are not eligible because the assistance is not provided to a specific project.

(b) Applications must be from the prospective owner(s) of the renewable energy system for which the feasibility study grant is sought. Applications from other entities (e.g., entities that would be conducting the feasibility study and are not the prospective owners) will not be accepted.

(c) Applications can be submitted for a modification to an existing renewable energy system (e.g., for the expansion portion of an existing wind farm).

(d) Applications cannot be submitted in a Fiscal Year for an RES project if an RES application for the same renewable energy system is submitted in that same Fiscal Year and vice versa.

§4280.173 Grant funding for feasibility studies.

(a) Maximum grant amount. The maximum amount of grant funds that will be made available for an eligible feasibility study project under this subpart to any one recipient will not exceed $50,000 or 25 percent of the total eligible project cost of the study, whichever
(b) **Eligible project costs.** Only post-application costs will be considered eligible. Eligible project costs for renewable energy system feasibility studies shall be specific to the completion of the feasibility study (refer to Appendix E of this subpart for information on the content of a feasibility study) including, but not limited to, the items listed in paragraphs (b)(1) through (b)(3) of this section.

(1) Resource assessment;
(2) Transmission study; and
(3) Environmental study.

(c) **Ineligible project costs.** Ineligible project costs for renewable energy system feasibility studies include, but are not limited to:

(1) Costs associated with selection of engineering, architectural, or environmental services;
(2) Designing, bidding, or contract development for the proposed facility;
(3) Permitting and other licensing costs required to construct the facility; and
(4) Any goods or services provided by a person or entity who has a conflict of interest as provided in § 4280.106.

(d) **Time limit.** The grantee will have 2 years from the date of the grant agreement to provide the Agency with a complete and acceptable feasibility study and to request disbursement of the funds. If the grantee does not submit to the Agency a complete and acceptable feasibility study within this 2 year period, the grant is subject to termination by and reimbursement to the Agency according to Departmental regulations.

§§ 4280.174–4280.175 [Reserved]

§ 4280.176 **Feasibility study grant applications—content.**

Applications for feasibility study grants must include a Table of Contents with clear pagination and chapter identification and shall contain the information specified in paragraphs (a) and (b) of this section and shall be presented in the same order.

(a) **Forms, documents, and certifications.** The application shall contain the forms and documents specified in paragraphs (a)(1) through (a)(11) of this section.

(1) Form SF–424.
(2) Form SF–424A, “Budget Information—Non-Construction Programs” (as applicable).
(3) Form SF–424B, “Assurances—Non-Construction Programs” (as applicable).
(4) Form SF–424C (as applicable).
(5) Form SF–424D (as applicable).
(6) Form RD 1940–20 (as applicable).
(7) Except for sole proprietors, a copy of legal organizational documents.
(8) A proposed work plan, which includes:
   (i) A brief description of the proposed system the feasibility study will evaluate;
   (ii) A description of the feasibility study to be conducted. The contents of an acceptable feasibility study are identified in Appendix E of this subpart. Applicants shall require those conducting the feasibility study to consider and document within the feasibility study the important environmental factors within the planning area and the potential environmental impacts of the project for which the feasibility study is being conducted, as well as the alternatives considered;
   (iii) The timeframe for completion of the feasibility study;
   (iv) The experience of the company/individual completing the feasibility study, including the number of similar projects the company/individual has performed, the number of years the company has been performing a similar service, and corresponding resumes; and
   (v) The source and amount of other project funds needs to be clearly identified. Agency approved written documentation/confirmation from any third party committing a specific amount of such funds is required. Documentation includes such items as bank statements, lender commitment letters, and so forth;
(9) A certification that the applicant has not received any other Federal or State assistance for a feasibility study for the subject renewable energy system.
(10) If the applicant is a rural small business, certification that the feasibility study grant will be for a renewable energy system project that is located in a rural area.
(11) The applicant’s Dun and Bradstreet Data Universal Numbering System (DUNS) number (except for individuals).

(b) Financial information for gross income or size determination. The application shall contain sufficient financial information to allow the Agency to determine the agricultural producer’s percentage of gross income derived from agricultural operations or the rural small business’ size, as applicable. All information submitted under this paragraph (b) must be substantiated by authoritative records:

(1) If the applicant is a rural small business, provide sufficient information to determine its total annual receipts and number of employees and the same information for any parent, subsidiary, or affiliates at other locations. Voluntarily providing tax returns is one means of satisfying this requirement. The information provided must be sufficient for the Agency to make a determination of business size as defined by the Small Business Administration; and

(2) If the applicant is an agricultural producer, provide the gross market value of the agricultural products, gross agricultural income, and gross nonfarm income of the applicant for the calendar year preceding the year in which the application is submitted.

§4280.178 Scoring feasibility study grant applications.

Agency personnel will score each feasibility study application based on the evaluation criteria specified in paragraphs (a) through (f) of this section, with a maximum score of 100 points possible.

(a) Energy replacement or generation. The project can be for either replacement or generation, but not both. A maximum of 25 points can be awarded under this section.

(1) Energy replacement. 25 points will be awarded if proposed project will offset any portion of the applicant’s energy needs.

(2) Energy generation. 15 points will be awarded if the proposed renewable energy system is intended primarily for production of energy for sale.

(b) Commitment of funds for the feasibility study. Appropriate documentation must verify commitment of funds. A maximum of 25 points can be awarded under this section.

(1) 10 points—100 percent of matching funds.

(2) 7.5 points—75 percent up to, but not including 100 percent of matching funds.

(3) 5 points—50 percent up to, but not including 75 percent of matching funds.

(4) 0 points—less than 50 percent of matching funds.

(c) Designation as a Small agricultural producer/very small business. An applicant will be considered either an agricultural producer or rural small business. No applicant will be considered as both. Points will only be awarded under either paragraph (c)(1) or (c)(2) of
this section. A maximum of 20 points can be awarded under this section.

(1) For an Agricultural Producer:
(i) 10 points will be awarded if the applicant is an agricultural producer producing agricultural products with a gross market value of less than $600,000 in the preceding year; or
(ii) 20 points will be awarded if the applicant is an agricultural producer producing agricultural products with a gross market value of less than $200,000 in the preceding year.

(2) For a Rural Small Business, 20 points will be awarded if the applicant is a very small business, as defined in §4280.103.

(d) Experience and qualifications of the entity identified to perform the feasibility study. A maximum of 15 points can be awarded under this section.

(1) 15 points will be awarded if the entity has 5 or more years experience in the field of study for the technology being proposed.

(2) 7.5 points will be awarded if the entity has 2 or more years, but less than 5 years, experience in the field of study for the technology being proposed.

(3) 0 points will be awarded if the entity has less than 2 years experience in the field of study for the technology field being proposed.

(e) Size of feasibility study grant request. A maximum of 20 points can be awarded under this section. If the feasibility study request is:

(1) $10,000 or less, 20 points will be awarded.

(2) Greater than $10,000 up to and including $25,000, 10 points will be awarded.

(3) Greater than $25,000, 0 points will be awarded.

(f) Resources to implement project. Considering the technology being proposed, the applicant may qualify for other local or State programs to assist in the construction or operation of the facility. These programs will benefit the applicant and/or proposed project during or after the facility is constructed and operational. Points can be awarded for both types of assistance, for a maximum of 15 points.

(1) If the applicant has identified local programs, 5 points will be awarded.

(2) If the applicant has identified State programs, 5 points will be awarded.

§4280.179 Selecting feasibility study grant applications for award.

The Agency will use the following process to determine which feasibility study grants receive funding under this subpart.

(a) Ranking of applications. All scored applications will be ranked by the Agency as soon after the application deadline as possible. All applications that are ranked will be considered for selection for funding.

(b) Selection of applications for funding. Using the ranking created under paragraph (a) of this section, the Agency will consider the score an application has received compared to the scores of other ranked applications, with higher scoring applications receiving first consideration for funding.

(c) Funding selected applications. As applications are funded, if insufficient funds remain to fund the next highest scoring application, the Agency may elect to fund a lower scoring application. Before this occurs, the Agency will provide the applicant of the higher scoring application the opportunity to reduce the amount of its grant request to the amount of funds available. If the applicant agrees to lower its grant request, it must certify that the purposes of the project can be met, and the Agency must determine the project is financially feasible at the lower amount.

(d) Disposition of ranked applications not funded. Based on the availability of funding, a ranked application may not be funded in the fiscal year in which it was submitted. Such ranked applications will not be carried forward into Fiscal Year 2012 and the Agency will notify the applicant in writing.

§4280.180 Actions prior to grant closing.

(a) Environmental. If construction is a component of the study, the appropriate level of environmental assessment must be completed prior to the obligation of funds. All feasibility study grants made under this subpart are subject to the requirements of 7
CFR part 1940, subpart G. When construction is not a component of the study, feasibility studies are considered planning assistance, which are categorically excluded from the environmental review process by §1940.310 of this title.

(b) Evidence of other funds. Applicants expecting funds from other sources for use in completing projects being partially financed with Agency funds shall present evidence of the commitment of these funds from such other sources prior to disbursement of grant funds.

§ 4280.181 Awarding and administering feasibility study grants.

Renewable energy system feasibility study grants will be awarded and administered in accordance with Departmental regulations and paragraphs (a) through (e) of this section.

(a) Letter of conditions. The Agency will notify the approved applicant in writing, setting out the conditions under which the grant will be made. The notice will include those matters necessary to ensure that the proposed grant is completed in accordance with the terms of the scope of work and budget, that grant funds are expended for the feasibility study, and that the applicable requirements prescribed in the relevant Departmental regulations are complied with. The Letter of Conditions will be sent to the applicant.

(b) Applicant’s intent to meet conditions. Upon reviewing the conditions and requirements in the Letter of Conditions, the applicant must complete, sign and return a Form RD 1942–46, “Letter of Intent to Meet Conditions,” to the Agency; or if certain conditions cannot be met, the applicant may propose alternate conditions to the Agency. The Agency must concur with any changes proposed to the Letter of Conditions by the applicant before the application will be further processed.

(c) Forms and certifications. The forms specified in paragraphs (c)(1) through (c)(6) of this section will be attached to the letter of conditions referenced in paragraph (a) of this section. The forms specified in paragraphs (c)(1) through (c)(5) of this section and all of the certifications must be submitted prior to grant approval. The form specified in paragraph (c)(6), which is to be completed by the contractor (if any), does not need to be returned to the Agency, but must be kept on file.

(1) Form AD–1047.
(2) Form AD–1049.
(3) Either Form SF–LLL or Exhibit A–1 of RD Instruction 1940–Q.
(4) Form RD 400–1.
(5) Form RD 400–4.
(6) Form AD–1048.

(d) Grant approval. The applicant will be sent a copy of the executed Form RD 1940–1, the approved scope of work, and Form RD 4280–2. Form RD 1940–1 must be signed by the applicant.

(e) Grant agreement. Prior to grant disbursement, but after grant obligation, the applicant must complete, sign, and return Form RD 4280–2. The grantee must abide by all requirements contained in Form RD 4280–2, this subpart, and any other applicable Federal statutes or regulations. Failure to follow these requirements may result in termination of the grant and adoption of other available remedies.

§ 4280.182 Servicing feasibility study grants.

Feasibility study grants will be serviced in accordance with Departmental regulations; 7 CFR part 1951, subparts E and O; and paragraphs (a) through (n) of this section.

(a) Inspections. Grantees will permit periodic inspection of the project records and operations by a representative of the Agency.

(b) Programmatic changes. The grantee shall obtain prior Agency approval for any change to the scope or objectives of the approved project. Failure to obtain prior approval of changes to the scope of work or budget may result in suspension, termination, and recovery of grant funds.

(c) Changes in project cost or scope. If there is a significant reduction in project cost or changes in project scope, the applicant’s funding needs, eligibility, and scoring, as applicable, will be reassessed. Decreases in Agency funds will be based on revised project costs and other selection factors; however, other factors, including Agency regulations and Notices used at the time of grant approval, will remain the same. Obligated grant funds not needed
to complete the project will be de-obligated.

(d) Transfer of obligations. Subject to Agency approval, an obligation of funds established for a grantee may be transferred to a different (substituted) grantee provided:

(1) The substituted grantee
(i) Is eligible;
(ii) Has a close and genuine relationship with the original grantee; and
(iii) Has the authority to receive the assistance approved for the original grantee; and
(2) The type of renewable energy technology and the scope of the project for which the Agency funds will be used remain unchanged.

(e) Financial management system and records. Grantees are required to maintain a financial management system and records in accordance with Departmental regulations.

(f) Fund disbursement. Grant funds will be expended on a pro rata basis with matching funds.

(1) Requests for reimbursement may be submitted monthly or more frequently if authorized to do so by the Agency. Ordinarily, payment will be made within 30 days after receipt of a proper request for reimbursement.

(2) The Grantee shall not request reimbursement for the Federal share of amounts withheld from contractors to ensure satisfactory completion of work until after it makes those payments.

(3) Payment shall be made by electronic funds transfer.

(4) Standard Form 270, “Request for Advance or Reimbursement,” or other format prescribed by the Agency shall be used to request grant reimbursements.

(5) For renewable energy system feasibility studies, grant funds will be disbursed in accordance with the above through 90 percent of grant disbursement. The final 10 percent of grant funds will be held by the Agency until a feasibility study acceptable to the Agency has been submitted.

(g) Deobligation of grant funds. Funds remaining after all costs incident to the project have been paid or provided for are subject to deobligation.

(h) Monitoring of project. Grantees are responsible for ensuring that all activities are performed within the approved scope of work and that funds are only used for approved purposes. Grantees shall constantly monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, financial resources are being appropriately expended by contractors (if applicable), and any other performance objectives identified in the scope of work are being achieved. The Agency will monitor grantees to ensure that activities are performed in accordance with the Agency-approved scope of work and to ensure that funds are expended for approved purposes. The Agency’s monitoring of grantees neither relieves the grantee of its responsibilities to ensure that activities are performed within the scope of work approved by the Agency and that funds are expended for approved purposes only nor provides recourse or a defense to the grantee should the grantee conduct unapproved activities, engage in unethical conduct, engage in activities that are or give the appearance of a conflict of interest, or expend funds for unapproved purposes.

(i) Federal financial reports. A SF–425, “Federal Financial Report,” and a project performance report will be required of all grantees on a semiannual basis. The grantee will complete the project within the total sums available to it, including the grant, in accordance with the scope of work and any necessary modifications thereof prepared by the grantee and approved by the Agency. The final federal financial report must be submitted to the Agency within 90 days after the feasibility study has been completed.

(j) Performance reports. Grantees must submit to the Agency, in writing, semiannual performance reports and a final performance report. Grantees are to submit an original of each report to the Agency.

(1) Semiannual performance reports. Each semiannual performance report shall describe current progress and identify any problems, delays, or adverse conditions, if any, which have affected or will affect attainment of overall project objectives or prevent meeting time frame for completion of the feasibility study within 2 years. This disclosure shall be accompanied.
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by a statement of the action taken or planned to resolve the situation.

(2) Final performance report. A final performance report, which will serve as the last semiannual performance report, will be required within 90 days after the feasibility study has been completed. The final performance report shall summarize any problems, delays, or adverse conditions, if any, which have affected the project objectives or prevented meeting time frames for completion of the feasibility study. The final performance report should indicate if the grantee intends to proceed with the construction of the project.

(k) Final deliverables. Upon completion of the feasibility study, the grantee shall submit the following to the Agency:

(1) The project feasibility study; and
(2) SF–270.

(l) Renewable energy feasibility studies. Beginning the first full year after the feasibility study has been completed, grantees shall report annually for 2 years on the following:

(1) Is the renewable energy system project for which the feasibility study was conducted underway? If “yes,” describe how far along the renewable energy system project is (e.g., financing has been secured, site has been secured, construction contracts are in place, project is completed).

(2) Is the renewable energy system project complete? If so, what is the actual amount of energy being produced?

(m) Other reports. For clarification purposes, the Agency may request any additional project and/or performance data for the project for which grant funds have been received.

(a) Grant close-out and related activities. Grant close-out and related activities shall be performed in accordance with the Departmental Regulations. In addition, failure to submit satisfactory reports on time under the provisions of paragraphs (i) through (m) of this section may result in the suspension or termination of a grant. The provisions of this section apply to grants and subgrants.

§§ 4280.183–4280.185 [Reserved]

ENERGY AUDIT AND RENEWABLE ENERGY DEVELOPMENT ASSISTANCE GRANTS

§ 4280.186 Applicant eligibility.

To be eligible for an energy audit grant or a renewable energy development assistance grant under this subpart, the applicant must meet each of the criteria, as applicable, specified in paragraphs (a) through (c) of this section. The Agency will determine an applicant’s eligibility.

(a) Type of applicant. The applicant must be one of the following:

(1) A unit of State, tribal, or local government;
(2) A land-grant college or university, or other institution of higher education;
(3) A rural electric cooperative;
(4) A public power entity; or
(5) An instrumentality of a State, tribal, or local government.

(b) Capacity to perform. The applicant must have sufficient capacity to perform the energy audit or renewable energy development assistance activities proposed in the application to ensure success. The Agency will make this assessment based on the information provided in the application.

(c) Legal authority and responsibility. Each applicant must have, or obtain, the legal authority necessary to carry out the purpose of the grant.

§ 4280.187 Project eligibility.

To be eligible for an energy audit or a renewable energy development assistance grant, the grant funds for a project must be used by the grant recipient to assist agricultural producers or rural small businesses located in a State in one or both of the purposes specified in paragraphs (a) and (b) of this section, and shall also comply with paragraphs (c) through (e), and, if applicable, paragraph (f) of this section.

(a) Grant funds may be used to conduct and promote energy audits that meet the requirements of the energy audit as defined in this subpart. Energy audits must cover the following:

(1) Situation report. Provide a narrative description of the facility or
process being audited; its energy system(s) and usage; its activity profile; and the price per unit of energy (electricity, natural gas, propane, fuel oil, renewable energy, etc.) paid by the customer on the date of the audit. Any energy conversion data should be based on use and source.

(2) Potential improvements. List specific information regarding all potential energy-saving opportunities and the associated cost.

(3) Technical analysis. Discuss the interactions of the potential improvements with existing energy systems.

(i) Estimate the annual energy and energy costs savings expected from each improvement identified for the potential project.

(ii) Estimate all direct and attendant indirect costs of each improvement.

(iii) Rank potential improvement measures by cost-effectiveness.

(4) Potential improvement description. Provide a narrative summary of the potential improvement and its ability to provide needed benefits, including a discussion of non-energy benefits such as project reliability and durability.

(i) Provide preliminary specifications for critical components.

(ii) Provide preliminary drawings of project layout, including any related structural changes.

(iii) Document baseline data compared to projected consumption, together with any explanatory notes. Provide the actual total quantity of energy used (BTU) in the original building and/or equipment in the 12 months prior to the EEI project and the projected energy usage after the EEI project shall be the projected total quantity of energy used (BTU) on an annual basis for the same size or capacity as the original building or equipment. For energy efficiency improvement to equipment, if the new piece of equipment has a different capacity than the piece of equipment being replaced, the projected total quantity of energy used for the new piece of equipment shall be adjusted based on the ratio of the capacity of the replaced piece of equipment to the capacity of the new piece of equipment. When appropriate, show before-and-after data in terms of consumption per unit of production, time or area. Include at least 1 year’s bills for those energy sources/fuel types affected by this project. Also submit utility rate schedules, if appropriate.

(iv) Identify significant changes in future related operations and maintenance costs.

(v) Describe explicitly how outcomes will be measured annually.

(b) Grant funds may be used to conduct and promote renewable energy development assistance by providing to agricultural producers and rural small businesses recommendations and information on how to improve the energy efficiency of their operations and to use renewable energy technologies and resources in their operations.

(c) Energy audit and renewable energy development assistance can be provided only to a facility located in a rural area unless the owner of such facility is an agricultural producer. If the facility is owned by an agricultural producer, the facility for which such services are being provided may be located in either a rural or non-rural area. If the agricultural producer’s facility is in a non-rural area, then the energy audit or renewable energy development assistance can only be for a renewable energy system or energy efficiency improvement on integral components of or directly related to the facility, such as vertically integrated operations, and are part of and co-located with the agriculture production operation.

(d) The energy audit or renewable energy development assistance must be provided to a recipient in a State.

(e) The applicant must have a place of business in a State.

(f) For the purposes of this subpart, only small hydropower projects are eligible for energy audits and renewable energy development assistance. Per consultation with the U.S. Department of Energy, the Agency is defining small hydropower as having a rated power of 30 megawatts or less, which includes hydropower projects commonly referred to as “micro-hydropower” and “mini-hydropower.”
§ 4280.188 Grant funding for energy audit and renewable energy development assistance.

(a) Maximum grant amount. The maximum aggregate amount of energy audit and renewable energy development assistance grants awarded to any one recipient under this subpart cannot exceed $100,000. Grant funds awarded for energy audit and renewable energy development assistance projects may be used only to pay eligible project costs, as described in paragraph (b) of this section. Grant funds awarded for energy audits and renewable energy development assistance projects are prohibited from being used to pay costs associated with the items listed in paragraph (c) of this section.

(b) Eligible project costs. Eligible project costs for energy audits and renewable energy development assistance are those post-application expenses directly related to conducting and promoting energy audits and renewable energy development assistance, which include but are not limited to:

(1) Salaries directly or indirectly related to the project;
(2) Travel expenses directly related to conducting energy audits or renewable energy development assistance;
(3) Office supplies (e.g., paper, pens, file folders); and
(4) Administrative expenses, up to a maximum of 5 percent of the grant, which include but are not limited to:
   (i) Utilities;
   (ii) Office space;
   (iii) Operation expenses of office and other project-related equipment (e.g., computers, cameras, printers, copiers, scanners); and
   (iv) Expenses for outreach and marketing of the energy audit and renewable energy development assistance activities, including associated travel expenses.

(c) Ineligible project purposes. Grant funds may not be used to:

(1) Pay for any construction-related activities;
(2) Purchase equipment;
(3) Pay any costs of preparing the application package for funding under this subpart;
(4) Pay any costs of the project incurred prior to the application date of the grant made under this subpart;
(5) Fund political or lobbying activities; and
(6) Pay any judgment or debt owed to the United States.

(d) Energy audits. A recipient of a grant under this subpart that conducts an energy audit shall require that, as a condition of the energy audit, the agricultural producer or rural small business pay at least 25 percent of the cost of the energy audit. Further, the amount paid by the agricultural producer or rural small business will be retained by the recipient as a contribution towards the cost of the energy audit.

(e) Time limit. Unless otherwise agreed to by the Agency, any energy audit or renewable energy development assistance grant agreement under this subpart will terminate 2 years from the date the Agency signs the agreement.

§ 4280.189 [Reserved]

§ 4280.190 EA/REDA grant applications—content.

Applications must contain the elements specified in paragraphs (a) through (g) of this section.

(a) Form SF–424.
(b) Form SF–424A.
(c) Form SF–424B.

(d) If applicable, a copy of the applicant’s organizational documents showing the applicant’s legal existence and authority to perform the activities under the grant.

(e) A proposed scope of work, including a description of the proposed project, details of the proposed activities to be accomplished and timeframes for completion of each task, the number of months duration of the project, and the estimated time it will take from grant approval to beginning of project implementation. A written narrative to be used as the scope of work which includes, at a minimum, the following items:

(1) An Executive Summary;
(2) The plan and schedule for implementation;
(3) The anticipated number of agricultural producers and/or rural small businesses to be served;
(4) An itemized budget—compute total cost per rural small business or
agricultural producer served—matching funds should be clearly identified as cash;

(5) The geographic scope of the proposed project;

(6) Applicant’s experience as follows:
   (i) If applying for a renewable energy development assistance grant, the applicant’s experience in completing similar renewable energy development assistance activities, including the number of similar projects the applicant has performed and the number of years the applicant has been performing a similar service.
   (ii) If applying for an energy audit grant, the number of energy audits and assessments the applicant has completed and the number of years the applicant has been performing those services;
   (iii) For all applicants, the amount of experience in administering energy audit, renewable energy development assistance, or similar activities using State or Federal support.

(7) Applicant’s resources, including personnel, finances, and technology, to complete what is proposed. If an application is for projects located in multiple states, resources must be sufficient to complete all projects;

(8) Leveraging and commitment of other sources of funding being brought to the project. Leveraged funds should be clearly identified as cash and by source. Written documentation/confirmation from the party committing a specific amount of leveraged funds is required;

(9) Outreach activities/marketing efforts specific to conducting energy audit and renewable energy development assistance including:
   (i) Project title;
   (ii) Goals of the project;
   (iii) Identified need;
   (iv) Target audience;
   (v) Timeline and type of activities/action plan; and
   (vi) Marketing strategies.

(10) Method and rationale used to select the areas and businesses that will receive the service.

(11) Brief description of how the work will be performed, including whether organizational staff, consultants, or contractors will be used.

(f) The most recent financial audit (not more than 18 months old) of the applicant, or subdivision thereof, that will be performing the proposed work. If such an audit is not available, the latest financial information that shows the financial capacity of the applicant, or subdivision thereof, to perform the proposed work. Such information may include, but is not limited to, the most recent year-end balance sheet, income statement, and other appropriate data that identify the applicant’s resources.

(g) The applicant’s Dun and Bradstreet Data Universal Numbering System (DUNS) number.

§ 4280.191 Evaluation of energy audit and renewable energy development assistance grant applications.

Upon receipt of an application, the Agency will conduct a review to determine if the applicant and project are eligible. The Agency will notify the applicant in writing of the Agency’s findings. If the Agency has determined that either the applicant or project is ineligible, it will include in the notification the reason(s) for its determination(s).

§ 4280.192 Scoring energy audit and renewable energy development assistance grant applications.

Agency personnel will score each application using the criteria specified in paragraphs (a) through (h) of this section, with a maximum score of 100 points possible.

(a) Project proposal (maximum score of 10 points). The applicant will be scored based on its in-house ability to conduct audits versus using third party auditing organizations as illustrated in the application.

   (1) If the applicant proposes to use at least 51 percent of the awarded funding to employ internal, qualified auditors and/or renewable energy specialists for program implementation, up to 10 points will be awarded as follows:
      (i) If the percentage is between 51 percent and 75 percent (inclusive), 5 points will be awarded.
      (ii) If the percentage is more than 75 percent, 10 points will be awarded.

   (2) If the applicant proposes to use less than 51 percent of the awarded funding to employ internal, qualified
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(a) Auditors and/or renewable energy specialists for program implementation, zero points will be awarded.

(b) Use of Grant Funds for Administrative Expenses (maximum score of 10 points). Grantees selected to participate may use up to 5 percent of their award for administrative expenses.

(1) If the applicant proposes to use none of the grant funds for Administrative Expenses, 10 points will be awarded.

(2) If the applicant proposes to use a portion (up to 5 percent) of the grant funds for Administrative Expenses, zero points will be awarded.

(c) Applicant’s organizational experience in completing proposed activity (maximum score of 15 points). The applicant will be scored on the experience of the organization in meeting the benchmarks below. This means that an organization must have been in business and provided services as noted in the scoring requirements. An organization’s experience must be documented with references and resumes. Points will be awarded as follows:

(1) More than 3 years of experience, 15 points will be awarded.

(2) At least 2 years and up to and including 3 years of experience, 10 points will be awarded.

(3) At least 1 year but less than 2 years of experience, 5 points will be awarded.

(4) Less than 1 year of experience, zero points will be awarded.

(d) Geographic scope of project in relation to identified need (maximum score of 10 points). (1) If the applicant’s proposed or existing service area is State-wide or includes all or parts of multiple states, and the marketing and outreach plan has identified needs throughout that service area, 10 points will be awarded.

(2) If the applicant’s proposed or existing service area consists of multiple counties in a single State and the marketing and outreach plan has identified needs throughout that service area, 7.5 points will be awarded.

(3) If the applicant’s service area consists of a single county or municipality and the marketing and outreach plan has identified needs throughout that service area, 5 points will be awarded.

(e) Number of agricultural producers/rural small businesses to be served (maximum score of 15 points). (1) If the applicant plans to provide audits to ultimate recipients with average audit costs of $1,000 or less, 15 points will be awarded.

(2) If the applicant plans to provide audits to ultimate recipients with average audit costs over $1,000 but less than $1,500, 10 points will be awarded.

(3) If the applicant plans to provide audits to ultimate recipients with average audit costs of at least $1,500 but less than $2,000, 5 points will be awarded.

(f) Potential of project to produce energy savings and its attending environmental benefits (maximum score of 25 points). Applicants can be awarded points under both paragraphs (f)(1) and (f)(2) of this section.

(1) If the applicant has an existing program that can demonstrate the achievement of energy savings with the agricultural producers and/or rural small businesses it has served, 13 points will be awarded.

(2) If the applicant provides evidence that it has received awards in recognition of its renewable energy, energy savings, or energy-based technical assistance, up to 12 points will be awarded based on number of awards and rigorousness of the competition for each award.

(g) Marketing and outreach plan (maximum score of 10 points). If the applicant includes in the application a marketing and outreach plan and provides a satisfactory discussion of each of the following criteria, two points for each of the following will be awarded:

(1) The goals of the project;

(2) Identified need;

(3) Target beneficiaries;

(4) Timeline and action plan; and

(5) Marketing strategies and supporting data for strategies.

(h) Level and commitment of other funds for the project (maximum score of 5 points). (1) If the applicant proposes to leverage grant funding with 50 percent or more in non-State and non-Federal government matching funds for the subject grant, and has a written commitment for those funds, 5 points will be awarded.
§ 4280.193 Selecting energy audit and renewable energy development assistance grant applications for award.

Applications will be scored by the State Offices and submitted to the National Office for review. To ensure the equitable geographic distribution of funds, the two highest scoring applications from each State, based on the scoring criteria established under § 4280.192, will be submitted to the National Office to compete for funding.

(a) Ranking of applications. All applications submitted to the National Office will be ranked. All applications that are ranked will be considered for selection for funding.

(b) Selection of applications for funding. Using the ranking created under paragraph (a) of this section, the Agency will consider the score an application has received compared to the scores of other ranked applications, with higher scoring applications receiving first consideration for funding.

(c) Funding selected applications. As applications are funded, if insufficient funds remain to fund the next highest scoring application, the Agency may elect to fund a lower scoring application. Before this occurs, the Agency will provide the applicant of the higher scoring application the opportunity to reduce the amount of its grant request to the amount of funds available. If the applicant agrees to lower its grant request, it must certify that the purposes of the project can be met, and the Administrator must determine the project is financially feasible at the lower amount.

(d) Disposition of ranked applications not funded. Based on the availability of funding, a ranked application submitted under this subpart may not be funded. Such ranked applications will not be carried forward into Fiscal Year 2012 and the Agency will notify the applicant in writing.

§ 4280.194 Actions prior to grant closing.

Applicants expecting funds from other sources for use in completing projects being partially financed with Agency funds must have these funds from other such sources prior to grant closing. Agency funds will not be expended in advance of funds committed to the project from other sources without prior Agency approval.

§ 4280.195 Awarding and administering energy audit and renewable energy development assistance grants.

Energy audit and renewable energy development assistance grants under this subpart will be awarded and administered in accordance with Departmental regulations and with paragraphs (a) through (e) of this section.

(a) Letter of conditions. The Agency will notify the approved applicant in writing, setting out the conditions under which the grant will be made. The notice will include those matters necessary to ensure that the proposed grant is completed in accordance with the terms of the scope of work and budget, that grant funds are expended for authorized purposes, and that the applicable requirements prescribed in the relevant Departmental regulations are complied with. The Letter of Conditions will be sent to the applicant.

(b) Applicant's intent to meet conditions. Upon reviewing the conditions and requirements in the letter of conditions, the applicant must complete, sign, and return Form RD 1942-46 to the Agency; or if certain conditions cannot be met, the applicant may propose alternate conditions to the Agency. The Agency must concur with any changes proposed to the Letter of Conditions by the applicant before the application will be further processed.

(c) Forms. The forms specified in paragraphs (c)(1) through (c)(6) of this section will be attached to the letter of conditions referenced in paragraph (a) of this section. The forms specified in paragraphs (c)(1) through (c)(5) of this section must be submitted prior to
grant approval. The form specified in paragraph (c)(6), which is to be completed by the contractor (if any), does not need to be returned to the Agency, but must be kept on file.

(1) Form RD 1942–46.
(2) Form AD–1047.
(3) Form AD–1048.
(4) Either Form SF–LLL or Exhibit A–1 of RD Instruction 1940–Q.
(5) Form RD 400–4.
(6) Form AD–1048.

(d) Grant approval. The applicant will be sent a copy of the executed Form RD 1940–1, the approved scope of work, and Form RD 4280–2. Form RD 1940–1 must be signed by the applicant.

(e) Grant agreement. Prior to grant approval, the applicant must complete, sign, and return Form RD 4280–2. The grantee must abide by all requirements contained in Form RD 4280–2, this subpart, and any other applicable Federal statutes or regulations. Failure to follow these requirements may result in termination of the grant and adoption of other available remedies.

§ 4280.196 Servicing energy audit and renewable energy development assistance grants.

Energy audit and renewable energy development assistance grants will be serviced in accordance with the requirements specified in Departmental regulations, 7 CFR part 1951, subparts E and O, and paragraphs (a) through (n) of this section.

(a) Inspections. Grantees will permit periodic inspection of the project operations by a representative of the Agency.

(b) Programmatic changes. The grantee shall obtain prior Agency approval for any change to the scope or objectives of the approved project. Failure to obtain prior approval of changes to the scope of work or budget may result in suspension, termination, and recovery of grant funds.

(c) Changes in project cost or scope. If there is a significant reduction in project cost or changes in project scope, the applicant’s funding needs, eligibility, and scoring, as applicable, will be reassessed. Decreases in Agency funds will be based on revised project costs and other selection factors; however, other factors, including Agency regulations used at the time of grant approval, will remain the same. Obligated grant funds not needed to complete the project will be de-obligated.

(d) Transfer of obligations. The grantee may request a transfer of obligation to a different (substitute) grantee. Subject to Agency approval, an obligation of funds established for a grantee may be transferred to a substitute grantee provided:

(1) The substituted grantee
   (i) Is eligible;
   (ii) Has a close and genuine relationship with the original grantee; and
   (iii) Has the authority to receive the assistance approved for the original grantee; and

(2) The need, purpose(s), and scope of the project for which the Agency funds will be used remain substantially unchanged.

(e) Financial management system and records. (1) The grantee will provide for Financial Management Systems that will include:

   (i) Accurate, current, and complete disclosure of the financial result of each grant.

   (ii) Records that identify adequately the source and application of funds for grant-supporting activities, together with documentation to support the records. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

   (iii) Effective control over and accountability for all funds. Grantee shall adequately safeguard all such assets and shall ensure that funds are used solely for authorized purposes.

(2) The grantee will retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least 3 years after completion of grant activities except that the records shall be retained beyond the 3-year period if audit findings have not been resolved or if directed by the United States. Microfilm copies may be substituted in lieu of original records. The Agency and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the grantee which are
pertinent to the specific grant for the purpose of making audit, examination, excerpts, and transcripts.

(f) Audit requirements. Grantees must provide an annual audit in accordance with 7 CFR part 3052.

(g) Fund disbursement. The Agency will determine, based on the applicable Departmental regulations, whether disbursement of a grant will be by advance or reimbursement. A SF–270 must be completed by the grantee and submitted to the Agency no more often than monthly to request either advance or reimbursement of funds. Upon receipt of a properly completed SF–270, the funds will be requested through the field office terminal system. Ordinarily, payment will be made within 30 days after receipt of a proper request for advance or reimbursement.

(h) Deobligation of grant funds. Funds remaining after all costs incident to the project have been paid or provided for are subject to deobligation.

(i) Monitoring of project. Grantees are responsible for ensuring that all activities are performed within the approved scope of work and that funds are only used for approved purposes. Grantees shall constantly monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, financial resources are appropriately expended by contractors (if applicable), and any other performance objectives identified in the scope of work are being achieved. The Agency will monitor grantees to ensure that activities are performed in accordance with the Agency-approved scope of work and to ensure that funds are expended for approved purposes. The Agency’s monitoring of grantees neither relieves the grantee of its responsibilities to ensure that activities are performed within the scope of work approved by the Agency and that funds are expended for approved purposes only nor provides recourse or a defense to the grantee should the grantee conduct unapproved activities, engage in unethical conduct, engage in activities that are or give the appearance of a conflict of interest, or expend funds for unapproved purposes.

(j) Federal financial reports. A SF–425 and a project performance report will be required of all grantees on a semi-annual basis. The grantee will complete the project within the total sums available to it, including the grant, in accordance with the scope of work and any necessary modifications thereof prepared by grantee and approved by the Agency.

(k) Performance reports. Grantees must submit to the Agency, in writing, semiannual performance reports and a final performance report. Grantees are to submit an original of each report to the Agency.

(1) Semiannual performance reports. Project performance reports shall include, but not be limited to, the following:

(i) A comparison of actual accomplishments to the objectives established for that period (e.g., the number of audits performed, number of recipients of renewable energy development assistance);

(ii) A list of recipients, each recipient’s location, and each recipient’s NAICS code;

(iii) Problems, delays, or adverse conditions, if any, that have in the past or will in the future affect attainment of overall project objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation;

(iv) Percentage of financial resources expended on contractors; and

(v) Objectives and timetable established for the next reporting period.

(2) Final performance report. A final performance report will be required with the final Federal financial report within 90 days after project completion. In addition to the information required under paragraph (k)(1) of this section, the final performance report must contain the information specified in paragraphs (k)(2)(i) and (k)(2)(ii), as applicable, of this section.

(i) For energy audit projects, the final performance report must provide complete information regarding:

(A) The number of audits conducted,

(B) A list of recipients (agricultural producers and rural small businesses) with each recipient’s North American Industry Classification System code,
(C) The location of each recipient,
(D) The cost of each audit,
(E) The expected energy saved for each audit conducted if the audit is implemented, and
(F) The percentage of financial resources expended on contractors.

(ii) For renewable energy development assistance projects, the final performance report must provide complete information regarding:
(A) A list of recipients with each recipient’s North American Industry Classification System code,
(B) The location of each recipient,
(C) The expected renewable energy that would be generated if the projects were implemented, and
(D) The percentage of financial resources expended on contractors.

(l) Final status report. One year after submittal of the final performance report, the grantee will provide the Agency a final status report on the number of projects that are proceeding with one or all of the grantee’s recommendations, including the amount of energy saved and the amount of renewable energy generated, as applicable.

(m) Other reports. The Agency may request any additional project and/or performance data for the project for which grant funds have been received.

(n) Grant close-out and related activities. In addition to the requirements specified in the Departmental regulations, failure to submit satisfactory reports on time under the provisions of paragraphs (i) through (m) of this section may result in the suspension or termination of a grant. The provisions of this section apply to grants and subgrants.

§§ 4280.197–4280.199 [Reserved]

§ 4280.200 OMB control numbers.

The information collection requirements contained in the regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control numbers 0570–0050, 0570–0059, and 0570–0061. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

APPENDIX A TO SUBPART B OF PART 4280—TECHNICAL REPORTS FOR PROJECTS WITH TOTAL ELIGIBLE PROJECT COSTS OF $200,000 OR LESS

The Technical Report for projects with total eligible project costs of $200,000 or less must demonstrate that the project design, procurement, installation, startup, operation, and maintenance of the renewable energy system or energy efficiency improvement will operate or perform as specified over its design life in a reliable and a cost-effective manner. The Technical Report must also identify all necessary project agreements, demonstrate that those agreements will be in place, and that necessary project equipment and services are available over the design life.

All technical information provided must follow the format specified in Sections 1 through 10 of this appendix. Supporting information may be submitted in other formats. Design drawings and process flowcharts are encouraged as exhibits. A discussion of each topic is not necessary if the topic is not applicable to the specific project. Questions identified in the Agency’s technical review of the project must be answered to the Agency’s satisfaction before the application will be approved. The applicant must submit the original technical report plus one copy to the Rural Development State Office. Depending on the level of engineering required for the specific project or if necessary to ensure public safety, the services of a licensed professional engineer or a team of licensed professional engineers may be required.

SECTION 1. BIOENERGY

The technical requirements specified in this section apply to bioenergy projects, which are, as defined in §4280.103, renewable system[s] that produce fuel, thermal energy, or electric power from a biomass source, other than an anaerobic digester project.

(a) Qualifications of key project service providers. List all key project service providers. If one or more licensed professionals are involved in the project, provide the credentials for each professional.

(b) Agreements, permits, and certifications.

(1) Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits.

(2) For systems planning to interconnect with a utility, describe the utility’s system interconnection requirements, power purchase agreements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the
utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(3) Identification of environmental issues, including any compliance issues associated with or expected as a result of the project on Form RD 1940-20, “Request for Environmental Information,” and in compliance with 7 CFR part 1940, subpart G of this title.

(c) Resources assessment. Provide adequate and appropriate evidence of the availability of the renewable resource required for the system to operate as designed. Indicate the type, quantity, quality, and seasonality of the biomass resource, including harvest and storage, where applicable. Where applicable, indicate shipping or receiving method and required infrastructure for shipping. For proposed projects with an established resource, provide a summary of the resource.

(d) Design and engineering. Applicants must submit a statement certifying that their project will be designed and engineered so as to meet the intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, applicants must:

(1) Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose;

(2) List possible suppliers and models of major pieces of equipment;

(3) Provide a description of the components, materials, or systems to be installed. Include the location of the project;

(4) Provide a one-line diagram for the electrical interconnection. Provide diagrams or schematics as required showing all major installed structural, mechanical, and electrical components of the system;

(5) Describe the expected electric power, fuel production, or thermal energy production of the proposed system as rated and as expected in actual field conditions. For systems with a capacity of more than 20 tons per day of biomass, address performance on a monthly and annual basis. For small projects such as a commercial biomass furnace or pelletizer of up to 5 tons daily capacity, proven, commercially available devices need not be addressed in detail. Describe the uses of or the market for electricity, heat, or fuel produced by the system;

(6) Discuss the impact of reduced or interrupted biomass availability on the system process; and

(7) Describe the project site and address issues such as proximity to the load or the electrical grid, unique safety concerns, and whether special circumstances exist.

(e) Project development schedule. Provide a project schedule in an appropriate level of detail that will demonstrate that the project can be adequately managed and be able to identify impacts of any delays on the project completion. The applicant must submit a statement certifying that the project will be completed within 2 years from the date of approval.

(f) Project economic assessment. Provide an analysis of the proposed project to demonstrate its financial performance, including the calculation of simple payback. The analysis should include applicable investment incentives, productivity incentives, loans and grants, and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project’s cost effectiveness.

(g) Equipment procurement. Include a statement from the applicant certifying that “open and free” competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 305 of this title.

(h) Equipment installation. The project must be installed in accordance with applicable local, State, and national building and electrical codes and regulations. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules. Upon successful system installation and following established operation, the successful applicant must deliver invoices and evidence of payment.

(1) Operations and maintenance. Identify any unique operations and maintenance requirements of the project necessary for the system to operate as designed over the design life. State the design life of the system.

(1) Provide information on all system warranties. A minimum 3-year warranty for equipment and a 10-year warranty on design are expected.

(2) If the project has any unique operation and maintenance issues, describe them.

(i) Dismantling and disposal of project components. Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives.

SECTION 2. ANAEROBIC DIGESTER PROJECTS

The technical requirements specified in this section apply to anaerobic digester projects, which are, as defined in §4280.103, renewable energy systems that use animal waste and other organic substrates to produce thermal or electrical energy via anaerobic digestion.

(a) Qualifications of key project service providers. List all key project service providers. If one or more licensed professionals are involved in the project, provide the credentials for each professional.

(b) Agreements, permits, and certifications.

(1) Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits.

(2) For systems planning to interconnect with a utility, describe the utility’s system
interconnection requirements, power purchase agreements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This must be done even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection point, describe the applicable local net metering program.

(3) Identify all environmental issues, including any compliance issues associated with or expected as a result of the project on Form RD 1940-20, “Request for Environmental Information,” and in compliance with 7 CFR part 1940, subpart G of this title.

(c) Resources assessment. Provide adequate and appropriate data to demonstrate the amount of digestible substrate resource available. Indicate the source of the data and assumptions. Indicate the substrates used as digester inputs, including animal wastes, food-processing wastes, or other organic wastes in terms of type, quantity, seasonality, and frequency of collection. Describe any special handling of feedstock that may be necessary. Describe the process for determining the feedstock resource. Show the digestion conversion factors and calculations used to estimate biogas production and heat or power production.

(d) Design and engineering. Applicants must submit a statement certifying that their project will be designed and engineered so as to meet the intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, applicants must:

(1) Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose;

(2) List possible suppliers and models of major pieces of equipment;

(3) Provide a description of the components, materials, or systems to be installed. Include the location of the project;

(4) Provide a one-line diagram for the electrical interconnection. Provide diagrams or schematics as required showing all major installed structural, mechanical, and electrical components of the system;

(5) Describe the expected electric power, fuel production, or thermal energy production of the proposed system as rated and as expected in actual field conditions. Describe the uses of or the market for electricity, heat, or fuel produced by the system; and

(6) Describe the project site and address issues such as proximity to the load or the electrical grid, unique safety concerns, and whether special circumstances exist.

(e) Project development schedule. Provide a project schedule in an appropriate level of detail that will demonstrate the project can be adequately managed and be able to identify impacts of any delays on the project completion. The applicant must submit a statement certifying that the project will be completed within 2 years from the date of approval.

(f) Project economic assessment. Provide an analysis of the proposed project to demonstrate its financial performance, including the calculation of simple payback. The analysis should include applicable investment incentives, productivity incentives, loans and grants, and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project’s cost effectiveness.

(g) Equipment procurement. Include a statement from the applicant certifying “open and free” competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) Equipment installation. The project must be installed in accordance with applicable local, State, and national building and electrical codes and regulations. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules. Upon successful system installation and following established operation, the successful applicant must deliver invoices and evidence of payment.

(i) Operations and maintenance. Identify any unique operations and maintenance requirements of the project necessary for the system to operate as designed over the design life. State the design life of the system.

(1) Provide information on all system warranties. A minimum 3-year warranty for equipment and a 10-year warranty on design are expected.

(2) If the project has any unique operation and maintenance issues, describe them.

(j) Dismantling and disposal of project components. Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives.

### SECTION 3. GEOTHERMAL, ELECTRIC GENERATION

The technical requirements specified in this section apply to electric generation geothermal projects, which are, as defined in §1230.150, systems that use geothermal energy to produce high pressure steam for electric power production.

(a) Qualifications of key project service providers. List all key project service providers. If one or more licensed professionals are involved in the project, provide the credential for each professional.

(b) Agreements, permits, and certifications.

(1) Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including any permits or agreements required for well construction.
and for disposal or re-injection of cooled geothermal waters and the schedule for securing those agreements and permits.

(2) For systems planning to interconnect with a utility, describe the utility’s system interconnection requirements, power purchase agreements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(3) Identify all environmental issues, including any compliance issues associated with or expected as a result of the project on Form RD 1940–20, “Request for Environmental Information,” and in compliance with 7 CFR part 1940, subpart G of this title.

(c) Resources assessment. Provide adequate and appropriate evidence of the availability of the renewable resource required for the system to operate as designed. Indicate the quality of the geothermal resource, including temperature, flow, and sustainability and what conversion system is to be installed. Describe any special handling of cooled geothermal waters that may be necessary. Describe the process for determining the geothermal resource, including measurement setup for the collection of the geothermal resource data. For proposed projects with an established resource, provide a summary of the resource and the specifications of the measurement setup.

(d) Design and engineering. Applicants must submit a statement certifying that their project will be designed and engineered so as to meet the intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, applicants must:

(1) Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose;

(2) List possible suppliers and models of major pieces of equipment;

(3) Provide a description of the components, materials, or systems to be installed. Include the location of the project;

(4) Provide a one-line diagram for the electrical interconnection. Provide diagrams or schematics as required showing all major installed structural, mechanical, and electrical components of the system;

(5) Describe the expected electric power, fuel production, or thermal energy production of the proposed system as rated and as expected in actual field conditions. Describe the uses of or the market for electricity, heat, or fuel produced by the system; and

(6) Describe the project site and address issues such as proximity to the load or the electrical grid, unique safety concerns, and whether special circumstances exist.

(e) Project development schedule. Provide a project schedule in an appropriate level of detail that will demonstrate that the project can be adequately managed and be able to identify impacts of any delays on the project completion. The applicant must submit a statement certifying that the project will be completed within 2 years from the date of approval.

(f) Project economic assessment. Provide an analysis of the proposed project to demonstrate its financial performance, including the calculation of simple payback. The analysis should include applicable investment incentives, productivity incentives, loans and grants, and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project’s cost effectiveness.

(g) Equipment procurement. Include a statement from the applicant certifying that “open and free” competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) Equipment installation. The project must be installed in accordance with applicable local, State, and national building and electrical codes and regulations. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules. Upon successful system installation and following established operation, the successful applicant must deliver invoices and evidence of payment.

(i) Operations and maintenance. Identify any unique operations and maintenance requirements of the project necessary for the system to operate as designed over the design life. State the design life of the system.

(1) Provide information on all system warranties. A minimum 3-year warranty for equipment and a 10-year warranty on design are expected.

(2) If the project has any unique operation and maintenance issues, describe them.

(j) Dismantling and disposal of project components. Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives.

Section 4. Geothermal, Direct Use

The technical requirements specified in this section apply to direct use geothermal projects, which are, as defined in 4280.103, systems that use thermal energy directly from a geothermal source.

(a) Qualifications of key project service providers. List all key project service providers. If one or more licensed professionals are involved in the project, provide the credentials for each professional.

(b) Agreements, permits, and certifications.
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(1) Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including any permits or agreements associated with or expected as a result of the project on Form RD 1940–20, “Request for Environmental Information,” and in compliance with 7 CFR part 1940, subpart G of this title.

(c) Resources assessment. Provide adequate and appropriate evidence of the availability of the renewable resource required for the system to operate as designed. Indicate the quality of the geothermal resource, including temperature, flow, and sustainability and what direct use system is to be installed. Describe any special handling of cooled geothermal waters that may be necessary. Describe the process for determining the geothermal resource, including measurement setup for the collection of the geothermal resource data. For proposed projects with an established resource, provide a summary of the resource and the specifications of the measurement setup.

(d) Design and engineering. Applicants must submit a statement certifying that their project will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, applicants must:

(1) Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose;

(2) List possible suppliers and models of major pieces of equipment;

(3) Provide a description of the components, materials, or systems to be installed. Include the location of the project;

(4) Provide a one-line diagram for the electrical interconnection. Provide diagrams or schematics as required showing all major installed structural, mechanical, and electrical components of the system;

(5) Describe the expected thermal energy production of the proposed system as rated and as expected in actual field conditions. Describe the uses of, or the market for, heat produced by the system; and

(6) Describe the project site and address issues such as proximity to the load, unique safety concerns, and whether special circumstances exist.

(e) Project development schedule. Provide a project schedule in an appropriate level of detail that will demonstrate the project can be adequately managed and be able to identify impacts of any delays on the project completion. The applicant must submit a statement certifying that the project will be completed within 2 years from the date of approval.

(f) Project economic assessment. Provide an analysis of the proposed project to demonstrate its financial performance, including the calculation of simple payback. The analysis should include applicable investment incentives, productivity incentives, loans and grants, and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project’s cost effectiveness.

(g) Equipment procurement. Include a statement from the applicant certifying that “open and free” competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) Equipment installation. The project must be installed in accordance with applicable local, State, and national building and electrical codes and regulations. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules. Upon successful system installation and following established operation, the successful applicant must deliver invoices and evidence of payment.

(i) Operations and maintenance. Identify any unique operations and maintenance requirements of the project necessary for the system to operate as designed over the design life. State the design life of the system.

(1) Provide information on all system warranties. A minimum 3-year warranty for equipment and a 10-year warranty on design are expected.

(2) If the project has any unique operation and maintenance issues, describe them.

(j) Dismantling and disposal of project components. Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives.

SECTION 5. HYDROGEN

The technical requirements specified in this section apply to hydrogen projects, which are, as defined in §4280.163, renewable energy systems that produce hydrogen, or a renewable energy system that uses mechanical or electric power or thermal energy from a renewable resource using hydrogen as an energy transport medium.

(a) Qualifications of key project service providers. List all key project service providers. If one or more licensed professionals are involved in the project, provide the credentials for each professional.

(b) Agreements, permits, and certifications.

(1) Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits.

(2) For systems planning to interconnect with a utility, describe the utility’s system
interconnection requirements, power purchase agreements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those permits. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(3) Identify all environmental issues, including any compliance issues associated with or expected as a result of the project on Form RD 1940-20, “Request for Environmental Information,” and in compliance with 7 CFR part 1940, subpart G of this title.

(c) Resources assessment. Provide adequate and appropriate data to demonstrate the type, quantity, quality, and seasonality of the local renewable resource that will be used to produce the hydrogen.

(d) Design and engineering. Applicants must submit a statement certifying that their project will be designed and engineered so as to meet the intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, applicants must:

(1) Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose;

(2) List possible suppliers and models of major pieces of equipment;

(3) Provide a description of the components, materials, or systems to be installed. Include the location of the project;

(4) Provide a one-line diagram for the electrical interconnection. Provide diagrams or schematics as required showing all major installed structural, mechanical, and electrical components of the system; and

(5) Describe the project site and address issues such as proximity to the load or the electrical grid, unique safety concerns, and whether special circumstances exist.

(e) Project development schedule. Provide a project schedule in an appropriate level of detail that will demonstrate the project can be adequately managed and be able to identify impacts of any delays on the project completion. The applicant must submit a statement certifying that the project will be completed within 2 years from the date of approval.

(f) Project economic assessment. Provide an analysis of the proposed project to demonstrate its financial performance, including the calculation of simple payback. The analysis should include applicable investment incentives, productivity incentives, loans and grants, and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) Equipment procurement. Include a statement from the applicant certifying that "open and free" competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) Equipment installation. The project must be installed in accordance with applicable local, State, and national building and electrical codes and regulations. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules. Upon successful system installation and following established operation, the successful applicant must deliver invoices and evidence of payment.

(i) Operations and maintenance. Identify any unique operations and maintenance requirements of the project necessary for the system to operate as designed over the design life. State the design life of the system.

(1) Provide information on all system warranties. A minimum 3-year warranty for equipment and a 10-year warranty on design are expected.

(2) If the project has any unique operation and maintenance issues, describe them.

(j) Dismantling and disposal of project components. Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives.

SECTION 6. SOLAR, SMALL

The technical requirements specified in this section apply to small solar electric projects and small solar thermal projects, as defined in § 4280.3. Solar electric projects are those for which the rated power of the system is 10kW or smaller. Small solar electric projects are either stand-alone (off grid) or interconnected to the grid at less than 600 volts (on grid).

Small solar thermal projects are those for which the rated storage volume of the system is 240 gallons or smaller, or which have a collector area of 1,000 square feet or less.

(a) Qualifications of key project service providers. List all key project service providers. If one or more licensed professionals are involved in the project, provide the credentials for each professional.

(b) Agreements, permits, and certifications.

(1) Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits.

(2) For systems planning to interconnect with a utility, describe the utility’s system interconnection requirements, power purchase agreements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their
interconnection agreement, describe the applicable local net metering program.

(3) Identify all environmental issues, including any compliance issues associated with or expected as a result of the project on Form RD 1940–20, “Request for Environmental Information,” and in compliance with 7 CFR part 1940, subpart G of this title.

(c) Resources assessment. Provide adequate and appropriate data to demonstrate the amount of solar resource available. Indicate the source of the solar data and assumptions.

(d) Design and engineering. Applicants must submit a statement certifying that their project will be designed and engineered so as to meet the intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, applicants must:

(1) Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose;

(2) List possible suppliers and models of major pieces of equipment;

(3) Provide a description of the components, materials, or systems to be installed. Include the location of the project;

(4) Provide a one-line diagram for the electrical interconnection. Provide diagrams or schematics as required showing all major installed structural, mechanical, and electrical components of the system; and

(5) Describe the project site and address issues such as solar access, orientation, proximity to the load or the electrical grid, unique safety concerns, and whether special circumstances exist.

(e) Project development schedule. Provide a project schedule in an appropriate level of detail that will demonstrate that the project can be adequately managed and be able to identify impacts of any delays on the project completion. The applicant must submit a statement certifying that the project will be completed within 2 years from the date of approval.

(f) Project economic assessment. Provide an analysis of the proposed project to demonstrate its financial performance, including the calculation of simple payback. The analysis should include applicable investment incentives, productivity incentives, loans and grants, and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project’s cost effectiveness.

(g) Equipment procurement. Include a statement from the applicant certifying that “open and free” competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) Equipment installation. The project must be installed in accordance with applicable local, State, and national building and electrical codes and regulations. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules. Upon successful system installation and following establishment of operation, the successful applicant must deliver invoices and evidence of payment.

(i) Operations and maintenance. Identify any unique operations and maintenance requirements of the project necessary for the system to operate as designed over the design life. State the design life of the system.

(1) Provide information on all system warranties. A minimum 3-year warranty for equipment and a 10-year warranty on design are expected.

(2) If the project has any unique operation and maintenance issues, describe them.

(j) Dismantling and disposal of project components. Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives.

SECTION 7. SOLAR, LARGE

The technical requirements specified in this section apply to large solar electric projects and large solar thermal projects, as defined in §4280.103.

Large solar electric systems are those for which the rated power of the system is larger than 10kW. Large solar electric systems are either stand-alone (off grid) or interconnected to the grid (on grid).

Large solar thermal systems are those for which the rated storage volume of the system is greater than 240 gallons or that have a collector area of more than 1,000 square feet.

(a) Qualifications of key project service providers. List all key project service providers. If one or more licensed professionals are involved in the project, provide the credential for each professional.

(b) Agreements, permits, and certifications.

(1) Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits.

(2) For systems planning to interconnect with a utility, describe the utility’s system interconnection requirements, power purchase agreements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(3) Identify all environmental issues, including any compliance issues associated with or expected as a result of the project on Form RD 1940–20, “Request for Environmental Information,” and in compliance with 7 CFR part 1940, subpart G of this title.
(c) Resources assessment. Provide adequate and appropriate data to demonstrate the amount of solar resource available. Indicate the source of the solar data and assumptions.

(d) Design and engineering. Applicants must submit a statement certifying that their project will be designed and engineered so as to meet the intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, applicants must:

1. Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose;
2. List possible suppliers and models of major pieces of equipment;
3. Provide a description of the components, materials, or systems to be installed. Include the location of the project;
4. Provide a one-line diagram for the electrical interconnection. Provide diagrams or schematics as required showing all major installed structural, mechanical, and electrical components of the system; and
5. Describe the project site and address issues such as solar access, orientation, proximity to the load or the electrical grid, unique safety concerns, and whether special circumstances exist.

(e) Project development schedule. Provide a project schedule in an appropriate level of detail that will demonstrate the project can be adequately managed and be able to identify impacts of any delays on the project completion. The applicant must submit a statement certifying that the project will be completed within 2 years from the date of approval.

(f) Project economic assessment. Provide an analysis of the proposed project to demonstrate its financial performance, including the calculation of simple payback. The analysis should include applicable investment incentives, productivity incentives, loans and grants, and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project’s cost effectiveness.

(g) Equipment procurement. Include a statement from the applicant certifying that “open and free” competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) Equipment installation. The project must be installed in accordance with applicable local, state, and national building and electrical codes and regulations. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules. Upon successful system installation and following established operation, the successful applicant must deliver invoices and evidence of payment.

(1) Operations and maintenance. Identify any unique operations and maintenance requirements of the project necessary for the system to operate as designed over the design life. State the design life of the system.

(2) Provide information on all system warranties. A minimum 3-year warranty for equipment and a 10-year warranty on design are expected.

(3) If the project has any unique operation and maintenance issues, describe them.

(j) Dismantling and disposal of project components. Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives.

SECTION 8. WIND, SMALL

The technical requirements specified in this section apply to small wind systems, which are, as defined in §1230.103, wind energy systems for which the rated power of the wind turbine is 100kW or smaller and with a generator hub height of 120 feet or less. Small wind systems are either stand-alone or connected to the local electrical system at less than 600 volts.

(a) Qualifications of key project service providers. List all key project service providers. If one or more licensed professionals are involved in the project, provide the credentials for each professional.

(b) Agreements, permits, and certifications.

1. Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits.

2. For systems planning to interconnect with a utility, describe the utility’s system interconnection requirements, power purchase agreements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

3. Identify all environmental issues, including any compliance issues associated with or expected as a result of the project on Form RD 1940-20, “Request for Environmental Information,” and in compliance with 7 CFR part 1940, subpart G of this title.

(c) Resources assessment. Provide adequate and appropriate data to demonstrate the amount of local wind resource where the small wind turbine is to be installed. Indicate the source of the wind data and assumptions.

(d) Design and engineering. Applicants must certify that their project will be designed and engineered so as to meet the intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, applicants must:
(1) Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose;
(2) List possible suppliers and models of major pieces of equipment;
(3) Provide a description of the components, materials, or systems to be installed. Include the location of the project;
(4) Provide a one-line diagram for the electrical interconnection. Provide diagrams or schematics as required showing all major installed structural, mechanical, and electrical components of the system; and
(5) Describe the project site and address issues such as proximity to the load or the electrical grid, unique safety concerns, and whether special circumstances exist.

(e) Project development schedule. Provide a project schedule in an appropriate level of detail that will demonstrate the project can be adequately managed and be able to identify impacts of any delays on the project completion. The applicant must submit a statement certifying that the project will be completed within 2 years from the date of approval.

(f) Project economic assessment. Provide an analysis of the proposed project to demonstrate its financial performance, including the calculation of simple payback. The analysis should include applicable investment incentives, productivity incentives, loans and grants, and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project’s cost effectiveness.

(g) Equipment procurement. Include a statement from the applicant certifying that “open and free” competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) Equipment installation. The project must be installed in accordance with applicable local, State, and national building and electrical codes and regulations. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules. Upon successful system installation and following established operation, the successful applicant must deliver invoices and evidence of payment.

(i) Operations and maintenance. Identify any unique operations and maintenance requirements of the project necessary for the system to operate as designed over the design life. State the design life of the system.

(1) Provide information on all system warranties. A minimum 3-year warranty for equipment and a 10-year warranty on design are expected.
(2) If the project has any unique operation and maintenance issues, describe them.

(i) Dismantling and disposal of project components. Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives.

SECTION 9. WIND, LARGE

The technical requirements specified in this section apply to large wind systems, which are, as defined in § 4280.103, wind energy projects for which the rated power of the individual wind turbine(s) is larger than 100kW.

(a) Qualifications of key project service providers. List all key project service providers. If one or more licensed professionals are involved in the project, provide the credentials for each professional.

(b) Agreements, permits, and certifications.

(1) Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits.
(2) For systems planning to interconnect with a utility, describe the utility’s system interconnection requirements, power purchase agreements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(3) Identify all environmental issues, including any compliance issues associated with or expected as a result of the project on Form RD 1940–20, “Request for Environmental Information,” and in compliance with 7 CFR part 1940, subpart G of this title.

(c) Resources assessment. Provide adequate and appropriate data to demonstrate the amount of local wind resource where the large wind turbine is to be installed. Indicate the source of the wind data and assumptions. Projects greater than 500kW must obtain wind data from the proposed project site. For such projects, describe the proposed measurement setup for the collection of the wind resource data. For proposed projects with an established wind resource, provide a summary of the wind resource and the specifications of the measurement setup. Large wind systems larger than 500kW in size will typically require at least 1 year of on-site monitoring. If less than 1 year of data is used, the qualified meteorological consultant must provide a detailed analysis of correlation between the site data and a nearby long-term measurement site.

(d) Design and engineering. Applicants must submit a statement certifying that their project will be designed and engineered so as to meet the intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, applicants must:
(1) Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose;

(2) List possible suppliers and models of major pieces of equipment;

(3) Provide a description of the components, materials, or systems to be installed. Include the location of the project;

(4) Provide one-line diagram for the electrical interconnection. Provide diagrams or schematics as required showing all major installed structural, mechanical, and electrical components of the system; and

(5) Describe the project site and address issues such as proximity to the load or the electrical grid, unique safety concerns, and whether special circumstances exist.

(e) Project development schedule. Provide a project schedule in an appropriate level of detail that will demonstrate the project can be adequately managed and be able to identify impacts of any delays on the project completion. The applicant must submit a statement certifying that the project will be completed within 3 years from the date of approval.

(f) Project economic assessment. Provide an analysis of the proposed project to demonstrate its financial performance, including the calculation of simple payback. The analysis should include applicable investment incentives, productivity incentives, loans and grants, and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project’s cost-effectiveness.

(g) Equipment procurement. Include a statement from the applicant certifying that “open and free” competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) Equipment installation. The project must be installed in accordance with applicable local, state, and national building and electrical codes and regulations. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules. Upon successful system installation and following established operation, the successful applicant must deliver invoices and evidence of payment.

(i) Operations and maintenance. Identify any unique operations and maintenance requirements of the project necessary for the system to operate as designed over the design life. State the design life of the system.

(1) Provide information on all system warranties. A minimum 3-year warranty for equipment and a 10-year warranty on design are expected.

(2) If the project has any unique operation and maintenance issues, describe them.

(i) Dismantling and disposal of project components. Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives.

SECTION 10. ENERGY EFFICIENCY IMPROVEMENTS

The technical requirements specified in this section apply to energy efficiency improvement projects, which are, as defined in §4280.106, improvements to a facility, building, or process that reduce energy consumption, or reduce energy consumed per square foot.

(a) Qualifications of key project service providers. List all key project service providers. If one or more licensed professionals are involved in the project, provide the credentials for each professional. For projects with total eligible project costs greater than $50,000, also discuss the qualifications of the energy auditor, including any relevant certifications by recognized organizations or bodies.

(b) Agreements, permits, and certifications.

(1) The applicant must certify that they will comply with all necessary agreements and permits required for the project. Indicate the status and schedule for securing those agreements and permits.

(2) Identify all environmental issues, including any compliance issues associated with or expected as a result of the project. Also include price per unit of energy (electricity, natural gas, propane, fuel oil, renewable energy, etc.) paid by the customer on Form RD 1940-20, “Request for Environmental Information,” and in compliance with 7 CFR part 1940, subpart G of this title.

(c) Energy assessment and audits. For all energy efficiency improvement projects, provide adequate and appropriate evidence of energy savings expected when the system is operated as designed.

(1) For energy efficiency improvement projects with total eligible project costs greater than $50,000, an energy audit must be conducted. An energy audit is a written report by an independent, qualified party that documents current energy usage, recommended potential improvements and their costs, energy savings from these improvements, dollars saved per year, and simple payback. The methodology of the energy audit must meet professional and industry standards.

(2) The energy assessment or energy audit must cover the following:

(i) Situation report. Provide a narrative description of the facility or process, its energy system(s) and usage, and activity profile. Also include price per unit of energy (electricity, natural gas, propane, fuel oil, renewable energy, etc.) paid by the customer on the date of the assessment or audit. Any energy conversion should be based on use rather than source.

(ii) Potential improvements. List specific information on all potential energy-saving opportunities and the associated costs.
(iii) Technical analysis. Discuss the interactions of the potential improvements with existing energy systems.
(A) Estimate the annual energy and energy cost savings expected from each improvement identified in the potential project.
(B) Calculate all direct and attendant indirect costs of each improvement.
(C) Rank potential improvement measures by cost-effectiveness.
(iv) Potential improvement description. Provide a narrative summary of the potential improvement and its ability to provide needed benefits, including a discussion of non-energy benefits such as project reliability and durability.
(A) Provide preliminary specifications for critical components.
(B) Provide preliminary drawings of project layout, including any related structural changes.
(C) Document baseline data compared to projected consumption, together with any explanatory notes. Provide the actual total quantity of energy used (BTU) in the original building and/or equipment in the 12 months prior to the EEI project and the projected energy usage after the EEI project shall be the projected total quantity of energy used (BTU) on an annual basis for the same size or capacity as the original building or equipment. For energy efficiency improvement to equipment, if the new piece of equipment has a different capacity than the piece of equipment being replaced, the projected total quantity of energy used for the new piece of equipment shall be adjusted based on the ratio of the capacity of the replaced piece of equipment to the capacity of the new piece of equipment in accordance with the regulation. When appropriate, show before-and-after data in terms of consumption per unit of production, time or area. Include at least 1 year’s bills for those energy sources/fuel types affected by this project. Also submit utility rate schedules, if appropriate.
(D) Identify significant changes in future related operations and maintenance costs.
(E) Describe explicitly how outcomes will be measured.
(d) Design and engineering. The applicant must submit a statement certifying that their project will be designed and engineered so as to meet the intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards.
(1) Identify possible suppliers and models of major pieces of equipment.
(2) Describe the components, materials, or systems to be installed. Include the location of the project.
(e) Project development schedule. Provide a project schedule in an appropriate level of detail that will demonstrate the project can be adequately managed. The applicant must submit a statement certifying that the project will be completed within 2 years from the date of approval.
(f) Project economic assessment. For projects with total eligible project costs greater than $200,000, provide an analysis of the proposed project to demonstrate its financial performance, including the calculation of simple payback. The analysis should include applicable investment incentives, productivity incentives, loans and grants, and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project’s cost effectiveness.
(g) Equipment procurement. Include a statement from the applicant certifying that “open and free” competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.
(h) Equipment installation. The project must be installed in accordance with applicable local, State, and national building and electrical codes and regulations. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules. Upon successful system installation and following established operation, the successful applicant must deliver invoices and evidence of payment.
(i) Operations and maintenance. Identify any unique operations and maintenance requirements of the project necessary for the improvement(s) to perform as designed over the design life. State the design life of the improvement(s). Provide information regarding component warranties.
(j) Dismantling and disposal of project components. Describe a plan for dismantling and proper disposal of the project components and associated wastes at the end of their useful lives.

APPENDIX B TO SUBPART B OF PART 4280—TECHNICAL REPORTS FOR PROJECTS WITH TOTAL ELIGIBLE PROJECT COSTS OF GREATER THAN $200,000

The Technical Report for projects with total eligible project costs greater than $200,000 (and for any other project that must submit a Technical Report under this appendix) must demonstrate that the project design, procurement, installation, startup, operation, and maintenance of the renewable energy system or energy efficiency improvement will operate or perform as specified over its design life in a reliable and a cost-effective manner. The Technical Report must also identify all necessary project agreements, demonstrate that those agreements will be in place, and that necessary project equipment and services are available over the design life.
All technical information provided must follow the format specified in Sections 1 through 10 of this appendix. Supporting information may be submitted in other formats. Design drawings and process flowcharts are encouraged as exhibits. A discussion of each topic is not necessary if the topic is not applicable to the specific project. Questions identified in the Agency’s technical review of the project must be answered to the Agency’s satisfaction before the application will be approved. The applicant must submit the original technical report plus one copy to the Rural Development State Office.

Renewable energy projects with total eligible project costs greater than $400,000 and for energy efficiency improvement projects with total eligible project costs greater than $200,000 require the services of a licensed professional engineer (PE) or team of PEs. Depending on the level of engineering required for the specific project or if necessary to ensure public safety, the services of a licensed PE or a team of licensed PEs may be required for smaller projects.

**SECTION 1. BIOENERGY**

The technical requirements specified in this section apply to bioenergy projects, which are, as defined in §4280.103, renewable energy systems that produces fuel, thermal energy, or electric power from a renewable biomass source only, other than an anaerobic digester project.

(a) **Qualifications of project team.** The bioenergy project team will vary according to the complexity and scale of the project. For engineered systems, the project team should consist of a system designer, a project manager, an equipment supplier, a project engineer, a construction contractor or system installer, and a system operator and maintainer. One individual or entity may serve more than one role. The project team must have demonstrated expertise in similar bioenergy systems development, engineering, installation, and maintenance. Authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services must be provided. Authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life must also be provided. The application must:

(1) Discuss the proposed project delivery method. Such methods include a design, bid, build where a separate engineering firm may design the project and prepare a request for bids and the successful bidder constructs the project at the applicant’s risk, and a design/build method, often referred to as turnkey, where the applicant establishes the specifications for the project and secures the services of a developer who will design and build the project at the developer’s risk;

(2) Discuss the bioenergy system equipment manufacturers of major components being considered in terms of the length of time in business and the number of units installed at the capacity and scale being considered;

(3) Discuss the project manager, equipment supplier, system designer, project engineer, and construction contractor qualifications for engineering, designing, and installing bioenergy systems, including any relevant certifications by recognized organizations. Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available; and

(4) Describe the system operator’s qualifications and experience for servicing, operating, and maintaining bioenergy renewable energy equipment or projects. Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available.

(b) **Agreements, permits, and certifications.** Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (b)(1) through (8).

(1) Identify zoning and code issues, and required permits and the anticipated schedule for meeting those requirements and securing those permits.

(2) Identify licenses where required and the schedule for obtaining those licenses.

(3) Identify land use agreements required for the project and the anticipated schedule for securing those agreements and the term of those agreements.

(4) Identify any permits or agreements required for solid, liquid, and gaseous emissions or effluents and the schedule for securing those permits and agreements.

(5) Identify available component warranties for the specific project location and size.

(6) For systems planning to interconnect with a utility, describe the utility’s system interconnection requirements, power purchase agreements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(7) Identify all environmental issues, including environmental compliance issues, associated with the project on Form RD 1940-20, “Request for Environmental Information,” and in compliance with 7 CFR part 1940, subpart G of this title.

(8) Submit a statement certifying that the project will be installed in accordance with
applicable local, State, and national codes and regulations.

(c) Resources assessment. Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the type, quantity, quality, and seasonality of the biomass resource, including harvest and storage, where applicable. Where applicable, also indicate shipping or receiving method and required infrastructure for shipping. For proposed projects with an established resource, provide a summary of the resource.

(d) Design and engineering. Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. Projects shall be engineered by a qualified party. Systems must be engineered as a complete, integrated system with matched components. The engineering must be comprehensive, including site selection, system and component selections, and system monitoring equipment. Systems must be constructed by a qualified party.

(1) Provide a concise but complete description of the bioenergy project, including location of the project, resource characteristics, system specifications, electric power system interconnection, and monitoring equipment. Identify possible vendors and models of major system components. Describe the expected electric power, fuel production, or thermal energy production of the proposed system as rated and as expected in actual field conditions. For systems with a capacity of more than 20 tons per day of biomass, address performance on a monthly and annual basis. For small projects such as a commercial biomass furnace or pelletizer of up to 5 tons daily capacity, proven, commercially available devices need not be addressed in detail. Describe the uses of or the market for electricity, heat, or fuel produced by the system. Discuss the impact of reduced or interrupted biomass availability on the system process.

(2) Describe the project site and address issues such as site access, foundations, backup equipment when applicable, and environmental concerns with emphasis on land use, air quality, water quality, soil degradation, habitat fragmentation, land use, visibility, odor, noise, construction, and installation issues. Identify any unique construction and installation issues.

(e) Project development schedule. Identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline, including resource assessment, system and site design, permits and agreements, equipment procurement, and system installation from excavation through startup and shakedown.

(f) Project economic assessment. Provide a study that describes the costs and revenues of the proposed project to demonstrate the financial performance of the project, including the calculation of simple payback. Provide a detailed analysis and description of project costs, including project management, resource assessment, project design, project permitting, land agreements, equipment, site preparation, system installation, startup and shakedown, warranties, insurance, financing, professional services, and operations and maintenance costs. Provide a detailed analysis and description of annual project revenues and expenses. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants. In addition, provide other information necessary to assess the project’s cost effectiveness.

(g) Equipment procurement. Demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Bioenergy systems may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Identify all the major equipment that is proprietary and justify how this unique equipment is needed to meet the requirements of the proposed design. Include a statement from the applicant certifying that “open and free” competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) Equipment installation. Fully describe the management of and plan for site development and system installation, provide details regarding the scheduling of major installation equipment needed for project construction, and provide a description of the startup and shakedown specifications and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules.

(i) Operations and maintenance. Identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. In addition:

(1) Provide information regarding available system and component warranties and availability of spare parts;

(2) Describe the routine operations and maintenance requirements of the proposed system, including maintenance schedule for...
the mechanical, piping, and electrical systems and system monitoring and control requirements. Provide information that supports expected design life of the system and timing of major component replacement or rebuilds. Discuss the costs and labor associated with the operation and maintenance of the system, and plans for in-sourcing or out-sourcing. Describe opportunities for technology transfer for long-term project operations and maintenance by a local entity or owner/operator; and

(3) For systems having a biomass input capacity exceeding 10 tons of biomass per day, provide and discuss the risk management plan for handling large, potential failures of major components.

(i) Dismantling and disposal of project components. Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives. Describe the budget for and any unique concerns associated with the dismantling and disposal of project components and their wastes.

SECTION 2. ANAEROBIC DIGESTER PROJECTS

The technical requirements specified in this section apply to anaerobic digester projects, which are, as defined in §4280.103, renewable energy systems that use animal or other waste and may include other organic substrates to produce biofuel, biogas, thermal, or electrical energy via anaerobic digestion.

(a) Qualifications of project team. The anaerobic digester project team should consist of a system designer, a project manager, an equipment supplier, a project engineer, a construction contractor, and a system operator or maintainer. One individual or entity may serve more than one role. The project team must have demonstrated commercial-scale expertise in anaerobic digester systems development, engineering, installation, and maintenance as related to the organic materials and operating mode of the system. Authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services must be provided. Authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life must also be provided. The application must:

(1) Discuss the proposed project delivery method. Such methods include a design, bid, build where a separate engineering firm may design the project and prepare a request for bids and the successful bidder constructs the project at the applicant’s risk, and a design/build method, often referred to as turnkey, where the applicant establishes the specifications for the project and secures the services of a developer who will design and build the project at the developer’s risk;

(2) Discuss the anaerobic digester system equipment manufacturers of major components being considered in terms of the length of time in business and the number of units installed at the capacity and scale being considered;

(3) Discuss the project manager, equipment supplier, system designer, project engineer, and construction contractor qualifications for engineering, designing, and installing anaerobic digester systems, including any relevant certifications by recognized organizations. Provide a list of the same or similar projects designed, installed, or supplied and currently operating consistent with the substrate material with references, if available; and

(4) For regional or centralized digester plants, describe the system operator’s qualifications and experience for servicing, operating, and maintaining similar projects. Farm scale systems may not require operator experience as the developer is typically required to provide operational training during system startup and shakedown. Provide a list of the same or similar projects designed, installed, or supplied and currently operating consistent with the substrate material with references, if available.

(b) Agreements, permits, and certifications.

Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (b)(1) through (8):

(1) Identify zoning and code issues, and required permits and the anticipated schedule for meeting those requirements and securing those permits.

(2) Identify licenses where required and the schedule for obtaining those licenses.

(3) For regional or centralized digester plants, identify feedstock access agreements required for the project and the anticipated schedule for securing those agreements and the term of those agreements.

(4) Identify any permits or agreements required for transport and ultimate waste disposal and the schedule for securing those agreements and permits.

(5) Identify available component warranties for the specific project location and size.

(6) For systems planning to interconnect with a utility, describe the utility’s system interconnection requirements, power purchase agreements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(7) Identify all environmental issues, including environmental compliance issues, associated with the project on Form RD 4040-
(f) Project economic assessment. Provide a study that describes the costs and revenues of the proposed project to demonstrate the financial performance of the project, including the calculation of simple payback. Provide a detailed analysis and description of annual project revenues and expenses. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants. In addition, provide other information necessary to assess the project’s cost effectiveness.

(g) Equipment procurement. Demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Anaerobic digester systems may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Identify all the major equipment that is proprietary and justify how this unique equipment is needed to meet the requirements of the proposed design. Include a statement from the applicant certifying that “open and free” competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) Equipment installation. Describe fully the management of and plan for site development and system installation, provide details regarding the scheduling of major installation equipment needed for project construction, and provide a description of the startup and shakedown specifications and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules.

(i) Operations and maintenance. Identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The application must:

(1) Ensure that systems must have at least a 3-year warranty for equipment and a 10-
year warranty on design. Provide information regarding system warranties and availability of spare parts;

(2) Describe the routine operations and maintenance requirements of the proposed project, including maintenance for the digester, the gas handling equipment, and the gas use systems. Describe any maintenance requirements for system monitoring and control equipment;

(3) Provide information that supports the expected design life of the system and the timing of major component replacement or rebuilds;

(4) Provide and discuss the risk management plan for handling large, potential failures of major components. Include in the discussion, costs and labor associated with the operation and maintenance of the system, and plans for in-sourcing or out-sourcing; and

(5) Describe opportunities for technology transfer for long-term project operations and maintenance by a local entity or owner/operator.

(1) Dismantling and disposal of project components. Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives. Describe the budget for and any unique concerns associated with the dismantling and disposal of project components and their wastes.

SECTION 3. GEOTHERMAL, ELECTRIC

GENERATION

The technical requirements specified in this section apply to electric generation geothermal projects, which are, as defined in §4280.103, systems that use geothermal energy to produce high pressure steam for electric power production.

(a) Qualifications of project team. The electric generating geothermal plant project team should consist of a system designer, a project manager, an equipment supplier, a project engineer, a construction contractor, and a system operator and maintainer. One individual or entity may serve more than one role. The project team must have demonstrated expertise in geothermal electric generation systems development, engineering, installation, and maintenance. Authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services must be provided. Authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life must also be provided. The application must:

(1) Discuss the proposed project delivery method. Such methods include a design, bid, build where a separate engineering firm may design the project and prepare a request for bids and the successful bidder constructs the project at the applicant’s risk, and a design/build method, often referred to as turnkey, where the applicant establishes the specifications for the project and secures the services of a developer who will design and build the project at the developer’s risk;

(2) Discuss the geothermal plant equipment manufacturers of major components being considered in terms of the length of time in business and the number of units installed at the capacity and scale being considered;

(3) Discuss the project manager, equipment supplier, system designer, project engineer, and construction contractor qualifications for engineering, designing, and installing geothermal electric generation systems, including any relevant certifications by recognized organizations. Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available; and

(4) Describe the system operator’s qualifications and experience for servicing, operating, and maintaining electric generating geothermal projects. Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available.

(b) Agreements, permits, and certifications. Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (b)(1) through (7).

(1) Identify zoning and code issues and required permits and the anticipated schedule for meeting those requirements and securing those permits.

(2) Identify any permits or agreements required for well construction and for disposal or re-injection of cooled geothermal waters and the schedule for securing those agreements and permits.

(3) Identify land use or access to the resource agreements required for the project and the anticipated schedule for securing the agreements and the term of those agreements.

(4) Identify available component warranties for the specific project location and size.

(5) For systems planning to interconnect with a utility, describe the utility’s system interconnection requirements, power purchase agreements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements.

(6) Identify all environmental issues, including environmental compliance issues, associated with the project on Form RD 1940-20, “Request for Environmental Information,” and in compliance with 7 CFR part 1940, subpart G of this title.

(7) Submit a statement certifying that the project will be installed in accordance with
applicable local, State, and national codes and regulations.

(c) Resources assessment. Provide adequate and appropriate data to demonstrate the amenability of the resource available. Indicate the quality of the geothermal resource, including temperature, flow, and sustainability and what conversion system is to be installed. Describe the process for determining the geothermal resource, including measurement setup for the collection of the geothermal resource data. For proposed projects with an established resource, provide a summary of the resource and the specifications of the measurement setup.

(d) Design and engineering. Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. Projects shall be engineered by a qualified party. Systems must be engineered as a complete, integrated system with matched components. The engineering must be comprehensive, including site selection, system and component selection, conversion system component and selection, design of the local collection grid, interconnection equipment selection, and system monitoring equipment. Systems must be constructed by a qualified party.

(1) Provide a concise but complete description of the geothermal project, including location of the project, resource characteristics, thermal system specifications, electric power system, interconnection equipment, and project monitoring equipment. Identify possible vendors and models of major system components. Provide the expected system energy production on a monthly and annual basis.

(2) Describe the project site and address issues such as site access, proximity to the electrical grid, environmental concerns with emphasis on land use, air quality, water quality, habitat fragmentation, visibility, noise, construction, and installation issues. Identify any unique construction and installation issues.

(e) Project development schedule. Identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline, including resource assessment, system and site design, permits and agreements, equipment procurement, and system installation from excavation through startup and shakedown.

(f) Project economic assessment. Provide a study that describes the costs and revenues of the proposed project to demonstrate the financial performance of the project, including the calculation of simple payback. Provide a detailed analysis and description of project costs, including project management, resource assessment, project design, project permitting, land agreements, equipment, site preparation, system installation, startup and shakedown, warranties, insurance, financing, professional services, and operations and maintenance costs. Provide a detailed analysis and description of annual project revenues, including electricity sales, production tax credits, revenues from green tags, and any other production incentive programs throughout the life of the project. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants. In addition, provide other information necessary to assess the project’s cost effectiveness.

(g) Equipment procurement. Demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Geothermal systems may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Identify all the major equipment that is proprietary and justify how this unique equipment is needed to meet the requirements of the proposed design. Include a statement from the applicant certifying that “open and free” competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) Equipment installation. Describe fully the management of and plan for site development and system installation, provide details regarding the scheduling of major installation equipment needed for project construction, and provide a description of the startup and shakedown specifications and process and the conditions required for startup or shakedown for each equipment item individually and for the system as a whole. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules.

(i) Operations and maintenance. Identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The application must:

(1) Ensure that systems must have at least a 3-year warranty for equipment. Provide information regarding turbine warranties and availability of spare parts;

(2) Describe the routine operations and maintenance requirements of the proposed project, including maintenance for the mechanical and electrical systems and system monitoring and control requirements;
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(3) Provide information that supports expected design life of the system and timing of major component replacement or rebuilds;

(4) Provide and discuss the risk management plan for handling large, potential failures of major components such as the turbine. Include in the discussion, costs and labor associated with the operation and maintenance of the system, and plans for in-sourcing or out-sourcing; and

(5) Describe opportunities for technology transfer for long-term project operations and maintenance by a local entity or owner/operator.

(1) Dismantling and disposal of project components. Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives. Describe the budget for and any unique concerns associated with the dismantling and disposal of project components and their wastes.

SECTION 4. GEOTHERMAL, DIRECT USE

The technical requirements specified in this section apply to direct use geothermal projects, which are, as defined in §4280.103, systems that use thermal energy directly from a geothermal source.

(a) Qualifications of project team. The geothermal project team should consist of a system designer, a project manager, an equipment supplier, a project engineer, a construction contractor, and a system operator and maintainer. One individual or entity may serve more than one role. The project team must have demonstrated expertise in geothermal heating systems development, engineering, installation, and maintenance. Authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services must be provided. Authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life must also be provided. The application must:

(1) Discuss the proposed project delivery method. Such methods include a design, bid, build where a separate engineering firm may design the project and prepare a request for bids and the successful bidder constructs the project at the applicant’s risk, and a design/build method, often referred to as turnkey, where the applicant establishes the specifications for the project and secures the services of a developer who will design and build the project at the developer’s risk;

(2) Discuss the geothermal system equipment manufacturers of major components being considered in terms of the length of time in business and the number of units installed at the capacity and scale being considered;

(3) Discuss the project manager, equipment supplier, system designer, project engineer, and construction contractor qualifications for engineering, designing, and installing direct use geothermal systems, including any relevant certifications by recognized organizations. Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available; and

(4) Describe system operator’s qualifications and experience for servicing, operating, and maintaining direct use generating geothermal projects. Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available.

(b) Agreements, permits, and certifications. Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (b)(1) through (7).

(1) Identify zoning and code issues, and required permits and the anticipated schedule for meeting those requirements and securing those permits.

(2) Identify licenses where required and the schedule for obtaining those licenses.

(3) Identify land use or access to the resource agreements required for the project and the anticipated schedule for securing the agreements and the term of those agreements.

(4) Identify any permits or agreements required for well construction and for disposal or re-injection of cooled geothermal waters and the anticipated schedule for securing those permits and agreements.

(5) Identify available component warranties for the specific project location and size.

(6) Identify all environmental issues, including environmental compliance issues, associated with the project on Form RD 1940-20, “Request for Environmental Information,” and in compliance with 7 CFR part 1940, subpart G of this title.

(7) Submit a statement certifying that the project will be installed in accordance with applicable local, State, and national codes and regulations.

(c) Resources assessment. Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the quality of the geothermal resource, including temperature, flow, and sustainability and what direct use system is to be installed. Describe any special handling of cooled geothermal waters that may be necessary. Describe the process for determining the geothermal resource, including measurement setup for the collection of the geothermal resource data. For proposed projects with an established resource, provide a summary of the resource and the specifications of the measurement setup.
(d) Design and engineering. Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will be consistent with applicable laws, regulations, agreements, permits, codes, and standards. Projects shall be engineered by a qualified party. Systems must be engineered as a comprehensive, integrated system with matched components. The engineering must be comprehensive, including site selection, system and component selection, thermal system component selection, and system monitoring equipment. Systems must be constructed by a qualified party.

(1) Provide a concise but complete description of the geothermal project, including location of the project, resource characteristics, thermal system specifications, and monitoring equipment. Identify possible vendors and models of major system components. Provide the expected system energy production on a monthly and annual basis. The project site and address issues such as site access, thermal backup equipment, environmental concerns with emphasis on land use, air quality, water quality, habitat fragmentation, visibility, noise, construction, and installation issues. Identify any unique construction and installation issues.

(2) Project development schedule. Identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline, including resource assessment, system and site design, permits and agreements, equipment procurement, and system installation from excavation through startup and shakedown.

(3) Project economic assessment. Provide a study that describes the costs and revenues of the proposed project to demonstrate the financial performance of the project, including the calculation of simple payback. Provide a detailed analysis and description of project costs, including project management, resource assessment, project design, project permitting, land agreements, equipment, site preparation, system installation, startup and shakedown, warranties, insurance, financing, professional services, and operations and maintenance costs. Provide a detailed analysis and description of annual project revenues and expenses. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants. In addition, provide other information necessary to assess the project’s cost effectiveness.

(4) Equipment procurement. Demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Geothermal systems may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Identify all the major equipment that is proprietary and justify how this unique equipment is needed to meet the requirements of the proposed design. Include a statement from the applicant certifying that "open and free" competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) Equipment installation. Describe fully the management of and plan for site development and system installation, provide details regarding the scheduling of major installation equipment needed for project construction, and provide a description of the startup and shakedown specifications and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules.

(1) Operations and maintenance. Identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The application must:

(1) Ensure that systems must have at least a 3-year warranty for equipment. Provide information regarding system warranties and availability of spare parts;

(2) Describe the routine operations and maintenance requirements of the proposed project, including maintenance for the mechanical and electrical systems and system monitoring and control requirements;

(3) Provide information that supports expected design life of the system and timing of major component replacement or rebuilds;

(4) Provide and discuss the risk management plan for handling large, potential failures of major components. Include in the discussion, costs and labor associated with the operation and maintenance of the system, and plans for in-sourcing or out-sourcing; and

(5) Describe opportunities for technology transfer for long-term project operations and maintenance by a local entity or owner/operator.

(i) Dismantling and disposal of project components. Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives. Describe the budget for and any unique concerns associated with the dismantling and disposal of project components and their wastes.
SECTION 5. HYDROGEN PROJECTS
The technical requirements specified in this section apply to hydrogen projects, which are, as defined in §1280.103, renewable energy systems that produce hydrogen or, a renewable energy system that uses mechanical or electric power or thermal energy from a renewable resource using hydrogen as an energy transport medium.

(a) Qualifications of project team. The hydrogen project team will vary according to the complexity and scale of the project. For engineered systems, the project team should consist of a system designer, a project manager, an equipment supplier, a project engineer, a construction contractor or system installer, and a system operator and maintainer. One individual or entity may serve more than one role. The project team must have demonstrated expertise in similar hydrogen systems development, engineering, installation, and maintenance. Authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services must be provided. Authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life must also be provided.

The application must:

(1) Discuss the proposed project delivery method. Such methods include a design, bid, build where a separate engineering firm may design the project and prepare a request for bids and the successful bidder constructs the project at the applicant's risk, and a design/build method, often referred to as turnkey, where the applicant establishes the specifications for the project and secures the services of a developer who will design and build the project at the developer's risk;

(2) Discuss the hydrogen system equipment manufacturers of major components for the hydrogen system being considered in terms of the length of time in the business and the number of units installed at the capacity and scale being considered;

(3) Discuss the project manager, equipment supplier, system designer, project engineer, and construction contractor qualifications for engineering, designing, and installing hydrogen systems, including any relevant certifications by recognized organizations. Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available; and

(4) Describe the system operator's qualifications and experience for servicing, operating, and maintaining hydrogen system equipment or projects. Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available.

(b) Agreements, permits, and certifications. Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (b)(1) through (8).

(1) Identify zoning and building code issues, and required permits and the anticipated schedule for meeting those requirements and securing those permits.

(2) Identify licenses where required and the schedule for obtaining those licenses.

(3) Identify land use agreements required for the project and the anticipated schedule for securing the agreements and the term of those agreements.

(4) Identify any permits or agreements required for solid, liquid, and gaseous emissions or effluents and the anticipated schedule for securing those permits and agreements.

(5) Identify available component warranties for the specific project location and size.

(6) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase agreements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(7) Identify all environmental issues, including environmental compliance issues, associated with the project on Form RD 1940–20, “Request for Environmental Information,” and in compliance with 7 CFR part 1940, subpart G of this title.

(8) Submit a statement certifying that the project will be installed in accordance with applicable local, State, and national codes and regulations.

(c) Resources assessment. Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the type, quantity, quality, and seasonality of the biomass resource. For solar, wind, or geothermal sources of energy used to generate hydrogen, indicate the local renewable resource where the hydrogen system is to be installed. Local resource maps may be used as an acceptable preliminary source of renewable resource data. For proposed projects with an established renewable resource, provide a summary of the resource.

(d) Design and engineering. Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. Projects shall be engineered by a qualified party. Systems must be engineered as a complete, integrated system with matched components. The engineering must be comprehensive, including site selection, system
and component selection, and system monitoring equipment. Systems must be constructed by a qualified party.

(1) Provide a concise but complete description of the project, including location of the project, resource characteristics, system specifications, electric power system interconnection equipment, and monitoring equipment. Provide a detailed description of major system components. Describe the expected electric power, fuel production, or thermal energy production of the proposed system. Address performance on a monthly and annual basis. Describe the uses of or the market for electricity, heat, or fuel produced by the system. Discuss the impact of reduced or interrupted resource availability on the system process.

(2) Describe the project site and address issues such as site access, foundations, backup equipment when applicable, and any environmental and safety concerns with emphasis on land use, air quality, water quality, and safety hazards. Identify any unique construction and installation issues.

(e) Project development schedule. Identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline, including resource assessment, system and site design, permits and agreements, equipment procurement, and system installation from excavation through startup and shakedown.

(f) Project economic assessment. Provide a study that describes the costs and revenues of the proposed project to demonstrate the financial performance of the project, including the calculation of simple payback. Provide a detailed analysis and description of project costs, including project management, resource assessment, project design and engineering, project permitting, land agreements, equipment, site preparation, system installation, startup and shakedown, warranties, insurance, financing, professional services, and operations and maintenance costs. Provide a detailed analysis and description of annual project revenues and expenses. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants. In addition, provide other information necessary to assess the project’s cost effectiveness.

(g) Equipment procurement. Demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Hydrogen systems may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues, such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, and receiving, and on-site storage or inventory. Identify all the major equipment that is proprietary and justify how this unique equipment is needed to meet the requirements of the proposed design. Include a statement from the applicant certifying that “open and free” competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) Equipment installation. Describe fully the management of and plan for site development and system installation, provide details regarding the scheduling of major installation equipment needed for project construction, and provide a description of the startup and shakedown specifications and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules.

(1) Operations and maintenance. Identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The application must:

(1) Provide information regarding system warranties and availability of spare parts;

(2) Describe the routine operations and maintenance requirements of the proposed project, including maintenance of the reformer, electrolyzer, or fuel cell as appropriate, and other mechanical, piping, and electrical systems, and system monitoring and control requirements;

(3) Provide information that supports expected design life of the system and timing of major component replacement or rebuilds;

(4) Provide and discuss the risk management plan for handling large, potential failures of major components. Include in the discussion, costs and labor associated with the operation and maintenance of the system, and plans for in-sourcing or out-sourcing; and

(5) Describe opportunities for technology transfer for long-term project operations and maintenance by a local entity or owner/operator.

(i) Dismantling and disposal of project components. Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives. Describe the budget for and any unique concerns associated with the dismantling and disposal of project components and their wastes.

SECTION 6. SOLAR, SMALL

The technical requirements specified in this section apply to small solar electric projects and small solar thermal projects, as defined in §4280.103.

Small solar electric projects are those for which the rated power of the system is 10kW or smaller. Small solar electric projects are
either stand-alone (off grid) or interconnected to the grid at less than 600 volts (on grid).

Small solar thermal projects are those for which the rated storage volume of the system is 240 gallons or smaller, or which have a collector area of 1,000 square feet or less.

(a) Qualifications of project team. The small solar project team must consist of a system designer, a project manager or general contractor, an equipment supplier of major components, a system installer, a system maintainer, and, in some cases, the owner of the application or load served by the system. One individual or entity may serve more than one role. Authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services must be provided. Authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life must also be provided. The application must:

1. Discuss the qualifications of the suppliers of major components being considered;
2. Describe the knowledge, skills, and abilities needed to service, operate, and maintain the system for the proposed application; and
3. Discuss the project manager, system designer, and system installer qualifications for engineering, designing, and installing small solar systems, including any relevant certifications by recognized organizations.

Provide a list of the same or similar systems designed or installed by the design and installation team and currently operating with comparable local net metering program.

(b) Agreements, permits, and certifications. Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (b)(1) through (5).

1. Identify zoning, building, and electrical code issues, and required permits and the anticipated schedule for meeting those requirements and securing those permits.
2. Identify available component warranties for the specific project location and size.
3. For systems planning to interconnect with a utility, describe the utility’s system interconnection requirements, power purchase agreements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.
4. Identify all environmental issues, including environmental compliance issues, associated with the project on Form RD 1940–20, “Request for Environmental Information,” and in compliance with 7 CFR part 1940, subpart G of this title.
5. Submit a statement certifying that the project will be installed in accordance with applicable local, State, and national codes and regulations.

(c) Resources assessment. Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the source of the solar data and assumptions.

(d) Design and engineering. Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. For small solar electric systems, the engineering must be comprehensive, including solar collector design and selection, support structure design and selection, power conditioning design and selection, surface or submersible water pumps and energy storage requirements as applicable, and selection of cabling, disconnects, and interconnection equipment. For small solar thermal systems, the engineering must be comprehensive, including solar collector design and selection, support structure design and selection, pump and piping design and selection, and energy storage design and selection.

1. Provide a concise but complete description of the small solar system, including location of the project and proposed equipment specifications. Identify possible vendors and models of major system components. Provide the expected system energy production based on available solar resource data on a monthly (when possible) and annual basis and how the energy produced by the system will be used.
2. Describe the project site and address issues such as solar access, orientation, proximity to the load or the electrical grid, environmental concerns such as water quality and land use, unique safety concerns such as hazardous materials handling, construction, and installation issues, and whether special circumstances exist.
3. Identify project development schedule. Identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through start-up and shakedown. Provide a detailed description of the project timeline, including system and site design, permits and agreements, equipment procurement, and system installation from excavation through startup and shakedown.
4. Project economic assessment. Provide a study that describes the costs and revenues of the proposed project to demonstrate the financial performance of the project, including the calculation of simple payback. Provide a detailed analysis and description of project costs, including design, permitting,
equipment, site preparation, system installation, system startup and shakedown, warranties, insurance, financing, professional services, and operations and maintenance costs. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants. Provide a detailed description of historic or expected energy use and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project’s cost effectiveness.

(g) Equipment procurement. Demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Small solar systems may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Provide a detailed description of equipment certification. Identify all the major equipment that is proprietary and justify how this unique equipment is needed to meet the requirements of the proposed design. Include a statement from the applicant certifying that “open and free” competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) Equipment installation. Describe fully the management of and plan for site development and system installation, provide details regarding the scheduling of major installation equipment needed for project construction, and provide a description of the startup and shakedown specifications and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules.

(i) Operations and maintenance. Identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The application must:

(1) Ensure that systems must have at least a 5-year warranty for equipment. Provide information regarding system warranty and availability of spare parts;

(2) Describe the routine operations and maintenance requirements of the proposed system, including maintenance schedules for the mechanical and electrical and software systems;

(3) For owner maintained portions of the system, describe any unique knowledge, skills, or abilities needed for service operations or maintenance; and

(4) Provide information regarding expected system design life and timing of major component replacement or rebuilds. Include in the discussion, costs and labor associated with the operation and maintenance of the system, and plans for in-sourcing or outsourcing.

(j) Dismantling and disposal of project components. Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives. Describe the budget for and any unique concerns associated with the dismantling and disposal of project components and their wastes. Describe any environmental compliance requirements such as proper disposal or recycling procedures to reduce potential impact from any hazardous chemicals.

SECTION 7. SOLAR, LARGE

The technical requirements specified in this section apply to large solar electric projects and large solar thermal projects, as defined in §4280.103. Large solar electric systems are those for which the rated power of the system is larger than 10kW. Large solar electric systems are either stand-alone (off grid) or interconnected to the grid (on grid). Large solar thermal systems are those for which the rated storage volume of the system is greater than 240 gallons or that have a collector area of more than 1,000 square feet.

(a) Qualifications of project team. The large solar project team should consist of an equipment supplier of major components, a project manager, general contractor, system engineer, system installer, and system maintainer. One individual or entity may serve more than one role. Authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services must be provided. Authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life must also be provided. The application must:

(1) Discuss the proposed project delivery method. Such methods include a design, bid, build where a separate engineering firm may design the project and prepare a request for bids and the successful bidder constructs the project at the applicant’s risk, and a design/build method, often referred to as turnkey, where the applicant establishes the specifications for the project and secures the services of a developer who will design and build the project at the developer’s risk;

(2) Discuss the qualifications of the suppliers of major components being considered;
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(3) Discuss the project manager, general contractor, system engineer, and system installer qualifications for engineering, designing, and installing large solar systems, including certifications by recognized organizations. Provide a list of the same or similar systems designed or installed by the design, engineering, and installation team and currently operating with references, if available; and

(4) Describe the system operator's qualifications and experience for servicing, operating, and maintaining the system for the proposed application. Provide a list of the same or similar systems designed or installed by the design, engineering, and installation team and currently operating with references, if available.

(b) Agreements, permits, and certifications. Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (b)(1) through (5).

(1) Identify zoning, building, and electrical code issues, and required permits and the anticipated schedule for meeting those requirements and securing those permits.

(2) Identify available component warranties for the specific project location and size.

(3) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase agreements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(4) Identify all environmental issues, including environmental compliance issues, associated with the project on Form RD 1940–20, "Request for Environmental Information," in compliance with 7 CFR part 1940, subpart G of this title.

(5) Submit a statement certifying that the project will be installed in accordance with applicable local, State, and national codes and regulations.

(c) Resources assessment. Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the source of the solar data and assumptions.

(d) Design and engineering. Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards.

(1) For large solar electric systems, the engineering must be comprehensive, including solar collector design and selection, support structure design and selection, power conditioning design and selection, surface or submersible water pumps and energy storage requirements as applicable, and selection of cabling, disconnects, and interconnection equipment. A complete set of engineering drawings, stamped by a professional engineer, must be provided.

(2) For large solar thermal systems, the engineering must be comprehensive, including solar collector design and selection, support structure design and selection, pump and piping design and selection, and energy storage design and selection. Provide a complete set of engineering drawings stamped by a professional engineer.

(3) For either type of system, provide a concise but complete description of the large solar system, including location of the project and proposed equipment and system specifications. Identify possible vendors and models of major system components. Provide the expected system energy production based on available solar resource data on a monthly (when possible) and annual basis and how the energy produced by the system will be used.

(4) For either type of system, provide a description of the project site and address issues such as solar access, orientation, proximity to the load or the electrical grid, environmental concerns such as land use, water quality, habitat fragmentation, and aesthetics, unique safety concerns, construction, and installation issues, and whether special circumstances exist.

(e) Project development schedule. Identify each significant task; its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline, including system and site design, permits and agreements, equipment procurement, and system installation from excavation through startup and shakedown.

(f) Project economic assessment. Provide a study that describes the costs and revenues of the proposed project to demonstrate the financial performance of the project, including the calculation of simple payback. Provide a detailed analysis and description of project costs, including design and engineering, permitting, equipment, site preparation, system installation, system startup and shakedown, warranties, insurance, financing, professional services, and operations and maintenance costs. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants. Provide a detailed description of historic or expected energy use and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project's cost effectiveness.
(g) Equipment procurement. Demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Large solar systems may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Provide a detailed description of equipment certification. Identify all the major equipment that is proprietary and justify how this unique equipment is needed to meet the requirements of the proposed design. Include a statement from the applicant certifying that “open and free” competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) Equipment installation. Describe fully the management of and plan for site development and system installation, provide details regarding the scheduling of major installation equipment, including cranes and other devices needed for project construction, and provide a description of the startup and shakedown specifications and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules.

(1) Operations and maintenance. Identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The application must:

(1) Ensure that systems must have at least a 5-year warranty for equipment. Provide information regarding system warranty and availability of spare parts;

(2) Describe the routine operations and maintenance requirements of the proposed system, including maintenance schedules for the mechanical, electrical, and software systems;

(3) For owner maintained portions of the system, describe any unique knowledge, skills, or abilities needed for service operations or maintenance; and

(4) Provide information regarding expected system design life and timing of major component replacement or rebuilds. Include in the discussion, costs and labor associated with the operation and maintenance of the system, and plans for in-sourcing or outsourcing.

(1) Dismantling and disposal of project components. Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives. Describe the budget for and any unique concerns associated with the dismantling and disposal of project components and their wastes. Describe any environmental compliance requirements such as proper disposal or recycling procedures to reduce any potential impact from hazardous chemicals.

SECTION 8. WIND, SMALL

The technical requirements specified in this section apply to small wind systems, which are, as defined in §4280.103, wind energy systems for which the rated power of the wind turbine is 100kW or smaller and with a generator hub height of 120 ft or less. Small wind systems are either stand-alone or connected to the local electrical system at less than 600 volts.

(a) Qualifications of project team. The small wind project team should consist of a system designer, a project manager or general contractor, an equipment supplier of major components, a system installer, a system maintainer, and, in some cases, the owner of the application or load served by the system. One individual or entity may serve more than one role. Authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services must be provided. Authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life must also be provided. The application must:

(1) Discuss the small wind turbine manufacturers and other equipment suppliers of major components being considered in terms of their length of time in business and the number of units installed at the capacity and scale being considered;

(2) Describe the knowledge, skills, and abilities needed to service, operate, and maintain the system for the proposed application; and

(3) Discuss the project manager, system designer, and system installer qualifications for engineering, designing, and installing small wind systems, including any relevant certifications by recognized organizations. Provide a list of the same or similar systems designed, installed, or supplied and currently operating with references, if available.

(b) Agreements, permits, and certifications. Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (b)(1) through (6).

(1) Identify zoning, building, and electrical code issues, and required permits and the anticipated schedule for meeting those requirements and securing those permits.

(2) Identify available component warranties for the specific project location and size.

(3) For systems planning to interconnect with a utility, describe the utility's system
interconnection requirements, power purchase agreements, or licenses, where required, and the anticipated schedule for meeting those requirements and obtaining the necessary permits. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(d) Identify all environmental issues, including environmental compliance issues, associated with the project on Form RD 1940–20, “Request for Environmental Information,” and in compliance with 7 CFR part 1940, subpart G of this title.

(e) Submit a statement certifying that the project will be installed in accordance with applicable local, State, and national codes and regulations.

(f) Design and engineering. Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the source of the wind data and the conditions of the wind monitoring when collected at the site or assumptions made when applying nearby wind data to the site.

(g) Resources assessment. Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the source of the wind data and the conditions of the wind monitoring when collected at the site or assumptions made when applying nearby wind data to the site.

(h) Project development schedule. Identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline, including system and site design, permits and agreements, equipment procurement, and system installation from excavation through startup and shakedown.

(i) Project economic assessment. Provide a study that describes the costs and revenues of the proposed project to demonstrate the financial performance of the project, including the calculation of simple payback. Provide a detailed analysis and description of project costs, including design, permitting, equipment, site preparation, system installation, system startup and shakedown, warranties, insurance, financing, professional services, and operations and maintenance costs. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants. Provide a detailed description of historic or expected energy use and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project’s cost effectiveness.

(j) Equipment procurement. Demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Small wind systems may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Provide a detailed description of equipment certification. Identify all the major equipment that is proprietary and justify how this unique equipment is needed to meet the requirements of the proposed design. Include a statement from the applicant certifying that “open and free” competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(k) Equipment installation. Describe fully the management of and plan for site development and system installation, provide details regarding the scheduling of major installation equipment, including cranes and
other devices needed for project construction, and provide a description of the startup and shakedown specifications and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules.

(1) Operations and maintenance. Identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The application must:

1. Ensure that systems must have at least a 5-year warranty for equipment and a commitment from the supplier to have spare parts available. Provide information regarding system warranty and availability of spare parts;

2. Describe the routine operations and maintenance requirements of the proposed system, including maintenance schedules for the mechanical, electrical, and software systems;

3. Provide historical or engineering information that supports expected design life of the system and timing of major component replacement or rebuilds. Include in the discussion, costs and labor associated with the operation and maintenance of the system, and plans for in-sourcing or out-sourcing; and

4. For owner maintained portions of the system, describe any unique knowledge, skills, or abilities needed for service operations or maintenance.

(i) Dismantling and disposal of project components. Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives. Describe the budget for and any unique concerns associated with the dismantling and disposal of project components and their wastes.

SECTION 9. WIND, LARGE

The technical requirements specified in this section apply to wind energy systems, which are, as defined in §4280.103, wind energy projects for which the rated power of the individual wind turbine(s) is larger than 100kW.

(a) Qualifications of project team. The large wind project team should consist of a project manager, a meteorologist, an equipment supplier, a project engineer, a primary or general contractor, construction contractor, and a system operator and maintainer and, in some cases, the owner of the application or load served by the system. One individual or entity may serve more than one role. Authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services must be provided. Authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life must also be provided. The application must:

1. Discuss the proposed project delivery method. Such methods include a design, bid, build where a separate engineering firm may design the project and prepare a request for bids and the successful bidder constructs the project at the applicant’s risk, and a design/build method, often referred to as turnkey, where the applicant establishes the specifications for the project and secures the services of a developer who will design and build the project at the developer’s risk;

2. Discuss the large wind turbine manufacturers and other equipment suppliers of major components being considered in terms of the length of time in business and the number of units installed at the capacity and scale being considered;

3. Discuss the project manager, equipment supplier, project engineer, and construction contractor qualifications for engineering, designing, and installing large wind systems, including any relevant certifications by recognized organizations. Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available;

4. Discuss the qualifications of the meteorologist, including references; and

5. Describe system operator’s qualifications and experience for servicing, operating, and maintaining the system for the proposed application. Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available.

(b) Agreements, permits, and certifications. Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (b)(1) through (6).

1. Identify zoning, building, and electrical code issues, and required permits and the anticipated schedule for meeting those requirements and securing those permits;

2. Identify land use agreements required for the project and the anticipated schedule for securing the agreements and the term of those agreements;

3. Identify available component warranties for the specific project location and size. For systems planning to interconnect with a utility, describe the utility’s system interconnection requirements, power purchase agreements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements.

4. Identify all environmental issues, including environmental compliance issues, associated with the project on Form RD 1940.

(b) Submit a statement certifying that the project will be carried out in accordance with applicable local, State, and national codes and regulations.

(c) Resources assessment. Provide adequate information and appropriate data to demonstrate the amount of renewable resource available. Projects greater than 500kW must obtain wind data from the proposed project site. For such projects, describe the proposed measurement setup for the collection of the wind resource data. For proposed projects with an established wind resource, provide a summary of the wind resource and the specifications of the measurement setup. Large wind systems larger than 500kW in size will typically require at least 1 year of on-site monitoring. If less than 1 year of data is used, the qualified meteorological consultant must provide a detailed analysis of the correlation between the site data and a nearby, long-term measurement site.

(d) Design and engineering. Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. Large wind systems must be engineered by a qualified party. Systems must be engineered as complete, integrated systems with matched components. The engineering must be comprehensive, including site selection, turbine selection, tower selection, tower foundation, design of the local collection grid, interconnection equipment selection, and system monitoring equipment. For stand-alone, non-grid applications, engineering information must be provided that demonstrates appropriate matching of wind turbine and load.

(1) Provide a concise, but complete, description of the large wind project, including location of the project, proposed turbine specifications, tower height and type of tower, the collection grid, interconnection equipment, and monitoring equipment. Identify possible vendors and models of major system components. Provide the expected system energy production based on available wind resource data on a monthly and annual basis. For wind projects larger than 500kW in size, provide the expected system energy production over the life of the project, including a discussion on inter-annual variation using a comparison of the on-site monitoring data with long-term meteorological data from a nearby monitored site.

(2) Describe the project site and address issues such as site access, proximity to the electrical grid or application load, environmental concerns with emphasis on historic properties, visibility, noise, bird and bat populations, and wildlife habitat destruction and/or fragmentation, construction, and installation issues and whether special circumstances such as proximity to airports exist.

(e) Project development schedule. Identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline, including resource assessment, system and site design, permits and agreements, equipment procurement, and system installation from excavation through startup and shakedown.

(f) Project economic assessment. Provide a study that describes the costs and revenues of the proposed project to demonstrate the financial performance of the proposed project. Provide a detailed analysis and description of project costs, including project management, resource assessment, project design, project permitting, land agreements, equipment, site preparation, system installation, startup and shakedown, warranties, insurance, financing, professional services, and operations and maintenance costs. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants. Provide a detailed analysis and description of annual project revenues, including electricity sales, production tax credits, revenues from green tags, and any other production incentive programs throughout the life of the project. Provide a description of planned contingency fees or reserve funds to be used for unexpected large component replacement or repairs and for low productivity periods. In addition, provide other information necessary to assess the project’s cost effectiveness.

(g) Equipment procurement. Demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Large wind turbines may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Provide a detailed description of equipment certification. Identify all the major equipment that is proprietary and justify how this unique equipment is needed to meet the requirements of the proposed design. Include a statement from the applicant certifying that “open and free” competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) Equipment installation. Describe fully the management of and plan for site development and system installation, provide details regarding the scheduling of major installation equipment, including cranes or
other devices, needed for project construction, and provide a description of the startup and shutdown specifications and process and the conditions required for startup and shutdown to be completed safely and successfully. Typically and for the system as a whole. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules.

(1) Operations and maintenance. Identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The application must:
   (1) Ensure that systems must have at least a 3-year warranty for equipment. Provide information regarding turbine warranties and availability of spare parts;
   (2) Describe the routine operations and maintenance requirements of the proposed project, including maintenance schedules for the mechanical and electrical systems and system monitoring and control requirements;
   (3) Provide information that supports expected design life of the system and timing of major component replacement or rebuilds;
   (4) Provide and discuss the risk management plan for handling large, potential failures of major components such as the turbine gearbox or rotor. Include in the discussion, costs and labor associated with the operation and maintenance of the system, and plans for in-sourcing or out-sourcing;
   (5) Describe opportunities for technology transfer for long-term project operations and maintenance by a local entity or owner/operator; and
   (6) For owner maintained portions of the system, describe any unique knowledge, skills, or abilities needed for service operations or maintenance.

(a) Qualifications of project team. The energy efficiency project team is expected to consist of an energy auditor or other service provider, a project manager, an equipment supplier of major components, a project engineer, and a construction contractor or system installer. One individual or entity may serve more than one role. Authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services must be provided. Authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life must also be provided.

The application must:
   (1) Discuss the qualifications of the various project team members, including any relevant certifications by recognized organizations;
   (2) Describe qualifications or experience of the team as related to installation, service, operation and maintenance of the project;
   (3) Provide a list of the same or similarly engineered projects designed, installed, or supplied by the team or by team members and currently operating. Provide references if available; and
   (4) Discuss the manufacturers of major energy efficiency equipment being considered, including length of time in business.

(b) Agreements, permits, and certifications. Identify all necessary agreements and permits required for the energy efficiency improvement(s) and the status and anticipated schedule for securing those agreements and permits, including the items specified in paragraphs (b)(1) through (4). The applicant must also submit a statement certifying that the applicant will comply with all necessary agreements and permits for the energy efficiency improvement(s).

(1) Identify building code, electrical code, and zoning issues and required permits, and the anticipated schedule for meeting those requirements and securing those permits.
(2) Identify available component warranties for the specific project location and size.
(3) Identify all environmental issues, including environmental compliance issues, associated with the project on Form RD 1940–20, “Request for Environmental Information,” and in compliance with 7 CFR part 1940, subpart G of this title.
(4) Submit a statement certifying that the project will be installed in accordance with applicable local, State, and national codes and regulations.

(c) Energy audits. For all energy efficiency improvement projects, provide adequate and appropriate evidence of energy savings expected when the system is operated as designed.

(1) An energy audit is a written report by an independent, qualified party that documents current energy usage, recommended potential improvements and their costs, energy savings from these improvements, dollars saved per year, and simple payback. The
The energy audit must meet professional and industry standards.

(2) The energy audit must cover the following:

(i) **Situation report.** Provide a narrative description of the facility or process, its energy system(s) and usage, and activity profile. Include price per unit of energy (electricity, natural gas, propane, fuel oil, renewable energy, etc..) paid by the customer on the date of the audit. Any energy conversion should be based on use rather than source.

(ii) **Potential improvements.** List specific information on all potential energy-saving opportunities and the associated costs.

(iii) **Technical analysis.** Discuss the interactions of the potential improvements with existing energy systems.

(A) Estimate the annual energy and energy costs savings expected from each improvement identified in the potential project.

(B) Calculate all direct and attendant indirect costs of each improvement.

(C) Rank potential improvement measures by cost-effectiveness.

(iv) **Potential improvement description.** Provide a narrative summary of the potential improvement and its ability to provide needed benefits, including a discussion of non-energy benefits such as project reliability and durability.

(A) Provide preliminary specifications for critical components.

(B) Provide preliminary drawings of project layout, including any related structural changes.

(C) Document baseline data compared to projected consumption, together with any explanatory notes. Provide the actual total quantity of energy used (BTU) in the original building and/or equipment in the 12 months prior to the ERI project and the projected energy usage after the ERI project shall be the projected total quantity of energy used (BTU) on an annual basis for the same size or capacity as the original building or equipment. For energy efficiency improvement to equipment, if the new piece of equipment has a different capacity than the piece of equipment being replaced, the projected total quantity of energy used for the new piece of equipment shall be adjusted based on the ratio of the capacity of the replaced piece of equipment to the capacity of the new piece of equipment in accordance with the regulation. When appropriate, show before-and-after data in terms of consumption per unit of production, time or area. Include at least 1 year’s bills for those energy sources/fuel types affected by this project. Also submit utility rate schedules, if appropriate.

(D) Identify significant changes in future related operations and maintenance costs.

(E) Describe explicitly how outcomes will be measured.

(d) **Design and engineering.** Provide authoritative evidence that the energy efficiency improvement(s) will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards.

(1) Energy efficiency improvement projects in excess of $50,000 must be engineered by a qualified party. Systems must be engineered as a complete, integrated system with matched components.

(2) For all energy efficiency improvement projects, identify and itemize major energy efficiency improvements, including associated project costs. Specifically delineate which costs of the project are directly associated with energy efficiency improvements. Describe the components, materials or systems to be installed and how they improve the energy efficiency of the process or facility being modified. Discuss passive improvements that reduce energy loads, such as improving the thermal efficiency of a storage facility, and active improvements that directly reduce energy consumption, such as replacing existing energy consuming equipment with high efficiency equipment, as separate topics. Discuss any anticipated synergy between active and passive improvements or other energy systems. Include in the discussion any change in on-site effluents, pollutants, or other by-products.

(3) Identify possible suppliers and models of major pieces of equipment.

(e) **Project development schedule.** Identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline, including energy audit (if applicable), system and site design, permits and agreements, equipment procurement, and system installation from site preparation through startup and shakedown.

(f) **Project economic assessment.** For projects whose total eligible costs are greater than $50,000, provide an analysis of the proposed project to demonstrate its financial performance, including the calculation of simple payback. The analysis should include applicable investment incentives, productivity incentives, loans and grants, and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project’s cost effectiveness.

(g) **Equipment procurement.** Demonstrate that equipment required for the energy efficiency improvement(s) is available and can be procured and delivered within the proposed project development schedule. Energy efficiency improvements may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such
APPENDIX C TO SUBPART B OF PART 4280—TECHNICAL REPORT FOR HYDROPOWER PROJECTS

The technical requirements specified in this appendix apply to all hydropower projects. Hydropower projects are those projects that create hydroelectric or ocean energy.

The Technical Report for hydropower projects must demonstrate that the project design, procurement, installation, startup, operation, and maintenance of the renewable energy system will operate or perform as specified over its design life in a reliable and a cost-effective manner. The Technical Report must also identify all necessary project agreements, demonstrate that those agreements will be in place, and that necessary project equipment and services are available over the design life.

All technical information provided must follow the format specified in this appendix. Supporting information may be submitted in other formats. Design drawings and process flowcharts are encouraged as exhibits. A discussion of each topic is not necessary if the topic is not applicable to the specific project. Questions identified in the Agency’s technical review of the project must be answered to the Agency’s satisfaction before the application will be approved. The applicant must submit the original Technical Report plus one copy to the Rural Development State Office. Hydropower projects with total eligible project costs greater than $400,000 require the services of a licensed professional engineer (PE) or team of PEs. Depending on the level of engineering required for the specific project or if necessary to ensure public safety, the services of a licensed PE or a team of licensed PEs may be required for smaller projects.

(a) Qualifications of project team. The hydropower project team should consist of a system designer, a project manager, an equipment supplier, a project engineer, a construction contractor, and a system operator and maintainer. One individual or entity may serve more than one role. The project team must have demonstrated expertise in hydropower development, engineering, installation, and maintenance. Authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services must be provided. Authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life must also be provided.

The application must:

(1) Qualifications of project team.

(a) Discuss the proposed project delivery method. Such methods include a design, bid,
RBS and RUS, USDA

(1) Identify zoning and code issues and required permits and the anticipated schedule for meeting those requirements and securing those permits. This list should include all local, state, and federal permits required, estimated timeline for each permit and current status of acquiring each permit.

(2) Identify land use agreements required for the project and the anticipated schedule for securing the agreements and the term of those agreements.

(3) Identify available component warranties for the specific project location and size.

(4) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase agreements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements.

(5) Identify all environmental issues, including environmental compliance issues, associated with the project on Form RD 1940-20, “Request for Environmental Information,” and in compliance with 7 CFR part 1940, subpart G. (Note: The environmental review process, including all required publications, must be completed prior to approval of any Rural Development funding.) The applicant may want to work with all Federal organizations involved with the project to supplement a single environmental review document.

(6) Submit a statement certifying that the project will be installed in accordance with applicable local, State, and national codes, regulations, and permits.

(c) Resource assessment. Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the quality of the resource, including temperature (if applicable), flow, and sustainability of the resource, including a summary of the resource evaluation process and the specifications of the measurement setup and the date and duration of the evaluation process and proximity to the proposed site. If less than 1 year of data is used, a qualified consultant must provide a detailed analysis of the correlation between the site data and a nearby, long-term measurement site.

(d) Design and engineering. Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. Projects shall be engineered by a qualified party. Systems must be engineered as a complete, integrated system with matched components. The engineering must be comprehensive, including site selection, system and component selection, conversion system component selection, design of the local collection grid, interconnection equipment selection, and system monitoring equipment. Systems must be constructed by a qualified party.

(1) Provide a concise but complete description of the hydropower project, including location of the project, resource characteristics, system specifications, electric power system interconnection equipment and project monitoring equipment. Identify possible vendors and models of major system components. Provide the expected system energy production on a monthly and annual basis.

(2) Describe the project site and address issues such as site access, proximity to the electrical grid, environmental concerns with emphasis on land use, air quality, water quality, habitat fragmentation, visibility, noise, construction, and installation issues. Identify any unique construction and installation issues.

(e) Project development schedule. Identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline, including resource assessment, system and site design, permits and agreements, equipment procurement, and system installation from excavation through startup and shakedown.

(f) Project economic assessment. Provide a study that describes the costs and revenues
of the proposed project to demonstrate the financial performance of the proposed project. Provide a detailed analysis and description of project costs, including project management, resource assessment, project design, project permitting, land agreements, equipment, site preparation, system installation, startup and shakedown, warranties, insurance, financing, professional services, and operations and maintenance costs. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants. Provide a detailed analysis and description of annual project revenues, including electricity sales, production tax credits, revenues from green tags, and any other production incentive programs throughout the life of the project. Provide a description of planned contingency fees or reserve funds to be used for unexpected large component replacement or repairs and for low productivity periods. In addition, provide other information necessary to assess the project’s cost effectiveness.

(g) Equipment procurement. Demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Hydropower systems may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Provide a detailed description of equipment certification. Identify all the major equipment that is proprietary and justify how this unique equipment is needed to meet the requirements of the proposed design. Include a statement from the applicant certifying that vendors of proprietary services must be provided. Authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services must be provided. Authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life must also be provided. The application must:

(i) Discuss the proposed project delivery method. Such methods include a design, bid, build where a separate engineering firm may design the project and prepare a request for bids and the successful bidder constructs the project at the applicant’s risk, and a design/ build method, often referred to as turnkey.

APPENDIX D TO SUBPART B OF PART 4280—TECHNICAL REPORT FOR FLEXIBLE FUEL PUMPS

The technical requirements specified in this appendix apply to flexible fuel pump projects, as defined in §4280.103.

(a) Qualifications of project team. The flexible fuel pump project team is expected to consist of a project manager, an equipment supplier of major components, a project engineer, and a construction contractor or system installer. One individual or entity may serve more than one role. Authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services must be provided. Authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life must also be provided. The application must:

(1) Ensure that systems must have at least a 3-year warranty for equipment. Provide information regarding turbine warranties and availability of spare parts;

(2) Describe the routine operations and maintenance requirements of the proposed project, including maintenance schedules for the mechanical and electrical systems and system monitoring and control requirements;

(3) Provide information that supports expected design life of the system and timing of major component replacement or rebuilds;

(4) Provide and discuss the risk management plan for handling large, potential failures of major components such as the turbine gearbox or rotor. Include in the discussion, costs and labor associated with the operation and maintenance of the system, and plans for in-sourcing or out-sourcing;

(5) Describe opportunities for technology transfer for long-term project operations and maintenance by a local entity or owner/operator; and

(6) For owner maintained portions of the system, describe any unique knowledge, skills, or abilities needed for service operations or maintenance.

(b) Dismantling and disposal of project components. Describe a plan for dismantling and disposal of project components and associated wastes at the end of their useful lives. Describe the budget for and any unique concerns associated with the dismantling and disposal of project components and their wastes.

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where the applicant establishes the specifications for the project and secures the services of a developer who will design and build the project at the developer’s risk;
(2) Discuss the flexible fuel system equipment, manufacturers of major components being considered in terms of the length of time in business and the number of units installed at the capacity and scale being considered;
(3) Discuss the project manager, equipment supplier, system designer, project engineer, and contractor qualifications for engineering, design, and installing fuel dispensing systems, including any relevant certifications by recognized organizations. Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available; and
(4) Describe the system operator’s qualifications and experience for servicing, operating, and maintaining fuel dispensing equipment or projects. Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available.

(b) Agreements, permits, and certifications. Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (b)(1) through (b)(8).

(1) Include Underwriters Laboratory certifications for installed flexible fuel pumps.
(2) Identify zoning and code issues and required permits and the anticipated schedule for meeting those requirements and securing those permits.
(3) Identify licenses where required and the schedule for obtaining those licenses.
(4) Identify land use agreements required for the project and the anticipated schedule for securing the agreements and the term of those agreements.
(5) Identify any permits or agreements required for solid, liquid, and gaseous emissions or effluents and the schedule for securing those permits and agreements.
(6) Identify available component warranties for the specific project location and size.
(7) Identify all environmental issues, including environmental compliance issues, associated with the project on Form RD 1940–20, “Request for Environmental Information,” and in compliance with 7 CFR part 1940, subpart G of this title.
(8) Submit a statement certifying that the project will be installed in accordance with applicable local, State, and national codes and regulations.

(c) Resource assessment. Provide adequate and appropriate data to demonstrate the amount of renewable fuels available. Indicate the type, quantity, and quality and the demand for that fuel in its service area.

(d) Design and engineering. Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. Projects shall be engineered by a qualified party. Systems must be engineered as a complete, integrated system with matched components. The engineering must be comprehensive, including site selection, system and component selections, and system monitoring equipment. Systems must be constructed by a qualified party.

(1) Provide a concise but complete description of the flexible fuel pump project, including location of the project, resource characteristics, system specifications, electric power system, fire suppression systems, and monitoring equipment. Identify possible vendors and models of major system components. Describe the system capacity, storage tank(s), and dispensing apparatus of the proposed system as rated and as expected in actual field conditions.

(2) Describe the project site and address issues such as site access, foundations, backup equipment when applicable, and environmental concerns with emphasis on land use, air quality, water quality, soil degradation, habitat fragmentation, land use, visibility, odor, noise, construction, and installation issues. Identify any unique construction and installation issues.

(e) Project development schedule. Identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shake down. Provide a detailed description of the project timeline, including resource assessment, system and site design, permits and agreements, equipment procurement, and system installation from excavation through startup and shake down.

(f) Project economic assessment. Provide a report that describes the costs and revenues of the proposed project to demonstrate the financial performance of the project (the projected increase in annual net income resulting by the installation of the project) and include the calculation of simple payback. Provide a detailed analysis and description of project costs, including project management, resource assessment, project design, project permitting, equipment, site preparation, system installation, startup and shake down, warranties, insurance, financing, professional services, and operations and maintenance costs. Provide a detailed analysis and description of annual project revenues and expenses. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants. In addition, provide other information necessary to assess the project’s cost effectiveness.

(g) Equipment procurement. Demonstrate that equipment required by the system is
available and can be procured and delivered within the proposed project development schedule. Flexible fuel systems may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Identify all the major equipment that is proprietary and justify how this unique equipment is needed to meet the requirements of the proposed design. Include a statement from the applicant certifying that “open and free” competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015.

(b) Equipment installation. Fully describe the management of and plan for site development and system installation, provide details regarding the scheduling of major installation equipment needed for project construction, and provide a description of the startup and shakedown specifications and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules.

(1) Operations and maintenance. Identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. In addition:

(a) Provide information regarding available system and component warranties and availability of spare parts;

(b) Describe the routine operations and maintenance requirements of the proposed system, including maintenance schedule for the mechanical, piping, and electrical systems and system monitoring and control requirements. Provide information that supports expected design life of the system and timing of major component replacement or rebuilds. Discuss the costs and labor associated with the operation and maintenance of the system, and plans for in-sourcing or outsourcing. Water infiltration should be checked daily. Replace filters if pump/dis- penser is running slowly. Check/calibrate pump two weeks after initial load conversion.

(c) Dismantling and disposal of project components. Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives. Describe the budget for and any unique concerns associated with the dismantling and disposal of project components and their wastes.

APPENDIX E TO SUBPART B OF PART 4280—FEASIBILITY STUDY CONTENT

Elements in an acceptable feasibility study include, but are not limited to, the elements specified in Sections A through G, as applicable, of this Appendix. Both a technical report for the project and an economic analysis of the project are required as part of the feasibility study. The technical report to be provided must conform to that required under Appendix A, B, C, or D of this subpart, as applicable.

Section A. Executive Summary. Provide an introduction and overview of the project. In the overview, describe the nature and scope of the proposed project, including purpose, project location, design features, capacity, and estimated total capital cost. Include a summary of each of the elements of the feasibility study, including:

(1) Economic feasibility determinations;

(2) Market feasibility determinations;

(3) Technical feasibility determinations;

(4) Financial feasibility determinations;

(5) Management feasibility determinations; and

(6) Recommendations for implementation of the proposed project.

Section B. Economic Feasibility. Provide information regarding project site, the availability of trained or trainable labor; and the availability of infrastructure, including utilities, and rail, air and road service to the site. Discuss feedstock source management, including feedstock collection, pre-treatment, transportation, and storage, and provide estimates of feedstock volumes and costs. Discuss the proposed project’s potential impacts on existing manufacturing plants or other facilities that use similar feedstock if the proposed technology is adopted. Provide projected impacts of the proposed project on resource conservation, public health, and the environment. Provide an overall economic impact of the project including any additional markets created (e.g., for agricultural and forestry products and agricultural waste material) and potential for rural economic development. Provide feasibility plans of project to work with producer associations or cooperatives including estimated amount of annual feedstock and biofuel and byproduct dollars from producer associations and cooperatives.

Section C. Market Feasibility. Provide information on the sales organization and management. Discuss the nature and extent of market and market area and provide marketing plans for sale of projected output, including both the principal products and the by-products. Discuss the extent of competition including other similar facilities in the market area. Provide projected total supply of and projected competitive demand for raw materials. Describe the procurement plan, including projected procurement costs and
the form of commitment of raw materials (e.g., marketing agreements, etc.). Identify commitments from customers or brokers for both the principal products and the by-products. Discuss all risks related to the industry, including industry status.

Section D. Technical Feasibility. The technical feasibility report shall be based upon verifiable data and contain sufficient information and analysis so that a determination may be made on the technical feasibility of achieving the levels of income or production that are projected in the financial statements. The project engineer or architect is considered an independent party provided neither the principals of the firm nor any individual of the firm who participates in the technical feasibility report has a financial interest in the project. If no other individual or firm with the expertise necessary to make such a determination is reasonably available to perform the function, an individual or firm that is not independent may be used.

(1) Identify any constraints or limitations in the financial projections and any other facility or design-related factors that might affect the success of the enterprise. Identify and estimate project operation and development costs and specify the level of accuracy of these estimates and the assumptions on which these estimates have been based.

(2) Discuss all risks related to construction of the project and regulation and governmental action as they affect the technical feasibility of the project.

Section E. Financial Feasibility. Discuss the reliability of the financial projections and assumptions on which the financial statements are based including all sources of project capital both private and public, such as Federal funds. Provide 3 years (minimum) projected Balance Sheets and Income Statements and cash flow projections for the life of the project. Discuss the ability of the business to achieve the projected income and cash flow. Provide an assessment of the cost accounting system. Discuss the availability of short-term credit or other means to meet seasonable business costs and the adequacy of raw materials and supplies. Provide a sensitivity analysis, including feedstock and energy costs. Discuss all risks related to the project, financing plan, the operational units, and tax issues.

Section F. Management Feasibility. Discuss the continuity and adequacy of management. Identify applicant and/or management’s previous experience concerning the receipt of federal financial assistance, including amount of funding, date received, purpose, and outcome. Discuss all risks related to the applicant as a company (e.g., applicant is at the Development-Stage) and conflicts of interest, including appearances of conflicts of interest.

Section G. Qualifications. Provide a resume or statement of qualifications of the author of the feasibility study, including prior experience.

Subpart C [Reserved]

Subpart D—Rural Microentrepreneur Assistance Program


SOURCE: 75 FR 30145, May 28, 2010, unless otherwise noted.

§ 4280.301 Purpose and scope.

(a) This subpart contains the provisions and procedures by which the Agency will administer the Rural Microenterprise Assistance Program (RMAP). The purpose of the program is to support the development and ongoing success of rural microentrepreneurs and microenterprises. To accomplish this purpose, the program will make direct loans, and provide grants to selected Microenterprise Development Organizations (MDOs). Selected MDOs will use the funds to:

(1) Provide microloans to rural microentrepreneurs and microenterprises;

(2) Provide business based training and technical assistance to rural microborrowers and potential microborrowers; and

(3) Perform other such activities as deemed appropriate by the Secretary to ensure the development and ongoing success of rural microenterprises.

(b) The Agency will make direct loans to microlenders, as defined in § 4280.302, for the purpose of providing fixed interest rate microloans to rural microentrepreneurs for startup and growing microenterprises. Eligible microlenders will also be automatically eligible to receive microlender technical assistance grants to provide technical assistance and training to microentrepreneurs that have received or are seeking a microloan under this program.

(c) To allow for extended opportunities for technical assistance and training, the Agency will make technical assistance-only grants to MDOs that have sources of funding other than program funds for making or facilitating microloans.
§ 4280.302 Definitions and abbreviations.

(a) General definitions. The following definitions apply to the terms used in this subpart.

Administrative expenses. Those expenses incurred by an MDO for the operation of services under this program. Not more than 10 percent of TA grant funding may be used for such expenses.

Agency. USDA Rural Development, Rural Business-Cooperative Service or its successor organization.

Agency personnel. Individuals employed by the Agency.

Applicant. The legal entity, also referred to as a microenterprise development organization or MDO, submitting an application to participate in the program.

Application. The forms and documentation submitted by an MDO for acceptance into the program.

Award. The written documentation, executed by the Agency after the application is approved, containing the terms and conditions for provision of financial assistance to the applicant. Financial assistance may constitute a loan or a grant or both.

Business incubator. An organization that provides temporary premises at below market rates, technical assistance, advice, use of equipment, and may provide access to capital, or other facilities or services to rural microentrepreneurs and microenterprises starting or growing a business.

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

Default. The condition that exists when a borrower is not in compliance with the promissory note, the loan and/or grant agreement, or other related documents evidencing the loan.

Delinquency. Failure by an MDO to make a scheduled loan payment by the due date or within any grace period as stipulated in the promissory note and loan agreement.

Eligible project cost. The total cost of a microborrower’s project for which a microloan is being sought from a microlender less any costs identified as ineligible in § 4280.323.

Facilitation of access to capital. For purposes of this program, facilitation of access to capital means assisting a technical assistance client of the TA-only grantee in obtaining a microloan whether or not the microloan is wholly or partially capitalized by funds provided under this program.

Federal Fiscal year (FY). The 12-month period beginning October 1 of any given year and ending on September 30 of the following year.

Full-time equivalent employee (FTE). The Agency uses the Bureau of Labor Statistics definition of full-time jobs as its standard definition. For purposes of this program, a full-time job is a job that has at least 35 hours in a work week. As such, one full-time job with at least 35 hours in a work week equals one FTE; two part-time jobs with combined hours of at least 35 hours in a work week equals one FTE, and three seasonal jobs equals one FTE. If an FTE calculation results in a fraction, it should be rounded up to the next whole number.

Indian tribe. As defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b), “any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.”

Loan loss reserve fund (LLRF). An interest-bearing deposit account that each microlender must establish and maintain in an amount equal to not less than 5 percent of the total amount owed by the microlender under this program to the Agency to pay any shortage in the RMRF caused by delinquencies or losses on microloans.

Microborrower. A microentrepreneur or microenterprise that has received financial assistance from a microlender under this program in an amount of $50,000 or less.

Microenterprise. Microenterprise means:
(i) A sole proprietorship located in a rural area; or
(ii) A business entity, located in a rural area, with not more than 10 full-time-equivalent employees. Rural microenterprises are businesses employing 10 people or fewer that are in need of $50,000 or less in business capital and/or in need of business based technical assistance and training. Such businesses may include any type of legal business that meets local standards of decency. Business types may also include agricultural producers provided they meet the stipulations in this definition.
(iii) All microenterprises assisted under this regulation must be located in rural areas.

Microenterprise development organization (MDO). An organization that is a non-profit entity; an Indian tribe (the government of which tribe certifies that no MDO serves the tribe and no RMAP exists under the jurisdiction of the Indian tribe); or a public institution of higher education; and that, for the benefit of rural microentrepreneurs and microenterprises:
(i) Provides training and technical assistance and/or;
(ii) Makes microloans or facilitates access to capital or another related service; and/or
(iii) Has a demonstrated record of delivering, or an effective plan to develop a program to deliver, such services.

Microentrepreneur. An owner and operator, or prospective owner and operator, of a microenterprise who is unable to obtain sufficient training, technical assistance, or credit other than under this section, as determined by the Secretary. All microentrepreneurs assisted under this regulation must be located in rural areas.

Microlender. An MDO that has been approved by the Agency for participation under this subpart to make microloans and provide an integrated program of training and technical assistance to its microborrowers and prospective microborrowers.

Microloan. A business loan of not more than $50,000 with a fixed interest rate and a term not to exceed 10 years.

Military personnel. Individuals, regardless of rank or grade, currently in active United States military service with less than 6 months remaining in their active duty service requirement.

Nonprofit entity. An entity chartered as a nonprofit entity under State Law.

Program. The Rural Microentrepreneur Assistance Program (RMAP).

Rural microloan revolving fund (RMRF). An exclusive interest-bearing account on which the Agency will hold a first lien and from which microloans will be made; into which payments from microborrowers and reimbursements from the LLRF will be deposited; and from which payments will be made by the microlender to the Agency.

Rural or rural area. Any area of a State not in a city or town that has a population of more than 50,000 inhabitants, according to the latest decennial census of the United States, and the contiguous and adjacent urbanized area, and any area that has been determined to be “rural in character” by the Under Secretary for Rural Development, or as otherwise identified in this definition. In determining which census blocks in an urbanized area are not in a rural area, the Agency will exclude any cluster of census blocks that would otherwise be considered not in a Rural Area only because the cluster is adjacent to not more than two census blocks that are otherwise considered not in a rural area under this definition.

(i) For the purposes of this definition, cities and towns are incorporated population centers with definite boundaries, local self government, and legal powers set forth in a charter granted by the State.
(ii) For the Commonwealth of Puerto Rico, the island is considered rural and eligible for Business Programs assistance, except for the San Juan Census Designated Place (CDP) and any other CDP with greater than 50,000 inhabitants. CDPs with greater than 50,000 inhabitants, other than the San Juan CDP, may be determined to be eligible if they are “not urban in character.” Any such requests must be forwarded to the National Office, Business and Industry Division, with supporting documentation as to why the area is “not urban in character” for review, analysis, and decision by the Rural Development Under Secretary.
(iii) For the State of Hawaii, all areas within the State are considered rural and eligible for Business Programs assistance, except for the Honolulu CDP within the County of Honolulu.

(iv) For the purpose of defining a rural area in the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands, the Agency shall determine what constitutes rural and rural area based on available population data.

(v) On the petition of a unit of local government in an area described in paragraph (v)(A) or (B) of this definition, or on the initiative of the Under Secretary for Rural Development, the Under Secretary may determine that part of an area described in paragraph (v)(A) or (B) of this definition, is a rural area for the purposes of this paragraph, if the Under Secretary finds that the part is “rural in character”, as determined by the Under Secretary.

(A) An urbanized area that has two points on its boundary that are at least 40 miles apart, which is not contiguous or adjacent to a city or town that has a population of greater than 150,000 inhabitants or the urbanized area of such a city or town; or

(B) An urbanized area contiguous and adjacent to a city or town of greater than 50,000 population that is within one-quarter mile of a rural area.

State. Any of the 50 States of the United States, the Commonwealth of Puerto Rico, the District of Columbia, 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.

Technical assistance and training. The provision of education, guidance, or instruction to one or more rural microentrepreneurs to prepare them for self-employment; to improve the state of their existing rural microenterprises; to increase their capacity in a specific technical aspect of the subject business; and, to assist the rural microentrepreneurs in achieving a degree of business preparedness and/or functioning that will allow them to obtain, one or more business loans of $50,000 or less, whether or not from program funds.

Technical assistance grant. A grant, the funds of which are used to provide technical assistance and training, as defined in this section.

(b) Abbreviations. The following abbreviations apply to the terms used in this subpart:

FTE—Full-time employee
LLRF—Loan loss reserve fund
MDO—Microenterprise development organization
RMAP—Rural microentrepreneur assistance program
RMRF—Rural microloan revolving fund
TA—Technical assistance.

§ 4280.304 Review or appeal rights and administrative concerns.

(a) Review or appeal rights. An applicant MDO, a micro lender, or grantee MDO may seek a review of an adverse Agency decision under this subpart from the appropriate Agency official that oversees the program in question, and/or appeal the Agency decision to the National Appeals Division in accordance with 7 CFR part 11.

(b) Administrative concerns. Any questions or concerns regarding the administration of the program, including any action of the micro lender, may be addressed to: USDA Rural Development, Rural Business-Cooperative Service, Specialty Programs Division or its successor agency, or the local USDA Rural Development office.
§ 4280.305 Nondiscrimination and compliance with other Federal laws.

(a) Any entity receiving funds under this subpart 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, 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) 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, 1400 Independence Avenue, S.W., Washington, DC 20250–9410, or call (866) 632–9992 (toll free) or (202) 401–0216 (TDD) for information and instructions regarding the filing of a Civil Rights complaint. USDA is an equal opportunity provider, employer, and lender.

(c) A pre-award compliance review will take place at the time of application when the applicant completes Form RD 400-8, “Compliance Review”. Post-award compliance reviews will take place once every three years after the beginning of participation in the program and until such time as a microlender leaves the program.

§ 4280.306 Forms, regulations, and instructions.

Copies of all forms, regulations, and instructions referenced in this subpart are available in any Agency office, the Agency’s Web site (http://www.rurdev.usda.gov/regs/), and for grants on the Internet at http://www.grants.gov.

§§ 4280.307–4280.309 [Reserved]

§ 4280.310 Program requirements for MDOs.

(a) Eligibility requirements for applicant MDOs. To be eligible for a direct loan or grant award under this subpart, an applicant must meet each of the criteria set forth in paragraphs (a)(1) through (4) of this section, as applicable.

(1) Type of applicant. The applicant must meet the definition of an MDO under this program.

(2) Citizenship. For non-profit entities only, to be eligible to apply for status as an MDO, the applicant must be at least 51 percent controlled by persons who are either:

(i) Citizens of the United States, the Republic of Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, American Samoa, or the Commonwealth of Puerto Rico; or

(ii) Legally admitted permanent residents residing in the U.S.

(3) Legal authority and responsibility. The applicant must have the legal authority necessary to carry out the purpose of the award.

(4) Other eligibility requirements. For potential microlenders only.

(i) The applicant must also provide evidence that it:

(A) Has demonstrated experience in the management of a revolving loan fund; or

(B) Certifies that it, or its employees, have received education and training from a qualified microenterprise development training entity so that the applicant has the capacity to manage such a revolving loan fund; or

(C) Is actively and successfully participating as an intermediary lender in good standing under the U.S. Small Business Administration (SBA) Microloan Program or other similar loan programs as determined by the Administrator.

(ii) An attorney’s opinion regarding the potential microlender’s legal status and its ability to enter into program transactions is required at the time of initial entry into the program. Subsequent to acceptance into the program,
§ 4280.311 Loan provisions for Agency loans to microlenders.

(a) Purpose of the loan. Loans will be made to eligible and qualified microlenders to capitalize RMRFs that it will administer by making and servicing microloans in one or more rural areas.

(b) Eligible activities. Microlenders may make microloans for qualified business activities and use Agency loan funds only as provided in § 4280.322.

(c) Ineligible activities. Microlenders may not use RMRF funds for administrative costs or expenses and may not make microloans under this program for ineligible purposes as specified in § 4280.323.

(d) Cost share. The Federal share of the eligible project cost of a microborrower’s project funded under this section shall not exceed 75 percent. The cost share requirement shall be met by the microlender using either of the options identified in paragraphs (d)(1) and (2) of this section in establishing an RMRF. A microlender may establish multiple RMRFs utilizing either option. Whichever option is selected for an RMRF, it must apply to the entire RMRF and all microloans made with funds from that RMRF.

(1) Microborrower project level option. The loan covenants between the Agency and the microlender and the microlender’s lending policies and procedures shall limit the microlender’s loan to the microborrower to no more than 75 percent of the eligible project cost of the microborrower’s project and require that the microborrower obtain the remaining 25 percent of the eligible project cost from non-Federal sources. The non-Federal share of the eligible project cost of the microborrower’s project may be provided in cash (including through fees, grants (including community development block grants), and gifts) or in the form of in-kind contributions.

(2) RMRF level option. The microlender shall capitalize the RMRF at no more than 75 percent Agency loan funds and not less than 25 percent non-Federal funds, thereby allowing the microlender to finance 100 percent of the microborrower’s eligible project costs. All contributed funds shall be maintained in the RMRF.
(e) Loan terms and conditions for micro-lenders. Loans will be made to micro-lenders under the following terms and conditions:

(1) Funds received from the Agency and any non-Federal share will be deposited into an interest-bearing account that will be the RMRF account.

(2) The RMRF account, including any interest earned on the account and the microloans made from the account, will be used to make fixed-rate microloans, to accept repayments from microborrowers and reimbursements from the LLRF, to repay the Agency and, with the advance written approval of the Agency, to supplement the LLRF with interest earnings (from payments received or from account earnings) from the RMRF.

(3) The term of a loan made to a micro-lender will not exceed 20 years. If requested by the applicant MDO, a shorter term may be agreed upon by the micro-lender and the Agency.

(4) Each loan made to a micro-lender will automatically receive a 2-year deferral during which time no repayment to the Agency will be required. Voluntary payments will be accepted.

(1) Interest will accrue during the deferral period only on funds disbursed by the Agency.

(ii) The deferral period will begin on the day the Agency loan to the micro-lender is closed.

(iii) Loan repayments will be made in equal monthly installments to the Agency beginning on the last day of the 24th month of the life of the loan.

(5) Partial or full repayment of debt to the Agency under this program may be made at any time, including during the deferral period, without any prepayment penalties being assessed.

(6) The micro-lender is responsible for full repayment of its loan to the Agency regardless of the performance of its microloan portfolio.

(7) The Agency may call the entire loan due and payable prior to the end of the full term, due to any non-performance, delinquency, or default on the loan.

(8) Loan closing between the micro-lender and the Agency must take place within 90 days of loan approval or funds will be forfeited and the loan will be deobligated.

(9) Micro-lenders will be eligible to receive a disbursement of up to 25 percent of the total loan amount at the time of loan closing. Interest will accrue on all funds disbursed to the micro-lender beginning on the date of disbursement.

(10) A micro-lender must make one or more microloans within 60 days of any disbursement it receives from the Agency. Failure to make a microloan within this time period may result in the micro-lender not receiving any additional funds from the Agency and may result in the Agency demanding return of any funds already disbursed to the micro-lender.

(11) Micro-lenders may request in writing, and receive additional disbursements not more than quarterly, until the full amount of the loan to the micro-lender is disbursed, or until the end of the 36th month of the loan, whichever occurs first. Letters of request for disbursement must be accompanied by a description of the micro-lender’s anticipated need. Such description will indicate the amount and number of microloans anticipated to be made with the funding.

(12) Each loan made to a micro-lender during its first five years of participation in this program will bear an interest rate of 2 percent. After the fifth year of an MDO’s continuous and satisfactory participation in this program, each new loan made to the micro-lender will bear an interest rate of 1 percent. Satisfactory participation requires a default rate of 5 percent or less and a pattern of delinquencies of 10 percent or less. Except in the case of liquidation or early repayment, loans to micro-lenders must fully amortize over the life of the loan.

(13) During the initial deferral period, each loan to a micro-lender will accrue interest at a rate of 1 or 2 percent based on the ultimate interest rate on the loan. Interest accrued during the 2-year deferral period will be capitalized so that, during the 24th month of the initial deferral period, the micro-lender’s debt to the Agency will be calculated and amortized over the remaining life of the loan. The first payment will be due to the Agency on the last day of the 24th month of the life of the loan.
(14) Funds not disbursed to the microlender by the end of the 36th month of the loan from the Agency will be de-obligated.

(15) The Agency will hold first lien position on the RMRF account, the LLRF, and all notes receivable from microloans.

(16) If a micro lender makes a withdrawal from the RMRF for any purpose other than to make a micro loan, repay the Agency, or, with advance written approval, transfer an appropriate amount of non-Federal funds to the L LRF, the Agency may restrict further access to withdrawals from the account by the microlender.

(17) In the event a microlender fails to meet its obligations to the Agency, the Agency may pursue any combination of the following:

(i) Take possession of the RMRF and/or any microloans outstanding, and/or the LLRF;

(ii) Call the loan due and payable in full; and/or

(iii) Enter into a workout agreement acceptable to the Agency, which may or may not include transfer or sale of the portfolio to another microlender (whether or not funded under this program) deemed acceptable to the Agency.

(f) Loan funding limitations—(1) Minimum and maximum loan amounts. The minimum loan amount a microlender may borrow under this program will be $50,000. The maximum any microlender may borrow on a single loan under this program, or in any given Federal fiscal year, will be $500,000. In no case will the aggregate outstanding balance owed to the program by any single microlender exceed $2,500,000.

(2) Use of funds. Loans must be used only to establish or recapitalize an existing Agency funded RMRF out of which microloans will be made, into which microloan payments will be deposited, and from which repayments to the Agency will be made. In no case will the aggregate outstanding balance owed to the program by any single microlender exceed $2,500,000.

(g) Loan loss reserve fund (LLRF). Each micro lender that receives one or more loans under this program will be required to establish an interest-bearing LLRF.

(1) Purpose. The purpose of the LLRF is to protect the microlender and the Agency against losses that may occur as the result of the failure of one or more micro borrowers to repay their loans on a timely basis.

(2) Capitalization and maintenance. The LLRF is subject to each of the following conditions:

(i) The microlender must maintain the LLRF at a minimum of 5 percent of the total amount owed by the micro lender under this program to the Agency. If the LLRF falls below the required amount, the microlender will have 30 days to replenish the LLRF. The Agency will hold a security interest in the account and all funds therein until the MDO has repaid its debt to the Agency under this program.

(ii) No Agency loan funds may be used to capitalize the LLRF.

(iii) The LLRF must be held in an interest-bearing, Federally-insured deposit account separate and distinct from any other fund owned by the microlender.

(iv) The LLRF must remain open, appropriately capitalized, and active until such time as:

(A) All obligations owed to the Agency by the microlender under this program are paid in full; or

(B) The LLRF is used to assist with full repayment or prepayment of the microlender’s program debt.

(v) Earnings on the LLRF account must remain a part of the account except as stipulated in §4280.311(e)(2).

(3) Use of LLRF. The LLRF must be used only to:

(i) Recapitalize the RMRF in the event of the loss and write-off of a microloan; that is, when a loss has been paid to the RMRF, from the LLRF, the microlender must, within 30 days, replenish the LLRF, with non-federal funds, to the required level;

(ii) Accept non-Federal deposits as required for maintenance of the fund at a level equal to 5 percent or more of the amount owed to the Agency by the microlender under this program;

(iii) Accrue interest (interest earnings accrued by the LLRF will become part of the LLRF and may be used only for eligible purposes); and
(iv) Prepay or repay the Agency program loan.

(4) LLRF funded at time of closing. The LLRF account must be established by the microlender prior to the closing of the loan from the Agency. At the time of initial loan closing, sources of funding for the LLRF must be identified by the microlender so that as microloans are made, the amount in the LLRF can be built over time to an amount greater than or equal to 5 percent of the amount owed to the Agency by the microlender under this program. After the first disbursement is made to a microlender, further disbursements will only be made if the LLRF is funded at the appropriate amount. After the initial loan is made to a microlender, subsequent loan closings will require the LLRF to be funded in an amount equal to 5 percent of the anticipated initial drawdown of funds for the RMRF. Federal funds, except where specifically permitted by other laws, may not be used to fund LLRF.

(5) Additional LLRF funding. In the event of exhibited weaknesses, such as losses that are greater than 5 percent of the microloan portfolio, on the part of a microlender, the Agency may require additional funding be put into the LLRF; however, the Agency may never require an LLRF of more than 10 percent of the total amount owed by the microlender.

(h) Recordkeeping, reporting, and oversight. Microlenders must maintain all records applicable to the program and make them available to the Agency upon request. Microlenders must submit quarterly reports as specified in paragraphs (h)(1) through (4) of this section. Portfolio reporting requirements must be met via the electronic reporting system. Other reports, such as narrative information, may be submitted as hard copy in the event the microlender, grantee, or Agency do not have the capability to submit or accept same electronically.

(1) Periodic reports. On a quarterly basis, within 30 days of the end of the calendar quarter, each microlender that has an outstanding loan under this section must provide to the Agency:

(i) Quarterly reports, using an Agency-approved form, containing such information as the Agency may require, and in accordance with OMB circulars and guidance, to ensure that funds provided are being used for the purposes for which the loan to the microlender was made. At a minimum, these reports must identify each microborrower under this program and should include a discussion reconciling the microlender’s actual results for the period against its goals, milestones, and objectives as provided in the application package;

(ii) SF–PPR, “Performance Progress Report” cover sheet, performance measures (SF–PPR–A), and activity based expenditures (SF–PPR–E); and

(iii) SF–270, “Request for Advance or Reimbursement”.

(2) Minimum retention. Microlenders must provide evidence in their quarterly reports that the sum of the unexpended amount in the RMRF, plus the amount in the LLRF, plus debt owed by the microborrowers is equal to a minimum of 105 percent of the amount owed by the microlender to the Agency unless the Agency has established a higher LLRF reserve requirement for a specific microlender.

(3) Combining accounts and reports. If a microlender has more than one loan from the Agency, a separate report must be made for each except when RMRF accounts have been combined. A microlender may combine RMRF accounts only when:

(i) The underlying loans have the same rates, terms and conditions;

(ii) The combined report allows the Agency to effectively administer the program, including providing the same level of transparency and information for each loan as if separate RMRF reports had been prepared; and

(iii) The accompanying LLRF fund reports also provide the same level of transparency and information for each loan as if separate LLRF reports had been prepared.

(iv) The Agency must approve the combining of accounts and reports in writing before such accounts are combined and reports are submitted.

(4) Delinquency. In the event that a microlender has delinquent loans in its RMAP portfolio, quarterly reports will include narrative explanation of the
steps being taken to cure the delinquencies.

(5) Other reports. Other reports may be required by the Agency from time to time in the event of poor performance, one or more work out agreements or other such occurrences that require more than the usual set of reporting information.

(6) Site visits. The Agency may, at any time, choose to visit the microlender and inspect its files to ensure that program requirements are being met.

(7) Access to microlender’s records. Upon request by the Agency, the microlender will permit representatives of the Agency (or other agencies of the U.S. Department of Agriculture authorized by that Department or the U.S. Government) to inspect and make copies of any records pertaining to operation and administration of this program. Such inspection and copying may be made during regular office hours of the microlender or at any other time agreed upon between the microlender and the Agency.

(8) Changes in key personnel. Before any additions are made to key personnel, the microlender must notify and the Agency must approve such changes.

§ 4280.312 Loan approval and closing.

(a) Loan approval and obligating funds. The loan will be considered approved on the date the signed copy of Form RD 1940–1, “Request for Obligation of Funds,” is signed by the Agency. Form RD 1940–1 authorizes funds to be obligated and may be executed by the Agency provided the microlender has the legal authority to contract for a loan, and to enter into required agreements, including an Agency-approved loan agreement, and meets all program loan requirements and has signed Form RD 1940–1.

(b) Letter of conditions. Upon reviewing the conditions and requirements in the letter of conditions, the applicant must complete, sign, and return Form RD 1942–46, “Letter of Intent to Meet Conditions,” to the Agency; or if certain conditions cannot be met, the applicant may propose alternate conditions. The Agency will review any requests for changes to the letter of conditions. The Agency may approve only minor changes that do not materially affect the microlender. Changes in legal entities prior to loan closing will not be approved.

(c) Loan closing. (1) Prior to loan closing, microlenders must provide evidence that the RMRF and LLRF bank accounts have been set up and the LLRF has been, or will be, funded as described in §4280.311(g)(4). Such evidence shall consist of:

(i) A pre-authorized debit form allowing the Agency to withdraw payments from the RMRF account, and in the event of a repayment workout, from the LLRF account;

(ii) An Agency-approved automatic deposit authorization form from the depository institution providing the Agency with the RMRF account number into which funds may be deposited at time of disbursement to the microlender;

(iii) A statement from the depository institution as to the amount of cash in the LLRF account;

(iv) An Agency-approved promissory note must be executed at loan closing;

(v) An appropriate security agreement on the LLRF and RMRF accounts.

(2) At loan closing, the microlender must certify that:

(i) All requirements of the letter of conditions have been met and

(ii) There has been no material adverse change in the microlender or its financial condition since the issuance of the letter of conditions. If one or more adverse changes have occurred, the microlender must explain the changes and the Agency must determine that the microlender remains eligible and qualified to participate as an MDO.

(3) The microlender will provide sufficient evidence, which may include but is not limited to, mechanics’ lien waivers or in their absence receipts of payment, that no lawsuits are pending or threatened that would adversely affect the security of the microlender when Agency security instruments are filed.

§ 4280.313 Grant provisions.

(a) General. The following provisions apply to each type of grant offered
under this program unless otherwise specified annually in a Federal Register notice. Competition for these funds will occur as part of the application and qualification process of becoming a microlender. Failure to meet scoring benchmarks will preclude an applicant from receiving loan and/or grant dollars. Once an MDO is participating as a microlender, grant funds will be made available automatically based on lending and the availability of funds.

(1) **Grant amounts.**—(i) The maximum TA grant amount for a microlender is 25 percent of the first $400,000 of outstanding microloans owed to the microlender under this program, plus an additional 5 percent of the outstanding loan amount owed by the microborrowers to the lender under this program over $400,000 up to and including $2.5 million. This calculation leads to a maximum grant of $205,000 annually for any microlender to provide technical assistance to its clients. These grants will be awarded annually.

(ii) The maximum amount of a TA-only grant under this program will not exceed 10 percent of the amount of funding available for TA-only grants. The amount of funding available for TA funding will be announced annually and will be based on the availability of funds. In no case will funding for the TA-only grants exceed 10 percent of the amount appropriated for the program each Federal fiscal year.

(2) **Matching requirement.** The MDO is required to provide a match of not less than 15 percent of the total amount of the grant in the form of matching funds, indirect costs, or in-kind goods or services. Unless specifically permitted by laws other than the statute authorizing RMAP, matching contributions must be made up of non-Federal funding.

(3) **Administrative expenses.** Not more than 10 percent of a grant received by a MDO for a Federal fiscal year (FY) may be used to pay administrative expenses. MDOs must submit an annual budget of proposed administrative expenses for Agency approval. The Agency has the right to deny the 10 percent and to fund administration expenses at a lower level.

(4) **Ineligible grant purposes.** Grant funds, matching funds, indirect costs, and in-kind goods and services may not be used for:

(i) Grant application preparation costs;

(ii) Costs incurred prior to the obligation date of the grant;

(iii) Capital improvements;

(iv) Political or lobbying activities;

(v) Assistance to any ineligible entity;

(vi) Payment of any judgment or debt owed; and

(vii) Payment of any costs other than those allowed in paragraphs (b)(1) and (c) of this section.

(5) **Changes in key personnel.** Before any additions are made to key personnel, the microlender must notify and the Agency must approve such changes.

(b) **Grants to assist microentrepreneurs (Microlender Technical Assistance (TA) Grants).** The capacity of a microlender to provide an integrated program of microlending and technical assistance will be evaluated during the scoring process. An eligible MDO selected to be a microlender will be eligible to receive a microlending TA grant if it receives funding to provide microloans under this program.

(1) **Purpose.** The Agency shall make microlender TA grants to microlenders to assist them in providing marketing, management, and other technical assistance to rural microentrepreneurs and microenterprises that have received or are seeking one or more microloans from the microlender.

(2) **Grant amounts.** Microlender TA grants will be limited to an amount equal to not more than 25 percent of the total outstanding balance of microloans made under this program and active by the microlender as of the date the grant is awarded for the first $400,000 plus an additional 5 percent of the loan amount owed by the microborrowers to the lender under this program over $400,000 up to and including $2.5 million. Funds cannot be used to pay off the loans. During the first year of operation, the percentage will be determined based on the amount of the loan to the microlender, but will be disbursed on a quarterly basis based on the amount of microloans made. Any
grant dollars obligated, but not spent, from the initial grant, will be subtracted from the subsequent year grant to ensure that obligations cover only microloans made and active.

(3) **TA grant fund uses and limitations.** The microlender will agree to use TA grant funding exclusively for providing technical assistance and training to eligible microentrepreneurs and microenterprises, with the exception that up to 10 percent of the grant funds may be used to cover the microlender’s administrative expenses, except as may be reduced as provided under §4280.313(a)(4). The following limitations will apply to TA grant funding:

(i) Administrative expenses should be kept to a minimum. As such, the applicant MDO is required, in the application materials, to provide an administrative budget plan indicating the amount of funding it will need for administrative purposes. Applicants will be scored accordingly, with those using less than 10 percent of the funding for administrative purposes being scored higher than those using 10 percent of the funding for administrative purposes.

(ii) While operating the program, the selected microlender will be expected to adhere to the estimates it provides in the application. If for any reason, the microlender cannot meet the expectations of the application, it must contact the Agency in writing to request a budget adjustment.

(iii) At no time will it be appropriate for the microlender to expend more than 10 percent of its grant funding on administrative expenses. Microlenders that go over 10 percent will be considered in performance default and may be subject to forfeiting funding.

(iv) **Budget adjustments** will be considered within the 10 percent limitation and approved or denied on a case-by-case basis.

(c) **TA-only grants.** Grants will be competitively made to MDOs for the purpose of providing technical assistance and training to prospective microborrowers. Technical assistance-only grants will be provided to eligible MDOs that seek to provide business-based technical assistance and training to eligible microentrepreneurs and microenterprises, but do not seek funding for an RMRF. Entities receiving microlending TA grants will not be eligible to apply for TA-only grants.

(1) **Grant term.** TA-only grants will have a grant term not to exceed 12 months from the date the grant agreement is signed.

(2) **Funding level.** The maximum amount of a TA-only grant under this program will not exceed 10 percent of the amount of funding available for TA-only grants. In no case will funding for the TA-only grants exceed 10 percent of the amount appropriated for the program each Federal fiscal year.

(3) **Loan referencing.** TA-only grantees will be required to:

(i) Refer clients to internal or external non-program funded lenders for loans of $50,000 or less and

(ii) Collect data regarding such clients. TA-only grantees will be considered successful if a minimum of 1-in-5 TA clients are referred for a microloan and are operating a business within 18 months of receiving technical assistance.

(4) **Facilitation of access to capital.** Technical assistance-only grantees will be expected to provide training and technical assistance services to the extent that access to capital for eligible microentrepreneurs and microenterprises is facilitated by referral to either an internal or external non-program loan fund so that these clients may take advantage of available financing programs.

(5) **Microlender funding.** No entity will receive grant funding as both a microlender and a TA-only provider; that is, RMAP microlenders are not eligible for TA-only funding and an MDO receiving TA-only funding are not eligible for microlender funding.

(d) **Grant agreement.** For any grant to an MDO or microlender, the Agency will notify the approved applicant in writing, using an Agency-approved grant agreement setting out the conditions under which the grant will be made. The form will include those matters necessary to ensure that the proposed grant is completed in accordance with the proposed project, that grant
funds are expended for authorized purposes, and that the applicable requirements prescribed in the relevant Department regulations are complied with.

§ 4280.314 [Reserved]

§ 4280.315 MDO application and submission information.

(a) Initial and subsequent applications. Applications shall be submitted in accordance with the provisions of this subpart unless adjusted by the Agency in an annual Federal Register Notice for Solicitation of Applications (NOSA) or a Notice of Funding Availability (NOFA), depending on the availability of funds at the time of publication.

(1) The information required in this section is necessary for an application to be considered complete.

(2) When preparing applications, applicants are strongly encouraged to review the scoring criteria in §4280.316 and provide documentation that will support a competitive score.

(3) Only those applicants that meet the basic eligibility requirements in §4280.310 will have their applications fully scored and considered for participation in the program under this section.

(b) Content and form of submission. The content and form requirements will differ based on the nature of the application. All applicants must provide the information specified in paragraph (c) of this section. Additional application information is required in paragraph (d) of this section depending on the type of application being submitted.

(c) Application information for all applicants. All applicants must provide the following information and forms fully completed and with all attachments:

(1) Standard Form-424, “Application for Federal Assistance.”

(2) Standard Form-424A, “Budget Information—Non-construction Programs.”

(3) Standard Form-424B, “Assurances—Non-construction Programs.”

(4) For entities that are applying for more than $150,000 in loan funds and/or more than $100,000 in grant funds, only, SF LLL, “Disclosure of Lobbying Activities.”

(5) AD 1047, “Certification Regarding Debarment, Suspension, and other Responsibility Matters—Primary Covered Transaction.”

(6) For entities applying for program loan funds to become an RMAP micro-lender only, Form RD 1910–11, “Certification of No Federal Debt.”

(7) Form RD 400–8, “Compliance Review.”

(8) Demonstration that the applicant is eligible to apply to participate in this program. To demonstrate eligibility, applicants must submit documentation that the applicant is an MDO as defined in §4280.302, as follows:

(i) If a nonprofit entity, evidence that the applicant organization meets the citizenship requirements;

(ii) If a nonprofit entity, a copy of the applicant’s bylaws and articles of incorporation, which include evidence that the applicant is legally considered a non-profit organization;

(iii) If an Indian tribe, evidence that the applicant is a Federally-recognized Indian tribe, and that the tribe neither operates nor is served by an existing MDO;

(iv) If a public institution of higher education, evidence that the applicant is a public institution of higher education; and

(v) For nonprofit applicants only, a Certificate of Good Standing, not more than 6 months old, from the Office of the Secretary of State in the State in which the applicant is located. If the applicant has offices in more than one state, then the state in which the applicant is organized and licensed will be considered the home location.

(9) Certification by the applicant that it cannot obtain sufficient credit elsewhere to fund the activities called for under this program with similar rates and terms.

(10) Form RD 400–4, “Assurance Agreement.”

(d) Type of application specific information. In addition to the information required under paragraph (c) of this section, the following information is also required, as applicable:

(1) The information specified in §4280.316(a).
§4280.316

(2) An applicant for status as a microlender with more than 3 years of experience as an MDO seeking to participate as a microlender must provide the additional information specified in §4280.316(b). Such an applicant will be applying for a loan to capitalize an RMRF, which, unless otherwise requested by the applicant, will be accompanied by a microlending TA grant.

(3) An applicant for status as a microlender with 3 years or less experience as an MDO seeking to participate as a microlender must provide the additional information specified in §4280.316(c). Such an applicant will be applying for a loan to capitalize an RMRF, which, unless otherwise requested by the applicant, will be accompanied by a microlending TA grant.

(4) All applicants seeking status as a microlender must identify in their application which cost share option(s) the applicant will utilize, as described in §4280.316(d), to meet the Federal cost share requirement. If the applicant will utilize the RMRF-level option, the applicant shall identify the amount(s) and source(s) of the non-Federal share.

(5) An applicant seeking TA-only grant funding must provide the additional information specified in §4280.316(d).

(e) Application limits. Paragraph (d) of this section sets out three types of funding under which applications may be submitted. MDOs may only submit and have pending for consideration, at any given time, one application, regardless of funding category.

(f) Completed applications. Applications that fulfill the requirements specified in paragraphs (a) through (e) of this section will be fully reviewed, scored, and ranked by the Agency in accordance with the provisions of §4280.316.


§4280.316 Application scoring.

Applications will be scored based on the criteria specified in this section using only the information submitted in the application. The total available points per application are 100. Points will be awarded as shown in paragraphs (a) through (e) of this section. Awards will be based on the ranking, with the highest ranking applications being funded first, subject to available funding.

(a) Application requirements for all applicants. All applicants must submit the eligibility information described in §4280.315. Only those applicants deemed eligible will be scored for qualification. Qualification information provides the complete forms and information necessary to determine a baseline of capacity. Additional information is specified depending on the level of experience or type of funding being applied for. The maximum points available in this part of the application are 45. In addition to the eligibility information, all applicants will submit:

1. An organizational chart clearly showing the positions and naming the individuals in those positions. Of particular interest to the Agency are management positions and those positions essential to the operation of microlending and TA programming. Up to 5 points will be awarded.

2. Resumes for each of the individuals shown on the organizational chart and indicated as key to the operation of the activities to be funded under this program. There should be a corresponding resume for each of the key individuals noted and named on the organizational chart. Points will be awarded based on the quality of the resumes and on the ability (based on the resumes) of the key personnel to administer the program. Up to 5 points will be awarded.

3. A succession plan to be followed in the event of the departure of personnel key to the operation of the applicant’s RMAP activities. Up to 5 points will be awarded.

4. Information indicating an understanding of microenterprise development concepts. Provide those parts of your policy and procedures manual that deal with the provision of loans, management of loan funds, and provision of technical assistance. Up to 5 points will be awarded.

5. Copies of the applicant’s most recent, and two years previous, financial statements. Points will be awarded based on the demonstrated ability of the applicant to maintain or grow its
bottom line fund balance, its ability to manage one or more federal programs, and its capacity to manage multiple funding sources, restricted and non-restricted funding sources, income, earnings, and expenditures. Up to 10 points will be awarded.

(6) A copy of the applicant’s organizational mission statement. The mission statement will be rated based on its relative connectivity to microenterprise development and general economic development. The mission statement may or may not be a part of a larger statement. For example, if the mission statement is included in the by-laws or other organizational documents, please so note, direct the reviewer to the proper document, and do not submit these documents twice. Up to 5 points will be awarded.

(7) Information regarding the geographic service area to be served. Describe the service area, which must be rural as defined. State the number of counties or other jurisdictions to be served. Describe the demographics of the service area and whether or not the population is a diverse population. Note that the applicant will not be scored on the size of the service area, but on its ability to fully cover the service area as described. Up to 10 points will be awarded.

(b) Program loan application requirements for MDOs seeking to participate as RMAP microlenders with more than 3 years of experience. In addition to the information required under paragraph (a) of this section, applicants with more than 3 years of experience as a microlender also must provide the information specified in paragraphs (b)(1) through (5) of this section. The total number of points available under this paragraph, in addition to the up to 45 points available in paragraph (a) of this section, is 55, for a total of 100.

(1) History of provision of microloans. The applicant must provide data regarding its history of making microloans for the three years previous to this application by answering the questions in paragraphs (b)(1)(i) through (vi) of this section. This information should be provided clearly and concisely in numerical format as the data will be used to calculate points as noted. Figure 1 presents an example of the format and data required. The maximum number of points under this criterion is 20.

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<thead>
<tr>
<th>Data item</th>
<th>Federal FY</th>
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<tbody>
<tr>
<td></td>
<td>Last fiscal year</td>
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<tr>
<td>Total # of Microloans Made</td>
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<tr>
<td>Total $ Amount of Microloans Made</td>
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<tr>
<td># of Microloans Made in Rural Areas</td>
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<td>Total $ Amount of Microloans Made in Rural Areas</td>
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<tr>
<td># of Microloans Made to Racial and Ethnic Minorities</td>
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<td># of Microloans Made to women</td>
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<tr>
<td># of Microloans Made to the Disabled</td>
<td>...........................</td>
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</table>

(i) Number and amount of microloans made during each of the three previous Federal FYs. Do not include current year information. A narrative may be included as a separate attachment, not in the body of the suggested table.

(ii) Number and amount of microloans made in rural areas in each of the three years prior to the year in which the application is submitted. If the history of providing microloans in rural areas shows:

(A) More than the three consecutive years immediately prior to this application, 5 points will be awarded;

(B) At least two of the years but not more than the three consecutive years immediately prior to this application, 3 points will be awarded;

(C) At least 6 months, but not more than one year immediately prior to this application, 1 point will be awarded.
(iii) Percentage of number of loans made in rural areas. Calculate and enter the total number of microloans made in rural areas as a percentage of the total number of all microloans made for each of the past three Federal FYs. If the percentage of the total number of microloans made in rural areas is:

(A) 75 percent or more, 5 points will be awarded;
(B) At least 50 percent but less than 75 percent, 3 points will be awarded;
(C) At least 25 but less than 50 percent, 1 point will be awarded.

(iv) The percentage of dollar amount of loans made in rural areas. Enter the dollar amount of microloans made in rural areas as a percentage of the dollar amount of the total portfolio (rural and non-rural) of microloans made for each of the previous three Federal FYs. If percentage of the dollar amount of the microloans made in rural areas is:

(A) 75 percent or more of the total amount, 5 points will be awarded;
(B) At least 50 percent but less than 75 percent, 3 points will be awarded;
(C) At least 25 percent but less than 50 percent, 1 point will be awarded.

(v) Each applicant shall compare the diversity of its entire microloan portfolio to the demographic makeup of its service area (as determined by the latest applicable decennial census for the State) based on the number of microloans made during the three years preceding the subject application. Demographic groups shall include gender, racial and ethnic minority status, and disability (as defined in The Americans with Disabilities Act). Points will be awarded on the basis of how close the MDO’s microloan portfolio matches the demographic makeup of its service area. A maximum of 5 points will be awarded.

(A) If at least one loan has been made to each demographic group and if the percentage of loans made to each demographic group is each within 5 or less percent of the demographic makeup, 5 points will be awarded.
(B) If at least one loan has been made to each demographic group and if the percentage of loans made to each demographic group is each within 10 or less percent of the demographic makeup, 3 points will be awarded.
(C) If at least one loan has been made to two or more demographic groups, no points will be awarded.

(D) If no loans have been made to two or more demographic groups, no points will be awarded.

(2) Portfolio management. Each applicant’s ability to manage its portfolio will be determined based on the data provided in response to paragraphs (b)(2)(i) and (ii) of this section and scored accordingly. The maximum number of points under this criterion is 10.

(i) Enter the total number of your microloans paying on time for the three previous Federal FYs. If the total number of microloans paying on time at the end of each year over the prior three Federal FYs is:

(A) 95 percent or more, 5 points will be awarded;
(B) At least 85 percent but less than 95 percent, 3 points will be awarded;
(C) Less than 85 percent, 0 points will be awarded.

(ii) Enter the total number of microloans 30 to 90 days in arrears or that have been written off at year end for the three previous Federal FYs. If the total number of these microloans is:

(A) 5 percent or less of the total portfolio, 5 points will be awarded;
(B) More than 5 percent, 0 points will be awarded.

(3) History of provision of technical assistance. Each applicant’s history of provision of technical assistance to microentrepreneurs and microenterprises, and their ability to reach diverse communities, will be scored based on the data specified in paragraphs (b)(3)(i) through (iv) of this section. Applicants may use a chart such as that suggested in Figure 1 as they deem appropriate. The maximum number of points under this criterion is 15.

(i) Provide the total number of rural and non-rural microentrepreneurs and
(ii) Provide the percentage of the total number of only rural microentrepreneurs and rural microenterprises that received both microloans and TA services for each of the previous three Federal FYs (calculate this as the total number of rural microloans made each year divided by the total number of loans made during the past three Federal FYs). If provision of both microloans and technical assistance to rural microentrepreneurs and rural microenterprises is demonstrated at a rate of:

(A) 75 percent or more, 5 points will be awarded;
(B) At least 50 percent but less than 75 percent, 3 points will be awarded;
(C) At least 25 percent but less than 50 percent, 1 point will be awarded.

(iii) Provide the percentage of the total number of rural microentrepreneurs and rural microenterprises by racial and ethnic minority, disabled, and/or gender that received both microloans and TA services for each of the previous three Federal FYs. If the demonstrated provision of microloans and technical assistance to these rural microentrepreneurs and rural microenterprises is at a rate of:

(A) 75 percent or more, 5 points will be awarded;
(B) At least 50 percent but less than 75 percent, 3 points will be awarded;
(C) At least 25 percent but less than 50 percent, 1 point will be awarded.

(iv) Provide the ratio of TA clients that also received microloans during each of the previous three Federal FYs. If the ratio of clients receiving technical assistance to clients receiving microloans is:

(A) Between 1:1 and 1:5, 5 points will be awarded.
(B) Between 1:6 and 1:8, 3 points will be awarded.
(C) Either 1:9 or 1:10, 1 point will be awarded.

(4) Ability to provide technical assistance. In addition to providing a statistical history of their provision of technical assistance to microentrepreneurs, microenterprises, and microborrowers, applicants must provide a narrative of not more than five pages describing the teaching and training methods used by the applicant organization to provide such technical assistance and discussing the outcomes of their endeavors. Technical assistance is defined in §4280.302. The narrative will be scored as specified in paragraphs (b)(4)(i) through (iv) of this section. The maximum number of points under this criterion is 5.

(i) Applicants that have used more than one method of training and technical assistance (e.g., classroom training, peer-to-peer discussion groups, individual assistance, distance learning) will be awarded 2 points.

(ii) Applicants that provide success stories to demonstrate the effects of technical assistance on their clients will be awarded 1 point.

(iii) Applicants that provide evidence that they require evaluations by the clients of their training programs and indicate that the average level of evaluation scores is “good” or higher will be awarded 1 point.

(iv) Applicants that present their narrative information clearly and concisely (five pages or less) and at a level expected by trainers and teachers will be awarded 1 point.

(5) Proposed administrative expenses to be spent from TA grant funds. The maximum number of points under this criterion is 5. If the percentage of grant funds to be used for administrative purposes is:

(i) Less than 5 percent of the TA grant funding, 5 points will be awarded;
(ii) Between 5 percent and 8 percent, but not including 8 percent, 3 points will be awarded; and
(iii) Between 8 percent up to and including 10 percent, 0 point will be awarded.

(c) Application requirements for MDOs seeking to participate as RMAP microlenders with 3 years or less experience. In addition to the information required under paragraph (a) of this section, an applicant MDO with 3 years or less experience that is applying to be a microlender must submit the information specified in paragraphs (c)(1) through (8) of this section. The total number of points available under this paragraph, in addition to the up to 45 points available in paragraph (a) of this section, is 55, for a total of 100.
§4280.316  7 CFR Ch. XLII (1–1–14 Edition)

(1) The applicant must provide a narrative work plan that clearly indicates its intention for the use of loan and grant funding. Provide goals and milestones for planned microlending and technical assistance activities. In relation to the information requested in paragraph (a) of this section, the applicant must describe how it will incorporate its mission statement, utilize its employees, and maximize its human and capital assets to meet the goals of this program. The applicant must provide its strategic plan and organizational development goals and clearly indicate its lending goals for the five years after the date of application. The narrative work plan should be not more than five pages in length. Up to 10 points will be awarded.

(2) The applicant will provide the date that it began business as an MDO or other provider of business education and/or facilitator of capital. This date will reflect when the applicant became licensed to do business, in good standing with the Secretary of State in which it is registered to do business, and regularly paid staff to conduct business on a daily basis. If the applicant has been in business for:

(i) More than 2 years but less than 3 years, 5 points will be awarded;
(ii) At least 1 year, but not more than 2 years, 3 points will be awarded;
(iii) At least 6 months, but not more than 1 year, 1 point will be awarded;
(iv) Less than 6 months, or more than 3 full years, 0 points will be awarded.

(3) The applicant must describe in detail any microenterprise development training received by it as a whole, or its employees as individuals, to date. The narrative may refer reviewers to already submitted resumes to save space. The training received will be rated on its topical variety, the quality of the description, and its relevance to the organization’s strategic plan. The applicant should not submit training brochures or conference announcements. Up to 10 points will be awarded.

(4) The applicant must indicate its current number of employees, those that concentrate on rural microentrepreneurial development, and the current average caseload for each. Indicate how the caseload ratio does or does not optimize the applicant’s ability to perform the services described in the work plan. Discuss how Agency grant funding will be used to assist with TA program delivery and how loan funding will affect the portfolio. Up to 5 points will be awarded.

(5) The applicant must indicate any training organizations with which it has a working relationship. Provide contact information for references regarding the applicant’s capacity to perform the work plan provided. If the recommendations received from references are:

(i) Generally excellent, 5 points will be awarded;
(ii) Generally above average, 3 points will be awarded;
(iii) Generally average, 1 point will be awarded;
(iv) Generally less than average, 0 points will be awarded.

(6) Describe any plans for continuing training relationship(s), including ongoing or future training plans and goals, and the timeline for same. Up to 5 points will be awarded.

(7) The applicant will describe its internal benchmarking system for determining client success, reporting on client success, and following client success for up to 5 years after completion of a training relationship. Up to 10 points will be awarded.

(8) The applicant will identify its proposed administrative expenses to be spent from TA grant funds. The maximum total number of points under this criterion is 5. If the percentage of grant funds to be used for administrative purposes is:

(i) Less than 5 percent of the TA grant funding, 5 points will be awarded;
(ii) Between 5 percent and 8 percent, but not including 8 percent, 3 points will be awarded; and
(iii) Between 8 percent up to and including 10 percent, 0 points will be awarded.

(d) Application requirements for MDOs seeking technical assistance-only grants. TA-only grants may be provided to MDOs that are not RMAP microlenders
seeking to provide training and technical assistance to rural microentrepreneurs and rural microenterprises. An applicant seeking a TA-only grant must submit the information specified in paragraphs (d)(1) through (4) of this section. The total number of points available under this section, in addition to the 45 points available in paragraph (a) of this section, is 55, for a total of 100 points.

(1) History of provision of technical assistance. Each applicant’s history of provision of technical assistance to microentrepreneurs and microenterprises, and their ability to reach diverse communities, will be scored based on the data specified in paragraphs (d)(1)(i) through (iv) of this section. Applicants may use a chart such as that suggested in Figure 1 as they deem appropriate. The maximum number of points under this criterion is 20.

(i) Provide the total number of rural and non-rural microentrepreneurs and microenterprises that received both microloans and TA services for each of the previous three Federal FYs.

(ii) Provide the percentage of the total number of rural microentrepreneurs and rural microenterprises that received both microloans and TA services for each of the previous three Federal FYs (calculate this as the total number of rural microloans made each year divided by the total number of rural and non-rural microloans made during the past three Federal FYs). If provision of both technical assistance and resultant microloans to rural microentrepreneurs and rural microenterprises is demonstrated at a rate of:

(A) 75 percent or more, 5 points will be awarded;

(B) At least 50 percent but less than 75 percent, 3 points will be awarded;

(C) At least 25 percent but less than 50 percent, 1 point will be awarded.

(iii) Provide the ratio of TA clients that also received microloans during each of the last three years. If the ratio of clients receiving technical assistance to clients receiving microloans is:

(A) Between 1:1 and 1:5, 5 points will be awarded.

(B) Between 1:6 and 1:8, 3 points will be awarded.

(C) Either 1:9 or 1:10, 1 point will be awarded.

(2) Ability to provide technical assistance. In addition to providing a statistical history of their provision of technical assistance to microentrepreneurs, microenterprises, and microborrowers, applicants must provide a narrative of not more than five pages describing the teaching and training method(s) used by the applicant organization to provide technical assistance and discussing the outcomes of their endeavors. The narrative will be scored as specified in paragraphs (d)(2)(i) through (iv) of this section. The maximum number of points under this criterion is 20.

(i) Applicants that have used more than one method of training and technical assistance (e.g., classroom training, peer-to-peer discussion groups, individual assistance, distance learning) will be awarded 5 points.

(ii) Applicants that provide success stories to demonstrate the effects of technical assistance on their clients will be awarded points under either of the following paragraphs, but not both.

(A) News stories that highlight businesses made successful as a result of technical assistance, 5 points will be awarded.

(B) Internal stories that highlight businesses made successful as a result of technical assistance, 3 points.

(iii) Applicants that provide evidence that they require evaluations by the clients of their training programs and indicate that the evaluation scores are generally:
§ 4280.317  Selection of applications for funding.

All applications received will be scored using the scoring criteria specified in §4280.316. Because each set of applicants is scored on a 100 point scale, applications will be ranked together. Shortened applications can only receive 90 points. Within funding limitations, applications will be funded in descending order, from the highest ranking application down. If two or more applications score the same, the Administrator may prioritize such applications to help the program achieve overall geographic diversity.

(a) Timing and submission of applications. (1) All applications must be submitted as a complete application, in one package. Packages must be bound in a three ring binder and evidence must be organized in the order of appearance in §4280.315 of this document. Applications that are unbound, disorganized, or otherwise not ready for evaluation will be returned.

(2) Applications will be accepted on a quarterly basis using Federal fiscal quarters. Deadlines and specific application instructions will be published annually in the Federal Register.
(3) Applications received will be reviewed, scored, and ranked quarterly. Unless withdrawn by the applicant, the Agency will retain unsuccessful applications that score 70 points or more, for consideration in subsequent reviews, through a total of four quarterly reviews. Applications unsuccessful after 4 quarters will be returned.

(b) Availability of funds. If an application is received, scored, and ranked, but insufficient funds remain to fully fund it, the Agency may elect to fund an application requesting a smaller amount that has a lower score. Before this occurs, the Agency, as applicable, will provide the higher scoring applicant the opportunity to reduce the amount of its request to the amount of funds available. If the applicant agrees to lower its request, it must certify that the purposes of the project can be met, and the Agency must determine that the project is financially feasible at the lower amount.

(c) Applicant notification. The Agency will notify applicants regarding their selection or non-selection, provide appeal rights of unsuccessful applicants, and closing procedures for the loans and/or grants to awardees.

(d) Closing. Awardees unable to complete closing for obligation within 90 days will forfeit their funding. Such funding will revert back to the Agency for later use.

§§ 4280.318–4280.319 [Reserved]

§ 4280.320 Grant administration.

(a) Oversight. Any MDO receiving a grant under this program is subject to Agency oversight, with site visits and inspection of records occurring at the discretion of the Agency. In addition, MDOs receiving a grant under this subpart must submit reports, as specified in paragraphs (a)(1) through (3) of this section.

(1) On a quarterly basis, within 30 days after the end of each Federal fiscal quarter, the microlender will provide to the Agency an Agency-approved quarterly report containing such information as the Agency may require to ensure that funds provided are being used for the purposes for which the grant was made, including:

(i) SF–PPR, “Performance Progress Report,” including narrative reporting information as required by Office of Management and Budget (OMB) circulars and successor regulations. This report will include information on the microlender’s technical assistance, training, and/or enhancement activity, and grant expenses, milestones met, or unmet, explanation of difficulties, observations and other such information;

(ii) As appropriate, SF–270; and

(iii) If requesting grant funding at the time of reporting, SF–PPR–E, “Activity Based Expenditures.”

(2) If a microlender has more than one grant from the Agency, a separate report must be made for each.

(3) Other reports may be required by the Agency from time to time in the event of poor performance or other such occurrences that require more than the usual set of reporting information.

(b) Payments. The Agency will make grant payments not more often than on a quarterly basis. The first payment may be made in advance and will equal no more than one fourth of the grant award. Payment requests must be submitted on Standard Form 270 and will only be paid if reports are up to date and approved.

§ 4280.321 Grant and loan servicing.

In addition to the ongoing oversight of the participating MDOs:

(a) Grants. Grants will be serviced in accordance with all applicable regulations:

(1) Department of Agriculture regulations including, but not limited to 7 CFR part 1951, subparts E and O, parts 3015, 3016, 3017, 3018, 3019, and 3052; and

(2) Office of Management and Budget (OMB) regulations including, but not limited to, 2 CFR parts 215, 220, 230, and OMB Circulars A–110 and A–133.

(b) Loans. Loans to microlenders will be serviced in accordance with the following:

(1) Department of Agriculture regulations 7 CFR part 1951, subparts E, O, and R;

(2) Other Department of Agriculture regulations as may be applicable; and

(3) OMB Circular A–129.
§ 4280.322 Loans from the microlenders to microentrepreneurs.

The primary purpose of making a loan to a microlender is to enable that microlender to make microloans. It is the responsibility of each microborrower to repay the microlender in accordance with the terms and conditions agreed to with the microlender. It is the responsibility of each microlender to make microloans in such a fashion that the terms and conditions of the microloan will support microborrower success while enabling the microlender to repay the Federal Government.

(a) Maximum microloan amount. The maximum amount of a microloan made under this program will be $50,000.

(b) Microloan terms and conditions. The terms and conditions for microloans made by microlenders will be negotiated between the prospective microborrower and the microlender, with the following limitations:

1. No microloan may have a term of more than 10 years;
2. The interest rate charged to the microborrower will be established at, or before the closing of the microloan; and
3. The microlender may establish its margin of earnings but may not adjust the margin so as to violate Fair Credit Lending laws. Margins must be reasonable so as to ensure that microloans are affordable to the microborrowers.

(c) Microloan insurance requirements. The requirement of reasonable hazard, key person, and other insurance will be at the discretion of the microlender.

(d) Credit elsewhere test. Microborrowers will be subject to a “credit elsewhere” test so that the microlender will make loans only to those borrowers that cannot obtain business funding of $50,000 or less at affordable rates and on acceptable terms. Each microborrower file must contain evidence that the microborrower has sought credit elsewhere or that the rates and terms available within the community at the time were outside the range of the microborrower’s affordability. Evidence may include a comparison of rates, loan limitations, terms, etc. for other funding sources to those forth offered by the microlender. Denial letters from other lenders are not required.

(e) Fair credit requirements. To ensure fairness, microlenders must publicize their rates and terms on a regular basis. Microlenders are also subject to Fair Credit lending laws as discussed in § 4280.305.

(f) Eligible microloan purposes. Agency loan funds may be used to make microloans as defined in § 4280.302 for any legal business purpose not identified in § 4280.323 as an ineligible purpose. Microlenders may make microloans for qualified business activities and expenses including, but not limited to:

1. Working capital;
2. The purchase of furniture, fixtures, supplies, inventory or equipment;
3. Debt refinancing;
4. Business acquisitions; and
5. The purchase or lease of real estate that is already improved and will be used for the location of the subject business only, provided no demolition or construction will be accomplished with program funding. Neither interior decorating, nor the affixing of chattel to walls, floors, or ceilings is considered to be demolition or construction.

(g) Military personnel. Military personnel who are or seek to be a microentrepreneur and are on active duty with six months or less remaining in their active duty status may receive a microloan and/or technical assistance and training if they are otherwise qualified to participate in the program.

§ 4280.323 Ineligible microloan purposes and uses.

Agency loan funds will not be used for the payment of microlender administrative costs or expenses and microlenders may not make microloans under this program for any of purposes and uses identified as ineligible in paragraphs (a) through (p) of this section.

(a) Construction costs.

(b) Any amount in excess of that needed by a microborrower to accomplish the immediate business goal.

(c) Assistance that will cause a conflict of interest or the appearance of a conflict of interest including but not limited to:

1. Financial assistance to principals, directors, officers, or employees of the
(1) The purpose of which would appear to benefit the microlender or its principals, directors, or employees, or their close relatives, as defined, in any way other than the normal repayment of debt.

(d) Distribution or payment to a microborrower when such will use any portion of the microloan for other than the purpose for which it was intended.

(e) Distribution or payment to a charitable institution not gaining revenue from sales or fees to support the operation and repay the microloan.

(f) Microloans to a fraternal organization.

(g) Any microloan to an applicant that has an RMAP funded microloan application pending with another microlender or that has an RMAP-funded microloan outstanding with another microlender that would cause the applicant to owe a combined amount of more than $50,000 to one or more microlenders under this program.

(h) Assistance to USDA Rural Development (Agency) employees, or their close relatives, as defined.

(i) Any illegal activity.

(j) Any project that is in violation of either a Federal, State, or local environmental protection law, regulation, or enforceable land use restriction unless the microloan will result in curing or removing the violation.

(k) Microloans to lending and investment institutions and insurance companies.

(l) Golf courses, race tracks, or gambling facilities.

(m) Any lobbying activities as described in 7 CFR part 3018.

(n) Lines of credit.

(o) Subordinated liens.

(p) Use of an Agency funded loan to pay debt service on a previous Agency loan.

§§ 4280.324–4280.399 [Reserved]

§ 4280.400 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0570-0062. A person is not required to respond to this collection of information unless it displays a currently valid OMB control number.


PART 4284—GRANTS

Subpart A—General Requirements for Cooperative Services Grant Programs

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Subpart F—Rural Cooperative Development Grants

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Subpart G—Rural Business Opportunity Grants

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4284.620 Applicant eligibility.
§ 4284.1 Purpose.
The purpose of this subpart is to set forth definitions and requirements which are common to all grant programs set forth in this part administered by Cooperative Services within

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7 CFR Ch. XLII (1–1–14 Edition)
the Rural Business-Cooperative Service (RBS). Programs administered by the Business Programs within RBS are not affected by this subpart.

§ 4284.2 Policy.

It is the policy of Cooperative Services to administer grant programs as uniformly as possible to minimize unnecessary inconsistencies in the administration of the grant programs provided for in this part. The specific provisions or definitions provided in the subparts that are specific to Cooperative Services are supplemental to these general provisions. Where a specific program provision is expressly different from what is provided in this subpart, the program specific subpart shall prevail.

§ 4284.3 Definitions.

Agency—Rural Business-Cooperative Service (RBS), an agency of the United States Department of Agriculture (USDA), or a successor agency.

Agricultural Producer—Persons or entities, including farmers, ranchers, loggers, agricultural harvesters and fishermen, that engage in the production or harvesting of an agricultural product. Producers may or may not own the land or other production resources, but must have majority ownership interest in the agricultural product to which Value-Added is to accrue as a result of the project. Examples of agricultural producers include: a logger who has a majority interest in the logs harvested that are then converted to boards, a fisherman that has a majority interest in the fish caught that are then smoked, a wild herb gatherer that has a majority interest in the gathered herbs that are then converted into essential oils, a cattle feeder that has a majority interest in the cattle that are fed, slaughtered and sold as boxed beef, and a corn grower that has a majority interest in the corn produced that is then converted into corn meal.

Agricultural Product—Plant and animal products and their by-products to include forestry products, fish and seafood products.

Cooperative Services—The office within RBS, and its successor organization, that administers programs authorized by the Cooperative Marketing Act of 1926 (7 U.S.C. 451 et seq.) and such other programs so identified in USDA regulations.

Economic development—The economic growth of an area as evidenced by increase in total income, employment opportunities, decreased out-migration of population, value of production, increased diversification of industry, higher labor force participation rates, increased duration of employment, higher wage levels, or gains in other measurements of economic activity, such as land values.

Emerging Market—A new or developing market for the applicant, which the applicant has not traditionally supplied.

Farmer or Rancher Cooperative—A farmer or rancher-owned and controlled business from which benefits are derived and distributed equitably on the basis of use by each of the farmer or rancher owners.

Fixed equipment—Tangible personal property used in trade or business that would ordinarily be subject to depreciation under the Internal Revenue Code, including processing equipment, but not including property for equipping and furnishing offices such as computers, office equipment, desks or file cabinets.

Independent Producers—Agricultural producers, individuals or entities (including for profit and not for profit corporations, LLCs, partnerships or LLPs), where the entities are solely owned or controlled by Agricultural Producers who own a majority ownership interest in the agricultural product that is produced. An independent producer can also be a steering committee composed of independent producers in the process of organizing an association to operate a Value-Added venture that will be owned and controlled by the independent producers supplying the agricultural product to the market. Independent Producers must produce and own the agricultural
product to which value is being added. Producers who produce the agricultural product under contract for another entity but do not own the product produced are not independent producers.

**Majority-Controlled Producer-Based Business Venture**—A venture where more than 50% of the ownership and control is held by Independent Producers, or, partnerships, LLCs, LLPs, corporations or cooperatives that are themselves 100 percent owned and controlled by Independent Producers.

**Matching Funds**—Cash or confirmed funding commitments from non-Federal sources unless otherwise provided by law. Unless otherwise provided, matching funds must be at least equal to the grant amount. Unless otherwise provided, in-kind contributions that conform to the provisions of 7 CFR 3015.50 and 7 CFR 3019.23, as applicable, can be used as matching funds. Examples of in-kind contributions include volunteer services furnished by professional and technical personnel, donated supplies and equipment, and donated office space. Matching funds must be provided in advance of grant funding, such that for every dollar of grant that is advanced, not less than an equal amount of match funds shall have been funded prior to submitting the request for reimbursement. Matching funds are subject to the same use restrictions as grant funds. Funds used for an ineligible purpose will not be considered matching funds.

**National Office**—USDA RBS headquarters in Washington, DC.

**Nonprofit institution**—Any organization or institution, including an accredited institution of higher education, no part of the net earnings of which may inure, to the benefit of any private shareholder or individual.

**Product segregation**—Physical separation of a product or commodity from similar products. Physical separation requires a barrier to prevent mixing with the similar product.

**Public body**—Any state, county, city, township, incorporated town or village, borough, authority, district, economic development authority, or Indian tribe on federal or state reservations or other federally recognized Indian tribe in rural areas.

**RFP**—Request for Proposals.

**Rural and rural area**—Includes all the territory of a state that is not within the outer boundary of any city or town having a population of 50,000 or more and the urbanized area contiguous and adjacent to such city or town, as defined by the U.S. Bureau of the Census using the latest decennial census of the United States.

**Rural Development**—A mission area within the USDA consisting of the Office of Under Secretary for Rural Development, Office of Community Development, Rural Business-Cooperative Service, Rural Housing Service and Rural Utilities Service and their successors.

**State**—includes each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and, as may be determined by the Secretary to be feasible, appropriate and lawful, the Freely Associated States and the Federated States of Micronesia.

**State Office**—USDA Rural Development offices located in each state.

**Value-Added**—The incremental value that is realized by the producer from an agricultural commodity or product as the result of a change in its physical state, differentiated production or marketing, as demonstrated in a business plan, or Product segregation. Also, the economic benefit realized from the production of farm or ranch-based renewable energy. Incremental value may be realized by the producer as a result of either an increase in value to buyers or the expansion of the overall market for the product. Examples include milling wheat into flour, slaughtering livestock or poultry, making strawberries into jam, the marketing of organic products, an identity-preserved marketing system, wind or hydro power produced on land that is farmed and collecting and converting methane from animal waste to generate energy. Identity-preserved marketing systems include labeling that identifies how the product was produced and by whom.
§ 4284.4 Appeals.
Any appealable adverse decision made by the Agency may be appealed in accordance with USDA appeal regulations found at 7 CFR part 11 and subpart B of part 1900. If the Agency makes a determination that a decision is not appealable, a participant may request that it be reviewed by the Director of the National Appeals Division.

§ 4284.5 [Reserved]

§ 4284.6 Applicant eligibility.
An outstanding judgment obtained against an applicant by the United States in a Federal Court (other than in the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible to receive any assistance until the judgment is paid in full or otherwise satisfied. RBS grant funds may not be used to satisfy the judgment.

§ 4284.7 Electronic submission.
Applicants and grant awardees are encouraged, but not required, to submit applications and reports in electronic form as prescribed in requests for proposals issued by USDA and in the applicable grant agreements.

§ 4284.8 Grant approval and obligation of funds.
The following statement will be entered in the comment section of the Request for Obligation of Funds, which must be signed by the grantee:

The grantee certifies that it is in compliance with and will continue to comply with all applicable laws, regulations, Executive Orders and other generally applicable requirements, including those contained in 7 CFR part 4284 and 7 CFR parts 3015, 3016, 3017, 3018, 3019 and 3052 in effect on the date of grant approval, and the approved Letter of Conditions.

§ 4284.9 Grant disbursement.
The Agency will determine, based on 7 CFR parts 3015, 3016 and 3019, as applicable, whether disbursement of a grant will be by advance or reimbursement. The Agency may limit the frequency in which a Request for Advance or Reimbursement may be submitted.

§ 4284.10 Ineligible grant purposes.
Grant funds may not be used to:
(a) Duplicate current services or replace or substitute support previously provided. If the current service is inadequate, however, grant funds may be used to expand the level of effort or services beyond what is currently being provided;
(b) Pay costs of preparing the application package for funding under this program;
(c) Pay costs of the project incurred prior to the date of grant approval;
(d) Fund political activities;
(e) Pay for assistance to any private business enterprise which does not have a least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence;
(f) Pay any judgment or debt owed to the United States;
(g) Plan, repair, rehabilitate, acquire, or construct a building or facility (including a processing facility);
(h) Purchase, rent or install Fixed Equipment;
(i) Pay for the repair of privately owned vehicles; or
(j) Fund research and development.

§ 4284.11 Award requirements.
In addition to specific grant requirements, all approved applicants will be required to do the following:
(a) Enter into a grant agreement with USDA in form and substance similar to the form of agreement as may be published within or as an appendix to the applicable RFP;
(b) Submit a feasibility study and business plan showing the viability of the venture, if any Federal grant and matching funds are to be used as working capital;
(c) Use “Request for Advance or Reimbursement” to request advances or reimbursements, as applicable, but not more frequently than once a month;
(d) Maintain a financial management system that is acceptable to the Agency; and
(e) Collect and maintain data on race, sex and national origin of the beneficiaries of the project.
§ 4284.12 Reporting requirements.

Grantees must submit the following to USDA:

(a) A “Financial Status Report” listing expenditures according to agreed upon budget categories, on a semi-annual basis. Reporting periods end each March 31 and September 30. Reports are due 30 days after the reporting period ends.

(b) Semi-annual performance reports that compare accomplishments to the objectives stated in the proposal. Identify all tasks completed to date and provide documentation supporting the reported results. If the original schedule provided in the work plan is not being met, the report should discuss the problems or delays that may affect completion of the project. Objectives for the next reporting period should be listed. Compliance with any special condition on the use of award funds should be discussed. Reports are due as provided in paragraph (a) of this section. The supporting documentation for completed tasks include, but are not limited to, feasibility studies, marketing plans, business plans, articles of incorporation and bylaws and an accounting of how working capital funds were spent.

(c) Final project performance reports, inclusive of supporting documentation. The final performance report is due within 30 days of the completion of the project.

§ 4284.13 Confidentiality of reports.

All reports submitted to the Agency will be held in confidence to the extent permitted by law.

§ 4284.14 Grant servicing.

Grants will be serviced in accordance with 7 CFR part 1951, subparts E and O. Grantees will permit periodic inspection of the program operations by a representative of the Agency. All non-confidential information resulting from the Grantee’s activities shall be made available to the general public on an equal basis.

§ 4284.15 Performance reviews.

(a) USDA will incorporate performance criteria in grant award documentation and will regularly evaluate the progress and performance of grant awardees.

(b) USDA may elect to suspend or terminate a grant in all or part, or funding of a particular workplan activity, but nevertheless fund the remainder of a request for an advance or reimbursement, as applicable, where USDA has determined:

1. That the grantee or subrecipient of grant funds has demonstrated insufficient progress in complying with the terms of the grant agreement;
2. There is reason to believe that other sources of joint funding have not been or will not be forthcoming on a timely basis; or
3. Such other cause as USDA identifies in writing to the grantee (including but not limited to the use of Federal grant funds for ineligible purposes).

§ 4284.16 Other considerations.

(a) Environmental review. All grants made under this subpart are subject to the requirements of 7 CFR part 1940, subpart G. Applications for technical assistance or planning projects are generally excluded from the environmental review process by § 1940.333, provided the assistance is not related to the development of a specific site. Applicants for grant funds must consider and document within their plans the important environmental factors within the planning area and the potential environmental impacts of the plan on the planning area, as well as the alternative planning strategies that were reviewed.

(b) Civil rights. All grants made under this subpart are subject to the requirements of title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color and national origin as outlined in 7 CFR part 1901, subpart E. In addition, the grants made under this subpart are subject to the requirements of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of disability; the requirements of the Age Discrimination Act of 1975, which prohibits discrimination on the basis of age; and title III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability by private entities in places.
of public accommodations. This program will also be administered in accordance with all other applicable civil rights law.

(c) Other USDA regulations. The grant programs under this part are subject to the provisions of the following regulations, as applicable:

(1) 7 CFR part 3015, Uniform Federal Assistance Regulations;
(2) 7 CFR part 3016, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;
(3) 7 CFR part 3017, Governmentwide Debarment and Suspension (non-procurement) and Governmentwide Requirements for Drug-Free Workplace (Grants);
(4) 7 CFR part 3018, New Restrictions on Lobbying;
(5) 7 CFR part 3019, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-profit Organizations; and
(6) 7 CFR part 3052, Audits of States, Local Governments and Non-profit Organizations.

§ 4284.17 Member delegate clause.

No Member of Congress shall be admitted to any share or part of a grant program or any benefit that may arise there from, but this provision shall not be construed to bar a contractor under a grant a publicly held corporation whose ownership might include a Member of Congress.

§ 4284.18 Audit requirements.

Grantees must comply with the audit requirements of 7 CFR part 3052. The audit requirements apply to the years in which grant funds are received and years in which work is accomplished using grant funds.

§ 4284.19 Programmatic changes.

The Grantee shall obtain prior approval for any change to the scope or objectives of the approved project. Failure to obtain prior approval of changes to the scope of work or budget may result in suspension, termination and recovery of grant funds.
§§ 4284.505–4284.506

1994 Institution—means a college identified as such for purposes of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note). Contact the Agency for a list of currently eligible colleges.

Project—A planned undertaking by a Center that utilizes the funds provided to it to promote economic development in rural areas through the creation and enhancement of cooperatives.

§§ 4284.505–4284.506 [Reserved]

§ 4284.507 Eligibility for grant assistance.

Grants may be made to Nonprofit corporations and institutions of higher education. Grants may not be made to Public bodies.

§ 4284.508 Use of grant funds.

Grant funds may be used to pay up to 75 percent (95 percent where the grantee is a 1994 Institution) of the cost of establishing and operating centers for rural cooperative development. Matching funds contributed by the applicant may include a loan from another federal source. Grant funds may be used for, but are not limited to, providing the following to individuals, cooperatives, small businesses and other similar entities in rural areas served by the Center:

(a) Applied research, feasibility, environmental and other studies that may be useful for the purpose of cooperative development.

(b) Collection, interpretation and dissemination of principles, facts, technical knowledge, or other information for the purpose of cooperative development.

(c) Providing training and instruction for the purpose of cooperative development.

(d) Providing loans and grants for the purpose of cooperative development in accordance with the subpart.

(e) Providing technical assistance, research services and advisory services for the purpose of cooperative development.

§ 4284.509 Limitations on grants.

Grants made pursuant to this subpart shall be for one year or less.

§ 4284.510 Application processing.

(a) Applications. USDA will solicit applications on a competitive basis by publication of one or more Requests for Proposals (RFPs). Unless otherwise specified in the applicable RFP, applicants must file an original and one hard copy of the required forms and a proposal.

(b) Required forms. The following forms must be completed, signed and submitted as part of the application package. Other forms may be required. This will be published in the applicable RFP.

(1) “Application for Federal Assistance”

(2) “Budget Information—Non-Construction Programs”

(3) “Assurances—Non-Construction Programs”

(c) Proposal. Each proposal must contain the following elements. Additional elements may be published in the applicable RFP.

(1) Title Page.

(2) Table of Contents.

(3) Executive Summary. A summary of the proposal should briefly describe the Center, including goals and tasks to be accomplished, the amount requested, how the work will be performed and whether organizational staff, consultants or contractors will be used.

(4) Eligibility. A detailed discussion describing how the applicant meets the eligibility requirements.

(5) Proposal Narrative. The narrative portion of the proposal must include, but is not limited to, the following:

(i) Project Title. The title of the proposed project must be brief, not to exceed 75 characters, yet describe the essentials of the project.

(ii) Information Sheet. A separate one-page information sheet listing each of the evaluation criteria referenced in the RFP, followed by the page numbers of all relevant material and documentation contained in the proposal that address or support the criteria.

(iii) Goals of the Project. This section must include the following:

(A) A provision that substantiates that the Center will effectively serve rural areas in the United States;

(B) A provision that the primary objective of the Center will be to improve...
the economic condition of rural areas through cooperative development;

(C) A description of the contributions that the proposed activities are likely to make to the improvement of the economic conditions of the rural areas for which the Center will provide services.

(D) Provisions that the Center, in carrying out the activities, will seek, where appropriate, the advice, participation, expertise, and assistance of representatives of business, industry, educational institutions, the Federal Government, and State and local governments.

(iv) Work Plan. Applicants must discuss the specific tasks to be completed using grant and matching funds. The work plan should show how customers will be identified, key personnel to be involved, and the evaluation methods to be used to determine the success of specific tasks and overall objectives of Center operations. The budget must present a breakdown of the estimated costs associated with cooperative development activities as well as the operation of the Center and allocate these costs to each of the tasks to be undertaken. Matching funds as well as grant funds must be accounted for in the budget.

(v) Performance Evaluation Criteria. Performance criteria suggested by the applicant for incorporation in the grant award in the event the proposal receives grant funding under this subpart. These suggested criteria are not binding on USDA.

(vi) Undertakings. The applicant must expressly undertake to do the following:

(A) Take all practicable steps to develop continuing sources of financial support for the Center, particularly from sources in the private sector;

(B) Make arrangements for the activities by the nonprofit institution operating the Center to be monitored and evaluated; and

(C) Provide an accounting for the money received by the grantee under this subpart.

(vii) Delivery of Cooperative development assistance. The applicant must describe its previous accomplishments and outcomes in Cooperative development activities and/or its potential for effective delivery of Cooperative development services to rural areas. The applicant should also describe the type(s) of assistance to be provided, the expected impacts of that assistance, the sustainability of cooperative organizations receiving the assistance, and the transferability of its Cooperative development strategy and focus to other areas of the U.S.

(viii) Qualifications of Personnel. Applicants must describe the qualifications of personnel expected to perform key center tasks, and whether these personnel are to be full/part-time Center employees or contract personnel. Those personnel having a track record of positive solutions for complex cooperative development or marketing problems, or those with a record of conducting feasibility studies that later proved to be accurate, business planning, marketing analysis, or other activities relevant to the Center’s success should be highlighted.

(ix) Support and commitments. Applicants must describe the level of support and commitment in the community for the proposed Center and the services it would provide. Plans for coordinating with other developmental organizations in the proposed service area, or with state and local government institutions should be included. Letters supporting cooperation and coordination from potential local customers should be provided.

(x) Future support. Applicants should describe their vision for Center operations beyond the first year, including issues such as sources and uses of alternative funding; reliance on Federal, state, and local grants; and the use of in-house personnel for providing services versus contracting out for that expertise. To the extent possible, applicants should document future funding sources that will help achieve long-term sustainability of the Center.

(xi) Evaluation criteria. Each of the evaluation criteria referenced in the RFP must be specifically and individually addressed in narrative form.

(6) Verification of Matching Funds. Applicants must provide a budget to support the work plan showing all sources and uses of funds during the project period. Applicants will be required to verify matching funds, both cash and
in-kind. Sufficient information should be included such that USDA can verify all representations.

(7) Certification. Applicants must certify that matching funds will be available at the same time grant funds are anticipated to be spent and that matching funds will be spent in advance of grant funding, such that for every dollar of grant that is advanced, not less than an equal amount of match funds will have been funded prior to submitting the request for advance.

§ 4284.511 Evaluation screening.

The Agency will conduct an initial screening of all proposals to determine whether the applicant is eligible and whether the application is complete and sufficiently responsive to the requirements set forth in the applicable RFP so as to allow for an informed review. Incomplete or non-responsive applications will not be evaluated further. Applicants may revise their applications and re-submit them prior to the published deadline if there is sufficient time to do so.

§ 4284.512 Evaluation process.

(a) Applications will be evaluated by qualified reviewers appointed by the Agency.

(b) After all proposals have been evaluated using the evaluation criteria and scored in accordance with the point allocation specified in the applicable RFP, the Agency will present to the Administrator of RBS a list of all applications in rank order, together with funding level recommendations.

§ 4284.513 Evaluation criteria and weights.

Unless supplemented in a RFP, the criteria listed in this section will be used to evaluate grants under this subpart. Preference will be given to items in paragraphs (a) through (f) of this section. The distribution of points to be awarded per criterion will be identified in the applicable RFP.

(a) Administrative capabilities. The application will be evaluated to determine whether the subject Center has a track record of administering a nationally coordinated, regional or state-wide operated project. Centers that have capable financial systems and audit controls, personnel and program administration performance measures and clear rules of governance will receive more points than those not evidencing this capacity.

(b) Technical assistance and other services. The Agency will evaluate the applicant’s demonstrated expertise in providing technical assistance in Rural areas.

(c) Economic development. The Agency will evaluate the applicant’s demonstrated ability to assist in the retention of businesses, facilitate the establishment of cooperatives and new cooperative approaches and generate employment opportunities that will improve the economic conditions of rural areas.

(d) Linkages. The Agency will evaluate the applicant’s demonstrated ability to create horizontal linkages among businesses within and among various sectors in rural areas of the United States and vertical linkages to domestic and international markets.

(e) Commitment. The Agency will evaluate the applicant’s commitment to providing technical assistance and other services to underserved and economically distressed areas in rural areas of the United States.

(f) Matching Funds. All applicants must demonstrate Matching Funds equal to at least 25 percent (5 percent for 1994 Institutions) of the grant amount requested. Applications exceeding these minimum commitment levels will receive more points.

(g) Delivery. The Agency will evaluate whether the Center has a track record in providing technical assistance in rural areas and accomplishing effective outcomes in cooperative development. The Center’s potential for delivering effective cooperative development assistance, the expected effects of that assistance, the sustainability of cooperative organizations receiving the assistance, and the transferability of the Center’s cooperative development strategy and focus to other States will also be assessed.

(h) Work Plan/Budget. The work plan will be reviewed for detailed actions and an accompanying timetable for implementing the proposal. Clear, logical, realistic and efficient plans will result
in a higher score. Budgets will be reviewed for completeness and the quality of non Federal funding commitments.

(i) Qualifications of those Performing the Tasks. The application will be evaluated to determine if the personnel expected to perform key center tasks have a track record of positive solutions for complex Cooperative development or marketing problems, or a successful record of conducting accurate feasibility studies, business plans, marketing analysis, or other activities relevant to Cooperative development center success.

(j) Local support. Applications will be reviewed for previous and expected local support for the Center, plans for coordinating with other developmental organizations in the proposed service area and coordination with state and local institutions. Support documentation should include recognition of rural values that balance employment opportunities with environmental stewardship and other positive rural amenities. Centers that demonstrate strong support from potential beneficiaries and formal evidence of the Center’s intent to coordinate with other developmental organizations will receive more points than those not evidencing such support and formal intent.

(k) Future support. Applications that demonstrate their vision for funding center operations for future years, including diversification of funding sources and building in-house technical assistance capacity, will receive more points for this criterion.

§ 4284.514 Grant closing.

(a) Letter of Conditions. The Agency will notify an approved applicant in writing, setting out the conditions under which the grant will be made.

(b) Applicant’s intent to meet conditions. Upon reviewing the conditions and requirements in the letter of conditions, the applicant must complete, sign and return the Agency’s “Letter of Intent to Meet Conditions,” or, if certain conditions cannot be met, the applicant may propose alternate conditions to the Agency. The Agency must concur with any changes proposed to the letter of conditions by the applicant before the application will be further processed.

(c) Grant agreement. The Agency and the grantee must enter into the Agency’s “Agriculture Innovation Center Grant Agreement” prior to the advance of funds.

§§ 4284.515–4284.599 [Reserved]

§ 4284.600 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0570–0006 in accordance with the Paperwork Reduction Act of 1995.

Subpart G—Rural Business Opportunity Grants

SOURCE: 64 FR 71986, Dec. 23, 1999, unless otherwise noted.

§ 4284.601 Purpose.

This subpart outlines Agency policies and authorizations and sets forth procedures for making grants to provide technical assistance for business development and conduct economic development planning in rural areas. The purpose of this program is to promote sustainable economic development in rural communities with exceptional needs by:

(a) Promoting economic development that is sustainable over the long term through local effort without subsidies or external support and that leads to improvements in quality as well as the quantity of economic activity in the community;

(b) Catalyzing economic development projects by providing critical investments that enable effective development projects to be undertaken by rural communities that, with the Rural Business Opportunity Grants (RBOG) assistance, will be able to identify their needs and take full advantage of available resources and opportunities;

(c) Focusing assistance on priority communities (defined in § 4284.603); and

(d) Sponsoring economic development activities with significant potential to serve as examples of “best practices” that merit implementation in
rural communities in similar circumstances.

§ 4284.602 Policy.

(a) The grant program will be used to assist in the economic development of rural areas.

(b) Funds allocated for use in accordance with this subpart are also to be considered for use by Indian tribes within the State regardless of whether State development strategies include Indian reservations within the State’s boundaries. Indians residing on such reservations must have equal opportunity, along with other rural residents, to participate in the benefits of these programs.

§ 4284.603 Definitions.

Agency. The Federal agency within the United States Department of Agriculture (USDA) with responsibility assigned by the Secretary of Agriculture to administer the RBOG Program. At the time of publication, that agency is the Rural Business-Cooperative Service.

Best practice project. An action that has potential applicability in other rural communities and which potentially has instructional value when shared with those communities.

Business support centers. Centers established to provide assistance to businesses in such areas as counseling, business planning, training, management assistance, marketing information, and locating financing for business operations. The centers need not be located in a rural area, but must provide assistance to businesses located in rural areas.

Economic development. The industrial, business and financial augmentation of an area as evidenced by increases in total income, employment opportunities, value of production, duration of employment, or diversification of industry, reduced outmigration, higher labor force participation rates or wage levels, or gains in other measurements of economic activity, such as land values.

Long-term. The period of time covered by the three most recent decennial censuses of the United States to the present.

Planning. A process to coordinate economic development activities, develop guides for action, or otherwise assist local community leaders in the economic development of rural areas.

Priority communities. Communities targeted for Agency assistance as determined by the USDA Under Secretary for Rural Development. Priority communities are those that are experiencing trauma due to natural disasters or are undertaking or completing fundamental structural changes, have remained persistently poor, or have experienced long-term population decline or job deterioration.

Project. The result of the use of grant funds provided under this subpart through technical assistance or planning relating to the economic development of a rural area.

Rural and rural area. Any area other than a city or town that has a population of greater than 50,000 inhabitants including the urbanized area contiguous and adjacent to such a city or town. The population figure used must be in accordance with the latest decennial census of the United States.

State. Any of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, 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.

Sustainable development. Development planned and designed to consider and balance environmental quality, economic needs, and social concerns.

Technical assistance. A nonconstruction, problem solving activity performed for the benefit of a business or community to assist in the economic development of a rural area. The Agency will determine whether a specific activity qualifies as technical assistance.

United States. The 50 States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of
§ 4284.620 Applicant eligibility.

(a) Grants may be made to public bodies, nonprofit corporations, Indian tribes on Federal or State reservations and other Federally recognized tribal groups, and cooperatives with members that are primarily rural residents and that conduct activities for the mutual benefit of the members.

(b) Applicants must have sufficient financial strength and expertise in activities proposed in the application to ensure accomplishment of the described activities and objectives.

(1) Financial strength will be analyzed by the Agency based on financial data provided in the application. The analysis will consider the applicant’s tangible net worth, which must be positive, and whether the applicant has dependable sources of revenue or a successful history of raising revenue sufficient to meet cash requirements.

(2) Expertise will be analyzed by the Agency based on the applicant staff’s training and experience in activities similar to those proposed in the application and, if consultants will be used, on the staff’s experience in choosing and supervising consultants.

(c) Any delinquent debt to the Federal Government shall cause the applicant to be ineligible to receive any RBOG funds until the debt has been paid.

§ 4284.621 Eligible grant purposes.

(a) Grant funds may be used to assist in the economic development of rural areas by providing technical assistance for business development and economic development planning. Grant funds may be used for, but are not limited to, the following purposes:

(1) Identify and analyze business opportunities that will use local rural materials or human resources. This includes opportunities in export markets, as well as feasibility and business plan studies.

(2) Identify, train, and provide technical assistance to existing or prospective rural entrepreneurs and managers;

(3) Establish business support centers and otherwise assist in the creation of new rural businesses;

(4) Conduct local community or multi-county economic development planning;

(5) Establish centers for training, technology, and trade that will provide training to rural businesses in the utilization of interactive communications technologies to develop international trade opportunities and markets;

(6) Conduct leadership development training of existing or prospective rural entrepreneurs and managers;

(7) Pay reasonable fees and charges for professional services necessary to conduct the technical assistance, training, or planning functions.

(b) Grants may be made only when there is a reasonable prospect that the project will result in the economic development of a rural area.

(c) Grants may be made only when the proposal includes a basis for determining the success or failure of the project and individual major elements of the project and outlines procedures that will be taken to assess the project’s impact at its conclusion.

(d) Grants may be made only when the proposed project is consistent with local and area-wide strategic plans for community and economic development, coordinated with other economic development activities in the project area and consistent with any USDA Rural Development State Strategic Plan.

(e) A grant may be considered for the amount needed to assist with the completion of a proposed project, provided that the project can reasonably be expected to be completed within 2 full years after it is begun. If grant funds are requested to establish or assist with an activity of more than 2 years duration, the amount of a grant approved in any fiscal year will be limited to the amount needed to assist with no more than 1 full year of operation. Subsequent grant requests may be considered in subsequent years, if needed to continue the operation, but
funding for 1 year provides no assurance of additional funding in subsequent years.

§§ 4284.628–4287.628 [Reserved]

§ 4284.629 Ineligible grant purposes.

Grant funds may not be used to:
(a) Duplicate current services or replace or substitute support previously provided. If the current service is inadequate, however, grant funds may be used to expand the level of effort or services beyond what is currently being provided;
(b) Pay costs of preparing the application package for funding under this program;
(c) Pay costs of the project incurred prior to the effective date of the grant made under this subpart;
(d) Fund political activities;
(e) Pay for assistance to any private business enterprise which does not have at least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence;
(f) Pay any judgment or debt owed to the United States; or
(g) Pay costs of real estate acquisition or development or building construction.

§ 4284.630 Other considerations.

(a) Civil rights compliance requirements. All grants made under this subpart are subject to title VI of the Civil Rights Act of 1964 and part 1901, subpart E of this title.
(b) Environmental review. All grants made under this subpart are subject to the requirements of subpart G of part 1940 of this title. Applications for technical assistance or planning projects are generally excluded from the environmental review process by §1940.333 of this title provided the assistance is not related to the development of a specific site. Applicants for grant funds must consider and document within their plans the important environmental factors within the planning area and the potential environmental impacts of the plan on the planning area, as well as the alternative planning strategies that were reviewed.
(c) Other USDA regulations. This program is subject to the provisions of the following regulations, as applicable:
(1) 7 CFR part 3015, Uniform Federal Assistance Regulations;
(2) 7 CFR part 3016, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;
(3) 7 CFR part 3017, Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants);
(4) 7 CFR part 3018, New Restrictions on Lobbying;
(5) 7 CFR part 3019, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations; and
(6) 7 CFR part 3052, Audits of States, Local Governments, and Non-profit Organizations.

§§ 4284.631–4284.637 [Reserved]

§ 4284.638 Application processing.

(a) Applications. (1) Applicants will file an original and one copy of "Application For Federal Assistance (For Nonconstruction)," with the Agency State Office (available in any Agency office).
(2) All applications shall be accompanied by:
(i) Copies of applicant’s organizational documents showing the applicant’s legal existence and authority to perform the activities under the grant;
(ii) A proposed scope of work, including a description of the proposed project, details of the proposed activities to be accomplished and timeframes for completion of each task, the number of months duration of the project, and the estimated time it will take from grant approval to beginning of project implementation;
(iii) A written narrative which includes, at a minimum, the following items:
(A) An explanation of why the project is needed, the benefits of the proposed project, and how the project meets the grant selection criteria;
(B) Area to be served, identifying each governmental unit, i.e., town,
county, etc., to be affected by the project;

(C) Description of how the project will coordinate economic development activities with other economic development activities within the project area;

(D) Business to be assisted, if appropriate; economic development to be accomplished;

(E) An explanation of how the proposed project will result in increased or saved jobs in the area and the number of projected new and saved jobs;

(F) Description of the applicant's demonstrated capability and experience in providing the proposed project assistance or similar economic development activities, including experience of key staff members and persons who will be providing the proposed project activities and managing the project;

(G) Method and rationale used to select the areas and businesses that will receive the service;

(H) Brief description of how the work will be performed including whether organizational staff or consultants or contractors will be used; and

(I) Other information the Agency may request to assist it in making a grant award determination.

(iv) The latest financial information to show the organization's financial capacity to carry out the proposed work. At a minimum, the information should include the most recent balance sheet and an income statement. A current audited report is required if available;

(v) An evaluation method to be used by the applicant to determine if objectives of the proposed activity are being accomplished; and

(vi) Intergovernmental review comments from the State Single Point of Contact, or evidence that the State has elected not to review the program under Executive Order 12372.

(b) Letter of conditions. The Agency will notify the approved applicant in writing, setting out the conditions under which the grant will be made.

(c) Applicant's intent to meet conditions. Upon reviewing the conditions and requirements in the letter of conditions, the applicant must complete, sign and return a "Letter of Intent to Meet Conditions" to the Agency; or if certain conditions cannot be met, the applicant may propose alternate conditions to the Agency. The Agency must concur with any changes proposed to the letter of conditions by the applicant before the application will be further processed.

§ 4284.639 Grant selection criteria.

Agency officials will select projects to receive assistance under this program according to the following criteria:

(a) A score of 0 to 10 points will be awarded based on the Agency assessment of the extent to which economic development resulting from the proposed project will be sustainable over the long term by local efforts, without the need for continued subsidies by governments or other organizations outside the community.

(b) A score of 0 to 10 points will be awarded based on the Agency assessment of the extent to which the project should lead to improvements in the quality of economic activity within the community, such as higher wages, improved benefits, greater career potential, and the use of higher levels of skills than currently are typical within the economy.

(c) If the grant will fund a critical element of a larger program of economic development, without which the overall program either could not proceed or would be far less effective, or if the program to be assisted by the grant will also be partially funded from other sources, points will be awarded as follows based on the percentage of the cost of the overall program that will be funded by the grant.

(1) Less than 20 percent—30 points;

(2) 20 but less than 50 percent—20 points;

(3) 50 but less than 75 percent—10 points; or

(4) More than 75 percent—0 points.

(d) Points will be awarded for each of the following criteria met by the community or communities that will receive the primary benefit of the grant. However, regardless of the mathematical total of points indicated by paragraphs (d)(1) through (d)(5) of this section, total points awarded under paragraph (d) must not exceed 40.

(1) Experiencing trauma due to a major natural disaster that occurred
§ 4284.640 Appeals.

Any appealable adverse decision made by the Agency may be appealed in accordance with USDA appeal regulations found at 7 CFR part 11. If the Agency makes a determination that a decision is not appealable, a request for a determination of appealability may be made to the National Appeals Staff.

§§ 4284.641–4287.646 [Reserved]

§ 4284.647 Grant approval and obligation of funds.

(a) The following statement will be entered in the comment section of the Request For Obligation of Funds, which must be signed by the grantee:

The grantee certifies that it is in compliance with and will continue to comply with all applicable laws; regulations; Executive Orders; and other generally applicable requirements, including those contained in 7 CFR part 4284, subpart G, and 7 CFR parts 3015, 3016, 3017, 3018, 3019, and 3052 in effect on the date of grant approval; and the approved Letter of Conditions.

(b) [Reserved]

§ 4284.648 Fund disbursement.

The Agency will determine, based on 7 CFR parts 3015, 3016, and 3019, as applicable, whether disbursement of a grant will be by advance or reimbursement. A Request for Advance or Reimbursement, (available in any Agency office) must be completed by the grantee and submitted to the Agency no more often than monthly to request either advance or reimbursement of funds.

§§ 4284.649–4284.655 [Reserved]

§ 4284.656 Reporting.

(a) A Financial Status Report (available in any Agency office) and a project performance activity report will be required of all grantees on a quarterly basis. The grantee will cause said program to be completed within the total sums available to it, including the grant, in accordance with the scope of work and any necessary modifications thereof prepared by grantee and approved by the Agency. A final project performance report will be required with the final Financial Status Report. The final report may serve as the last quarterly report. The final report must provide complete information regarding the jobs created and saved as a result of the grant. Grantees shall constantly monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. Grantees are to submit an original of each report to the Agency. The project performance reports shall include, but not be limited to, the following:

(1) A comparison of actual accomplishments to the objectives established for that period;

(2) Problems, delays, or adverse conditions, if any, which have affected or will affect attainment of overall project objectives, prevent meeting
time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation; and

(3) Objectives and timetable established for the next reporting period.

(b) Within 1 year after the conclusion of the project, the grantee will provide a project evaluation report based on criteria developed in accordance with §§ 4284.621(c) and 4284.638(a)(2)(v).

(c) The Agency may also require grantees to prepare a report suitable for public distribution describing the accomplishments made through the use of the grant and, in the case where the grant funded the development or application of a “best practice,” to describe that “best practice.”

(d) The grantee will provide for Financial Management Systems which will include:

(1) Accurate, current, and complete disclosure of the financial result of each grant.

(2) Records which identify adequately the source and application of funds for grant-supporting activities, together with documentation to support the records. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

(3) Effective control over and accountability for all funds. Grantee shall adequately safeguard all such assets and shall assure that funds are used solely for authorized purposes.

(e) The grantee will retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least 3 years after grant closing except that the records shall be retained beyond the 3-year period if audit findings have not been resolved or if directed by the United States. Microfilm copies may be substituted in lieu of original records. The Agency and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the grantee which are pertinent to the specific grant program for the purpose of making audit, examination, excerpts, and transcripts.

§ 4284.657 Audit requirements.

Grantees must provide an annual audit in accordance with 7 CFR part 3052. The audit requirements apply to the years in which grant funds are received and years in which work is accomplished that will be paid for with grant funds.

§§ 4284.658–4284.666 [Reserved]

§ 4284.667 Grant servicing.

Grants will be serviced in accordance with part 1951, subparts E and O, of this title. Grantees will permit periodic inspection of the program operations by a representative of the Agency. All non-confidential information resulting from the Grantee’s activities shall be made available to the general public on an equal basis.

§ 4284.668 Programmatic changes.

The Grantee shall obtain prior approval for any change to the scope or objectives of the approved project. Failure to obtain prior approval of changes to the scope of work or budget may result in suspension, termination, and recovery of grant funds.

§§ 4284.669–4284.683 [Reserved]

§ 4284.684 Exception authority.

The Administrator may, in individual cases, grant an exception to any requirement or provision of this subpart provided the Administrator determines that application of the requirement or provision would adversely affect USDA’s interest.

§§ 4284.685–4284.698 [Reserved]

§ 4284.699 Member delegate clause.

No member of Congress shall be admitted to any share or part of this grant or any benefit that may arise therefrom; but this provision shall not be construed to bar as a contractor under the grant a publicly held corporation whose ownership might include a member of Congress.
§ 4284.700 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0570–0024 in accordance with the Paperwork Reduction Act of 1995. You are not required to respond to this collection of information unless it displays a valid OMB control number.

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 part 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 designee 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 those 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.

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, family 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 §4284.922.

(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 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 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
(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 co-operative, 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 ownership 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 planning activities. However, in-kind contribution of matching funds may include appropriately valued inventory of raw commodity to be used in the project. 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 non-competitive 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.
§ 4284.930 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.

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 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) ...
(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.
§ 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 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 feasibility 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 based 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.

§ 4284.950 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
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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


(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]

Subpart K—Agriculture Innovation Demonstration Centers

SOURCE: 69 FR 23433, Apr. 29, 2004, unless otherwise noted.

§ 4284.1001 Purpose.

This subpart implements a demonstration program administered by the Rural Business-Cooperative Service whereby grants are made to innovation centers responsible for providing technical and business development assistance to agricultural producers seeking to engage in the marketing or the production of Value-Added products.

§ 4284.1002 Policy.

It is the policy of the Secretary of Agriculture to fund Centers which evidence broad support from the agricultural community in the state or region, significant coordination with end users (processing and distribution companies and regional grocers), strategic alliances with entities having technical research capabilities and a focused delivery plan for reaching out to the producer community. It is also the policy of the Secretary, using the research and technical services of the U.S. Department of Agriculture, to assist the grantees in establishing Centers. This program is not intended to fund scientific research.
§ 4284.1003 Program administration.

The Agriculture Innovation Demonstration Center program is administered by Cooperative Services within the Agency.

§ 4284.1004 Definitions.

Board of Directors—The group of individuals that govern the Center.

Center—The Agriculture Innovation Center to be established and operated by the grantees. It may or may not be an independent legal entity, but it must be independently governed in accordance with the requirements of this subpart.

Producer Services—Services to be provided by the Centers to agricultural producers. Producer Services consist of the following types of services:

(1) Technical assistance, consisting of engineering services, applied research, Scale Production Assessments, and similar services, to enable the agricultural producers to establish businesses to produce Value-Added agricultural commodities or products;

(2) Assistance in marketing, market development and business planning, including advisory services with respect to leveraging capital assets; and

(3) Organizational, outreach and development assistance to increase the viability, growth and sustainability of businesses that produce Value-Added agricultural commodities or products.

Qualified Board of Directors—A Board of Directors that includes representatives from each of the following groups:

(1) The two general agricultural organizations with the greatest number of members in the State in which the Center is located;

(2) The State department of agriculture, or equivalent, of the State in which the Center is located; and

(3) Entities representing the four highest grossing commodities produced in the State in which the Center is located, as determined on the basis of annual gross cash sales.

Scale Production Assessments—Studies that analyze facilities, including processing facilities, for potential Value-added activities in order to determine the size that optimizes construction and other cost efficiencies.

§ 4284.1007 Eligibility for grant assistance.

Non-profit and for-profit corporations, institutions of higher learning and other entities, including a consortium where a lead entity has been designated and agrees to act as funding agent, that meet the following requirements are eligible for grant assistance:

(a) The entity—

(1) Has provided services similar to those listed for Producer Services; or

(2) Demonstrates the capability of providing Producer Services;

(b) The application includes a plan that meets the requirements of § 4284.1010(c)(5)(iv) that also outlines—

(1) The support for the entity in the agricultural community;

(2) The technical and other expertise of the entity; and

(3) The goals of the entity for increasing and improving the ability of local agricultural producers to develop markets and processes for Value-Added agricultural commodities or products;

(c) The entity demonstrates that adequate resources (in cash or in kind) are available, or have been committed to be made available to the entity, to increase and improve the ability of local agricultural producers to develop markets and processes for Value-Added agricultural commodities or products; and

(d) The proposed Center has a Qualified Board of Directors.

§ 4284.1008 Use of grant funds.

Grant funds may be used to assist eligible recipients in establishing Centers that provide Producer Services and may only be used to support operations of the Center that directly relate to providing Producer Services. Grant funds may be used for the following purposes, subject to the limitations set forth in § 4284.10:

(a) Consulting services for legal, accounting and technical services to be used by the grantee in establishing and operating a Center;

(b) Hiring of employees, at the discretion of the Qualified Board of Directors;

(c) The making of matching grants to agricultural producers, individually
not to exceed $5,000, where the aggregate amount of all such matching grants made by the grantee does not exceed $50,000;

(d) Applied research;

(e) Legal services; and

(f) Such other related purposes as the Agency may announce in the RFP.

§ 4284.1009 Limitations on awards.

The maximum grant award for an agriculture innovation center shall be in an amount that does not exceed the lesser of $1,000,000 or twice the dollar amount of the resources (in cash or in kind) that the eligible entity demonstrates are available, or have been committed to be made available, to the eligible entity.

§ 4284.1010 Application processing.

(a) Applications. USDA will solicit applications on a competitive basis by publication of one or more Requests for Proposals (RFPs). Unless otherwise specified in the applicable RFP, applicants must file an original and one copy of the required forms and a proposal.

(b) Required forms. The following forms must be completed, signed and submitted as part of the application package. Other OMB approved forms may be required. This will be published in the applicable RFP.

(1) “Application for Federal Assistance.”

(2) “Budget Information—Non-Construction Programs.”

(3) “Assurances—Non-Construction Programs.”

(c) Proposal. Each proposal must contain the following elements. Additional elements may be published in the applicable RFP.

(1) Title Page.

(2) Table of Contents.

(3) Executive Summary. A summary of the proposal should briefly describe the project including goals, tasks to be completed and other relevant information that provides a general overview of the project and the amount requested.

(4) Eligibility. A detailed discussion describing how the applicant meets the eligibility requirements.

(5) Proposal Narrative. The narrative portion of the proposal must include, but is not limited to, the following:

(i) Project Title. The title of the proposed project must be brief, not to exceed 75 characters, yet describe the essentials of the project.

(ii) Information Sheet. A separate one page information sheet listing each of the evaluation criteria referenced in the RFP followed by the page numbers of all relevant material and documentation contained in the proposal that address or support the criteria.

(iii) Goals of the Project. The first part of this section should list each Producer Service to be offered by the Center. The second part of this section should list one or more specific goals relating to increasing and improving the ability of identified local agricultural producers to develop a market or process for Value-Added agricultural commodities or products.

(iv) Work Plan. Actions that must be taken in order for the Producer Services to be available from the Center. Each action listed should include a target date by which it will be completed. General start up tasks should be listed, followed by specific tasks listed for each Producer Service to be offered, as well as tasks associated with the start of operations. The tasks associated with the start of operations should include a focused marketing and delivery plan directed to the local agricultural producers that were identified in paragraph (c)(5)(iii) of this section. The actions to be taken should include steps for identifying customers, acquiring personnel and contracting for services to the Center, including arrangements for strategic alliances.

(v) Performance Evaluation Criteria. Performance criteria suggested by the applicant for incorporation in the grant award in the event the proposal receives grant funding under this subpart. These suggested criteria are not binding on USDA.

(vi) Agricultural Community Support. Evidence of support from the local agricultural community should be included in this section. Letters in support should reflect that the writer is familiar with the provisions of the Plan for the Center, including the stated goals.
Evidence of support can take the form of making employees available to the Center, service as a board member and other in-kind contributions.

(vii) Strategic Coordination and Alliances. Describe arrangements in place or planned with end users (processing and distribution companies and regional grocers) as well as arrangements with entities having technical research capabilities, broad support from the agricultural community in the state or region, significant coordination with end users (processing and distribution companies and regional grocers), strategic alliances with entities having technical research capabilities and a focused delivery plan for reaching out to the producer community.

(viii) Capacity. Evidence of the ability of the grantee(s) to successfully establish and operate a Center. A description of the grantee’s track record in providing services similar to those listed for Producer Services or evidence that the entity has the capability to provide Producer Services. Resumes of key personnel should be included in this section. Past successes should be described in detail, with a focus on lessons learned, best practices, familiarity with producer problems in Value-Added ventures, and how these barriers are best overcome should be elaborated on in this section. For every challenge identified, the applicant should demonstrate how they are addressed in the Work Plan (see paragraph (c)(5)(iv) of this section). All successes should include a monetary estimate of the Value-Added achieved.

(ix) Legal structure. Provide a description of the legal relationship between the grantee(s) and the proposed Center. If the Center is to be an independent corporate entity, provide copies of the corporate charter, bylaws and other relevant organizational documents. Describe how funds for the Center will be handled and include copies of the agreements documenting the legal relationships between the Center and related parties. If the Center is not to be an independent legal entity, provide copies of the corporate governance documents that describe how members of the Board of Directors for the Center are to be determined.

(x) Evaluation Criteria. Each of the evaluation criteria referenced in the RFP must be specifically and individually addressed in narrative form. Supporting documentation, as applicable, should be included in this section, or a cross reference to other sections in the application should be provided, as applicable.

(xi) Verification of Adequate Resources. Present a budget to support the work plan showing sources and uses of funds during the start up period prior to the start of operations and for the first year of full operations. Present a copy of a bank statement evidencing sources of funds equal to amounts required in excess of the grant requested, or, in the alternative, a copy of confirmed funding commitments from credible sources such that USDA is satisfied that the Center has adequate resources to complete a full year of operation. Include information sufficient to facilitate verification by USDA of all representations.

(xii) Certification of Adequate Resources. Applicants must certify that non-Federal funds identified in the budget pursuant to paragraph (c)(5)(xi) of this section will be available and funded commensurately with grant funds.

§ 4284.1012 Evaluation process.

(a) Applications will be evaluated by qualified reviewers appointed by the Agency.

(b) After all proposals have been evaluated using the evaluation criteria and scored in accordance with the point allocation specified in the applicable RFP, Agency officials will present to
the Administrator of RBS a list of all applications in rank order, together with funding level recommendations.

(c) The Administrator reserves the right to award additional points, as specified in the applicable RFP, to accomplish agency objectives (e.g., to ensure geographic distribution, put emphasis on a specific commodity, or to accomplish presidential initiatives.) The maximum number of points that can be added to an application under this paragraph cannot exceed ten percent of the total points the application originally scored.

(d) After giving effect to the Administrator’s point awards, applications will be funded in rank order until all available funds have been obligated.

§ 4284.1013 Evaluation criteria and weights.

Unless supplemented in a RFP, the criteria listed in this section will be used to evaluate grants under this subpart. The distribution of points to be awarded per criterion will be identified in the applicable RFP.

(a) Ability to Deliver. The application will be evaluated as to whether it evidences unique abilities to deliver Producer Services so as to create sustainable Value-Added ventures. Abilities that are transferable to a wide range of agricultural Value-Added commodities are preferred over highly specialized skills. Strong skills must be accompanied by a credible and thoughtful plan.

(b) Successful Track Record. The applicant’s track record in achieving Value-Added successes.

(c) Work Plan/Budget. The work plan will be reviewed for detailed actions and an accompanying timetable for implementing the proposal. Clear, logical, realistic and efficient plans will result in a higher score. Budgets will be reviewed for completeness and the strength of non-Federal funding commitments.

(d) Qualifications of personnel. Proposals will be reviewed for whether the key personnel are to be responsible for performing the proposed tasks have the necessary qualifications and whether they have a track record of performing activities similar to those being proposed. If a consultant or others are to be hired, points may be awarded for consultants only if the proposal includes evidence of their availability and commitment as well. Proposals using in-house employees with strong track records in innovative activities will receive higher points relative to proposals that out-source expertise.

(e) Local support. Proposed Centers must show local support and coordination with other developmental organizations in the proposed service area and with state and local institutions. Support documentation should include recognition of rural values that balance employment opportunities with environmental stewardship and other rural amenities. Proposed Centers that show strong support from potential beneficiaries and coordination with other developmental organizations will receive more points than those not evidencing such support.

(f) Future support. Applicants that can demonstrate their vision for funding center operations for future years, including diversification of funding sources and building in-house technical assistance capacity, will receive more points for this criterion.

§ 4284.1014 Grant closing.

(a) Letter of Conditions. The Agency will notify an approved applicant in writing, setting out the conditions under which the grant will be made.

(b) Applicant’s intent to meet conditions. Upon reviewing the conditions and requirements in the letter of conditions, the applicant must complete, sign and return the Agency’s “Letter of Intent to Meet Conditions.” or, if certain conditions cannot be met, the applicant may propose alternate conditions to the Agency. The Agency must concur with any changes proposed to the letter of conditions by the applicant before the application will be further processed.

(c) Grant agreement. The Agency and the grantee must enter into an “Agriculture Innovation Center Grant Agreement” prior to the advance of funds.
§ 4285.1 Objective.

This subpart sets forth the policies and procedures and delegates authority for providing Federal-State Research on Cooperatives cooperative agreement funds to finance programs of research on cooperatives as authorized under Section 204 (b) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1623 (b)). The primary purpose of this matching fund program, via cooperative agreements, is to encourage State Departments of Agriculture and State Agricultural Experiment Stations in conducting research related to agricultural cooperatives.

§ 4285.2 Cooperative agreement purposes.

Rural Development Administration (RDA) or its successor agency may enter into a cooperative agreement with a State agency to provide funds to the State agency to:

(a) Conduct marketing research related to agricultural cooperatives.

(b) Assist other organizations in conducting marketing research related to agricultural cooperatives.

§ 4285.3 Definitions.

As used in this part:

Agreement period. The total period of time approved by the Assistant Administrator for Cooperative Services for conducting the proposed project as outlined in an approved application. The time period is normally no more than 3 years, renewable for cause not to exceed a total of 4 fiscal years.

Agricultural products. Agricultural products include agricultural, horticultural, viticultural, and dairy products, livestock and poultry, bees, forest products, fish and shellfish, and any products thereof, including processed or manufactured products, and any and all products raised or produced on farms and any processed or manufactured product thereof.

Assistant Administrator for Cooperative Services. The Assistant Administrator for Cooperative Services, Rural Development Administration or its successor agency, USDA or any authorized delegate.

Awarding official. The Assistant Administrator for Cooperative Services or authorized delegate.

Cooperative agreement. A legal instrument reflecting a relationship between the United States Government and a State where:
(1) The principal purpose of the relationship is the transfer of money, property, services, or anything of value to the State agency to carry out research related to cooperatives; and

(2) Substantial involvement is anticipated between RDA or its successor agency, acting for the Federal Government, and the State or other recipient during performance of the research in the agreement.

Cooperator. The State agency designated in the cooperative agreement award document as the responsible legal entity to whom a cooperative agreement is awarded under this part.

Department. The U.S. Department of Agriculture.

Methodology. The research approach to be followed to carry out the project.

Principal investigator. A single individual who is responsible for the scientific and technical direction of the project, as designated by the cooperator in the cooperative agreement application and approved by the Assistant Administrator for Cooperative Services.

Project. The particular activity within the scope of one or more of the research program areas identified in the annual program solicitation that is supported by a cooperative agreement under this part.

State agencies. State agencies include, among others, State Agricultural Experiment Stations and State Departments of Agriculture in the 50 States, the Virgin Islands, and Guam, and other appropriate State agencies. Final determination of whether certain 1890 or 1862 Land Grant institutions qualify as state agencies will be determined on a case-by-case basis by the Office of the General Counsel (OGC), USDA.

§ 4285.24 Eligibility.

To enter into a cooperative agreement for these funds, the applicant must:

(a) Be a State Agency as defined in § 4285.3 of this subpart;

(b) Have the financial, legal, administrative, and actual capacity to assume and carry out the responsibilities imposed by the Agreement. To meet the requirement of actual capacity it must either:

(1) Have necessary background and experience with proven ability to perform responsibly in the field of economic, business management, or other needed research area; or

(2) Have the necessary administrative and supervisory controls in place to assure an agreed upon contracting organization has the proven ability to perform responsibly in the field of economic, business management, or other needed research area;

(c) Legally obligate itself to administer cooperative agreement funds, provide adequate accounting of the expenditure of such funds, and comply with the cooperative agreement;

(d) Provide at least 50 percent of the funds necessary to conduct the research from non-federal funds; and

(e) Agree to conduct proposed research related to cooperatives and agricultural marketing.

§ 4285.25 Authorized use of cooperative agreement funds.

Funds received for research under cooperative agreements in this program shall only be used for:

(a) Payment of salaries and necessary employee benefits of personnel as agreed upon in the Cooperative Agreement. Included are salaries and benefits of State employees assigned full-time to one or more projects, or the percent of the salaries and benefits related to project work for State employees assigned part-time to research on one or more projects. Salaries and benefits include basic salary, other compensation such as holiday pay, sick or annual leave, and personnel benefits (quarters allowance, payments to other funds such as employees’ life insurance, health benefits, retirement, Federal Insurance Contributions Act (FICA), accident compensation, and similar payments). For any of the benefit items when the State usually pays the employer share, Federal funds may be used to pay the proportionate share of such employer contributions.

(b) Payment of necessary and reasonable office expenses such as office rental, office utilities, and office equipment.
The purchase of office equipment is permissible when the cooperator determines it to be more economical than renting. However, as a general rule, these types of expenses would be classified as indirect costs in multiple funded organizations and would not be an allowable expense. Planned purchases of equipment costing more than $200 per unit must be approved by RDA or its successor agency. Equipment purchased becomes State property pursuant to the cooperative agreement.

(c) Payment of necessary and reasonable costs of printing publications of research project results. However, all such publications should show the RDA or its successor agency as cooperator in the project and bear the following statement: “State funds for this project (publication) were matched with Federal funds under the Federal-State Research on Cooperatives Program of the U.S. Department of Agriculture, Rural Development Administration or its successor agency, Cooperative Services, as provided by the Agricultural Marketing Act of 1946 and (appropriate) fiscal year appropriations.”

(d) Purchase of office supplies (such as paper, pens, pencils, and trade magazines) and postage needed for project activities.

(e) Payment of necessary and reasonable travel expenses.

§§ 4285.26–4285.45 [Reserved]

§ 4285.46 Prohibited use of cooperative agreement funds.

(a) The Agricultural Marketing Act prohibits the use of Federal funds to pay for newspaper or periodical space and radio and television time, either directly to the media or indirectly though an advertising agency or other firm. County and State fair exhibits, as well as commodity months and weeks, are also excluded as the research on cooperatives program activities.

(b) Federal funds cannot be used to purchase products or samples of products to give away to the public.

(c) Federal program funds cannot be used to purchase:

(1) Promotional pieces such as point-of-sale materials, promotional kits, billboard space and signs, streamers, automobile stickers, table tents, and placemats; or

(2) Promotion items of a personal gift nature.

(d) Cooperative agreement funds cannot be used to conduct general publicity or information programs designed to build the image of the State’s agriculture or of a particular State Department of Agriculture or Agricultural Experiment Station.

(e) Project funds cannot be used to pay for the salary and travel of employees of cooperatives, trade associations, commodity groups, and other industry organizations, or of State personnel while engaged in managing market orders, cooperatives, or other group endeavors.

(f) Commissioners, Directors, and Secretaries of State Departments of Agriculture, Agricultural Experiment Stations, and other State agencies cannot charge their salaries and travel to project funds, with the exception of travel to workshops or conferences devoted to the Federal-State Research On Cooperatives Program.

(g) Funds made available for this program shall not be subject to reduction for indirect costs or for tuition remission.

§ 4285.47 Limitations.

The amount of funds available for the cooperative agreements under this program is limited to the amount appropriated for the fiscal year.

§§ 4285.48–4285.57 [Reserved]

§ 4285.58 How to apply for cooperative agreement funds.

(a) A program solicitation will be prepared and announced through publications such as the FEDERAL REGISTER, professional trade journals, agency or program handbooks, and/or any other appropriate means, as early as practicable each fiscal year in which funds are appropriated for the program.

(b) The annual program solicitation will contain information sufficient to enable all eligible applicants to prepare proposals including:

(1) Desired research topics. The FY-94 solicitation will encourage studies:
(i) To improve the efficiency and effectiveness of marketing of agricultural cooperatives;
(ii) To measure the impact of rural cooperatives on the local economies;
(iii) That help identify opportunities to develop cooperatives for new or alternative market uses of agricultural products;
(iv) That help identify ways to develop agricultural marketing cooperatives; and
(v) Addressing other cooperative marketing objectives;
(2) Explanation of eligibility requirements as outlined in §4285.24 of this subpart;
(3) The notice of availability of application forms and instructions for submission of applications;
(4) The notice of deadline dates for postmarking proposal packages.

(c) Format for proposals. Unless otherwise indicated by the Department in the annual program solicitation, the following information must be submitted for the preparation of proposals under this program:
(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) Statement of Work. The application must include a narrative statement describing the nature of the proposed research. The Statement of Work must include at least the following:
(i) Title of the Project. The title of the proposal must be brief, yet represent the major thrust of the project.
(ii) Project Leaders. List the name(s) of the principal investigator(s). Minor collaborators or consultants should be so designated and not listed as principal investigators.
(iii) Need for the Project. A concisely worded rationale behind the proposed research must be presented. The need for the proposed research must be clearly related to marketing and to the needs of agricultural cooperatives.
(iv) Objectives of the project. The specific description of the overall project goal(s) and supporting objectives must be presented.
(v) Procedures for conducting the research. The hypotheses or questions being asked and the methodology being applied to the proposed project must be described. A description of any subcontracting arrangements that will be used for conducting the research must be included. A tentative schedule for conducting major steps involved in the investigation must also be included.
(vi) The expected output of the project. A description of how the results of the research will be disseminated should be presented. Responsibility for publishing any research reports or other types of output should also be identified.

(5) Collaborative arrangements. If the nature of the proposed project requires collaboration or subcontractual arrangements with other research scientists, corporations, organizations, agencies, or entities, the applicant must identify the collaborator(s) and provide a full explanation of the nature of the collaboration. Evidence (i.e., letters of intent) should be provided to assure reviewers that the collaborators involved have agreed to render this service. In addition, the proposal must indicate whether or not such a collaborative arrangement(s) has the potential for conflict(s) of interest.

(6) Personnel support. To assist reviewers in assessing the competence and experience of the proposed project staff, key personnel who will be involved in the proposed project must be identified clearly. For each principal investigator involved, and for all senior associates and other professional personnel who expect to work on the project, whether or not funds are sought for their support, the following must be included:
(i) An estimate of the time commitments necessary;
(ii) Curriculum Vitae. The curriculum vitae should be limited to a presentation of academic and research credentials, e.g., educational, employment and professional history, and honors and awards. Unless pertinent to the project, it should not include meetings attended, seminars given, or personal data such as birth date, marital status, or community activities; and
(iii) Publication List(s). A chronological list of all publications in refereed journals during the past five years, including those in press, must be
provided for each professional project member for whom a curriculum vitae is provided. Also list other non-refereed technical publications that have relevance to the proposed project. Authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these usually appear in journals.

§§ 4285.59–4285.68 [Reserved]

§ 4285.69 Evaluation and disposition of applications.

(a) Evaluation. (1) All proposals received from eligible applicants and postmarked in accordance with deadlines established in the annual program solicitation shall be evaluated by the Assistant Administrator for Cooperative Services through an RDA or its successor agency staff panel. The Assistant Administrator for Cooperative Services will select the evaluation panel from staff determined to be highly qualified in the subject matter areas that were emphasized in the current year's solicitation and from those with no potential conflict of interest with the applicants.

(2) Prior to technical examination, a preliminary review will be made for responsiveness to the program solicitation (e.g., relationship of proposal to research topic(s) listed in solicitation). Proposals that do not fall within the guidelines as stated in the program solicitation will be eliminated from competition and will be returned to the applicant.

(3) Proposals will be ranked based on evaluation criteria established in § 4285.70 of this subpart, and financial support levels will be recommended to the Assistant Administrator for Cooperative Services by the panel within the limitation of the total funding available in the fiscal year. The purpose of these evaluations is to provide information upon which the Assistant Administrator for Cooperative Services may make informed judgments in selecting proposals. Such recommendations are advisory only and are not binding on the awarding official of RDA or its successor agency. To ensure a comprehensive evaluation, all applications should be written with the care and thoroughness accorded papers for publication.

(b) Disposition. (1) On the basis of the Assistant Administrator for Cooperative Services's evaluation of an application in accordance with paragraph (a) of this section, the Assistant Administrator for Cooperative Services will either:

(i) Approve support using currently available funds;

(ii) Defer support due to lack of funds or need for further evaluation; or

(iii) Disapprove support for the proposed project in whole or in part.

(2) With respect to any approved project, the Assistant Administrator for Cooperative Services will determine the project period during which the project may be funded.

(3) Any deferral or disapproval of an application will not preclude its reconsideration or reapplication during subsequent fiscal years. However, applicants must reapply if reconsideration is desired.

(4) The Assistant Administrator for Cooperative Services will not make a cooperative agreement funding award, based upon an application covered by this part, unless the application has been properly reviewed in accordance with the provisions of this part and unless said reviewers have made recommendations concerning the scientific merit and relevance to the program of such application.

§ 4285.70 Evaluation criteria.

(a) In evaluating the proposal, the RDA or its successor agency staff review panel and the awarding official will take into account the degree to which the proposal demonstrates the following:

(1) Focus on a practical solution to a significant problem involving one or more of the following on a cooperative business basis: the preparation for market, processing, packaging, handling, storing, transporting, distributing, or marketing of agricultural products. (35%)

(2) Adequacy, soundness, and appropriateness of the proposed approach to solve the identified problem. (30%)

(3) Feasibility and probability of success of project solving the problem. (10%)
(4) Qualifications, experience in related work, competence, and availability of project personnel to direct and carry out the project. (25%)

(b) In addition, the cost relative to the expected research results will be considered in determining the awarding of the agreements.

§§ 4285.71–4285.80 [Reserved]

§ 4285.81 Cooperative agreement awards.

(a) General. Within the limit of funds available for such purpose, the awarding official shall make awards for cooperative agreements to those applicants whose proposals are judged most meritorious in the announced program areas under the evaluation criteria and procedures set forth in this part. The date specified by the Assistant Administrator for Cooperative Services as the beginning of the project period shall be no later than September 30 of the Federal fiscal year in which the project is approved and funds are appropriated for such purpose, unless otherwise permitted by law. All funds awarded under this part shall be expended solely in accordance with the methods identified in approved application and budget, the regulations of this part, the terms and conditions of the award, the applicable Federal cost principles, and the Department’s “Uniform Federal Assistance Regulations” (part 3015 of this title) and the Department’s “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments” (part 3016 of this title).

(b) Cooperative agreement award document and notice of award—(1) Cooperative agreement award document. The award document shall include at a minimum the following:

(i) Legal name and address of performing organization or institution to whom the Assistant Administrator for Cooperative Services has competitively awarded funds under the terms of this part;

(ii) Title of project;

(iii) Name(s) and address(es) of principal investigator(s) chosen to direct and control approved activities;

(iv) Identifying cooperative agreement number assigned by RDA or its successor agency;

(v) Project period, specifying the amount of time the Agency intends to support the project without requiring recompetition for funds;

(vi) Total amount of Agency financial assistance approved by the Assistant Administrator for Cooperative Services during the project period;

(vii) Legal authority(ies) under which the cooperative agreement is awarded;

(viii) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the cooperative agreement award; and

(ix) Other information or provisions deemed necessary by RDA or its successor agency to carry out its agreement activities or to accomplish the purpose of a particular cooperative agreement.

(2) Notice of award. The notice of award of funds for the cooperative agreement will be in the form of a letter providing pertinent instructions or information to the cooperator.

(c) Types of cooperative agreement instruments. The types of cooperative agreements shall be as follows:

(1) New agreement. This is an agreement instrument by which RDA or its successor agency agrees to support a specified level of effort for a project beyond the period approved in an original or amended agreement, provided that the cumulative period does not exceed the statutory limitation. When a renewal application is submitted, it must include a summary of progress to date from the previous agreement period. A renewal agreement shall be based upon new application, de novo review and staff evaluation, new recommendation and approval, and a new award instrument.

(2) Renewal agreement. This is an agreement instrument by which RDA or its successor agency agrees to provide additional funding for a project beyond the period approved in an original or amended agreement, provided that the cumulative period does not exceed the statutory limitation. When a renewal application is submitted, it must include a summary of progress to date from the previous agreement period. A renewal agreement shall be based upon new application, de novo review and staff evaluation, new recommendation and approval, and a new award instrument.

(3) Supplemental agreement. This is an instrument by which RDA or its successor agency agrees to provide small
amounts of additional funding under a new or renewal cooperative agreement as specified in paragraphs (c)(1) and (c)(2) of this section and may involve a short-term (usually one year or less) extension of the project period beyond that approved in an original or amended award, but in no case may the cumulative period for the project exceed the statutory limitation. A supplement is awarded only if required to assure adequate completion of the original scope of work and if there is sufficient justification to warrant such action. A request of this nature will not require additional review.

(d) Obligation of the Federal Government. The approval of any application or the award of any funds for a cooperative agreement shall not commit nor obligate the United States in any way to make any renewal, supplemental, continuation, or other award with respect to any approved application or portion of an approved application.

(e) Obligation of the cooperator. The cooperator shall be responsible for:

(1) Making a brief quarterly progress reports at the end of each December, March, June and September to the FSROC program staff for the duration of the research project;

(2) Presenting a final administrative report on the project at the end of the research project; and

(3) Preparing and publishing a report(s) of research findings for dissemination to interested producers, cooperatives, and agencies. Include recognition to financial and other assistance received from the FSROC program.

§ 4285.82 Use of funds; changes.

(a) Delegation of fiscal responsibility. The cooperator may not, in whole or in part, delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of cooperative agreement funds.

(b) Change in project plans. (1) The permissible changes by the cooperator, principal investigator(s), or other key project personnel in the approved cooperative agreement shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the cooperator and/or the principal investigator(s) is uncertain whether a particular change complies with this provision, the question must be referred to the Assistant Administrator for Cooperative Services for a final determination.

(2) Changes in approved goals, or objectives, shall be requested by cooperator and approved in writing by the Assistant Administrator for Cooperative Services, or authorized delegate, prior to effecting such changes. Normally, no requests for such changes outside the scope of the original approved project will be approved.

(3) Changes in approved project leadership or the replacement or realignment of other key project personnel shall be requested by the cooperator and approved in writing by the Assistant Administrator for Cooperative Services, or authorized delegate, prior to effecting such changes.

(4) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the cooperator and approved in writing by the Assistant Administrator for Cooperative Services, or authorized delegate, prior to effecting such changes.

(c) Changes in project period. The project period determined pursuant to §4285.81(b) of this subpart may be extended by the Assistant Administrator for Cooperative Services without additional financial support, for such additional period(s) as the Assistant Administrator for Cooperative Services determines may be necessary to complete, or fulfill the purposes of, an approved project. Any extension, when combined with the originally approved or amended project period, shall not exceed four (4) years and shall be further conditioned upon prior request by the cooperator and approval in writing by the Assistant Administrator for Cooperative Services, or authorized delegate, except as may be allowed in the terms and conditions of a cooperative agreement award.

(d) Changes in approved budget. The terms and conditions of a cooperative agreement...
agreement will prescribe circumstances under which written Agency approval must be requested and obtained prior to instituting changes in an approved budget.

§§ 4285.83–4285.92 [Reserved]

§ 4285.93 Other Federal statutes and regulations that apply.

Several other Federal statutes and regulations apply to cooperative agreement proposals considered for review or to agreements awarded under this part. These include but are not limited to:

(a) 7 CFR Part 1, Subpart A—USDA implementation of the Freedom of Information Act;
(b) 7 CFR Part 3—USDA implementation of OMB Circular A–129 regarding debt collection;
(c) 7 CFR Part 15, Subpart A—USDA implementation of title VI of the Civil Rights Act of 1964 in order to assure nondiscrimination;
(d) 7 CFR Part 1473—National Agricultural, Research, Extension, and Teaching Policy Act Amendments of 1981 if the project involves a college or university;
(e) 7 CFR Part 3015—USDA Uniform Federal Assistance Regulations implementing OMB directives (i.e., Circular Nos. A–110, A–21, and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly, the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–524, 92 Stat. 3), as well as general policy requirements applicable to recipients of Departmental financial assistance;
(f) 7 CFR Part 3016—USDA Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;
(g) 7 CFR Part 3017—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants);
(h) 7 CFR Part 3018—USDA implementation of New Restrictions on Lobbying. Imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans;
(i) 7 CFR Part 3051—Audits of Institutions of Higher Education and Other Nonprofit Institutions;
(j) 29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and 7 CFR Part 15B prohibiting discrimination based upon physical or mental handicap in Federally assisted programs;
(k) 35 U.S.C. 200 et seq.—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

§ 4285.94 Other conditions.

Post-award requirements. Upon awarding the cooperative agreement, the post-award requirements of subparts C and D of part 3016 of this title apply.

§§ 4285.95–4285.99 [Reserved]

§ 4285.100 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0570–0005. Public reporting burden for this collection of information is estimated to vary from 10 minutes to 36 hours per response with an average of 3.48 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Ag Box 7630, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0570–0005), Washington, DC 20503.
§ 4287.101 Introduction.

(a) This subpart supplements part 4279, subparts A and B, by providing additional requirements and instructions for servicing and liquidating all Business and Industry (B&I) Guaranteed Loans. This includes Drought and Disaster (D&D), Disaster Assistance for Rural Business Enterprises (DARBE), and Business and Industry Disaster (BID) loans.

(b) The lender will be responsible for servicing the entire loan and will remain mortgagee and secured party of record notwithstanding the fact that another party may hold a portion of the loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of a loan will neither be paid first nor given any preference or priority over the guaranteed portion of the loan.

(c) Copies of all forms, regulations, and Instructions referenced in this subpart are available in any Agency office. Whenever a form is designated in this subpart, that designation includes predecessor and successor forms, if applicable, as specified by the field or National Office.

§ 4287.102 Definitions.

The definitions and abbreviations contained in § 4279.2 of subpart A of part 4279 of this chapter apply to this subpart.

§ 4287.103 Exception authority.

Section 4279.15 of subpart A of part 4279 of this chapter applies to this subpart.

§§ 4287.104–4287.105 [Reserved]

§ 4287.106 Appeals.

Section 4279.16 of subpart A of part 4279 of this chapter applies to this subpart.

§ 4287.107 Routine servicing.

The lender is responsible for servicing the entire loan and for taking all servicing actions that a prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The Loan Note Guarantee is unenforceable by the lender to the extent any loss is occasioned by violation of usury laws, use of loan funds for unauthorized purposes, negligent servicing, or failure to obtain the required security interest regardless of the time at which the Agency acquires knowledge of the foregoing. This responsibility includes but is not limited to the collection of payments, obtaining compliance with the covenants and provisions in the Loan Agreement, obtaining and analyzing financial statements, checking on payment of taxes and insurance.
§ 4287.113 Interest rate adjustments.

(a) Reductions. The borrower, lender, and holder (if any) may collectively initiate a permanent or temporary reduction in the interest rate of the guaranteed loan at any time during the life of the loan upon written agreement among these parties. The Agency must be notified by the lender, in writing, within 10 calendar days of the change. If any of the guaranteed portion has been purchased by the Agency, then the Agency will affirm or reject interest rate change proposals in writing. The Agency will concur in such interest-rate changes only when it is demonstrated to the Agency that the change is a more viable alternative than initiating or proceeding with liquidation of the loan or continuing with the loan in its present state.

1. Fixed rates can be changed to variable rates to reduce the borrower’s interest rate only when the variable rate has a ceiling which is less than or equal to the original fixed rate.

2. Variable rates can be changed to a fixed rate which is at or below the current variable rate.

3. The interest rates, after adjustments, must comply with the requirements for interest rates on new loans as established by § 4279.125 of subpart B of part 4279 of this chapter.

4. The lender is responsible for the legal documentation of interest-rate changes by an endorsement or any other legally effective amendment to the promissory note; however, no new notes may be issued. Copies of all legal documents must be provided to the Agency.

(b) Increases. No increases in interest rates will be permitted except the normal fluctuations in approved variable interest rates unless a temporary interest-rate reduction had occurred.

§ 4287.113 Release of collateral.

(a) All releases of collateral with a value exceeding $100,000 must be supported by a current appraisal on the collateral released. The appraisal will be at the expense of the borrower and must meet the requirements of § 4279.144 of subpart B of part 4279 of this chapter. The remaining collateral must be sufficient to provide for repayment of the Agency’s guaranteed loan. The Agency may, at its discretion, require an appraisal of the remaining collateral in cases where it is determined...
§§ 4287.114–4287.122

that the Agency may be adversely affected by the release of collateral. Sale or release of collateral must be based on an arm’s-length transaction.

(b) Within the parameters of paragraph (a) of this section, lenders may, over the life of the loan, release collateral (other than personal and corporate guarantees) with a cumulative value of up to 20 percent of the original loan amount without Agency concurrence if the proceeds generated are used to reduce the guaranteed loan or to buy replacement collateral.

(c) Within the parameters of paragraph (a) of this section, release of collateral with a cumulative value in excess of 20 percent of the original loan or when the proceeds will not be used to reduce the guaranteed loan or to buy replacement collateral must be requested in writing by the lender and concurred in by the Agency in writing in advance of the release. A written evaluation will be completed by the lender to justify the release.

§§ 4287.114–4287.122 [Reserved]

§ 4287.123 Subordination of lien position.

A subordination of the lender’s lien position must be requested in writing by the lender and concurred in by the Agency in writing in advance of the subordination. The subordination must enhance the borrower’s business and the Agency’s interest. After the subordination, collateral must be adequate to secure the loan. The lien to which the guaranteed loan is subordinated must be for a fixed dollar limit and fixed or limited term, after which the guaranteed loan lien priority will be restored. Subordination to a revolving line of credit will not exceed 1 year. There must be adequate consideration for the subordination.

§ 4287.124 Alterations of loan instruments.

The lender shall neither alter nor approve any alterations of any loan instrument without the prior written approval of the Agency.

§§ 4287.125–4287.133 [Reserved]

§ 4287.134 Transfer and assumption.

(a) Documentation of request. All transfers and assumptions must be approved in writing by the Agency and must be to eligible applicants in accordance with subpart B of part 4279 of this chapter. An individual credit report must be provided for transferee proprietors, partners, officers, directors, and stockholders with 20 percent or more interest in the business, along with such other documentation as the Agency may request to determine eligibility.

(b) Terms. Loan terms must not be changed unless the change is approved in writing by the Agency with the concurrence of any holder and the transferor (including guarantors) if they have not been or will not be released from liability. Any new loan terms must be within the terms authorized by 4279.126 of subpart B of part 4279 of this chapter. The lender’s request for approval of new loan terms will be supported by an explanation of the reasons for the proposed change in loan terms.

(c) Release of liability. The transferor, including any guarantor, may be released from liability only with prior Agency written concurrence and only when the value of the collateral being transferred is at least equal to the amount of the loan being assumed and is supported by a current appraisal and a current financial statement. The Agency will not pay for the appraisal. If the transfer is for less than the debt, the lender must demonstrate to the Agency that the transferor and guarantors have no reasonable debt-paying ability considering their assets and income in the foreseeable future.

(d) Proceeds. Any proceeds received from the sale of collateral before a transfer and assumption will be credited to the transferor’s guaranteed loan debt in inverse order of maturity before the transfer and assumption are closed.

(e) Additional loans. Loans to provide additional funds in connection with a transfer and assumption will be considered as a new loan application under subpart B of part 4279 of this chapter.

(f) Credit quality. The lender must make a complete credit analysis which
RBS and RUS, USDA § 4287.135

is subject to Agency review and approval.

(g) Documents. Prior to Agency approval, the lender must advise the Agency, in writing, that the transaction can be properly and legally transferred, and the conveyance instruments will be filed, registered, or recorded as appropriate.

(1) The assumption will be done on the lender’s form of assumption agreement and will contain the Agency case number of the transferor and transferee. The lender will provide the Agency with a copy of the transfer and assumption agreement. The lender must ensure that all transfers and assumptions are noted on all original Loan Note Guarantees.

(2) A new Loan Agreement, consistent in principle with the original Loan Agreement, should be executed to establish the terms and conditions of the loan being assumed. An assumption agreement can be used to establish the loan covenants.

(3) The lender will provide to the Agency a written certification that the transfer and assumption is valid, enforceable, and complies with all Agency regulations.

(h) Loss resulting from transfer. If a loss should occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferee (including personal guarantors) is released from liability, the lender, if it holds the guaranteed portion, may file an estimated report of loss to recover its pro rata share of the actual loss. If a holder owns any of the guaranteed portion, such portion must be repurchased by the lender or the Agency in accordance with 4279.78(c) of subpart A of part 4279 of this chapter. In completing the report of loss, the amount of the debt assumed will be entered as net collateral (recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption will be included in the calculations.

(i) Related party. If the transferor and transferee are affiliated or related parties, any transfer and assumption must be for the full amount of the debt.

(j) Payment requests. Requests for a loan guarantee to provide equity for a transfer and assumption must be considered as a new loan under subpart B of part 4279 of this chapter.

(k) Cash downpayment. When the transferee will be making a cash downpayment as part of the transfer and assumption:

(1) The lender must have an appropriate appraiser, acceptable to both the transferee and transferor and currently authorized to perform appraisals, determine the value of the collateral securing the loan. The appraisal fee and any other costs will not be paid by the Agency.

(2) The market value of the collateral, plus any additional property the transferee proposes to offer as collateral, must be adequate to secure the balance of the guaranteed loans.

(3) Cash downpayments may be paid directly to the transferee provided:

(i) The lender recommends that the cash be released, and the Agency concurs prior to the transaction being completed. The lender may wish to require that an amount be retained for a defined period of time as a reserve against future defaults. Interest on such account may be paid periodically to the transferor or transferee as agreed;

(ii) The lender determines that the transferee has the repayment ability to meet the obligations of the assumed guaranteed loan as well as any other indebtedness;

(iii) Any payments by the transferee to the transferor will not suspend the transferee’s obligations to continue to meet the guaranteed loan payments as they come due under the terms of the assumption; and

(iv) The transferor agrees not to take any action against the transferee in connection with the assumption without prior written approval of the lender and the Agency.

§ 4287.135 Substitution of lender.

After the issuance of a Loan Note Guarantee, the lender shall not sell or transfer the entire loan without the prior written approval of the Agency. The Agency will not pay any loss or share in any costs (i.e., appraisal fees, environmental studies, or other costs
associated with servicing or liquidating the loan) with a new lender unless a relationship is established through a substitution of lender in accordance with paragraph (a) of this section. This includes cases where the lender has failed and been taken over by a regulatory agency such as the Federal Deposit Insurance Corporation (FDIC) and the loan is subsequently sold to another lender.

(a) The Agency may approve the substitution of a new lender if:

1. The proposed substitute lender:
   (i) Is an eligible lender in accordance with 4279.29 of subpart A of part 4279 of this chapter;
   (ii) Is able to service the loan in accordance with the original loan documents; and
   (iii) Agrees in writing to acquire title to the unguaranteed portion of the loan held by the original lender and assumes all original loan requirements, including liabilities and servicing responsibilities.

2. Where the lender has failed and been taken over by FDIC and the guaranteed loan is liquidated by FDIC rather than being sold to another lender, the Agency will pay losses and share in costs as if FDIC were an approved substitute lender.

§§ 4287.146–4287.155 [Reserved]

§ 4287.156 Protective advances.

Protective advances are advances made by the lender for the purpose of preserving and protecting the collateral where the debtor has failed to, will not, or cannot meet its obligations. Sound judgment must be exercised in determining that the protective advance preserves collateral and recovery is actually enhanced by making the advance. Protective advances will not be made in lieu of additional loans.

(a) The maximum loss to be paid by the Agency will never exceed the original principal plus accrued interest regardless of any protective advances made.

(b) Protective advances and interest thereon at the note rate will be guaranteed at the same percentage of loss as provided in the Loan Note Guarantee.

(c) Protective advances must constitute an indebtedness of the borrower.

§§ 4287.136–4287.144

Curative actions include but are not limited to:

1. Deferment of principal (subject to rights of any holder);
2. An additional unguaranteed loan by the lender to bring the account current;
3. Reamortization of or rescheduling the payments on the loan (subject to rights of any holder);
4. Transfer and assumption of the loan in accordance with § 4287.134 of this subpart;
5. Reorganization;
6. Liquidation;
7. Subsequent loan guarantees; and
8. Changes in interest rates with the Agency’s, the lender’s, and holder’s approval, provided that the interest rate is adjusted proportionately between the guaranteed and unguaranteed portion of the loan and the type of rate remains the same.

2. In the event a deferment, rescheduling, reamortization, or moratorium is accomplished, it will be limited to the remaining life of the collateral or remaining limits as contained in § 4279.126 of subpart B of part 4279 of this chapter, whichever is less.
§ 4287.157 Liquidation.

In the event of one or more incidents of default or third party actions that the borrower cannot or will not cure or eliminate within a reasonable period of time, liquidation may be considered. If the lender concludes that liquidation is necessary, it must request the Agency’s concurrence. The lender will liquidate the loan unless the Agency, at its option, carries out liquidation. When the decision to liquidate is made, if the loan has not already been repurchased, provisions will be made for repurchase in accordance with § 4279.78 of subpart A of part 4279 of this chapter.

(a) Decision to liquidate. A decision to liquidate shall be made when it is determined that the default cannot be cured through actions contained in § 4287.145 of this subpart or it has been determined that it is in the best interest of the Agency and the lender to liquidate. The decision to liquidate or continue with the borrower must be made as soon as possible when any of the following exist:

(1) A loan has been delinquent 90 days and the lender and borrower have not been able to cure the delinquency through one of the actions contained in § 4287.145 of this subpart.

(2) It has been determined that delaying liquidation will jeopardize full recovery on the loan.

(3) The borrower or lender has been uncooperative in resolving the problem and the Agency or the lender has reason to believe the borrower is not acting in good faith, and it would enhance the position of the guarantee to liquidate immediately.

(b) Liquidation by the Agency. The Agency may require the lender to assign the security instruments to the Agency if the Agency, at its option, decides to liquidate the loan. When the Agency liquidates, reasonable liquidation expenses will be assessed against the proceeds derived from the sale of the collateral. Form FmHA 1980–45, “Notice of Liquidation Responsibility,” will be forwarded to the Finance Office when the Agency liquidates the loan.

(c) Submission of liquidation plan. The lender will, within 30 days after a decision to liquidate, submit to the Agency in writing its proposed detailed method of liquidation. Upon approval by the Agency of the liquidation plan, the lender will commence liquidation.

(d) Lender’s liquidation plan. The liquidation plan must include, but is not limited to, the following:

(1) Such proof as the Agency requires to establish the lender’s ownership of the guaranteed loan promissory note and related security instruments and a copy of the payment ledger if available which reflects the current loan balance and accrued interest to date and the method of computing the interest.

(2) A full and complete list of all collateral including any personal and corporate guarantees.

(3) The recommended liquidation methods for making the maximum collection possible on the indebtedness and the justification for such methods, including recommended action:

(i) For acquiring and disposing of all collateral; and

(ii) To collect from guarantors.

(4) Necessary steps for preservation of the collateral.

(5) Copies of the borrower’s latest available financial statements.

(6) Copies of the guarantor’s latest available financial statements.

(7) An itemized list of estimated liquidation expenses expected to be incurred along with justification for each expense.

(8) A schedule to periodically report to the Agency on the progress of liquidation.

(9) Estimated protective advance amounts with justification.

(10) Proposed protective bid amounts on collateral to be sold at auction and a breakdown to show how the amounts were determined.

(11) If a voluntary conveyance is considered, the proposed amount to be credited to the guaranteed debt.

(12) Legal opinions, if needed.

(13) If the outstanding balance of principal and accrued interest is less than $200,000, the lender will obtain an estimate of fair market and potential liquidation value of the collateral. If
the outstanding balance of principal and accrued interest is $200,000 or more, the lender will obtain an independent appraisal report meeting the requirements of § 4279.144 of subpart B of part 4279 of this chapter on all collateral securing the loan which will reflect the fair market value and potential liquidation value. In order to formulate a liquidation plan which maximizes recovery, collateral must be evaluated for the release of hazardous substances, petroleum products, or other environmental hazards which may adversely impact the market value of the collateral. The appraisal shall consider this aspect. The independent appraiser’s fee, including the cost of the environmental site assessment, will be shared equally by the Agency and the lender. 

(e) Approval of liquidation plan. The Agency will inform the lender in writing whether it concurs in the lender’s liquidation plan. Should the Agency and the lender not agree on the liquidation plan, negotiations will take place between the Agency and the lender to resolve the disagreement. When the liquidation plan is approved by the Agency, the lender will proceed expeditiously with liquidation.

(1) A transfer and assumption of the borrower’s operation can be accomplished before or after the loan goes into liquidation. However, if the collateral has been purchased through foreclosure or the borrower has conveyed title to the lender, no transfer and assumption is permitted.

(2) A protective bid may be made by the lender, with prior Agency written approval, at a foreclosure sale to protect the lender’s and the Agency’s interest. The protective bid will not exceed the amount of the loan, including expenses of foreclosure, and should be based on the liquidation value considering estimated expenses for holding and reselling the property. These expenses include, but are not limited to, expenses for resale, interest accrual, length of time necessary for resale, maintenance, guard service, weatherization, and prior liens.

(f) Acceleration. The lender, or the Agency if it liquidates, will proceed to accelerate the indebtedness as expeditiously as possible when acceleration is necessary including giving any notices and taking any other legal actions required. A copy of the acceleration notice or other acceleration document will be sent to the Agency (or lender if the Agency liquidates). The guaranteed loan will be considered in liquidation once the loan has been accelerated and a demand for payment has been made upon the borrower.

(g) Filing an estimated loss claim. When the lender is conducting the liquidation and owns any or all of the guaranteed portion of the loan, the lender will file an estimated loss claim once a decision has been made to liquidate if the liquidation will exceed 90 days. The estimated loss payment will be based on the liquidation value of the collateral. For the purpose of reporting and loss claim computation, the lender will discontinue interest accrual on the defaulted loan in accordance with Agency procedures, and the loss claim will be promptly processed in accordance with applicable Agency regulations.

(h) Accounting and reports. When the lender conducts liquidation, it will account for funds during the period of liquidation and will provide the Agency with reports at least quarterly on the progress of liquidation including disposition of collateral, resulting costs, and additional procedures necessary for successful completion of the liquidation.

(i) Transmitting payments and proceeds to the Agency. When the Agency is the holder of a portion of the guaranteed loan, the lender will transmit to the Agency its pro rata share of any payments received from the borrower; liquidation; or other proceeds using Form FmHA 1980–43, “Lender’s Guaranteed Loan Payment to FmHA.”

(j) Abandonment of collateral. There may be instances when the cost of liquidation would exceed the potential recovery value of the collection. The lender, with proper documentation and concurrence of the Agency, may abandon the collateral in lieu of liquidation. A proposed abandonment will be considered a servicing action requiring the appropriate environmental review by the Agency in accordance with subpart G of part 1940 of this title. Examples where abandonment may be considered include, but are not limited to:
(1) The cost of liquidation is increased or the value of the collateral is decreased by environmental issues; 
(2) The collateral is functionally or economically obsolete; 
(3) There are superior liens held by other parties in excess of the value of the collateral; 
(4) The collateral has deteriorated; or 
(5) The collateral is specialized and there is little or no demand for it.

(k) Disposition of personal or corporate guarantees. The lender should take action to maximize recovery from all collateral, including personal and corporate guarantees. The lender will seek a deficiency judgment when there is a reasonable chance of future collection of the judgment. The lender must make a decision whether or not to seek a deficiency judgment when:
(1) A borrower voluntarily liquidates the collateral, but the sale fails to pay the guaranteed indebtedness; 
(2) The collateral is voluntarily conveyed to the lender, but the borrower and personal and corporate guarantors are not released from liability; or 
(3) A liquidation plan is being developed for forced liquidation.

(l) Compromise settlement. A compromise settlement may be considered at any time.
(1) The lender and the Agency must receive complete financial information on all parties obligated for the loan and must be satisfied that the statements reflect the true and correct financial position of the debtor including all assets. Adequate consideration must be received before a release from liability is issued. Adequate consideration includes money, additional security, or other benefit to the goals and objectives of the Agency.
(2) Before a personal guarantor can be released from liability, the following factors must be considered.
(i) Cash, either lump sum or over a period of time, or other consideration offered by the guarantor; 
(ii) Age and health of the guarantor; 
(iii) Potential income of the guarantor; 
(iv) Inheritance prospects of the guarantor; 
(v) Availability of the guarantor’s assets.
(vi) Possibility that the guarantor’s assets have been concealed or improperly transferred; and 
(vii) Effect of other guarantors on the loan.
(3) Once the Agency and the lender agree on a reasonable amount that is fair and adequate, the lender can proceed to effect the settlement compromise.
(4) A compromise will only be accepted if it is in the best interest of the Agency.

§4287.158 Determination of loss and payment.

In all liquidation cases, final settlement will be made with the lender after the collateral is liquidated, unless otherwise designated as a future recovery or after settlement and compromise of all parties has been completed. The Agency will have the right to recover losses paid under the guaranty from any party which may be liable.

(a) Report of loss form. Form FmHA 449–30, “Loan Note Guarantee Report of Loss,” will be used for calculations of all estimated and final loss determinations. Estimated loss payments may only be approved by the Agency after the Agency has approved a liquidation plan.

(b) Estimated loss. In accordance with the requirements of §4287.157(g) of this subpart, an estimated loss claim based on liquidation appraisal value will be prepared and submitted by the lender.
(1) The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by the Agency will be applied by the lender on the guaranteed portion of the loan debt. Such application does not release the borrower from liability.
(2) An estimated loss will be applied first to reduce the principal balance on the guaranteed loan and the balance, if any, to accrued interest. Interest accrual on the defaulted loan will be discontinued.
(3) A protective advance claim will be paid only at the time of the final report of loss payment, except in certain transfer and assumption situations as specified in §4287.134 of this subpart.
Final loss. Within 30 days after liquidation of all collateral, except for certain unsecured personal or corporate guarantees as provided for in this section, is completed, a final report of loss must be prepared and submitted by the lender to the Agency. The Agency will not guarantee interest beyond this 30-day period other than for the period of time it takes the Agency to process the loss claim. Before approval by the Agency of any final loss report, the lender must account for all funds during the period of liquidation, disposition of the collateral, all costs incurred, and any other information necessary for the successful completion of liquidation. Upon receipt of the final accounting and report of loss, the Agency may audit all applicable documentation to determine the final loss. The lender will make its records available and otherwise assist the Agency in making any investigation. The documentation accompanying the report of loss must support the amounts shown on Form FmHA 449-30.

(1) A determination must be made regarding the collectibility of unsecured personal and corporate guarantees. If reasonably possible, such guarantees should be promptly collected or otherwise disposed of in accordance with §4287.157(k) of this subpart prior to completion of the final loss report. However, in the event that collection from the guarantors appears unlikely or will require a prolonged period of time, the report of loss will be filed when all other collateral has been liquidated, and unsecured personal or corporate guarantees will be treated as a future recovery with the net proceeds to be shared on a pro rata basis by the lender and the Agency.

(2) The lender must document that all of the collateral has been accounted for and properly liquidated and that liquidation proceeds have been properly accounted for and applied correctly to the loan.

(3) The lender will show a breakdown of any protective advance amount as to the payee, purpose of the expenditure, date paid, and evidence that the amount expended was proper and that payment was actually made.

(4) The lender will show a breakdown of liquidation expenses as to the payee, purpose of the expenditure, date paid, and evidence that the amount expended was proper and that payment was actually made. Liquidation expenses are recoverable only from collateral proceeds. Attorney fees may be approved as liquidation expenses provided the fees are reasonable and cover legal issues pertaining to the liquidation that could not be properly handled by the lender and its in-house counsel.

(5) Accrued interest will be supported by documentation as to how the amount was accrued. If the interest rate was a variable rate, the lender will include documentation of changes in both the selected base rate and the loan rate.

(6) Loss payments will be paid by the Agency within 60 days after the review of the final loss report and accounting of the collateral.

(d) Loss limit. The amount payable by the Agency to the lender cannot exceed the limits set forth in the Loan Note Guarantee.

(e) Rent. Any net rental or other income that has been received by the lender from the collateral will be applied on the guaranteed loan debt.

(f) Liquidation costs. Liquidation costs will be deducted from the proceeds of the disposition of primary collateral. If changed circumstances after submission of the liquidation plan require a substantial revision of liquidation costs, the lender will procure the Agency’s written concurrence prior to proceeding with the proposed changes. No in-house expenses of the lender will be allowed. In-house expenses include, but are not limited to, employee’s salaries, staff lawyers, travel, and overhead.

(g) Payment. When the Agency finds the final report of loss to be proper in all respects, it will approve Form FmHA 449-30 and proceed as follows:

(1) If the loss is greater than any estimated loss payment, the Agency will pay the additional amount owed by the Agency to the lender.

(2) If the loss is less than the estimated loss payment, the lender will reimburse the Agency for the overpayment plus interest at the note rate from the date of payment.
If the Agency has conducted the liquidation, it will pay the lender in accordance with the Loan Note Guarantee.

§§ 4287.159–4287.168 [Reserved]

§ 4287.169 Future recovery.

After a loan has been liquidated and a final loss has been paid by the Agency, any future funds which may be recovered by the lender will be pro rated between the Agency and the lender based on the original percentage of guarantee.

§ 4287.170 Bankruptcy.

The lender is responsible for protecting the guaranteed loan and all collateral securing the loan in bankruptcy proceedings.

(a) Lender’s responsibilities. It is the lender’s responsibility to protect the guaranteed loan debt and all of the collateral securing it in bankruptcy proceedings. These responsibilities include but are not limited to the following:

(1) The lender will file a proof of claim where necessary and all the necessary papers and pleadings concerning the case.

(2) The lender will attend and, where necessary, participate in meetings of the creditors and all court proceedings.

(3) When permitted by the Bankruptcy Code, the lender will request modification of any plan of reorganization whenever it appears that additional recoveries are likely.

(4) The Agency will be kept adequately and regularly informed in writing of all aspects of the proceedings.

(5) In a Chapter 11 reorganization, if an independent appraisal of collateral is necessary in the Agency’s opinion, the Agency and the lender will share such appraisal fee equally.

(b) Reports of loss during bankruptcy.

When the loan is involved in reorganization proceedings, payment of loss claims may be made as provided in this section. For a liquidation proceeding, only paragraphs (b)(3) and (5) of this section are applicable.

(1) Estimated loss payments. (i) If a borrower has filed for protection under Chapter 11 of the United States Code for a reorganization (but not Chapter 13) and all or a portion of the debt has been discharged, the lender will request an estimated loss payment of the guaranteed portion of the accrued interest and principal discharged by the court. Only one estimated loss payment is allowed during the reorganization. All subsequent claims of the lender during reorganization will be considered revisions to the initial estimated loss. A revised estimated loss payment may be processed by the Agency, at its option, in accordance with any court-approved changes in the reorganization plan.

(ii) The reorganization plan has been completed, the lender is responsible for submitting the documentation necessary for the Agency to review and adjust the estimated loss claim to reflect any actual discharge of principal and interest and to reimburse the lender for any court-ordered interest-rate reduction under the terms of the reorganization plan.

(iii) Upon completion of a reorganization plan, the lender will complete a Form FmHA 449–30 to request an estimated loss payment and to revise any estimated loss payments during the course of the reorganization plan. The estimated loss claim, as well as any revisions to this claim, will be accompanied by documentation to support the claim.

(iv) Upon completion of a reorganization plan, the lender will complete a Form FmHA 1980–44 and forward this form to the Finance Office.

(2) Interest loss payments. (i) Interest losses sustained during the period of the reorganization plan will be processed in accordance with paragraph (b)(1) of this section.

(ii) Interest losses sustained after the reorganization plan is completed will be processed annually when the lender sustains a loss as a result of a permanent interest rate reduction which extends beyond the period of the reorganization plan.

(iii) If an estimated loss claim is paid during the operation of the Chapter 11 reorganization plan and the borrower repays in full the remaining balance without an additional loss sustained by the lender, a final report of loss is not necessary.

(3) Final loss payments. Final loss payments will be processed when the loan is liquidated.

(4) Payment application. The lender must apply estimated loss payments
first to the unsecured principal of the guaranteed portion of the debt and then to the unsecured interest of the guaranteed portion of the debt. In the event a bankruptcy court attempts to direct the payments to be applied in a different manner, the lender will immediately notify the Agency servicing office.

(5) Overpayments. Upon completion of the reorganization plan, the lender will provide the Agency with the documentation necessary to determine whether the estimated loss paid equals the actual loss sustained. If the actual loss sustained as a result of the reorganization is less than the estimated loss, the lender will reimburse the Agency for the overpayment plus interest at the note rate from the date of payment of the estimated loss. If the actual loss is greater than the estimated loss payment, the lender will submit a revised estimated loss in order to obtain payment of the additional amount owed by the Agency to the lender.

(6) Protective advances. If approved protective advances were made prior to the borrower having filed bankruptcy, these protective advances and accrued interest will be considered in the loss calculations.

(c) Legal expenses during bankruptcy proceedings. (1) When a bankruptcy proceeding results in a liquidation of the borrower by a trustee, legal expenses will be handled as directed by the court.

(2) Chapter 11 pertains to a reorganization of a business contemplating an ongoing business rather than a termination and dissolution of the business where legal protection is afforded to the business as defined under Chapter 11 of the Bankruptcy Code. Consequently, expenses incurred by the lender in a Chapter 11 reorganization can never be liquidation expenses unless the proceeding becomes a Chapter 11 liquidation. If the proceeding should become a Liquidating 11, reasonable and customary liquidation expenses may be deducted from proceeds of collateral as provided in the Lender’s Agreement. Chapter 7 pertains to a liquidation of the borrower’s assets. If, and when, liquidation of the borrower’s assets under Chapter 7 is conducted by the bankruptcy trustee, then the lender cannot claim expenses.

§§ 4287.171–4287.179 [Reserved]

§ 4287.180 Termination of guarantee.

A guarantee under this part will terminate automatically:

(a) Upon full payment of the guaranteed loan;

(b) Upon full payment of any loss obligation; or

(c) Upon written notice from the lender to the Agency that the guarantee will terminate 30 days after the date of notice, provided that the lender holds all of the guaranteed portion and the Loan Note Guarantee is returned to the Agency to be canceled.

§§ 4287.181–4287.199 [Reserved]

§ 4287.200 OMB control number.

The information collection requirements contained in this regulation have been approved by OMB and have been assigned OMB control number 0575–0168. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 8 hours per response, with an average of 4 hours per response, including time for reviewing the collection of information. Send comments regarding this burden, estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Department of Agriculture, Clearance Officer, OIRM, Stop 7630, Washington, DC 20250. You are not required to respond to this collection of information unless it displays a currently valid OMB control number.

Subpart D—Servicing Biorefinery Assistance Guaranteed Loans

SOURCE: 76 FR 8475, Feb. 14, 2011, unless otherwise noted.

§ 4287.301 Introduction.

(a) This subpart supplements 7 CFR part 4279, subparts A and C, by providing additional requirements and instructions for servicing and liquidating all Biorefinery Assistance Guaranteed Loans.
(b) The lender will be responsible for servicing the entire loan and will remain mortgagee and secured party of record notwithstanding the fact that another party may hold a portion of the loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of a loan will neither be paid first nor given any preference or priority over the guaranteed portion of the loan.

(c) Copies of all forms, regulations, and Instructions referenced in this subpart are available in any Agency office. Whenever a form is designated in this subpart, that designation includes predecessor and successor forms, if applicable, as specified by the field or National Office.

§ 4287.302 Definitions.

The definitions and abbreviations contained in § 4279.2 of subpart A and in § 4279.202 of subpart C of part 4279 of this chapter apply to this subpart.

§ 4287.303 Exception authority.

The exception authority provisions of this paragraph apply to this subpart instead of those in § 4279.15 of subpart A of part 4279 of this chapter. The Administrator may, with the concurrence of the Secretary of Agriculture, make an exception, on a case-by-case basis, to any requirement or provision of this subpart that is not inconsistent with any authorizing statute or applicable law, if the Administrator determines that application of the requirement or provision would adversely affect the Federal government’s interest.

§§ 4287.304–4287.305 [Reserved]

§ 4287.306 Appeals.

Section 4279.16 of subpart A of part 4279 of this chapter applies to this subpart.

§ 4287.307 Servicing.

Except as specified in paragraphs (a) through (m) of this section, all loans guaranteed under this subpart shall comply with the provisions found in §§ 4287.101 through 4287.180 of this chapter. If the Agency determines that the lender is not in compliance with its servicing responsibilities, the Agency reserves the right to take any action the Agency determines necessary to protect the Agency’s interests with respect to the loan. If the Agency exercises this right, the lender must cooperate with the Agency. Any cost to the Agency associated with such action will be assessed against the lender.

(a) Periodic reports. Each lender shall submit quarterly reports, unless more frequent ones are needed as determined by the Agency to meet the financial interests of the United States, regarding the condition of its Agency guaranteed loan portfolio (including borrower status and loan classification) and any material adverse change in the general financial condition of the borrower since the last report was submitted.

(b) Default reports. Lenders shall submit monthly default reports, including borrower payment history, for each loan in monetary default using a form approved by the Agency.

(c) Financial reports. The financial report requirements specified in § 4287.107(d) apply except as follows:

1. The financial reports required under § 4287.107(d) may be specified in either the loan agreement or the Conditional Commitment;

2. The lender must submit to the Agency quarterly financial statements within 45 days of the end of each quarter; and

3. The annual financial statements required under § 4287.107(d) must be audited financial statements and must be submitted within 180 days.

(d) Additional loans. Instead of complying with the additional expenditures provisions specified in § 4287.107(e), the lender may make additional expenditures or new loans to a borrower with an outstanding loan guaranteed only with prior written Agency approval. The Agency will only approve additional expenditures or new loans where the expenditure or loan will not violate one or more of the loan covenants of the borrower’s loan agreement. In all instances, the lender must notify the Agency when they make any additional expenditures or new loans. Any additional expenditure or loan made by the lender must be junior in priority to the loan guaranteed under 7 CFR part 4279 except for working capital loans for
which the Agency may consider a subordinate lien provided it is consistent with the conditional provisions specified in §4279.202(i)(1).

(e) Interest rate adjustments. The provisions of §4287.112 apply, except for §4287.112(a)(2).

(f) Collateral inspection and release. In lieu of complying with §4287.113, lenders must comply with the provisions of this paragraph. The lender must inspect the collateral as often as necessary to properly service the loan. The Agency must give prior approval for the release of collateral, except as specified in paragraph (f)(1) of this section or where the release of collateral is made under the abundance of collateral provision of the applicable security agreement, subject to the provisions of paragraph (f)(3) of this section. Appraisals on the collateral being released are required on all transactions exceeding $250,000 and will be at the expense of the borrower. The appraisal must meet the requirements of §4279.244. The sale or release of collateral must be based on an arm’s length transaction, unless otherwise approved by the Agency in writing.

(1) Lenders may, over the life of the guaranteed loan, release collateral with a cumulative value of up to 20 percent of the original loan amount without Agency concurrence (subject to the provisions of paragraph (f)(3) of this section) if the proceeds generated are used to pay down secured debt in order of lien priority or to buy replacement collateral.

(2) Release of collateral with a cumulative value in excess of 20 percent of the original loan amount will be at the Agency’s concurrence (subject to the provisions of paragraph (f)(3) of this section) if the proceeds generated are used to pay down secured debt in order of lien priority or to buy replacement collateral.

(g) Subordination of lien position. In addition to complying with the provisions found in §4287.123, a subordination must not extend the term of the guaranteed loan.

(h) Transfers and assumptions. Transfers and assumptions shall comply with §4287.134, except as specified in paragraphs (h)(1) through (h)(3) of this section, and with paragraphs (h)(4) and (h)(5) of this section.

(1) In complying with §4287.134(a), eligible applicants shall be determined in accordance with subpart C of part 4279 of this chapter instead of subpart B of part 4279.

(2) Any new loan terms under §4287.134(b) must be within the terms authorized by §4279.232 of subpart C of part 4279 of this chapter instead of §4279.126 of subpart B of part 4279.

(3) Additional loans under §4287.134(e) will be considered as a new loan application under subpart C of part 4279 of this chapter instead of subpart B of part 4279.

(4) The Agency may charge the lender a nonrefundable transfer fee at the time of a transfer application. The Agency will set the amount of the transfer fee in an annual notice of funds availability published in the Federal Register.

(5) Assumption shall be deemed to occur in the event of a change in the control of the borrower. For purposes of the loan, change of control means the merger of the borrower, sale of all or substantially all of the assets of the borrower, or the sale of more than 25 percent of the stock or other equity interest of either the borrower or its corporate parent.

(6) The Agency will not approve any change in terms that results in an increase in the cost of the loan guarantee, unless the Agency can secure any additional budget authority that would be required and the change otherwise conforms with applicable regulations.

(i) Substitution of lender after issuance of the Loan Note Guarantee. All substitutions of lenders must comply with §4287.135 except that, instead of approving a new lender as a substitute lender using the provisions of §4287.135(a), the Agency may approve the substitution
of a new lender if the proposed substitute lender:

1. Is an eligible lender in accordance with §4279.202(b);
2. Is able to service the loan in accordance with the original loan documents; and
3. Acquires title to the unguaranteed portion of the loan held by the original lender and assumes all original loan requirements, including liabilities and servicing responsibilities.

(j) Default by borrower. The provisions of §4287.145 apply to this subpart, except that:

1. Instead of complying with §4287.145(b)(2), in the event a deferment, rescheduling, reamortization, or moratorium is accomplished, it will be limited to the remaining life of the collateral or remaining limits as contained in §4279.232(a) of part 4279 of this chapter; and
2. If a loan goes into default, the lender must provide the notification required under §4287.145(a) to the Agency within 15 calendar days of when a borrower is 30 days past due on a payment or is otherwise in default of the Loan Agreement.

(k) Protective advances. All protective advances made by the lender must comply with §4287.156 and the provisions of paragraphs (k)(1) and (k)(2) of this section.

1. Instead of the $5,000 specified in §4287.156(c), the Agency’s written authorization is required when cumulative protective advances exceed $100,000, unless otherwise specified by the Agency at a lesser amount.
2. The lender must obtain written Agency approval for any protective advance that will singularly or cumulatively amount to more than $100,000 or 10 percent of the guaranteed loan, whichever is less.

(l) Liquidation. Liquidations shall comply with §4287.157, except that, in complying with §4287.157(d)(13), lenders are to obtain an independent appraisal report meeting the requirements of §4279.244, instead of §4279.144, when the outstanding balance of principal and accrued interest is $200,000 or more.

(m) Determination of loss and payment. In addition to complying with §4287.158, if a lender receives a final loss payment, the lender must submit to the Agency an annual report on its collection activities for each unsatisfied account for 3 years following payment of the final loss claim.

§4287.308 Fiscal Year 2009 and Fiscal Year 2010 loan guarantees.

Any loan guarantee application that has been submitted to the Agency under this program prior to March 16, 2011 may submit to the Agency a written request for an irrevocable election to have the guaranteed loan serviced in accordance with this subpart. Such an election must be made by October 1, 2011.

§§4287.309–4287.400 [Reserved]

PART 4288—PAYMENT PROGRAMS

Subpart A—Repowering Assistance Payments to Eligible Biorefineries

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Subpart B—Advanced Biofuel Payment Program

GENERAL PROVISIONS

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§ 4288.1 Purpose and scope.

(a) Purpose. The purpose of this program is to provide financial incentives to biofuels in existence on June 18, 2008, the date of the enactment of the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill) (Pub. L. 110–246), to replace the use of fossil fuels used to produce heat or power at their facilities by installing new systems that use renewable biomass, or to produce new energy from renewable biomass.

(b) Scope. The Agency may make payments under this program to any biorefinery that meets the requirements of the program up to the limits established for the program. Based on our research and survey of medium-sized project costs, the Agency has determined that the dollar amount identified will provide adequate incentive for biofuels to apply.

(1) The Agency will determine the amount of payments to be made to a biorefinery taking into consideration the percentage reduction in fossil fuel used by the biorefinery (including the quantity of fossil fuels a renewable biomass system is replacing), and the cost and cost-effectiveness of the renewable biomass system.

(2) The Agency will determine who receives payment under this program based on the percentage reduction in fossil fuel used by the biorefinery that will result from the installation of the renewable biomass system; the cost and cost-effectiveness of the renewable biomass system; and other scoring criteria identified in §4288.21. The above criteria will be used to determine priority for awards of 50 percent of total eligible project costs, up to the maximum award applicable for the fiscal year.

§ 4288.2 Definitions.

The definitions set forth in this section are applicable for all purposes of program administration under this subpart.

Agency. The USDA Rural Development, Rural Business-Cooperative Service or its successor organization.

Application period. The time period announced by the Agency during which the Agency will accept applications.

Base energy use. The amount of documented fossil fuel energy use over an extended operating period.

(1) The extended operating period must be at least 24 months of recorded usage, and requires metered utility records for electric energy, natural gas consumption, fuel oil, coal shipments and propane use, as applicable for providing heat or power for the operation of the biorefinery.

(2) Utility billing, oil and coal shipments must be actual bills, with meter readings, applicable rates and tariffs, costs and usage. Billing must be complete, without gaps and arranged in chronological order. Drop shipments of coal or oil can be substituted for metered readings, provided the biorefinery documents the usage and its relationship to providing heat or power to the biorefinery.

(3) A biorefinery in existence on or before June 18, 2008 with less than 24
months of actual operating data must provide at least 12 months of data supported by engineering and design calculations, and site plans, prepared by the construction engineering firm.

**Biobased products.** Products determined by the Secretary to be commercial or industrial products (other than food or feed) that are:

1. Composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials; or
2. Intermediate ingredients or feedstocks.

**Biofuel.** Fuel derived from renewable biomass.

**Biorefinery.** A facility (including equipment and processes) that converts renewable biomass into biofuels and biobased products, and may produce electricity.

**Eligible biorefinery.** A biorefinery that has been in existence on or before June 18, 2008.

**Energy Information Agency (EIA).** The statistical agency of the Department of Energy and source of official energy statistics from the U.S. Government.

**Feasibility study.** An Agency-acceptable analysis of the economic, environmental, technical, financial, and management capabilities of a proposed project or business in terms of its expected success. A list of items that must be included in a feasibility study is presented in §4288.20(c)(9) of this subpart.

**Financial interest.** Any ownership, creditor, or management interest in the biorefinery.

**Fiscal year.** A 12-month period beginning each October 1 and ending September 30 of the following calendar year.

**Fossil fuel.** Coal, oil, propane, and natural gas.

**Renewable biomass.**

1. Materials, pre-commercial thinnings, or invasive species from National Forest System land or public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)) that:
   1. Are byproducts of preventive treatments that are removed to reduce hazardous fuels; to reduce or contain disease or insect infestation; or to restore ecosystem health; and
   2. Would not otherwise be used for higher value products; and
   3. Are harvested in accordance with applicable law and land management plans and the requirements for old growth maintenance, restoration, and management direction as per paragraphs (e)(2), (e)(3), and (e)(4), and large tree retention as per paragraph (f), of section 102 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6512); or
2. Any organic matter that is available on a renewable or recurring basis from non-Federal land or land belonging to an Indian or Indian Tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States, including:
   1. Renewable plant material, including feed grains; other agricultural commodities; other plants and trees; and algae; and
   2. Waste material, including crop residue; other vegetative waste material (including wood waste and wood residues); animal waste and byproducts (including fats, oils, greases, and manure); and food waste and yard waste.

**Rural or rural area.** Any area of a State not in a city or town that has a population of more than 50,000 inhabitants, according to the latest decennial census of the United States, or in the urbanized area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants, and any area that has been determined to be “rural in character” by the Under Secretary for Rural Development, or as otherwise identified in this definition.

1. An area that is attached to the urbanized area of a city or town with more than 50,000 inhabitants by a contiguous area of urbanized census blocks that is not more than 2 census blocks wide. Applicants from such an area should work with their Rural Development State Office to request a determination of whether their project is located in a rural area under this provision.
2. For the purposes of this definition, cities and towns are incorporated population centers with definite boundaries, local self government, and legal
powers set forth in a charter granted by the State.

(3) For the Commonwealth of Puerto Rico, the island is considered rural and eligible for Business Programs assistance, except for the San Juan Census Designated Place (CDP) and any other CDP with greater than 50,000 inhabitants. CDPs with greater than 50,000 inhabitants, other than the San Juan CDP, may be determined to be eligible if they are “not urban in character.”

(4) For the State of Hawaii, all areas within the State are considered rural and eligible for Business Programs assistance, except for the Honolulu CDP within the County of Honolulu.

(5) For the purpose of defining a rural area in the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands, the Agency shall determine what constitutes rural and rural area based on available population data.

(6) The determination that an area is “rural in character” will be made by the Under Secretary of Rural Development. The process to request a determination under this provision is outlined in paragraph (6)(ii) of this definition.

   (i) The determination that an area is “rural in character” under this definition will apply to areas that are within:

   (A) An urbanized area that has two points on its boundary that are at least 40 miles apart, which is not contiguous or adjacent to a city or town that has a population of greater than 150,000 inhabitants or the urbanized area of such a city or town; or

   (B) An urbanized area contiguous and adjacent to a city or town of greater than 50,000 inhabitants that is within one-quarter mile of a rural area.

   (ii) Units of local government may petition the Under Secretary of Rural Development for a “rural in character” designation by submitting a petition to both the appropriate Rural Development State Director and the Administrator on behalf of the Under Secretary. The petition shall document how the area meets the requirements of paragraph (6)(i)(A) or (6)(i)(B) of this definition and discuss why the petitioner believes the area is “rural in character,” including, but not limited to, the area’s population density, demographics, and topography and how the local economy is tied to a rural economic base. Upon receiving a petition, the Under Secretary will consult with the applicable Governor or leader in a similar position and request comments to be submitted within 5 business days, unless such comments were submitted with the petition. The Under Secretary will release to the public a notice of a petition filed by a unit of local government not later than 30 days after receipt of the petition by way of publication in a local newspaper and posting on the Agency’s Web site, and the Under Secretary will make a determination not less than 15 days, but no more than 60 days, after the release of the notice. Upon a negative determination, the Under Secretary will provide to the petitioner an opportunity to appeal a determination to the Under Secretary, and the petitioner will have 10 business days to appeal the determination and provide further information for consideration.

§ 4288.3 Review or appeal rights.

A person may seek a review of an Agency decision or appeal to the National Appeals Division in accordance with 7 CFR part 11 of this title.

§ 4288.4 Compliance with other laws and regulations.

Participating biorefineries must comply with other applicable Federal, State, and local laws, including, but not limited to, the Equal Employment Opportunities Act, the Equal Credit Opportunity Act, Title VI of the Civil Rights Act of 1964, 7 CFR Part 1901, subpart E, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. Applicants must submit and will be subject to preaward and post award compliance reviews with the terms and conditions set forth in Form RD 400–1, “Equal Opportunity Agreement” and Form RD 400–4, “Assurance Agreement.”

§ 4288.5 Oversight, monitoring, and reporting requirements.

   (a) Verification. The Agency reserves the right to verify all payment requests and subsequent payments made
under this program, including field visits, as frequently as necessary to ensure the integrity of the program. Documentation provided will be used to verify, reconcile, and enforce the payment terms of Form RD 4288–5, “Repowering Assistance Program—Agreement,” along with any potential refunds that the recipient will be required to make should they fail to adequately document their request.

(b) Records. (1) For purposes of verifying the eligible project costs supporting payments under this subpart, each biorefinery must maintain in one place such books, documents, papers, receipts, payroll records and bills of sale adequate to identify the purposes for which, and the manner in which funds were expended for eligible project costs. The biorefinery must maintain copies of all documents submitted to the Agency in connection with payments made hereunder. These records must be available at all reasonable times for examination by the Agency and must be held and be available for Agency examination for a period of not less than 3 years from the final payment date.

(2) For the purpose of verifying compliance with the fossil fuel reduction and energy production requirements of this subpart, each biorefinery must make available and provide for the metering of all power and heat producing boilers, containment vessels, generators and any other equipment related to the production of heat or power required to displace fossil fuel loads with renewable biomass. These records must be held in one place and be available at all reasonable times for examination by the Agency. Such records include all books, papers, contracts, scale tickets, settlement sheets, invoices, and any other documents related to the program that are within the control of the biorefinery. These records must be held and made available for Agency examination for a period of not less than 3 years from the date the repowering project becomes operational.

(c) Reporting. Upon completion of the repowering project, the biorefinery must submit a report using Form RD 4288–6, “Repowering Assistance Programs—Reporting Form,” to the Agency annually for the first 3 years after completion of the project. The reports are to be submitted as of October 1 of each year. The report must include the items specified in paragraphs (c)(1) and (c)(2) of this section.

(1) Documentation regarding the usage and production of energy at the biorefinery during the previous year, including both the previous and current fossil fuel load and the renewable biomass energy production.

(i) Metered data documenting the production of heat, steam, gas and power must be obtained utilizing an Agency approved measurement device.

(ii) Metered data must be verifiable and subject to independent calibration testing.

(2) Current utility billing data, identifying metered loads, from the base energy use period.

§ 4288.6 Forms, regulations, and instructions.

Copies of all forms, regulations, instructions, and other materials related to this program may be obtained from the USDA Rural Development State Office, Renewable Energy Coordinator and the USDA Rural Development Web site at http://www.rurdev.usda.gov/regs/.

§ 4288.7 Exception authority.

The Administrator of the Agency (“Administrator”) may, with the concurrence of the Secretary of Agriculture, make an exception, on a case-by-case basis, to any requirement or provision of this subpart that is not inconsistent with any authorizing statute or applicable law, if the Administrator determines that application of the requirement or provision would adversely affect the Federal government’s interest.

§§ 4288.8–4288.9 [Reserved]

§ 4288.10 Applicant eligibility.

(a) Eligible projects. To be eligible for this program, the applicant must be an eligible biorefinery utilizing only renewable biomass for replacement fuel, and must meet the requirements specified in paragraphs (a)(1) through (a)(5) of this section.

(1) Timely complete application submission. To be eligible for this program, the applicant must submit a complete
application within the application period. Projects will be selected based on ranking which is derived from the application of the selection criteria stated in §4288.21.

(2) Multiple biorefineries. Corporations and entities with more than one biorefinery can submit an application for only one of their biorefineries. However, if a corporation or entity has multiple biorefineries located at the same location, the entity may submit an application that covers such biorefineries provided the heat and power used in the multiple biorefineries are centrally produced.

(3) Cost-effectiveness. The application must be awarded at least minimum points for cost-effectiveness under §4288.21(b)(1).

(4) Percentage of reduction of fossil fuel use. The application must be awarded at least minimum points for percentage of reduction of fossil fuel use under §4288.21(b)(2).

(5) Full project financing. The applicant must demonstrate that it has sufficient funds or has obtained commitments for sufficient funds to complete the repowering project taking into account the amount of the payment request in the application.

(b) Ineligible projects. A project is not eligible under this subpart if it is using feedstocks for repowering that are feed grain commodities that received benefits under Title I of the Food, Conservation, and Energy Act of 2008.

§4288.11 Eligible project costs.

Eligible project costs will be only for project related construction costs for repowering improvements associated with the equipment, installation, engineering, design, site plans, associated professional fees, permits and financing fees.

§4288.12 Ineligible project costs.

Any project costs incurred by the applicant prior to application for payment assistance under this program will be ineligible for payment assistance.

§4288.13 Payment information.

(a) Maximum payment. For purposes of this program, the maximum payment an applicant may receive will be 50 percent of total eligible project costs up to the applicable fiscal year’s maximum award as announced in an annual Federal Register notice. There is no minimum payment to an applicant.

(b) Reimbursement payments. The Agency shall only make payments based on the biorefinery’s expenditures on eligible project costs. Payments shall be determined by multiplying the amount of eligible expenditures stated on the payment request by a percentage obtained by dividing the aggregate payment award by total eligible project costs.

(c) Timing of payments. The Applicant may request payments not more frequently than once a month by submitting an original, completed, validly signed Standard Form (SF) 271, “Outlay Report and Request for Reimbursement for Construction Programs” including the supporting documentation identified in §4288.23, to reimburse the applicant for the Agency’s pro rata share of funds expended on eligible project costs. The Agency shall make such payments until 90 percent of the total payment award has been expended. The final 10 percent of the payment award will be paid upon completion of the repowering project and satisfactory evidence has been received by the Agency demonstrating that the biorefinery is operating as described in the Agency approved application.

§§4288.14–4288.19 [Reserved]

§4288.20 Submittal of applications.

(a) Address to make application. Application must be submitted to USDA, Rural Development-Energy Division, Program Branch, Attention: Repowering Assistance Program, 1400 Independence Avenue, SW., Stop 3225, Washington, DC 20250–3225.

(b) Content and form of submission. Applicants must submit a signed original and one copy of an application containing the information specified in this section. The applicant must also furnish the Agency the required documentation identified in Form RD 4288–4, “Repowering Assistance Program Application,” to verify compliance with program provisions before acceptance into the program. Note that applicants are required to have a Dun and
Bradstreet Universal Numbering System (DUNS) number (unless the applicant is an individual). The DUNS number is a nine-digit identification number, which uniquely identifies business entities. A DUNS number can be obtained at no cost via a toll-free request line at 1–866–705–5711, or online at http://fedgov.dnb.com/webform. Applicants must submit to the Agency the documents specified in paragraphs (b)(1) through (b)(6) of this section.

(1) Form RD 4288–4. Applicants must submit this form and all necessary attachments providing project information on the biorefinery; the facility at which the biorefinery operates, including location and products produced; and the types and quantities of renewable biomass feedstock being proposed to produce heat or power. This form requires the applicant to provide relevant data to allow for technical analysis of their existing facilities to demonstrate replacement of fossil fuel by renewable biomass with reasonable costs and maximum efficiencies. The applicant must also submit evidence that the biorefinery was in existence on or before June 18, 2008. The applicant is required to certify the information provided.

(2) RD Instruction 1940–Q, Exhibit A–1, “Certification for Contracts, Grants and Loans.”

(3) Form RD 400–1.

(4) Form RD 400–4.

(5) Form RD 1940–20, “Request for Environmental Information” (first page only). Note, however, that applicants must substitute the narrative outlined in RD Instruction 1940–Q, Exhibit H, in place of the narrative attachment specified in the instructions to Form RD 1940–20.

(6) Certifications. The applicant must furnish the Agency all required certifications before acceptance into the program, and furnish access to records required by the Agency to verify compliance with program provisions. The applicant must submit forms or other written documentation certifying to the following:

(i) AD–1047, “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions” or other written documentation.

(ii) AD–1048, “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions.”

(iii) SF–LLL, “Disclosure of Lobbying Activities.”

(c) Application package contents. Applicants are required to provide relevant data to allow for technical analysis of their existing facilities to demonstrate replacement of fossil fuel by renewable biomass with reasonable costs and maximum efficiencies. Applicants in existence on or before June 18, 2008 with more than 24 months of actual operating data must provide data for the most recent 24-month period. Applicants in existence on or before June 18, 2008 with less than 24 months of actual operating data must provide data supported by engineering and design calculations, and site plans, prepared by the construction engineering firm. All applicants must submit the information specified in paragraphs (c)(1) through (c)(9) of this section as part of their application package.

(1) Contact data. Contact information for the primary technical contact for the biorefinery.

(2) Biorefinery data. Basic information on facility operations over time (hours/day, days/year).

(3) Electric use data. Information on existing electric service to the facility, data on consumption, peak and average demand, and monthly/seasonal use patterns.

(4) Fuel use data. Information on natural gas and current fuel use for boilers and heaters, including fuel type, costs, and use patterns.

(5) Thermal loads. Information on existing thermal loads, including type (steam, hot water, direct heat), conditions (temperature, pressure) and use patterns.

(6) Existing equipment. Information on existing heating and cooling equipment, including type, capacities, efficiencies and emissions.

(7) Site-specific data. Information on other site-specific issues, such as expansion plans or neighborhood considerations that might impact the proposed new system design or operation; or environmental impacts.
(8) Biofuel and biobased product production. Information on biofuel and biobased product production, including quantity and units of production.

(9) Feasibility study. The applicant must submit a feasibility study by an independent qualified consultant, which has no financial interest in the biorefinery, and demonstrates that the renewable biomass system of the biorefinery is feasible, taking into account the economic, technical and environmental aspects of the system. The feasibility study must include the components specified in paragraphs (c)(9)(i) through (c)(9)(x) of this section.

(i) An executive summary, including resume of the consultant, and an introduction/project overview (brief general overview of project location, size, etc.).

(ii) An economic feasibility determination, including:
(A) Information regarding the project site;
(B) Information on the availability of trained or trainable labor; and
(C) Information on the availability of infrastructure and rail and road service to the site.

(iii) A technical feasibility determination, including a report that:
(A) Describes the repowering project, including:
(1) Information on heating and cooling equipment, including type, capacities, efficiencies and emissions;
(2) Anticipated impacts of the repowering project on the information requested above relating to electric use data, fuel use data, thermal loads and biofuel and biobased product production; and
(3) A project development schedule as more fully described in § 4288.21(b)(4)(iv);
(B) Is based upon verifiable data and contains sufficient information and analysis so that a determination may be made on the technical feasibility of achieving the levels of energy production that are projected in the statements. The report must provide the information in a format that is responsive to the scoring criteria specified in § 4288.21(b)(1) through (5) and applicants should identify in their report the information that corresponds to each of the scoring criteria; and
(C) Identifies and estimates project operation and development costs and specifies the level of accuracy of these estimates and the assumptions on which these estimates have been based.

(iv) A financial feasibility determination that discusses the following:
(A) Repowering project construction funding, including repayment terms and security arrangements. Attach any documents relating to the project financing;
(B) The reliability of the financial projections and assumptions on which the project is based including all sources of project capital, both private and public, such as Federal funds;
(C) Projected balance sheets and costs associated with project operations;
(D) Cash flow projections for 3 years;
(E) The adequacy of raw materials and supplies;
(F) A sensitivity analysis, including feedstock and energy costs, product/co-product prices;
(G) Risks related to the project; and
(H) The continuity, maintenance and availability of records.

(v) A management feasibility determination.

(vi) Recommendations for implementation.

(vii) The environmental concerns and issues of the system.

(viii) The availability of feedstock, including discussions of:
(A) Feedstock source management;
(B) Estimates of feedstock volumes and costs;
(C) Collection, pre-treatment, transportation, and storage; and
(D) Impacts on existing manufacturing plants or other facilities that use similar feedstock.

(ix) The feasibility/plans of project to work with producer associations or cooperatives including estimated amount of annual feedstock from those entities.

(x) If woody biomass from National forest system lands or public lands is proposed as the feedstock, documentation must be provided that it cannot be used as a higher value wood-based product.
§ 4288.21 Application review and scoring.

The Agency will evaluate projects based on the cost, cost-effectiveness, and capacity of projects to reduce fossil fuels. The cost of the project will be taken into consideration in the context of each project’s ability to economically produce energy from renewable biomass to replace its dependence on fossil fuels. Projects with higher costs that are less efficient will not score well. The scoring criteria are designed to evaluate projects on simple payback as well as the percentage of fossil fuel reduction.

(a) Review. The Agency will review each application and make a determination as to whether the applicant is eligible, whether the proposed project is eligible, and whether the proposed payment request complies with all applicable statutes and regulations. This evaluation will be conducted by experts in the Agency and other Federal agencies, including the U.S. Department of Energy based on the information provided by the applicant.

(b) Scoring. The Agency will score each application in order to prioritize each proposed project. The maximum number of points awardable to any applicant will be 100. The evaluation criteria that the Agency will use to score these projects are specified in paragraphs (b)(1) through (b)(6) of this section.

(1) Cost-effectiveness. Cost-effectiveness will be scored based on the anticipated simple payback period, or “simple payback.” Anticipated simple payback will be demonstrated by calculating documented base energy use costs for the 24-month period prior to submission of the application or at least 12 months of data supported by engineering and design calculations, and site plans, prepared by the construction engineering firm.

(i) The simple payback period is calculated as follows:

- Simple payback = C/S

Where:

C = eligible capital expenses of the repowering project
S = savings in annual operating costs.

Example: Eligible capital expenses of the repowering project, including handling equipment, biomass boiler, piping improvements and plant modifications, are equal to $5,300,500. The annual difference in fossil fuel cost versus the cost for renewable biomass is $990,500. Assume these costs and uses are based on a yearly operating cycle, which may include handling, storage and treatment costs. In this example, C = $5,300,500; S = $990,500; simple payback = 5.38 years (C/S = simple payback).

(ii) A maximum of 20 points will be awarded as follows:

(A) If the anticipated simple payback is less than or equal to 4 years, award 20 points.
(B) If the anticipated simple payback is greater than 4 years but less than or equal to 6 years, award 10 points.
(C) If the anticipated simple payback will be greater than 6 years but less than or equal to 10 years, award 5 points.
(D) If the anticipated simple payback will be greater than 10 years, award 0 points.

(2) Percentage of reduction of fossil fuel use. The anticipated percent reduction in the use of fossil fuels will be measured using the same evidence provided by the applicant for measuring cost-effectiveness. However, this set of criteria will measure actual fossil fuel use for the 24-month period prior to submission of the application or for at least 12 months of data supported by engineering and design calculations, and site plans, prepared by the construction engineering firm. All fossil fuel use, for thermal loads as well as for electric use, will be evaluated by using information provided by the Energy Information Agency (EIA). The Agency will determine the percentage reduction of fossil fuel use based on and in cooperation with the applicant’s submission of electric power provider contracts, power agreements, and utility billings in relation to available information from the EIA. A maximum of 35 points will be awarded as follows:

(i) Applicant demonstrates an anticipated annual reduction in fossil fuel use of 100 percent, award 35 points.
(ii) Applicant demonstrates an anticipated annual reduction in fossil fuel use of at least 80 percent but less than 100 percent, award 25 points.
(iii) Applicant demonstrates an anticipated annual reduction in fossil fuel use of at least 20 percent but less than 80 percent, award 10 points.
(iv) Applicant demonstrates an anticipated annual reduction in fossil fuel use of less than 20 percent, award 0 points.
§ 4288.22 Ranking of applications.

All scored applications will be ranked by the Agency as soon after the application deadline as possible. The Agency will consider the score an application has received compared to the proposed project. The Design and Engineering documents shall demonstrate that they meet the intended purpose, ensure public safety, and comply with all applicable laws, regulations, agreements, permits, codes, and standards. Award 0–4 points.

(iv) Project development schedule. The applicant must provide a detailed plan for project development including a proposed schedule of activities, a description of each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through to successful completion. This description must address the applicant’s project development cash flow requirements. Award 0–3 points.

(v) Equipment procurement. The applicant must describe the equipment needed, and the availability of the equipment needed, to complete installation and activation of the new system. The description supports that the required equipment is available, and can be procured and delivered within the proposed project development schedule. Award 0–3 points.

(vi) Equipment installation. The applicant must provide a satisfactory description of the plan for site development and system installation that reflects the soundness of the project plan. Award 0–3 points.

(vii) Operations and maintenance. The applicant must describe the operations and maintenance requirements of the system necessary for the system to operate as designed and provide the savings and efficiencies as described. The description and requirements noted must be supportable by the technical review. Award 0–3 points.

(5) Liquid transportation fuels. If the biorefinery primarily produces liquid transportation fuels, award 10 points.

(6) Rural area. If the biorefinery is located in a Rural Area, award 5 points.

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scores of other applications in the priority list, with higher scoring applications receiving first consideration for payments.

(a) Selection of applications for payments. Using the application scoring criteria point values specified in §4288.21 of this subpart, the Agency will select applications for payments.

(b) Availability of funds. As applications are funded, if insufficient funds remain to pay the next highest scoring application, the Agency may elect to pay a lower scoring application. Before this occurs, the Agency will provide the applicant of the higher scoring application the opportunity to reduce the amount of its payment request to the amount of funds available. If the applicant agrees to lower its payment request, it must certify that the purposes of the project can be met, and the Agency must determine the project is feasible at the lower amount.

§ 4288.23 Notifications.

(a) Successful applicants. Successful applicants will receive an award letter notifying them of the award, including the terms and conditions, and Form RD 4288–5. Each funded project is unique, and, therefore, conditions of Form RD 4288–5 may vary among projects. Successful applicants must execute and return the Form RD 4288–5, accompanied by any additional items identified in the award letter.

(b) Unsuccessful applicants. Unsuccessful applicants will receive a letter notifying them of their application score and ranking and the score necessary to qualify for payments.

§ 4288.24 Program payment provisions.

The procedure the Agency will use to make payments to eligible biorefineries is specified in paragraphs (a) through (e) of this section.

(a) Payment applications. The Agency shall make payments based on the biorefinery’s expenditures on eligible project costs. To request payments under this program during a fiscal year, an eligible biorefinery must:

(1) Submit an original, validly signed and completed SF 271 to the Agency not more frequently than once a month with the following supporting documentation:

(i) Evidence of expenditure of funds on eligible project costs which shall include paid third party invoices, receipts, bills of sale, and/or payroll records. Such records must be adequate to identify that funds to be reimbursed were spent on eligible project costs; and

(ii) Evidence that construction of the repowering project is in compliance with the project development schedule.

(2) Certify that the request is accurate.

(3) Furnish the Agency such certifications as required in Form RD 4288–4, Part C, and access to records that verify compliance with program provisions.

(b) Clarifying information. After payment applications are submitted, eligible biorefineries may be required to submit additional supporting clarification if their original submittal is not sufficient to verify eligibility for payment.

(c) Notification. The Agency will notify the biorefinery, in writing, whenever the Agency determines that a payment request is ineligible and why the request was determined ineligible.

(d) Refunds and interest payments. An eligible biorefinery that has received a payment under this program may be required to refund such payment as specified in paragraphs (d)(1) through (d)(5) of this section.

(1) An eligible biorefinery receiving payment under this program will become ineligible for payments if the Agency determines the biorefinery has:

(i) Made any material fraudulent representation;

(ii) Misrepresented any material fact affecting a program determination; or

(iii) Upon completion of the repowering project, failed to reduce its fossil fuel consumption, produce energy from renewal biomass or otherwise operate as described in its Agency approved application.

(2) All payments made to a biorefinery determined by the Agency to be ineligible must be refunded to the Agency with interest and other such sums as may become due, including, but not limited to, any interest, penalties, and administrative costs, as determined appropriate under 31 CFR 901.9.
§ 4288.25 Succession and control of facilities and production.

Any party obtaining a biorefinery that is participating in this program must request permission to participate in this program as a successor. The Agency may grant such request if it is determined that, the party is eligible, and permitting such succession would serve the purposes of the program. If appropriate, the Agency may require the consent of the previous party to such succession. Also, the Agency may terminate payments and demand full refund of payments made if a party loses control of a biorefinery whose production of heat or power from renewable biomass is the basis of a program payment, or otherwise fails to retain the ability to assure that all program obligations and requirements will be met.

§ 4288.26 Fiscal Year 2009 and Fiscal Year 2010 applications.

Any entity that submitted an application for payment to the Agency under this program prior to March 14, 2011 will have their payments made and serviced in accordance with the provisions specified in this subpart.

§§ 4288.27–4288.100 [Reserved]

Subpart B—Advanced Biofuel Payment Program General Provisions

AUTHORITY: 5 U.S.C. 301.

SOURCE: 76 FR 7967, Feb. 11, 2011, unless otherwise noted.

§ 4288.101 Purpose and scope.

(a) Purpose. The purpose of this subpart is to support and ensure an expanding production of advanced biofuels by providing payments to eligible advanced biofuel producers.

(b) Scope. This subpart sets forth, subject to the availability of funds as provided herein, or as may be limited by law, the terms and conditions an advanced biofuel producer must meet to obtain payments under this Program from the United States Department of Agriculture for eligible advanced biofuel production. Additional terms and conditions may be set forth in the Program contract and payment agreement prescribed by the Agency.

§ 4288.102 Definitions.

The definitions set forth in this section are applicable for all purposes of program administration under this subpart.

Advanced biofuel. A fuel that is derived from renewable biomass, other than corn kernel starch, to include:

(1) Biofuel derived from cellulose, hemicellulose, or lignin;

(2) Biofuel derived from sugar and starch (other than ethanol derived from corn kernel starch);

(3) Biofuel derived from waste material, including crop residue, other vegetative waste material, animal waste, food waste, and yard waste;
(4) Diesel-equivalent fuel derived from renewable biomass, including vegetable oil and animal fat;

(5) Biogas (including landfill gas and sewage waste treatment gas) produced through the conversion of organic matter from renewable biomass;

(6) Butanol or other alcohols produced through the conversion of organic matter from renewable biomass; or

(7) Other fuel derived from cellulosic biomass.

Advanced biofuel producer. An individual, corporation, company, foundation, association, labor organization, firm, partnership, society, joint stock company, group of organizations, or non-profit entity that produces and sells an advanced biofuel. An entity that blends or otherwise combines advanced biofuels into a blended biofuel is not considered an advanced biofuel producer under this Program.

Agency. The USDA Rural Development, Rural Business-Cooperative Service or its successor organization.

Alcohol. Anhydrous ethyl alcohol manufactured in the United States and its territories and sold either:

(1) For fuel use, rendered unfit for beverage use, produced at a biofuel facility and in a manner approved by the Bureau of Alcohol, Tobacco, Firearms, and Explosives for the production of alcohol for fuel; or

(2) As denatured alcohol used by blenders and refiners and rendered unfit for beverage use.

Alcohol producer. An advanced biofuel producer authorized by ATF to produce alcohol.

ATF. The Bureau of Alcohol, Tobacco, Firearms, and Explosives of the United States Department of Justice.

Biodiesel. A mono alkyl ester, manufactured in the United States and its territories, that meets the requirements of the appropriate ASTM International standard.

Biofuel. Fuel derived from renewable biomass.

Biofuel facility. A facility (including equipment and processes) that converts renewable biomass into biofuels and biobased products and may produce electricity.

Blender. A blender is a processor of fuels who combines two or more fuels, one of which must be an advanced biofuel, for distribution and sale. Producers who blend one or more of their own fuels are not blenders under this definition.

Certificate of analysis. A document approved by the Agency that certifies the quality and purity of the advanced biofuel being produced. The document must be from a qualified, independent third party.

Contract. Form RD 4288–2, “Advanced Biofuel Payment Program Contract,” signed by the eligible advanced biofuel producer and the Agency, that defines the terms and conditions for participating in and receiving payment under this Program.

Eligible advanced biofuel producer. A producer of advanced biofuels that meets all requirements of §4288.110 of this subpart.

Eligible renewable biomass. Renewable biomass, as defined in this section, excluding corn kernel starch.

Eligible renewable energy content. That portion of an advanced biofuel's energy content derived from eligible renewable biomass feedstock. The energy content from any portion of the biofuel, whether from, for example, blending with another fuel or a denaturant, that is derived from a non-eligible renewable biomass feedstock (e.g., corn kernel starch) is not eligible for payment under this Program.

Enrollment application. Form RD 4288–1, “Advanced Biofuel Payment Program Annual Application,” which is submitted by advanced biofuel producers for participation in this Program.

Ethanol. Anhydrous ethyl alcohol manufactured in the United States and its territories and sold either:

(1) For fuel use, and which has been rendered unfit for beverage use and produced at an advanced biofuel facility approved by the ATF for the production of ethanol for fuel, or

(2) As denatured ethanol used by blenders and energy refiners, which has been rendered unfit for beverage use.

Ethanol producer. An advanced biofuel producer authorized by ATF to produce ethanol.
Fiscal Year. A 12-month period beginning each October 1 and ending September 30 of the following calendar year.

Flared gas. The burning of unwanted gas through a pipe (also called a flare). Flaring is a means of disposal used when the operator cannot transport the gas to market or convert to electricity and cannot use the gas for any other purpose.

Forest biomass. Any plant or tree material produced by forest growth, such as trees, wood, brush, thinning, chips, and slash.

Incremental production. The quantity of eligible advanced biofuel produced at an advanced biofuel biorefinery in the fiscal year for which payment is sought that exceeds the quantity of advanced biofuel produced at the biorefinery over the prior fiscal year.

Larger producer. An eligible advanced biofuel producer with a refining capacity as determined for the prior fiscal year, based on all of the advanced biofuel facilities in which the producer has 50 percent or more ownership, exceeding:

(1) 150,000,000 gallons of liquid advanced biofuel per year; or
(2) 15,900,000 MMBTU of biogas and solid advanced biofuel per year.

Payment application. Form RD 4288–3, “Advanced Biofuel Payment Program—Payment Request,” which is submitted by an eligible advance producer to the Agency in order to receive payment under this Program.

Quarter. The Federal fiscal time period for any fiscal year as follows:

(1) 1st Quarter: October 1 through December 31;
(2) 2nd Quarter: January 1 through March 31;
(3) 3rd Quarter: April 1 through June 30; and
(4) 4th Quarter: July 1 through September 30.

Renewable biomass.

(1) Materials, pre-commercial thinnings, or invasive species from National Forest System land and public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)) that:

(i) Are byproducts of preventive treatments that are removed to reduce hazardous fuels; to reduce or contain disease or insect infestation; or to restore ecosystem health;
(ii) Would not otherwise be used for higher-value products; and
(iii) Are harvested in accordance with applicable law and land management plans and the requirements for old-growth maintenance, restoration, and management direction of paragraphs (e)(2), (e)(3), and (e)(4) and large-tree retention of paragraph (f) of section 102 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6512); or
(2) Any organic matter that is available on a renewable or recurring basis from non-Federal land or land belonging to an Indian or Indian Tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States, including:

(i) Renewable plant material, including feed grains; other agricultural commodities; other plants and trees; and algae; and
(ii) Waste material, including crop residue; other vegetative waste material (including wood waste and wood residues); animal waste and byproducts (including fats, oils, greases, and manure); and food waste and yard waste.

Sign-up period. The time period during which the Agency will accept enrollment applications.

Smaller producer. An eligible advanced biofuel producer with a refining capacity as determined for the prior fiscal year, based on all of the advanced biofuel facilities in which the producer has 50 percent or more ownership, equal to or less than:

(1) 150,000,000 gallons of liquid advanced biofuel per year; or
(2) 15,900,000 MMBTU of biogas and solid advanced biofuel per year.

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.

USDA. The United States Department of Agriculture.
§ 4288.103 Review or appeal rights.
A person may seek a review of an Agency decision or appeal to the National Appeals Division in accordance with 7 CFR part 11 of this title.

§ 4288.104 Compliance with other laws and regulations.
(a) Advanced biofuel producers must comply with other applicable Federal, State, and local laws, including, but not limited to, the Equal Employment 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, the Americans with Disabilities Act of 1990, and 7 CFR part 1901, subpart E. This includes collection and maintenance of race, sex, and national origin data of the recipient’s employee.
(b) Producers must comply with equal opportunity and nondiscriminatory requirements in accordance with 7 CFR 15d. Rural Development will not discriminate against an applicant on the bases of race, color, religion, national origin, sex, sexual orientation, marital status, familial status, disability, or age (provided that the applicant has the capacity to contract); to the fact that all or part of the applicant’s income derives from public assistance program; or to the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

§ 4288.105 Oversight and monitoring.
(a) Verification. The Agency reserves the right to verify all payment applications and subsequent payments made under this subpart, as frequently as necessary, to ensure the integrity of the Program. The Agency will conduct site visits as necessary.
(1) Production and feedstock verification. The Agency will review producer records to verify the type and amount of biofuel produced and the type and amount of feedstocks used.
(2) Blending verification. The Agency will review the producer’s certificates of analysis and feedstock records to verify the portion of the advanced biofuel eligible for payment.
(3) Certificate of Analysis. The Agency will review the producer records for quarterly payments to ensure that each certificate of analysis has been issued by a qualified, independent third party, which may include the blender only if the blender is not associated with the facility.
(b) Records. For the purpose of verifying compliance with the requirements of this subpart, each eligible advanced biofuel producer shall make available at one place at a reasonable time for examination by representatives of USDA, all books, papers, records, contracts, scale tickets, settlement sheets, invoices, written price quotations, and other documents related to the Program that is within the control of such advanced biofuel producer for not less than 3 years from each Program payment date.

§ 4288.106 Forms, regulations, and instructions.
Copies of all forms, regulations, instructions, and other materials related to this Program may be obtained from the USDA Rural Development State Office, Rural Energy Coordinator and the USDA Rural Development Web site at http://www.rurdev.usda.gov.

§ 4288.107 Exception authority.
The Administrator of the Agency (“Administrator”) may, with the concurrence of the Secretary of Agriculture, make an exception, on a case-by-case basis, to any requirement or provision of this subpart that is not inconsistent with any authorizing statute or applicable law, if the Administrator determines that application of the requirement or provision would adversely affect the Federal government’s interest.

§§ 4288.108–4288.109 [Reserved]

ELIGIBILITY PROVISIONS

§ 4288.110 Applicant eligibility.
Sections 4288.110 through 4288.119 present the requirements associated with advanced biofuel producer eligibility, biofuel eligibility, eligibility notifications, and payment record requirements. To be eligible for this Program, the applicant must meet the requirements specified in paragraph (a) of this section and must provide additional information as may be requested.
by the Agency under paragraph (b) of this section. Public bodies and educational institutions are not eligible for this Program.

(a) Eligible producer. The applicant must be an advanced biofuel producer, as defined in this subpart.

(b) Eligibility determination. The Agency will determine an applicant’s eligibility for participation in this Program. If an applicant’s original submittal is not sufficient to verify an applicant’s eligibility, the Agency will notify the applicant, in writing, as soon as practicable after receipt of the application. This notification will identify, at a minimum, the additional information being requested to enable the Agency to determine the applicant’s eligibility and a timeframe in which to supply the information.

(1) If the applicant provides the requested information to the Agency within the specified timeframe, the Agency will determine the applicant’s eligibility for the upcoming fiscal year.

(2) If the applicant does not provide the requested information to the Agency within the specified timeframe, the Agency will not consider the applicant any further for participation in the upcoming fiscal year. Such applicants may elect to enroll during the next sign-up period.

(c) Ineligibility determination. An otherwise eligible producer will be determined to be ineligible if the producer:

(1) Refuses to allow the Agency to verify any information provided by the advanced biofuel producer under this subpart, including information for determining applicant eligibility, advanced biofuel eligibility, and application payments;

(2) Fails to meet any of the conditions set out in this subpart, in the contract, or in other Program documents; or

(3) Fails to comply with all applicable Federal, State, or local laws.

§ 4288.111 Biofuel eligibility.

To be eligible for this Program, a biofuel must meet the requirements specified in paragraph (a) of this section and the biofuel’s producer must provide additional information as may be requested by the Agency under paragraph (b) of this section. Notwithstanding the provisions of paragraph (a) of this section, for the purposes of this subpart, flared gases are not eligible.

(a) Eligible advanced biofuel. For an advanced biofuel to be eligible, each of the following conditions must be met, as applicable:

(1) The advanced biofuel must meet the definition of advanced biofuel and be produced in a State;

(2) The advanced biofuel must be a solid, liquid, or gaseous advanced biofuel;

(3) The advanced biofuel must be a final product; and

(4) The advanced biofuel must be sold as an advanced biofuel through an arm’s length transaction to a third party.

(b) Eligibility determination. The Agency will determine a biofuel’s eligibility for payment under this Program. If an applicant’s original submittal is not sufficient to verify a biofuel’s eligibility, the Agency will notify the applicant, in writing, as soon as practicable after receipt of the application. This notification will identify, at a minimum, the additional information being requested to enable the Agency to determine the biofuel’s eligibility and a timeframe in which to supply the information.

(1) If the applicant provides the requested information to the Agency within the specified timeframe, the Agency will determine the biofuel’s eligibility for the upcoming fiscal year.

(2) If the applicant does not provide the requested information to the Agency within the specified timeframe, the biofuel will not be eligible for payment under this Program in the upcoming fiscal year. Applicants may elect to include such biofuels in the application form submitted during the next sign-up period.

§ 4288.112 Eligibility notifications.

(a) Applicant eligibility. If an applicant is determined by the Agency to be eligible for participation, the Agency will notify the applicant, in writing, as soon as practicable after receipt of the application and will assign the applicant a contract number.

(b) Ineligibility notifications. If an applicant or a biofuel is determined by
the Agency to be ineligible, the Agency will notify the applicant, in writing, as soon as practicable after receipt of the application, as to the reason(s) the applicant or biofuel was determined to be ineligible. Such applicant will have appeal rights as specified in this subpart.

(c) Subsequent ineligibility determinations. If at any time a producer or an advanced biofuel is determined to be ineligible, the Agency will notify the producer in writing of its determination.

§ 4288.113 Payment record requirements.

To be eligible for Program payments, an advanced biofuel producer must maintain records for all relevant fiscal years and fiscal year quarters for each advanced biofuel facility indicating:

(a) The type of eligible renewable biomass used in the production of advanced biofuel;
(b) The quantity of advanced biofuel produced from eligible renewable biomass at each advanced biofuel facility;
(c) The quantity of eligible renewable biomass used at each advanced biofuel facility to produce the advanced biofuel; and
(d) All other records required to establish Program eligibility and compliance.

§§ 4288.114–4288.119 [Reserved]

ENROLLMENT PROVISIONS

§ 4288.120 Enrollment.

In order to participate in the Program, a producer of advanced biofuels must be approved by the Agency and enter into a contract with the Agency. The process for enrolling in the Program is presented in this section. Advanced biofuel producers who expect to produce eligible advanced biofuels at any time during a fiscal year must enroll in the Program as described in this section.

(a) Enrollment. To enroll in the Program, an advanced biofuel producer must submit to the Agency a completed enrollment application during the applicable sign-up period, as specified in paragraph (b) of this section. An original, signed hard copy of the enrollment application must be submitted as specified in the annual Federal Register notice for this program. All applicants, except those that are individuals, are required to have a Dun and Bradstreet Universal Numbering System (DUNS) number, which can be obtained online at http://fedgov.dnb.com/webform.

1. Eligible advanced biofuel producers must submit enrollment applications during each sign-up period in order to continue participating in this Program. If a participating producer fails to submit the enrollment application during a fiscal year’s applicable sign-up period, the producer’s contract will be terminated and the producer will be ineligible to receive payments for that fiscal year. Such a producer must reapply, and sign a new contract, to participate in the Program for future fiscal years.

2. Eligible advanced biofuel producers may submit an enrollment application during a fiscal year’s sign-up period even if the advanced biofuel facility is not currently producing, but is scheduled to start producing advanced biofuel in that fiscal year.

3. The producer must furnish the Agency all required certifications before acceptance into the Program, and furnish access to the advanced biofuel producer’s records required by the Agency to verify compliance with Program provisions. The required certifications depend on the type of biofuel produced. Certifications specified in paragraphs (a)(3)(i) through (a)(3)(iv) of this section are to be completed and provided by an accredited independent third party.

(i) Alcohol. For alcohol producers with authority from ATF to produce alcohol, copies of either

(A) The Alcohol Fuel Producers Permit (TTB F 5110.74) or
(B) The registration of Distilled Spirits Plant (TTB F 5110.41) and Operating Permit (TTB F 5110.25).

(ii) Hydrous ethanol. For hydrous ethanol that is upgraded by another distiller to anhydrous ethyl alcohol, the increased ethanol production is eligible for payment one time only. If the advanced biofuel producer entering into this agreement is:

(A) The hydrous ethanol producer, then the advanced biofuel producer
§ 4288.121 Contract.  

Advanced biofuel producers determined to be eligible to receive payments must then enter into a contract with the Agency in order to participate in this Program.  

(a) Contract. The Agency will forward the contract to the advanced biofuel producer. The advanced biofuel producer must agree to the terms and conditions of the contract, sign, date, and return it to the Agency within the time provided by the Agency.  

(b) Length of contract. Once signed, a contract will remain in effect until terminated as specified in paragraph (d) of this section.  

(c) Contract review. All contracts will be reviewed at least annually to ensure compliance with the contract and ensure the integrity of the program.  

(d) Contract termination. Contracts under this Program will be terminated in writing by the Agency. Contracts may be terminated under any one of the following conditions:  

(1) At the mutual agreement of the parties;  

(2) In accordance with applicable Program notices and regulations;  

shall include with the contract an affidavit, acceptable to the Agency, from the distiller stating that the:  

(1) Applicable hydrous ethanol produced is distilled and denatured for fuel use according to ATF requirements, and  

(2) Distiller will not include the applicable ethanol in any payment requests that the distiller may make under this Program.  

(B) The distiller that upgrades hydrous ethanol to anhydrous ethyl alcohol, then the advanced biofuel producer shall include with the contract an affidavit, acceptable to the Agency, from the hydrous ethanol producer stating that the hydrous ethanol producer will not include the applicable ethanol in any payment requests that may be made under this Program.  

(iii) Biodiesel, biomass-based diesel, and liquid hydrocarbons derived from biomass. For these fuels, the advanced biofuel producer shall certify that the producer, the advanced biofuel facility, and the biofuel meet the definitions of these terms as defined in §4288.102, the applicable registration requirements under the Energy Independence and Security Act and the Clean Air Act and under the applicable regulations of the U.S. Environmental Protection Agency and Internal Revenue Service, and the quality requirements per applicable ASTM International standards (e.g., ASTM D6751) and commercially acceptable quality standards of the local market. If a Renewable Identification Number has been established, the advanced biofuel producer shall also provide documentation of the most recent Renewable Identification Number for a typical gallon of each type of advanced biofuel produced.  

(iv) Gaseous advanced biofuel. For gaseous advanced biofuel producers, certification that the biofuel meets commercially acceptable pipeline quality standards of the local market; that the flow meters used to determine the quantity of advanced biofuel produced are industry standard and properly calibrated by a third-party professional; and that the readings have been taken by a qualified individual.  

(v) Woody biomass feedstock. If the feedstock is from National Forest system land or public lands, documentation must be provided that it cannot be used as a higher value wood-based product.  

(4) Supporting documentation. Each advanced biofuel producer participating in this program for the first time must submit documentation to support the actual production and capacity reported in the enrollment application.  

(5) Additional forms. Applicants must submit the forms specified in this paragraph with the enrollment application when applying for participation under this subpart and as needed when re-enrolling in the program.  

(i) RD Instruction 1940-Q, Exhibit A–1, “Certification for Contracts, Grants and Loans.”  

(ii) SF–LLL, “Disclosure of Lobbying Activities.”  

(iii) Form RD 400–4, “Assurance Agreement.”  

(b) Sign-up period. The sign-up period is October 1 to October 31 of the fiscal year for which payment is sought, unless otherwise announced by the Agency in a FEDERAL REGISTER notice.
§ 4288.130 Payment applications.

Sections 4288.130 through 4288.189 identify the process and procedures the Agency will use to make payments to eligible advanced biofuel producers. In order to receive payments under this Program, eligible advanced biofuel producers with valid contracts must submit a payment application, as required under paragraph (a) of this section. The Agency will review the payment application and, if necessary, may request additional information, as specified under paragraph (b) of this section.

(a) Applying for payment. To apply for payments under this subpart for a fiscal year, an eligible advanced biofuel producer must:

(1) After a quarter has been completed, submit a payment application covering the quarter;

(2) Certify that the request is accurate;

(3) Furnish the Agency such certification, and access to such records, as the Agency considers necessary to verify compliance with Program provisions; and

(4) Provide documentation as requested by the Agency of the net production of advanced biofuel at all advanced biofuel facilities during the relevant quarter.

(b) Review of payment applications. The Agency will review each payment application it receives to determine if it is eligible for payment.

(1) Review factors. Factors that the Agency will consider in reviewing payments applications include, but are not necessarily limited to:

(i) Contract validity. Whether the entity submitting the payment application has a valid contract with the Agency under this Program;

(ii) Biofuel eligibility. Whether the biofuel for which payment is sought is an eligible advanced biofuel; and

(iii) Calculations. Whether the calculations for determining the requested payment are complete and accurate.

(2) Additional documentation. If the Agency determines additional information is required for the Agency to complete its review of a payment application, eligible advanced biofuel producers shall submit such additional supporting documentation as requested by the Agency. If the producer does not provide the requested information within the required time period, the Agency will not make payment.

(c) Payment application eligibility. The Agency will notify the advanced biofuel producer, in writing, as soon as practicable after the payment application, whenever the Agency determines that a payment application, or any portion thereof, is ineligible for payment and the basis for the Agency’s determination of ineligibility.

(d) Submittal information. Eligible advanced biofuel producers must submit payment applications as specified in the annual Federal Register notice for this program no later than 4:30 p.m. local time on the last day of the calendar month following the quarter for which payment is being requested. Neither complete nor incomplete payment applications received after this date and time will be considered, regardless of the postmark on the application.

(1) Any payment application form that is received by the Agency after October 31 of the calendar year for the preceding fiscal year is ineligible for payment.

(2) If the actual deadline falls on a weekend or a Federally-observed holiday, the deadline is the next Federal business day.

§ 4288.131 Payment provisions.

Payments to advanced biofuel producers for eligible advanced biofuel
production will be determined in accordance with the provisions of this section.

(a) Types of payments. The Agency will make available each fiscal year an actual production payment and an incremental production payment to participating producers, as specified in paragraphs (a)(1) and (a)(2), respectively, of this section. As provided in paragraph (a)(2) of this section, not all participating producers will receive an incremental production payment.

(1) Actual production. Participating producers will be paid on a quarterly basis for the actual quantity of eligible advanced biofuel produced during the quarter. Payment for actual production will be determined according to paragraph (c) of this section.

(2) Incremental production. For each participating advanced biofuel facility, the Agency will make an end-of-the-year payment for that facility’s incremental production, if any, during the fiscal year provided the advanced biofuel facility has fewer than 20 days (excluding weekends) of non-production of eligible advanced biofuels during the previous fiscal year. Payment for incremental production will be determined according to paragraph (d) of this section.

(b) Amount of payment funds available. Based on the amount of funds made available to this program each fiscal year, the Agency will allocate available program funds according to paragraphs (b)(1) and (b)(2) of this section.

(1) Actual versus incremental production. The Agency will determine the amount of funds for actual production payments and for incremental production payment as follows:

(i) For fiscal year 2010, 80 percent of the funds will be allocated for actual production payments and 20 percent of the funds will be allocated for incremental production payments.

(ii) For fiscal year 2011, 70 percent of the funds will be allocated for actual production payments and 30 percent of the funds will be allocated for incremental production payments.

(iii) For fiscal year 2012, 60 percent of the funds will be allocated for actual production payments and 40 percent of the funds will be allocated for incremental production payments.

(iv) For fiscal year 2013 and beyond, 50 percent of the funds will be allocated for actual production payments and 50 percent of the funds will be allocated for incremental production payments.

(2) Quarterly allocations. For each fiscal year, the Agency will allocate in each quarter one-fourth of the funds allocated to actual production for the entire fiscal year.

(c) Determination of payment for actual production. Each quarter, the Agency will establish an actual production payment rate using the procedures specified in paragraphs (c)(1) through (c)(5) of this section. This rate will be applied to the actual quantity of eligible advanced biofuel produced to determine payments to eligible advanced biofuel producers, as described in paragraph (c)(6) of this section.

(1) Based on the information provided in each payment application, the Agency will determine the eligible advanced biofuel production. If the Agency determines that the amount of advanced biofuel production reported in a payment application is not supported by the documentation submitted with the payment application, the Agency may reduce the production reported in the payment application.

(2) For each producer, the Agency will convert the production determined to be eligible under paragraph (c)(1) of this section into British Thermal Unit (BTU) equivalent using factors published by the Energy Information Administration (or successor organization). If the Energy Information Administration does not publish such conversion factor for a specific type of advanced biofuel, the Agency will use a conversion factor developed by another appropriate entity. If no such conversion factor exists, the Agency will, in consultation with other Federal agencies, establish and use a conversion formula as appropriate, that it publishes in the Federal Register, until such time as the Energy Information Administration or other appropriate entity publishes a conversion factor for said advanced biofuel. The Agency will then calculate the total eligible BTUs across all eligible applications.

(i) If the advanced biofuel is a liquid or gaseous advanced biofuel produced...
from forest biomass, the BTUs will be discounted 10 percent.

(ii) If the advanced biofuel is a solid advanced biofuel produced from forest biomass, the BTUs will be discounted 85 percent.

(iii) If the advanced biofuel meets an applicable renewable fuel standard, the BTUs will be increased by 10 percent.

(3) For each quarter, the Agency will determine the actual production payment rate ($/BTU) based on paragraphs (b) and (c)(2) of this section. The rate will be calculated such that all of the quarterly funds for actual production will be distributed.

(4) Using the actual production payment rate determined above and the actual production for each type of advanced biofuel facility, the Agency will calculate each quarter a payment for each eligible advanced biofuel producer for that quarter.

(d) Determination of payment for incremental production. At the end of each fiscal year, the Agency will establish incremental production payment rate using the procedures specified in paragraphs (d)(1) through (d)(6) of this section. This rate will be applied to the quantity of eligible incremental advanced biofuel produced to determine payments to eligible advanced biofuel producers, as described in paragraph (d)(7) of this section.

(1) For each participating advanced biofuel facility that produced eligible advanced biofuels during the fiscal year prior to the fiscal year for which payment is sought provided the advanced biofuel facility has fewer than 20 days (excluding weekends) of non-production of eligible advanced biofuels during that previous fiscal year, the Agency will determine the quantity of eligible advanced biofuel produced in that prior fiscal year based on information provided by the producer.

(2) Using the information in the payment applications submitted for the fiscal year for which payment is sought, the Agency will determine the actual amount of eligible advanced biofuel produced in the fiscal year for which payment is sought.

(3) Using the results from paragraphs (d)(1) and (d)(2) of this section, the Agency will determine the quantity of advanced biofuel produced in excess of the previous year's advanced biofuel production.

(4) For each advanced biofuel facility that shows incremental production under paragraph (d)(3) of this section, the Agency will convert the production into British Thermal Unit (BTU) equivalent using factors published by the Energy Information Administration (or successor organization). If the Energy Information Administration does not publish such conversion factor for a specific type of advanced biofuel, the Agency will use a conversion factor developed by another appropriate entity. If no such conversion factor exists, the Agency will establish and use a conversion formula as appropriate, that it publishes in the Federal Register, until such time as the Energy Information Administration or other appropriate entity publishes a conversion factor for said advanced biofuel. The Agency will then calculate the total eligible BTUs across all eligible applications.

(i) If the advanced biofuel is a liquid or gaseous advanced biofuel produced from forest biomass, the BTUs will be discounted 10 percent.

(ii) If the advanced biofuel is a solid advanced biofuel produced from forest biomass, the BTUs will be discounted 85 percent.

(iii) If the advanced biofuel meets an applicable renewable fuel standard, the BTUs will be increased by 10 percent.

(5) The Agency will sum all of the BTUs determined under paragraph (d)(4) of this section.

(6) Using the results from paragraph (d)(5) of this section and the amount of incremental funds available, the Agency will determine the incremental production payment rate ($/BTU). The rate will be calculated such that all of the incremental production funds will be distributed.

(7) Using the incremental production payment rate determined above and the incremental production for each advanced biofuel facility eligible for an incremental production payment, the Agency will calculate an incremental production payment for each eligible advanced biofuel producer.
§ 4288.132 Payment adjustments.

The Agency will adjust the payments otherwise payable to the advanced biofuel producer if there is a difference between the amount actually produced and the amount determined by the Agency to be eligible for payment.

§ 4288.133 Payment liability.

Any payment, or portion thereof, made under this subpart shall be made without regard to questions of title under State law and without regard to any claim or lien against the advanced biofuel facility.
biofuel, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government.

§ 4288.134 Refunds and interest payments.

An eligible advanced biofuel producer who receives payments under this subpart may be required to refund such payments as specified in this section. If the Agency suspects fraudulent representation through its site visits and records inspections under § 4288.105(b), it will be referred to the Office of Inspector General for appropriate action.

(a) An eligible advanced biofuel producer receiving payments under this subpart shall become ineligible if the Agency determines the advanced biofuel producer has:
   (1) Made any fraudulent representation; or
   (2) Misrepresented any material fact affecting a Program determination.

(b) If an Agency determination that a producer is not eligible for participation under this subpart is appealed and overturned, the Agency will make appropriate and applicable payments to the producer from Program funds, to the extent such funds are available, that remain from the fiscal year in which the original adverse Agency decision was made.

(c) All payments made to an entity determined by the Agency to be ineligible shall be refunded to the Agency with interest and other such sums as may become due, including, but not limited to, any interest, penalties, and administrative costs as determined appropriate under 31 CFR 901.9.

(d) When a refund is due, it shall be paid promptly. If a refund is not made promptly, the Agency may use all remedies available to it, including Treasury offset under the Debt Collection Improvement Act of 1996, financial judgment against the producer, and referral to the Department of Justice.

(e) Late payment interest shall be assessed on each refund in accordance with the provisions and rates as established by the United States Treasury.

(1) Interest charged by the Agency under this subpart shall be established by the United States Treasury. Such interest shall accrue from the date such payments were made by the Agency to the date of repayment by the producer.

(2) The Agency may waive the accrual of interest or damages if the Agency determines that the cause of the erroneous payment was not due to any action of the advanced biofuel producer.

(f) Any advanced biofuel producer or person engaged in an act prohibited by this section and any advanced biofuel producer or person receiving payment under this subpart shall be jointly and severally liable for any refund due under this subpart and for related charges.

§ 4288.135 Unauthorized payments and offsets.

When unauthorized assistance has been made to an advanced biofuel producer under this Program, the Agency reserves the right to collect from the recipient the sum that is determined to be unauthorized. If the recipient fails to pay the Agency the unauthorized assistance plus other sums due under this section, the Agency reserves the right to offset that amount against Program payments.

(a) Unauthorized assistance. The Agency will seek to collect from recipients all unauthorized assistance made under this Program by the procedures specified in paragraphs (a)(1) through (a)(4) of this section.

(i) Notification to the producer. Upon determination that unauthorized assistance has been made to an advanced biofuel producer under this Program, the Agency will send a demand letter to the producer. Unless the Agency modifies the original demand, it will remain in full force and effect. The demand letter will:
   (i) Specify the amount of unauthorized assistance, including any accrued interest to be repaid, and the standards for imposing accrued interest;
   (ii) State the amount of penalties and administrative costs to be paid, the standards for imposing them and the date on which they will begin to accrue;
   (iii) Provide detailed reason(s) why the assistance was determined to be unauthorized;
   (iv) State the amount is immediately due and payable to the Agency;
(v) Describe the rights the producer has for seeking review or appeal of the Agency’s determination pursuant to 7 CFR part 11;

(vi) Describe the Agency’s available remedies regarding enforced collection, including referral of debt delinquent after due process for Federal salary, benefit and tax offset under the Department of Treasury Offset Program; and

(vii) Provide an opportunity for the producer to meet with the Agency and to provide to the Agency facts, figures, written records, or other information that might refute the Agency’s determination.

(A) If the producer meets with the Agency, the producer will be given an opportunity to provide information to refute the Agency’s findings.

(B) When requested by the producer, the Agency may grant additional time for the producer to assemble documentation. Such extension of time for payment will be valid only if the Agency documents the extension in writing and specifies the period in days during which period the payment obligation created by the demand letter (but not the ongoing accrual of interest) will be suspended. Interest and other charges will continue to accrue pursuant to the initial demand letter during any extension period unless the terms of the demand letter are modified in writing by the Agency.

(2) Payment in full. If the producer agrees with the Agency’s determination or will pay the amount in question, the Agency may allow a reasonable period of time (usually not to exceed 90 days) for the producer to arrange for repayment. The amount due will be the unauthorized payments made plus interest accrued beginning on the date of the demand letter at the interest rate stipulated until the date paid unless otherwise agreed, in writing, by the Agency.

(3) Promissory note. If the producer agrees with the Agency’s determination or is willing to pay the amount in question, but cannot repay the unauthorized assistance within a reasonable period of time, the Agency will convert the unauthorized assistance amount to a loan provided all of the conditions specified in paragraphs (a)(3)(i) through (a)(3)(iii) of this section are met. Loans established under this paragraph will be at the Treasury interest rate in effect on the date the financial assistance was provided and that is consistent with the term length of the promissory note. In all cases, the receivable will be amortized per a repayment schedule satisfactory to the Agency that has the producer pay the unauthorized assistance as quickly as possible, but in no event will the amortization period exceed fifteen (15) years. The producer will be required to execute a debt instrument to evidence this receivable, and the best security position practicable in a manner that will adequately protect the Agency’s interest during the repayment period will be taken as security.

(i) The producer did not provide false information;

(ii) It would be highly inequitable to require prompt repayment of the unauthorized assistance; and

(iii) Failure to collect the unauthorized assistance immediately will not adversely affect the Agency’s interests.

(4) Appeals. Appeals resulting from the demand letter prescribed in paragraph (a)(1) of this section will be handled according to the provisions of §4288.103. All appeal provisions will be concluded before proceeding with further actions.

(b) Offsets. Failure to make payment as determined under paragraph (a) of this section will be treated by the Agency as a debt that can be collected by an Administrative offset, unless written agreements to repay such debt as an alternative to administrative offset is agreed to between the Agency and the producer.

(1) Any debtor who wishes to reach a written agreement to repay the debt as an alternative to administrative offset must submit a written proposal for repayment of the debt, which must be received by the Agency within 20 calendar days of the date the notice was delivered to the debtor. In response, the Agency will notify the debtor in writing whether the proposed agreement is acceptable. In exercising its discretion, the Agency will balance the Government’s interest in collect the debt against fairness to the debtor.
(2) When the Agency receives a debtor’s proposal for a repayment agreement, the offset is stayed until the debtor is notified as to whether the initial agreement is acceptable. If a Government payment will be made before the end of the fiscal year and the review is not yet completed, payment will be deferred pending resolution of the review.

§ 4288.136 Remedies.

In addition to the steps available under the provisions of §§4288.134 and 4288.135, if the Agency has determined that a producer has misrepresented the information or defrauded the Government, the Agency will take one of the following steps in accordance to 7 CFR part 3017, Government-wide Debarment and Suspension:

(a) Suspend payments on the Contract until the violation has been reconciled;
(b) Terminate the Contract; or
(c) Debarment to participate in any Federal Government program.

§ 4288.137 Succession and loss of control of advanced biofuel facilities and production.

(a) Contract succession. An entity who becomes the eligible advanced biofuel producer for an advanced biofuel facility that is under contract under this subpart must request permission from the Agency to succeed to the Program contract and the Agency may grant such request if it is determined that the entity is an eligible producer and permitting such succession would serve the purposes of the Program. If appropriate, the Agency may require the consent of the previous eligible advanced biofuel producer to such succession.

(b) Loss of control. Payments will be made only for eligible advanced biofuels produced at an advanced biofuel facility owned or controlled by an eligible advanced biofuel producer with a valid contract. If payments are made to an advanced biofuel producer for production at an advanced biofuel facility no longer owned or controlled by said producer or to an otherwise ineligible advanced biofuel producer, the Agency will demand full refund of all such payments.
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The Rural Business Investment Company ("RBIC") Program is a Developmental Venture Capital program for the purpose of promoting economic development and the creation of wealth and job opportunities in Rural Areas and among individuals living in such Areas. To this end, the Secretary will select and license RBIC Applicants that will agree to address the unmet Equity Capital needs of Smaller Enterprises primarily located in Rural Areas.

§ 4290.15 Leveraged and Non-leveraged Rural Business Investment Companies.

The regulations in this part apply to rural business investment companies (RBICs) that seek leverage and to RBICs that do not seek leverage. The provisions of subparts A through N of this part apply to Leveraged RBICs and, except as indicated or as otherwise modified by subpart O of this part, to Non-leveraged RBICs. The provisions in subpart O of this part apply to Non-leveraged RBICs and, in addition, modify certain provisions in subparts A through N of this part as they apply to Non-leveraged RBICs.

(76 FR 80221, Dec. 23, 2011)
§ 4290.20 Legal basis and applicability of this part 4290.

The regulations in this part implement Subtitle H of the Consolidated Farm and Rural Development Act, as amended (7 U.S.C. 2009cc et seq.) (“Act”). All RBICs must comply with all applicable regulations, accounting guidelines and valuation guidelines for RBICs.

§ 4290.30 Amendments to Act and regulations.

A RBIC is subject to all existing and future provisions of the Act and part 4290 of title 7 of the Code of Federal Regulations.

§ 4290.40 How to read this part 4290.

(a) Center Headings. Center headings are descriptive and are used for convenience only. They have no regulatory effect.

(b) Capitalizing defined terms. Terms defined in § 4290.50 have initial capitalization in this part 4290.

(c) “You.” The pronoun “you” as used in this part 4290 means a RBIC unless otherwise noted.

(d) Forms. All references in this part to forms, and instructions for their preparation, are to the current issue of such forms.

§ 4290.45 Responsibility for implementing this part 4290.

The Secretary has delegated to the U.S. Small Business Administration (SBA), pursuant to an agreement under the Economy Act (31 U.S.C. 1535), the authority to implement the RBIC program, including implementing and enforcing the regulations in this part 4290. Therefore, unless specifically stated otherwise, SBA will exercise on behalf of the Secretary all responsibilities and authorities assigned to the Secretary in this part 4290.

Subpart B—Definition of Terms Used in Part 4290

§ 4290.50 Definition of terms.

Act means Subtitle H of the Consolidated Farm and Rural Development Act, as amended (7 U.S.C. 2009cc et seq.).

Administrator means the Administrator of SBA.

Affiliate or Affiliates has the meaning set forth in title 13 CFR 121.103.

Applicant means any entity submitting an application to be licensed as a RBIC.

Articles mean articles of incorporation or charter and bylaws for a Corporate RBIC, the certificate and limited partnership agreement for a Partnership RBIC, and the operating agreement or other organizational documents for an LLC RBIC.

Assistance or Assisted means Financing of or management services rendered to a Portfolio Concern by or through a RBIC pursuant to the Act and this part.

Associate of a RBIC means any of the following:

1. An officer, director, employee or agent of a Corporate RBIC;
2. A Control Person, employee or agent of a Partnership RBIC;
3. A managing member of an LLC RBIC;
4. An Investment Adviser/Manager of any RBIC, including any Person who contracts with a Control Person of a RBIC to be the Investment Adviser/Manager of such RBIC; or
5. Any Person regularly serving a RBIC on retainer in the capacity of attorney at law.

(2) Any Person who owns or controls, or who has entered into an agreement to own or control, directly or indirectly, at least 10 percent of any class of stock of a Corporate RBIC or 10 percent of the membership interests of an LLC RBIC, or a limited partner’s interest of at least 10 percent of the partnership capital of a Partnership RBIC. However, neither a limited partner in a Partnership RBIC nor a non-managing member in an LLC RBIC is considered an Associate if such Person is an Entity Institutional Investor whose investment in the Partnership, including commitments, represents no more than 33 percent of the capital of the RBIC and no more than five percent of such Person’s net worth.

(3) Any officer, director, partner (other than a limited partner), manager, agent, or employee of any Associate described in paragraph (1) or (2) of this definition.
(4) Any Person that directly or indirectly Controls, or is Controlled by, or is under Common Control with, a RBIC.

(5) Any Person that directly or indirectly Controls, or is Controlled by, or is under Common Control with, any Person described in paragraphs (1) and (2) of this definition.

(6) Any Close Relative of any Person described in paragraphs (1), (2), (4), and (5) of this definition.

(7) Any Secondary Relative of any Person described in paragraphs (1), (2), (4), and (5) of this definition.

(8) Any concern in which—

(i) Any person described in paragraphs (1) through (6) of this definition is an officer; general partner, or managing member; or

(ii) Any such Person(s) singly or collectively Control or own, directly or indirectly, an equity interest of at least 10 percent (excluding interests that such Person(s) own indirectly through ownership interests in the RBIC).

(9) Any concern in which any Person(s) described in paragraph (7) of this definition singly or collectively own (including beneficial ownership) a majority equity interest, or otherwise have Control. As used in this paragraph (8), ‘‘collectively’’ means together with any Person(s) described in paragraphs (1) through (7) of this definition.

(10) For the purposes of this definition, any Associate relationship described in paragraphs (1) through (7) of this definition that exists at any time within six months before or after the date that a RBIC provides Financing, will be considered to exist on the date of the Financing.

Capital Impairment has the meaning set forth in §4290.1830(b).

Central Registration Agent or CRA means one or more agents appointed for the purpose of issuing Trust Certificates (TCs) and performing the functions enumerated in §4290.1620 and performing similar functions for Debentures funded outside the pooling process.

Close Relative of an individual means:

(1) A current or former spouse;

(2) A father, mother, guardian, brother, sister, son, daughter; or


Commitment means a written agreement between a RBIC and an Enterprise that obligates the RBIC to provide Financing (except a guarantee) to that Enterprise in a fixed or determinable sum, by a fixed or determinable future date. In this context the term “agreement” means that there has been agreement on the principal economic terms of the Financing. The agreement may include reasonable conditions precedent to the RBIC’s obligation to fund the Commitment, but these conditions must be outside the RBIC’s control.

Common Control means a condition such that two or more Persons, either through ownership, management, contract, or otherwise, are under the Control of one group or Person. Two or more RBICs are presumed to be under Common Control if they are Affiliates of each other by reason of common ownership or common officers, directors, or general partners; or if they are managed or their investments are significantly directed either by a common independent Investment Advisor/Manager or managerial contractor, or by two or more such advisors or contractors that are Affiliates of each other. This presumption may be rebutted by evidence satisfactory to the Secretary.

Community Development Finance means debt securities or equity-type investments in Rural Areas.

Control means the possession, direct or indirect, of the power to direct or cause, or the power to stop or hinder (also referred to as “negative Control”), the direction of the management and policies of a RBIC or other concern, whether through the ownership of voting securities, by contract, or otherwise.

Control Person means any Person that controls a RBIC, either directly or through an intervening entity. A Control Person includes:

(1) A general partner of a Partnership RBIC;

(2) Any Person serving as a general partner (in the case of a partnership), an officer or director (in the case of a corporation), or a manager (in the case of a limited liability company) of any
entity that controls a RBIC, either directly or through an intervening entity;

(3) Any Person that—
   (i) Controls or owns, directly or through an intervening entity, at least 10 percent of a Partnership RBIC, an LLC RBIC, or any entity described in paragraphs (1) or (2) of this definition; and
   (ii) Participates in the investment decisions of a general partner of such Partnership RBIC or of a managing member of such LLC RBIC;

(4) Any Person that controls or owns, directly or through an intervening entity, at least 50 percent of a RBIC or any entity described in paragraphs (1) or (2) of this definition.

Corporate RBIC has the meaning set forth in the definition of RBIC in this section.

Debenture means a debt obligation issued by RBICs pursuant to section 384E of the Act and held or guaranteed by the Secretary. A Debenture may be prepaid at any time without penalty.

Debt Securities means instruments evidencing a loan with an option or any other right to acquire Equity Securities in an Enterprise or its Affiliates, or a loan which by its terms is convertible into an equity position. Consideration must be paid for all options acquired.

Developmental Venture Capital means Equity Capital invested in Rural Business Concerns, with an objective of fostering economic development in Rural Areas.

Distribution means any transfer of cash or non-cash assets to the Secretary, the Secretary’s agent or Trustee, or to partners in a Partnership RBIC, or to shareholders in a Corporate RBIC, or to members in an LLC RBIC.

Capitalization of Retained Earnings Available for Distribution constitutes a Distribution to the RBIC’s partners, shareholders, or members.

Enterprise means a Person engaged in a business or commercial activity which charges for the goods and services it provides, whether such Person is operating for profit or is subject to any legal restrictions on the distribution of profits to its owners, members, or suppliers of its equity or quasi-equity capital. An Enterprise includes:

(1) A public, private, or cooperative for-profit or non-profit organization;
(2) A for-profit or nonprofit business controlled by an Indian tribe on a Federal or State reservation or other federally recognized Indian tribal group; or
(3) Any other Person.

Entity General Partner has the meaning set forth in §4290.160.

Entity Managing Member has the meaning set forth in §4290.160.

Equity Capital means Equity Securities or Subordinated Debt With Equity Features.

Equity Securities means stock of any class in a corporation, stock options, warrants, limited partnership interests in a limited partnership, membership interests in a limited liability company, or joint venture interests.

Farm Credit System Institution means an institution defined in section 1.2(a) of the Farm Credit Act of 1971 (12 U.S.C. 2002(a)).

Financing or Financed means outstanding financial assistance provided to a Portfolio Concern by a RBIC, whether through:

(1) Loans, with or without a right to acquire Equity Securities;
(2) Debt Securities;
(3) Equity Securities;
(3) Subordinated Debt With Equity Features;
(4) Guarantees; or
(5) Purchases of securities of an Enterprise through or from an underwriter as permitted by §4290.825.

Guaranty Agreement means the contract entered into by the Secretary which is a guarantee backed by the full faith and credit of the United States Government as to timely payment of principal and interest on Debentures and the Secretary’s rights in connection with such guarantee.

Includible Non-Cash Gains means those non-cash gains (as reported on SBA Form 468 or other USDA-approved form(s)) that are realized in the form of Publicly Traded and Marketable securities or investment grade debt instruments. For purposes of this definition, investment grade debt instruments means those instruments that are rated “BBB” or “Baa”, or better, by Standard & Poor’s Corporation or
Moody’s Investors Service, respectively. Non-rated debt may be considered to be investment grade if a RBIC obtains a written opinion from an investment banking firm acceptable to the Secretary stating that the non-rated debt instrument is equivalent in risk to the issuer’s investment grade debt.

**Institutional Investor** means Entity Institutional Investor or Individual Institutional Investor, each defined as follows:

1. **Entity Institutional Investors.** Any of the following entities if the entity has a net worth (exclusive of unfunded commitments from investors) of at least $1 million, or such higher amount as is specified in this paragraph (1). (See also §4290.230(c)(4) for limitations on the amount of an Entity Institutional Investor’s commitment that may be included in Private Capital.)
   - (i) A State or National bank, Farm Credit System Institution, trust company, savings bank, or savings and loan association, including an investment pool created entirely by such bank or savings association, the deposits of which are insured under the Federal Deposit Insurance Act.
   - (ii) An insurance company.
   - (iii) A 1940 Act Investment Company or Business Development Company (each as defined in the Investment Company Act of 1940, as amended (15 U.S.C. 80a–1 et seq.).
   - (iv) A holding company of any entity described in paragraph (1)(i), (ii) or (iii) of this definition.
   - (v) An employee benefit or pension plan established for the benefit of employees of the Federal government, any State or political subdivision of a State, or any agency or instrumentality of such government unit.
   - (vii) A trust, foundation or endowment exempt from Federal income taxation under the Internal Revenue Code of 1986, 26 U.S.C. 1, as amended.
   - (viii) A corporation, partnership or other entity with a net worth (exclusive of unfunded commitments from investors) of more than $10 million.
   - (ix) A State, a political subdivision of a State, or an agency or instrumentality of a State or its political subdivision.
   - (x) An entity whose primary purpose is to manage and invest non-Federal funds on behalf of at least three Institutional Investors described in paragraphs (1)(i) through (ix) of this definition, each of whom must have at least a 10 percent ownership interest in the entity.
   - (xi) Any other entity that the Secretary determines to be an Institutional Investor.

2. **Individual Institutional Investor.** (1) Any of the following individuals if he/she is also a permanent resident of the United States:
   - (A) An individual who is an Accredited Investor (as defined in the Securities Act of 1933, as amended (15 U.S.C. 77a–77aa)) and whose commitment to the RBIC is backed by a letter of credit from a State or National bank acceptable to the Secretary.
   - (B) An individual whose personal net worth is at least $2 million and at least ten times the amount of his or her commitment to the RBIC. The individual’s personal net worth must not include the value of any equity in his or her most valuable residence.
   - (C) An individual whose personal net worth, not including the value of any equity in his or her most valuable residence, is at least $10 million.
   - (ii) Any individual who is not a permanent resident of the United States but who otherwise satisfies paragraph (2)(i) of this definition provided such individual has irrevocably appointed an agent within the United States for the service of process.

**Investment Adviser/Manager** means any Person who furnishes advice or assistance with respect to operations of a RBIC under a written contract executed in accordance with the provisions of §4290.510.

**Lending Institution** means a concern that is operating under regulations of a state or Federal licensing, supervising, or examining body, or whose shares are publicly traded and listed on a recognized stock exchange or is listed in the Automated Quotation System of the
National Association of Securities Dealers (NASDAQ) and which has assets in excess of $500 million; and which, in either case, holds itself out to the public as engaged in the making of commercial and industrial loans and whose lending operations are not for the purpose of financing its own or an Associate’s sales or business operations.

Leverage means financial assistance provided to a RBIC by the Secretary either through the purchase or guaranty of a RBIC’s Debentures and any other SBA financial assistance evidenced by a security of the RBIC.

Leverageable Capital means Regulatory Capital, excluding unfunded commitments.

Leveraged RBIC means a RBIC that received financial assistance under this part.

LLC RBIC has the meaning set forth in the definition of RBIC in this section.

Loan means a transaction evidenced by a debt instrument with no provision for you to acquire Equity Securities.

Loans and Investments means Portfolio securities, assets acquired in liquidation of Portfolio securities, operating Enterprises acquired, and notes and other securities received, as set forth in the Statement of Financial Position on SBA Form 468 or other USDA-approved form(s).

Management Expenses has the meaning set forth in §4290.520.


1940 Act Company means a RBIC which is registered under the Investment Company Act of 1940.

1980 Act Company means a RBIC which is registered under the Small Business Investment Incentive Act of 1980.

Non-leveraged RBIC means a RBIC that has not received financial assistance under this part.

Operational Assistance means management, marketing, and other technical assistance that assists a Smaller Enterprise with its business development.

Original Issue Price means the price paid by the purchaser for securities at the time of issuance.

Participation Agreement means an agreement between the Secretary and an Applicant licensed as a RBIC pursuant to §4290.390 of this part, that details the RBIC’s operating plan and investment criteria and requires the RBIC to operate pursuant to the Act and this part.

Partnership RBIC has the meaning set forth in the definition of RBIC in this section.

Person means a natural person or legal entity.

Pool means an aggregation of guaranteed Debentures approved by the Secretary.

Portfolio means the securities representing a RBIC’s total outstanding Financings of Enterprises. It does not include idle funds or assets acquired in liquidation of Portfolio securities.

Portfolio Concern means any Enterprise Assisted by a RBIC.

Principal Office means the location where the greatest number of the Enterprise’s employees at any one location perform their work. However, for those Enterprises whose “primary industry” (see 13 CFR 121.107) is service or construction (see 13 CFR 121.201), the determination of principal office excludes the Enterprise’s employees who perform the majority of their work at job-site locations to fulfill specific contract obligations.

Private Capital has the meaning set forth in §4290.230.

Publicly Traded and Marketable means securities that are salable without restriction or that are salable within 12 months pursuant to Rule 144 (17 CFR 230.144) of the Securities Act of 1933, as amended, by the holder thereof, and are of a class which is traded on a regulated stock exchange, or is listed in NASDAQ, or has, at a minimum, at least two market makers as defined in the relevant sections of the Securities Exchange Act of 1934, as amended (15 U.S.C. 77b et seq.), and in all cases the quantity of which can be sold over a reasonable period of time without having an adverse impact upon the price of the stock.
Qualified Non-private Funds means:
(1) Funds directly or indirectly invested in any RBIC or Applicant on or after May 13, 2002 by any Federal agency other than USDA under a provision of law explicitly mandating the inclusion of those funds in the definition of “Private Capital;” and
(2) The aggregate amount of funds invested in any Applicant or RBIC by one or more States, or any political subdivisions, agencies or instrumentalities thereof, including any guarantee extended by such entities.

Regulatory Capital means Private Capital, excluding non-cash assets contributed to a RBIC or an Applicant unless such assets have been converted to cash or have been approved by the Secretary for inclusion in Regulatory Capital. For purposes of this definition, sales of contributed non-cash assets with recourse or borrowings against such assets shall not constitute a conversion to cash.

Relevant Venture Capital Finance means Equity Capital in Rural Business Concerns or benefiting Rural Areas.

Retained Earnings Available for Distribution means Undistributed Net Realized Earnings less any Unrealized Depreciation on Loans and Investments (as reported on SBA Form 468 or other USDA-approved form(s)), and represents the amount that a RBIC may distribute to investors as a profit Distribution, or transfer to Private Capital.

Rural Area means any area of a State not in a city or town that has a population of more than 50,000 inhabitants, according to the latest decennial census of the United States, or in the urbanized area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants, and any area that has been determined to be “rural in character” by the Under Secretary for Rural Development, or as otherwise identified in this definition.

(1) An area that is attached to the urbanized area of a city or town with more than 50,000 inhabitants by a contiguous area of urbanized census blocks that is not more than 2 census blocks wide. Applicants from such an area should work with their Rural Development State Office to request a determination of whether their project is located in a rural area under this provision.

(2) For the purposes of this definition, cities and towns are incorporated population centers with definite boundaries, local self government, and legal powers set forth in a charter granted by the State.

(3) For the Commonwealth of Puerto Rico, the island is considered rural and eligible for Business Programs assistance, except for the San Juan Census Designated Place (CDP) and any other CDP with greater than 50,000 inhabitants. CDPs with greater than 50,000 inhabitants, other than the San Juan CDP, may be determined to be eligible if they are “not urban in character.”

(4) For the State of Hawaii, all areas within the State are considered rural and eligible for Business Programs assistance, except for the Honolulu CDP within the County of Honolulu.

(5) For the purpose of defining a rural area in the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands, the USDA shall determine what constitutes rural and rural area based on available population data.

(6) The determination that an area is “rural in character” will be made by the Under Secretary of Rural Development. The process to request a determination under this provision is outlined in paragraph (6)(ii) of this definition.

(i) The determination that an area is “rural in character” under this definition will apply to areas that are within:

(A) An urbanized area that has two points on its boundary that are at least 40 miles apart, which is not contiguous or adjacent to a city or town that has a population of greater than 150,000 inhabitants or the urbanized area of such a city or town; or

(B) An urbanized area contiguous and adjacent to a city or town of greater than 50,000 inhabitants that is within one-quarter mile of a rural area.

(ii) Units of local government may petition the Under Secretary of Rural Development for a “rural in character” designation by submitting a petition to both the appropriate Rural Development State Director and the Rural
Business-Cooperative Service Administrator of USDA on behalf of the Under Secretary. The petition shall document how the area meets the requirements of paragraph (6)(i)(A) or (B) of this definition and discuss why the petitioner believes the area is “rural in character,” including, but not limited to, the area’s population density, demographics, and topography and how the local economy is tied to a rural economic base. Upon receiving a petition, the Under Secretary will consult with the applicable Governor or leader in a similar position and request comments to be submitted within 5 business days, unless such comments were submitted with the petition. The Under Secretary will release to the public a notice of a petition filed by a unit of local government not later than 30 days after receipt of the petition by way of publication in a local newspaper and posting on the Agency’s Web site, and the Under Secretary will make a determination not less than 15 days, but no more than 60 days, after the release of the notice. Upon a negative determination, the Under Secretary will provide to the petitioner an opportunity to appeal a determination to the Under Secretary, and the petitioner will have 10 business days to appeal the determination and provide further information for consideration.

Rural Business Concern means an Enterprise whose Principal Office is located in a Rural Area.

Rural Business Concern Investment means a Financing in a Rural Business Concern whose Principal Office was located in a Rural Area at the time of the Initial Financing.

Rural Business Investment Company or RBIC means a corporation organized as required by §4290.100 (Corporate RBIC), a limited partnership organized as required by §§4290.100 and 4290.160 (Partnership RBIC), or a limited liability company organized as required by §§4290.100 and 4290.160 (LLC RBIC), that has been licensed as a RBIC pursuant to §4290.390.

SBA means the U.S. Small Business Administration, an agency of the Federal Government headquartered at 409 Third Street, SW, Washington, DC 20416.

Secondary Relative of an individual means:

1. A grandparent, grandchild, or any other ancestor or lineal descendent who is not a Close Relative;
2. An uncle, aunt, nephew, niece, or first cousin; or
3. A spouse of any person described in paragraph (1) or (2) of this definition.

Secretary means the Secretary of Agriculture or his or her designee.

Small Business Concern means a for-profit Smaller Enterprise that meets the definition of “business concern” in 13 CFR 121.105 and that, together with its Affiliates, meets the small business size standards set forth in 13 CFR 121.201 or 13 CFR 121.301(c) for the industry in which it is primarily engaged on the date the Financing is made (the term “primarily engaged” for purposes of this definition is defined in 13 CFR 121.107).

Small Business Concern Investments means a Financing in the form of Equity Capital in an Enterprise that qualified as both a Smaller Enterprise and a Small Business Concern at the time of the initial Financing.

Small Business Investment Company or SBIC means a Licensee, as that term is defined in 13 CFR 107.50.

Smaller Enterprise means any Rural Business Concern that, together with its Affiliates and by itself—

1. Meets the size standard established by SBA in 13 CFR 121.201, corresponding to each type of economic activity or industry described in the NAICS Manual for the industry in which it is primarily engaged on the date on which the Financing is made (the term “primarily engaged” for purposes of this definition is defined in 13 CFR 121.107); or
2. Has—
   1. A net financial worth of not more than $6,000,000 as of the date on which the Financing is made; and
   2. An average net income for the two year period preceding the date on which the Financing is made of not more than $2,000,000, after Federal income taxes (excluding any carryover losses), except that, for purposes of this clause, if the Rural Business Concern is not required by law to pay Federal income taxes at the enterprise level, but
is required to pass income through to the shareholders, partners, beneficiaries, or other equitable owners of the Rural Business Concern, its net income is determined by allowing a deduction in an amount equal to the total of—

(A) If it is not required by law to pay State (and local, if any) income taxes at the enterprise level, the net income (determined without regard to this paragraph (2)(ii)(A)) multiplied by the marginal State income tax rate (or by the combined State and local income tax rates, as applicable) that would have applied if the Rural Business Concern were a corporation; and

(B) The net income (so determined) less any deduction for State (and local) income taxes calculated under paragraph (2)(ii)(A) of this definition multiplied by the marginal Federal income tax rate that would have applied if the Rural Business Concern were a corporation.

Smaller Enterprise Investment means a Financing in the form of Equity Capital in an Enterprise that qualified as a Smaller Enterprise at the time of the initial Financing.

State means each of the 50 states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the U.S. Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Federated States of Micronesia.

Subordinated Debt means a debt of a debtor, common to more than one creditor, that is the subject of an agreement between two groups of creditors (whose claims would otherwise be in parity) setting forth the circumstances under which the claims of one group (senior creditors) shall be satisfied out of the resources of the common debtor that would otherwise be available for the payment of the claims of the other group (junior creditors).

Subordinated Debt With Equity Features means a Subordinated Debt obligation that gives to the junior creditor such additional compensation as warrants, conversion rights, any other interest in the debtor’s equity, profits, increased future revenue, or a royalty interest.

Trust means a legal entity created for the purpose of holding guaranteed Debentures and the guaranty agreement related thereto, receiving, holding and making any related payments, and accounting for such payments.

Trust Certificate Rate means a fixed rate determined at the time Debentures are pooled.

Trust Certificates (TCs) means certificates issued by the Secretary, the Secretary’s agent or Trustee and representing ownership of all or a fractional part of a Trust or Pool of Debentures.

Trustee means the trustee or trustees of a Trust.

Undistributed Net Realized Earnings means Undistributed Realized Earnings less Non-cash Gains/Income, each as reported on SBA Form 468 or other USDA-approved form(s).

Unrealized Appreciation means the amount by which a RBIC’s valuation of each of its Loans and Investments, as determined by its board of directors, general partner(s), or managing member(s) in accordance with the RBIC’s valuation policies, exceeds the cost basis thereof.

Unrealized Depreciation means the amount by which a RBIC’s valuation of each of its Loans and Investments, as determined by its board of directors, general partner(s), or managing member(s) in accordance with the RBIC’s valuation policies, is below the cost basis thereof.

Unrealized Gain (Loss) on Securities Held means the sum of the Unrealized Appreciation and Unrealized Depreciation on all of a RBIC’s Loans and Investments, less estimated future income tax expense or estimated realizable future income tax benefit, as appropriate.

Urban Area means an area containing a city (or its equivalent), or any equivalent geographic area determined by the Census Bureau and adopted by the Secretary for purposes of this definition (about which the Secretary will publish a document in the Federal Register from time to time), which had a population of over 150,000 in the last decennial census and the urbanized areas containing or adjacent to that city, both as determined by the Census Bureau for the last decennial census.
Urban Area Investment means a financing in an Enterprise whose Principal Office was located in an Urban Area at the time of the initial Financing.

USDA means the U.S. Department of Agriculture, a department of the Federal government headquartered at 1400 Independence Avenue, SW., Washington, DC 20250.

Subpart C—Qualifications for the RBIC Program

ORGANIZING A RBIC

§ 4290.100 Business form.

(a) Newly-formed for-profit. An Applicant for a RBIC license must be a newly formed for-profit entity or, subject to §4290.150, a newly formed for-profit subsidiary of an existing entity. It must be organized under the law of a State. An Applicant may be organized as a corporation (“Corporate RBIC”), a limited partnership (“Partnership RBIC”), or a limited liability company (“LLC RBIC”).

(b) Purpose. An Applicant must be organized solely for the purpose of performing the functions and conducting the activities contemplated under the Act: making Developmental Venture Capital investments and providing Operational Assistance to eligible Smaller Enterprises.

(c) Articles. The RBIC’s Articles—

(1) Must specify in general terms:

(i) The purposes for which the RBIC is formed;

(ii) The name of the RBIC;

(iii) The Rural Area or Areas in which it will operate;

(iv) The place where the RBIC’s headquarters will be located; and

(v) The amount and classes of the RBIC’s ownership interests.

(2) May contain any other provisions consistent with the Act that the RBIC may determine is appropriate to adopt to regulate its business and the conduct of its affairs.

(3) Are subject to the Secretary’s approval.

(d) Duration—(1) Partnership RBICs. If you are a Partnership RBIC:

(i) You must have a minimum duration of 10 years, or two years following the maturity of your last-maturing Leverage security, whichever is longer. After 10 years, if all Leverage has been repaid or redeemed and all amounts due the Secretary, his or her agent, or Trustee have been paid, the Partnership RBIC may be terminated by a vote of your partners;

(ii) None of your general partner(s) may be removed or replaced by your limited partners without prior written approval of the Secretary;

(iii) Any transferee of, or successor in interest to, your general partner shall have only the rights and liabilities of a limited partner prior to the Secretary’s written approval of such transfer or succession; and

(iv) You must incorporate all the provisions in this paragraph (d) in your limited partnership agreement.

(2) LLC RBICs. If you are a LLC RBIC, you must have a minimum duration of 10 years, or two years following the maturity of your last-maturing Leverage security, whichever is longer. After 10 years, if all Leverage has been repaid or redeemed and all amounts due the Secretary, his or her agent, or Trustee have been paid, the LLC RBIC may be terminated by a vote of your members.

(3) Corporate RBICs. If you are a Corporate RBIC, you must have a duration of not less than 30 years unless earlier dissolved by the shareholders, except that the Corporate RBIC must not dissolve until at least two years following the maturity of your last-maturing Leverage security.

§ 4290.110 Qualified management.

An Applicant must show, to the satisfaction of the Secretary, that its current or proposed management team is qualified and has the knowledge, experience, and capability in Community Development Finance or Relevant Venture Capital Finance, necessary for investing in the types of Enterprises contemplated by the Act, regulations in this part, and its business plan. In determining whether an Applicant’s current or proposed management team has sufficient qualifications, the Secretary will consider information provided by
the Applicant and third parties concerning the background, capability, education, training and reputation (and any other managerial aspect identified by the USDA in a Federal Register notice) of its general partners, managers, officers, key personnel, and investment committee and governing board members. The Applicant must designate at least one individual as the official responsible for contact with the Secretary.

[76 FR 80222, Dec. 23, 2011]

§ 4290.120 Plan to invest in Rural Areas.

An Applicant must agree that if licensed as a RBIC, it will make Developmental Venture Capital investments in Enterprises that will create wealth and job opportunities in Rural Areas and among individuals living in those areas.

§ 4290.130 Identified Rural Areas.

A RBIC must identify the specific Rural Area or Areas in which it intends to make Developmental Venture Capital investments and provide Operational Assistance under the RBIC program. The scope of the identified areas must be consistent with Applicant’s business plan, especially as the plan relates to the Applicant’s ability to operate actively, soundly, and profitably in such areas.

§ 4290.140 Approval of initial Management Expenses.

A RBIC must have its Management Expenses approved by the Secretary at the time it is licensed. (See § 4290.520 for the definition of Management Expenses.)

§ 4290.150 Management and ownership diversity requirement.

(a) Diversity requirement. You must have diversity between management and ownership in order to be licensed as a RBIC and to maintain your license. To establish diversity, you must meet the requirements in paragraphs (b) and (c) of this section.

(b) Percentage ownership requirement. No Person or group of Persons who are Affiliates of one another may own or control, directly or indirectly, more than 70 percent of your Regulatory Capital or your Leverageable Capital.

(c) Non-affiliation requirement. At least 30 percent of your Regulatory Capital and Leverageable Capital must be owned and controlled by Persons unaffiliated with your management and unaffiliated with each other, and whose investments are significant in dollar and percentage terms as determined by the Secretary. Such Persons must not be your Associates (except for their status as your shareholders, limited partners or members) and must not Control, be Controlled by, or be under Common Control with any of your Associates. A single “acceptable” Institutional Investor may be substituted for two or three of the three investors who are otherwise required. The following Institutional Investors are “acceptable” for this purpose:

(1) Entities whose overall activities are regulated and periodically examined by State, Federal or other governmental authorities satisfactory to the Secretary;

(2) Entities listed on the New York Stock Exchange;

(3) Entities that are publicly-traded and that meet both the minimum numerical listing standards and the corporate governance listing standards of the New York Stock Exchange;

(4) Public or private employee pension funds;

(5) Trusts, foundations, or endowments, but only if exempt from Federal income taxation; and

(6) Other Institutional Investors satisfactory to the Secretary.

(d) Voting requirement. The investors relied upon to satisfy the diversity requirement may not delegate their voting rights to any Person who is your Associate, or who Controls, is Controlled by, or is under Common Control with any of your Associates, without prior approval by the Secretary.

(e) Requirement to maintain diversity. You must maintain management-ownership diversity while you are a RBIC. If, at any time, you no longer have the required management-ownership diversity, you must:

(1) Notify the Secretary within 10 days; and

(2) Re-establish diversity within six months after loss of diversity.
§ 4290.160 Special rules for Partnership RBICs and LLC RBICs.

(a) Entity General Partner or Entity Managing Member. (1) A general partner of a Partnership RBIC which is a corporation, limited liability company or partnership (an “Entity General Partner”), or a managing member of an LLC RBIC which is a corporation, limited liability company, or partnership (an “Entity Managing Member”) shall be organized under State law solely for the purpose of serving as the general partner or managing member of one or more RBICs, and shall be organized for profit.

(2) The Secretary must approve any person who will serve as an officer, director, manager, or general partner of the Entity General Partner or Entity Managing Member. This provision must be stated in an Entity General Partner’s or Entity Managing Member’s articles of incorporation or charter and bylaws if a corporation, operating agreement if a limited liability company, or partnership agreement if a partnership.

(3) An Entity General Partner or Entity Managing Member is subject to the same examination and reporting requirements as a RBIC under sections 384K and 384L of the Act. The restrictions and obligations imposed upon a RBIC by §§ 4290.1810, 4290.30, 4290.410 through 4290.450, 4290.470, 4290.500, 4290.510, 4290.585, 4290.600, 4290.680, 4290.690 through 4290.692, and 4290.1910 apply also to an Entity General Partner or Entity Managing Member of a RBIC.

(4) The general partner(s) of your Entity General Partner(s) or Entity Managing Member(s) will be considered your general partner.

(5) If your Entity General Partner or Entity Managing Member is a limited partnership, its limited partners may be considered your Control Person(s) if they meet the definition for Control Person in § 4290.50.

(b) Liability of general partner of Partnership RBIC. Subject to section 384O(b) of the Act, your general partner(s) is not liable solely by reason of its status as a general partner for repayment of any Leverage or debts you owe to the Secretary unless the Secretary, in the exercise of reasonable investment prudence, and with regard to your financial soundness, determines otherwise prior to the purchase or guaranty of your Leverage. The conditions specified in § 4290.1810 and § 4290.1910 apply to all general partners.

(c) Special Leverage requirement for Partnership RBICs and LLC RBICs. Before your first issuance of Leverage, you must furnish the Secretary with evidence that you qualify as a partnership for tax purposes, either by a ruling from the Internal Revenue Service or by an opinion of counsel.

§ 4290.165 Obligations of Control Persons.

All Control Persons are bound by the provisions of sections 384O and 384P of the Act and by the conflict-of-interest rules under § 4290.730. The term RBIC, as used in §§ 4290.30, 4290.400, and 4290.680, includes all of the RBIC’s Control Persons.

CAPITALIZING A RBIC

§ 4290.200 Adequate capital for RBICs.

You must meet the requirements of §§ 4290.210 through 4290.230 in order to qualify as a RBIC.

(76 FR 80222, Dec. 23, 2011)

§ 4290.210 Minimum capital requirements for RBICs.

(a) General Rule. Unless otherwise specified in a Federal Register notice, you must have Regulatory Capital of at least $10,000,000, or such lesser amount (but not less than $5,000,000) and Leverageable Capital of at least $500,000, to become a RBIC.

(b) Exception. (1) The Secretary in his or her sole discretion and based on a showing of special circumstances and good cause may license an Applicant with Regulatory Capital of at least $10,000,000, or such lesser amount (but not less than $5,000,000) and Leverageable Capital of at least $500,000, to become a RBIC.

(2) The Secretary in his or her sole discretion and based on a showing of special circumstances and good cause may license an Applicant with Regulatory Capital of at least $10,000,000, or such lesser amount (but not less than $5,000,000) and Leverageable Capital of at least $500,000, to become a RBIC.

(2) Has a viable business plan reasonably projecting profitable operations; and
(iii) Has a reasonable timetable for achieving Regulatory Capital of at least $10,000,000.

(2) A RBIC licensed under this exception is not eligible to receive Leverage until it has complied with paragraph (a) of this section.

(c) Time frame. Each RBIC shall have a period of 2 years to meet the capital requirements set forth in this section.

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§ 4290.230 Private Capital for RBICs.

(a) General. Private Capital means the contributed capital of a RBIC, plus unfunded binding commitments by Institutional Investors (including commitments evidenced by a promissory note) to contribute capital to a RBIC.

(b) Contributed capital. For purposes of this section, contributed capital means the paid-in capital and paid-in surplus of a Corporate RBIC, the members’ contributed capital of a LLC RBIC, or the partners’ contributed capital of a Partnership RBIC, in each case subject to the limitations in paragraph (c) of this section.

(c) Exclusions from Private Capital. Private Capital does not include:

(1) Funds borrowed by an Applicant or a RBIC from any source.

(2) Funds obtained through the issuance of Leverage.

(3) Funds obtained directly or indirectly from the Federal government or any State (including by a political subdivision, agency or instrumentality of the Federal government or a State), except that the following categories of such funds are not excluded from Private Capital—

(i) Funds obtained directly or indirectly from the business revenues (excluding any governmental appropriation) of any federally-chartered or government-sponsored enterprise established prior to May 13, 2002;

(ii) Funds invested by an employee welfare benefit plan or pension plan; and

(iii) Qualified Non-private Funds in an amount not to exceed 33 percent of the total Private Capital of any Applicant or RBIC, provided, however, that in no event may any investor or investors of Qualified Non-private Funds have the power to Control, directly or indirectly, the management, board of directors, general partners, or members of the RBIC.

(4) Any portion of an unfunded commitment from an Institutional Investor with a net worth of less than $10 million that exceeds 10 percent of such Institutional Investor’s net worth.

(5) An unfunded commitment from an investor if the Secretary determines that the collectibility of the commitment is questionable.

(d) Non-cash capital contributions. Capital contributions in a form other than cash are subject to the limitations in §4290.240 of this part.

(e) Contributions with borrowed funds. You may not accept any capital contribution made with funds borrowed by a Person seeking to own an equity interest (whether direct or indirect, beneficial or of record) of at least 10 percent of your Private Capital. This exclusion does not apply if:

(1) Such Person’s net worth is at least twice the amount borrowed; or

(2) The Secretary gives his or her prior written approval of the capital contribution.

§ 4290.240 Limitations on non-cash capital contributions in Private Capital.

Non-cash capital contributions to a RBIC or Applicant are included in Private Capital only if they are approved by the Secretary and they fall into one of the following categories:

(a) Direct obligations of, or obligations guaranteed as to principal and interest by, the United States having a term of no more than one year.

(b) Services rendered or to be rendered to you, priced at no more than their fair market value.

(c) Other non-cash assets approved by the Secretary.

Subpart D—Application and Approval Process for RBIC Licensing

§ 4290.300 When and how to apply for a RBIC License.

(a) Notice of Funds Availability ("NOFA"). The Secretary will publish a NOFA in the Federal Register advising potential applicants of the availability of funds for the RBIC program.
and inviting the submission of applications. The NOFA may specify limitations, special rules, procedures, and restrictions for a particular funding round. When submitting its application, an Applicant must comply with both this part 4290 and any requirements specified in the NOFA, including the opening and closing dates for submission of an application.

(b) Application form. An Applicant must apply for a RBIC license using an appropriate application packet provided by the Secretary. Upon receipt of a completed application packet, the Secretary may request clarifying or technical information on the materials submitted as part of the application.


§ 4290.310 Contents of application.

Each Applicant must submit a complete application, including the following:

(a) Management team experience. The Applicant must provide information generally as to the background, capability, education, reputation and training of its management team, including general partners, managers, officers, key personnel, and investment committee and governing board members. The Applicant also must provide information specifically on these individuals' qualifications and reputation in the areas of Community Development Finance and/or Relevant Venture Capital Finance, including the impact of these individuals' activities in these areas.

(b) Amount of Regulatory Capital. The Applicant must indicate the amount of Regulatory Capital it has raised or proposes to raise, which amount must satisfy the requirements of §4290.210(a) of this part, unless the Applicant indicates that it has raised or proposes to raise at least $2,500,000 and is applying for an exception pursuant to §4290.210(b) of this part and includes in its application—

(1) A showing of special circumstances and good cause for the exception;

(2) Will satisfy all eligibility criteria for licensing as a RBIC as set forth in §4290.390(a) of this part, except the capital requirement specified in paragraph (a)(1) of that section, as determined solely by the Secretary;

(3) Has a viable business plan reasonably projecting profitable operations; and

(4) Has a reasonable timetable for achieving Regulatory Capital in an amount that satisfies the requirements of §4290.210(a) of this part.

(c) Comprehensive business plan. The Applicant must submit a comprehensive business plan covering at least a five-year period, addressing the specific items described in §4290.320, and which demonstrates that the Applicant has the capacity to operate successfully as a RBIC.

§ 4290.320 Contents of comprehensive business plan.

(a) Plan for Developmental Venture Capital investing. The Applicant must describe its plans and strategies for how it proposes to make successful Developmental Venture Capital investments in identified Rural Areas.

(b) Working with Rural Area community-based organizations. The Applicant must describe how it intends to work with community-based organizations and local entities (including local economic development companies, local lenders, and local investors) in order to facilitate its Developmental Venture Capital investments.

(c) Market analysis. The Applicant must provide an analysis of the Rural Areas in which it intends to focus its Developmental Venture Capital investments and Operational Assistance to Smaller Enterprises, demonstrating that the Applicant understands the market and the unmet Equity Capital needs in such areas and how its activities will meet these unmet needs and will have a positive economic impact on those areas. The Applicant also must analyze the extent of the demand in such areas for Developmental Venture Capital investments and any factors or trends that may affect the Applicant’s ability to make effective Developmental Venture Capital investments.

(d) Operational capacity and investment strategies. The Applicant must submit information concerning its
§ 4290.330 Policies and procedures for underwriting and approving its Developmental Venture Capital investments, monitoring its portfolio, and maintaining internal controls and operations.

(e) Plan to raise Regulatory Capital. The Applicant must include a detailed description of how it plans to raise its Regulatory Capital if it has not yet done so at the time of application. The Applicant must discuss its potential sources of Regulatory Capital, the estimated timing for raising such funds, and the extent of the expressions of interest to commit such funds to the Applicant.

(f) Plan for providing Operational Assistance. The Applicant must describe how it plans to use its grant funds to provide Operational Assistance to Smaller Enterprises in which it makes or expects to make Developmental Venture Capital investments. Its plan must address the types of Operational Assistance it proposes to provide, and how it plans to provide the Operational Assistance through the use of licensed professionals, when necessary, either from its own staff or from outside entities.

(g) Projected amount of investment in Rural Areas. The Applicant must describe how it proposes to meet the requirements set forth in § 4290.700. An Applicant must project the amount of its total Regulatory Capital and Leverage that it proposes to invest in Smaller Enterprises and in Rural Business Concerns that are not Smaller Enterprises. The Applicant also must describe the amount of its total Regulatory Capital and Leverage that it proposes to invest in Urban Area Investments.

(h) Projected impact. The Applicant must describe the criteria and economic measurements to be used to evaluate whether and to what extent it has met the objectives of the RBIC program. It must include:

1. A description of the extent to which it will concentrate its Developmental Venture Capital investments and Operational Assistance activities in identified Rural Areas;

2. An estimate of the economic development benefits to be created within identified Rural Areas over the next five years or more as a result of its activities;

3. A description of the criteria to be used to measure the benefits created as a result of its activities;

4. A discussion about the amount of such benefits created that it will consider to constitute successfully meeting the objectives of the RBIC program.

(i) Affiliates and business relationships. The Applicant must submit information describing the management and financial strength of any parent or holding entity, affiliated firm or entity, or any other firm or entity essential to the success of the Applicant’s business plan.

§ 4290.330 Grant and guarantee issuance fee.

The Applicant must pay to the Secretary an issuance fee for each grant or debenture guarantee of $500. If both a grant and debenture guarantee are issued for the same RBIC, the issuance fee for both is $500. An Applicant must submit this fee in advance, at the time of application submission.

[76 FR 80222, Dec. 23, 2011]

Subpart E—Evaluation and Selection of RBICs


The Secretary on behalf of USDA and the Administrator on behalf of SBA, in their sole discretion, will evaluate and select an Applicant to participate in the RBIC program based on a review of the Applicant’s application materials, interviews or site visits with the Applicant (if any), and background investigations conducted by the Secretary and other Federal agencies. The Secretary’s evaluation and selection process is intended to—

(a) Ensure that Applicants are evaluated on a competitive basis and in a fair and consistent manner;

(b) Take into consideration the unique proposals presented by Applicants;

(c) Ensure that each Applicant licensed as a RBIC can fulfill successfully the goals of its comprehensive business plan; and
(d) Ensure that the Secretary selects Applicants in such a way as to promote nationwide geographic distribution of Developmental Venture Capital investments.

§ 4290.350 Eligibility and completeness.

The Secretary will not consider any application that is not complete or that is submitted by an Applicant that does not meet the eligibility criteria described in subpart C of this part. The Secretary, at his or her sole discretion, may request from an Applicant additional information concerning eligibility criteria or easily completed portions of the application in order to facilitate consideration of its application.

§ 4290.360 Initial review of Applicant’s management team’s qualifications.

The Secretary will review the information submitted by the Applicant concerning the qualifications of the Applicant’s management team to determine, in his or her sole discretion, whether the team meets the minimum requirements deemed by the Secretary to be critical to successful venture capital investing. In making this determination, the Secretary will consider, among other things, the general business reputation of the owners and managers of the Applicant. Only those Applicants considered to have a management team qualified for venture capital investing will be further considered for selection as a RBIC.

§ 4290.370 Evaluation criteria.

Of those Applicants whose management team is considered qualified for venture capital investing and who have submitted an eligible and complete application, the Secretary on behalf of USDA and the Administrator on behalf of SBA, in their sole discretion, will evaluate and select an Applicant for participation in the RBIC program by considering the following criteria—

(a) Whether the Applicant’s management team has the knowledge, experience, and capability necessary to manage a sound, economically viable RBIC and to comply with the Act;

(b) The quality of the Applicant’s comprehensive business plan in terms of meeting the objectives of the RBIC program;

(c) The likelihood that the Applicant will achieve the goals described in its comprehensive business plan;

(d) The strength and likelihood for success of the Applicant’s operations and investment strategies, including whether the Applicant has projected adequate profitability and financial soundness;

(e) Whether the Applicant will be able to operate soundly and profitably over the long term;

(f) Whether the Applicant will be able to operate actively in its identified Rural Areas in accordance with its business plan;

(g) The need for Developmental Venture Capital Investments in the Rural Areas in which the Applicant intends to invest;

(h) The extent to which the Applicant will concentrate its activities on serving Smaller Enterprises and Small Business Concerns located in the Rural Areas in which it intends to invest, including the ratio of resources that it proposes to invest in such Enterprises as compared to other Enterprises;

(i) The Applicant’s demonstrated understanding of the markets in the Rural Areas in which it intends to focus its activities;

(j) The likelihood that and the time frame within which the Applicant will be able to raise the Regulatory Capital it proposes to raise for its investments;

(k) The strength of the Applicant’s proposal to provide Operational Assistance to Smaller Enterprises in which it plans to invest;

(l) The extent to which the activities proposed by the Applicant will promote economic development and the creation of wealth and job opportunities in the Rural Areas in which it intends to invest and among individuals living in such Areas; and

(m) The strength of the Applicant’s application compared to applications submitted by other Applicants intending to invest in the same or proximate Rural Areas.

§ 4290.380 Selection.

From among the Applicants that have submitted eligible and complete applications, the Secretary on behalf of
USDA and the Administrator on behalf of SBA, in their sole discretion, will select some, all, or none of such Applicants to participate in the RBIC program. Selection will entitle the Applicant to proceed with obtaining a license as a RBIC but only if the Applicant also meets the conditions set forth in § 4290.390.

§ 4290.390 Licensing as a RBIC.

(a) Eligibility criteria for licensing as a RBIC. Each selected Applicant must meet the following conditions before it is eligible to be licensed as a RBIC:

1. Raise the specific amount of Regulatory Capital that the Applicant had projected in its application that it would raise (see § 4290.210 for additional information).

2. Raise $500,000 in Leverageable Capital as required by § 4290.210;

3. Complete and submit to the Secretary all legal and other documentation concerning the RBIC, including but not limited to its Articles and updated financial information concerning the RBIC in order to qualify for a Leverage commitment; and

4. Enter into a Participation Agreement with the Secretary.

(b) Licensing as a RBIC. If the selected Applicant has satisfactorily met all the conditions specified in paragraph (a) of this section, as determined within the sole discretion of the Secretary, then the Secretary on behalf of USDA and the Administrator on behalf of SBA will license the Applicant as a RBIC.

(c) Failure to meet eligibility criteria for licensing. Each selected Applicant that does not meet the eligibility criteria for licensing described in paragraph (a) of this section, within a time period specified by the Secretary, will not be licensed as a RBIC. Failure to meet any of those conditions, including but not limited to failure to raise the projected Regulatory Capital within the required time period, will cause the Applicant’s selection to lapse. The Secretary will not restore the selection of such an Applicant after the expiration of that time period. After the expiration of that time period, an Applicant that is not licensed as a RBIC must cease to represent itself as a participant or potential participant in the RBIC program.

(d) Effect of a RBIC license. The Participation Agreement executed by the Secretary with each Applicant licensed as a RBIC will include the following:

1. Approval to operate as a RBIC under the Act;

2. A commitment of Leverage; and

3. An Operational Assistance grant award.


Subpart F—Changes in Ownership, Structure, or Control

CHANGES IN CONTROL OR OWNERSHIP OF RBIC

§ 4290.400 Changes in ownership of 10 percent or more of RBIC but no change of Control.

You must obtain the Secretary’s prior written approval for any proposed transfer or issuance of ownership interests that results in the ownership (beneficial or of record) by any Person, or group of Persons acting in concert, of at least 10 percent of any class of your stock, partnership capital or membership interests.

§ 4290.410 Changes in Control of RBIC (through change in ownership or otherwise).

You must obtain the Secretary’s prior written approval for any proposed transaction or event that results in Control by any Person(s) not previously approved by the Secretary.

§ 4290.420 Prohibition on exercise of ownership or Control rights in RBIC before approval.

Without the Secretary’s prior written approval, no change of ownership or Control may take effect and no officer, director, employee or other Person acting on your behalf shall:

(a) Register on your books any transfer of ownership interest to the proposed new owner(s);

(b) Permit the proposed new owner(s) to exercise voting rights with respect to such ownership interest (including directly or indirectly procuring or voting any proxy, consent or authorization to such voting rights at any
§ 4290.430 Notification of transactions that may change ownership or Control.

You must promptly notify the Secretary as soon as you have knowledge of transactions or events that may result in a transfer of Control or ownership of at least 10 percent of your Regulatory Capital. If the effect of a particular transaction or event is unclear, you must report all pertinent facts to the Secretary.

§ 4290.440 Standards governing prior approval for a proposed transfer of Control.

The Secretary’s approval of a proposed transfer of Control is contingent upon full disclosure of the real parties in interest, the source of funds for the new owners’ interest, and other data requested by the Secretary. As a condition of approving a proposed transfer of control, the Secretary may:

(a) Require an increase in your Regulatory Capital;
(b) Require the new owners or the transferee’s Control Person(s) to assume, in writing, personal liability for your Leverage, effective only in the event of their direct or indirect participation in any transfer of Control not approved by the Secretary; or
(c) Require compliance with any other conditions set by the Secretary, including compliance with the requirements for minimum capital and management-ownership diversity in effect at such time for new RBICs.

§ 4290.450 Notification of pledge of RBIC’s shares.

(a) You must notify the Secretary in writing, within 30 calendar days, of the terms of any transaction in which:

(1) Any Person, or group of Persons acting in concert, pledges shares of your stock (or equivalent ownership interests) as collateral for indebtedness; and
(2) The shares pledged constitute at least 10 percent of your Regulatory Capital.

(b) If the transaction creates a change of ownership or Control, you must comply with § 4290.400 or § 4290.410, as appropriate.

Restrictions on common control or ownership of two or more RBICs

§ 4290.460 Restrictions on common control or ownership of two (or more) RBICs.

Without the Secretary’s prior written approval, you must not have an officer, director, manager, Control Person, or owner (with a direct or indirect ownership interest of at least 10 percent) who is also:

(a) An officer, director, manager, Control Person, or owner (with a direct or indirect ownership interest of at least 10 percent) of another RBIC; or
(b) An officer or director of any Person that directly or indirectly controls, or is controlled by, or is under common Control with, another RBIC.

Change in structure of RBIC

§ 4290.470 Prior approval of merger, consolidation, or reorganization of RBIC.

You may not merge, consolidate, change form of organization (corporation, limited liability company, or limited partnership) or reorganize without the Secretary’s prior written approval. Any such merger, consolidation, or change of form is subject to § 4290.440.

§ 4290.480 Prior approval of changes to RBIC’s business plan.

Without the Secretary’s prior written approval, no change in your business plan, upon which you were selected and licensed as a RBIC, may take effect.
§ 4290.500  Lawful operations under the Act.
You must engage only in the activities permitted by the Act and in no other activities.

§ 4290.502  Representations to the public.
You may not represent or imply to anyone that the Secretary, the U.S. Government, or any of its agencies or officers has approved any ownership interests you have issued, obligations you have incurred, or Financings you have made. You must include a statement to this effect in any solicitation provided to investors. Example: You may not represent or imply that "USDA stands behind the RBIC" or that "Your capital is safe because the Secretary's experts review proposed investments to make sure they are safe for the RBIC."

§ 4290.503  RBIC's adoption of an approved valuation policy.
(a) Valuation guidelines. You must prepare, document and report the valuations of your Loans and Investments in accordance with the Valuation Guidelines for SBICs issued by SBA. These guidelines may be obtained from SBA's Investment Division or at http://www.sba.gov/sites/default/files/files/invvaluation.pdf.
(b) The Secretary's approval of valuation policy. You must have a written valuation policy approved by the Secretary for use in determining the value of your Loans and Investments. You must either:
(1) Adopt without change the model valuation policy set forth in section III of the Valuation Guidelines for SBICs; or
(2) Obtain the Secretary's prior written approval of an alternative valuation policy.
(c) Responsibility for valuations. Your board of directors, managing member(s), or general partner(s) will be solely responsible for adopting your valuation policy and for using it to prepare valuations of your Loans and Investments for submission to the Secretary. If the Secretary reasonably believes that your valuations, individually or in the aggregate, are materially misstated, he or she reserves the right to require you to engage, at your expense, an independent third party acceptable to the Secretary to substantiate the valuations.
(d) Frequency of valuations. (1) You must value your Loans and Investments at the end of the second quarter of your fiscal year, and again at the end of your fiscal year.
(2) On a case-by-case basis, the Secretary may require you to perform valuations more frequently.
(3) You must report material adverse changes in valuations at least quarterly, within 30 days following the close of the quarter.
(e) Review of valuations by independent public accountant. (1) For valuations performed as of the end of your fiscal year, your independent public accountant must review your valuation procedures and the implementation of such procedures, including adequacy of documentation.
(2) The independent public accountant's report on your audited annual financial statements (SBA Form 468 or other USDA-approved form(s)) must include a statement that your valuations were prepared in accordance with your approved valuation policy.

§ 4290.504  Equipment of USDA or SBA officials.
(a) Computer capability. You must have a personal computer with access to the Internet and be able to use this equipment to prepare reports and transmit such reports to the Secretary. In addition, you must have the capability to send and receive electronic mail.
(b) Facsimile capability. You must be able to receive facsimile messages 24 hours per day at your primary office.
(c) Accessible office. You must maintain an office that is convenient to the public and is open for business during normal working hours.
§ 4290.506 Safeguarding the RBIC’s assets/Internal controls.

You must adopt a plan to safeguard your assets and monitor the reliability of your financial data, personnel, Portfolio, funds and equipment. You must provide your bank and custodian with a certified copy of your resolution or other formal document describing your control procedures.

§ 4290.507 Violations based on false filings and nonperformance of agreements with the Secretary or SBA.

The following shall constitute a violation of this part:

(a) Nonperformance. Failure to perform any of the requirements of any Debenture or of any written agreement with the Secretary or SBA.

(b) False statement. In any document submitted to the Secretary or SBA:

(1) Any false statement knowingly made; or

(2) Any misrepresentation of a material fact; or

(3) Any failure to state a material fact.

(4) A material fact is any fact that is necessary to make a statement not misleading in light of the circumstances under which the statement was made.

§ 4290.508 Compliance with non-discrimination laws and regulations applicable to federally-assisted programs.

In conducting your operations and providing Assistance to your Portfolio Concerns, you must comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1 et seq.), the Age Discrimination Act of 1975 (Pub. L. 94–135, Title III), and Title V of the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.) and the following regulations promulgated by USDA to implement and enforce such laws: 7 CFR part 15.

§ 4290.509 Employment of USDA or SBA officials.

(a) Without the Secretary’s prior written approval, for a period of two years after the date of your most recent issuance of Leverage or after the receipt of any assistance as defined in paragraph (b) of this section, whichever is later, you are not permitted to employ, offer employment to, or retain for professional services, any person who:

(1) Served as an officer, attorney, agent, or employee of SBA or USDA within one year before such date; and

(2) In that capacity, occupied a position or engaged in activities which, in SBA’s or the Secretary’s determination, involved discretion with respect to the issuing of Leverage or the granting of such assistance.

(b) For purposes of this section, “assistance” means financial, contractual, grant, managerial, or other aid, including licensing, certifications, and other eligibility determinations made by USDA or SBA, and any express decision to compromise or defer possible litigation or other adverse action.

§ 4290.510 Approval of RBIC’s Investment Adviser/Manager.

(a) General. You may employ an Investment Adviser/Manager who will be subject to the supervision of your board of directors, managing member(s), or general partner(s). If you have Leverage or plan to seek Leverage, you must obtain the Secretary’s prior written approval of the management contract. Approval of an Investment Adviser/Manager for one RBIC does not indicate approval of that manager for any other RBIC.

(b) Management contract. The contract must:

(1) Specify the services the Investment Adviser/Manager will render to you and to your Portfolio Concerns; and

(2) Indicate the basis for computing Management Expenses.

(c) Material change to approved management contract. Any proposed material change must be approved by both you and the Secretary in advance. If you are uncertain whether the change is material, submit the proposed revision to the Secretary.

§ 4290.520 Management Expenses of a RBIC.

The Secretary must approve your initial Management Expenses and any increases in your Management Expenses.
(a) **Definition of Management Expenses.** Management Expenses include:

1. Salaries;
2. Office expenses;
3. Travel;
4. Business development, including finders' fees;
5. Office and equipment rental;
6. Bookkeeping; and
7. Expenses related to developing, investigating and monitoring investments.

(b) Management Expenses do not include services provided by specialized outside consultants, outside lawyers and independent public accountants, if they perform services not generally performed by a venture capital company.

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**CASH MANAGEMENT BY A RBIC**

§ 4290.530 Restrictions on investments of idle funds by RBICs.

(a) **Permitted investments of idle funds.** Funds not invested in Portfolio Concerns must be maintained in:

1. Direct obligations of, or obligations guaranteed as to principal and interest by, the United States, which mature within 15 months from the date of the investment; or
2. Repurchase agreements with federally insured institutions, with a maturity of seven days or less. The securities underlying the repurchase agreements must be direct obligations of, or obligations guaranteed as to principal and interest by, the United States. The securities must be maintained in a custodial account at a federally insured institution; or
3. Certificates of deposit with a maturity of one year or less, issued by a federally insured institution; or
4. A deposit account in a federally insured institution, subject to a withdrawal restriction of one year or less; or
5. A checking account in a federally insured institution; or
6. A reasonable petty cash fund.

(b) **Deposit of funds in excess of the insured amount.**

(1) General rule. You are permitted to deposit in a federally insured institution funds in excess of the institution’s insured amount, but only if the institution is “well capitalized” in accordance with the definition set forth in regulations of the Federal Deposit Insurance Corporation (12 CFR 325.103).

(2) Exception. You may make a temporary deposit (not to exceed 30 days) in excess of the insured amount, in a transfer account established to facilitate the receipt and disbursement of funds or to hold funds necessary to honor Commitments issued.

(c) **Deposit of funds in Associate institution.** A deposit in, or a repurchase agreement with, a federally insured institution that is your Associate is not considered a Financing of such Associate under §4290.730, provided the terms of such deposit or repurchase agreement are no less favorable than those available to the general public.

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**SECURED BORROWING BY RBICs**

§ 4290.550 Prior approval of secured third-party debt of RBICs.

(a) **Definition.** For the purposes of this section, “secured third-party debt” means any debt that is secured by any of your assets and not guaranteed by the Secretary, including secured guarantees and other contingent obligations that you voluntarily assume and secured lines of credit.

(b) **General rule.** You must get the Secretary’s written approval before you incur any secured third-party debt or refinance any debt with secured third-party debt, including any renewal of a secured line of credit, increase in the maximum amount available under a secured line of credit, or expansion of the scope of a security interest or lien. For purposes of this paragraph (b), “expansion of the scope of a security interest or lien” does not include the substitution of one asset or group of assets for another, provided the asset values (as reported on your most recent annual SBA Form 468 or other USDA-approved form(s)) are comparable.

(c) **Conditions for approval.** As a condition of granting its approval under this section, the Secretary may impose such restrictions or limitations as he or she deems appropriate, taking into account your historical performance, current financial position, proposed terms of the secured debt and amount of aggregate debt you will have outstanding (including Leverage). The
Secretary will not favorably consider any requests for approval which include a blanket lien on all your assets, or a security interest in your investor commitments in excess of 125 percent of the proposed borrowing.

(d) Thirty-day approval. Unless the Secretary notifies you otherwise within 30 days after he or she receives your request, you may consider your request automatically approved if:

(1) You are in regulatory compliance;
(2) The security interest in your assets is limited to either those assets being acquired with the borrowed funds or an asset coverage ratio of no more than 2:1; and
(3) Your request is for approval of a secured line of credit that would not cause your total outstanding borrowings (not including Leverage) to exceed 50 percent of your Leverageable Capital.


VOLUNTARY DECREASE IN REGULATORY CAPITAL

§ 4290.585 Voluntary decrease in RBIC’s Regulatory Capital.

You must obtain the Secretary’s prior written approval to reduce your Regulatory Capital by more than two percent in any fiscal year. At all times, you must retain sufficient Regulatory Capital to meet the minimum capital requirements in the Act and § 4290.210, and sufficient Leverageable Capital to avoid having excess Leverage in violation of section 384E(d) of the Act.

Subpart H—Recordkeeping, Reporting, and Examination Requirements for RBICs

RECORDKEEPING REQUIREMENTS FOR RBICs

§ 4290.600 General requirement for RBIC to maintain and preserve records.

(a) Maintaining your accounting records. You must establish and maintain your accounting records using SBA’s standard chart of accounts for SBICs, unless the Secretary approves otherwise. You may obtain this chart of accounts from SBA or at http://www.sba.gov/sites/default/files/files/inv_charts_of_accounts.pdf.

(b) Location of records. You must keep the following records at your principal place of business or, in the case of paragraph (b)(3) of this section, at the branch office that is primarily responsible for the transaction:

(1) All your accounting and other financial records;
(2) All minutes of meetings of directors, stockholders, executive committees, partners, members, or other officials; and
(3) All documents and supporting materials related to your business transactions, except for any items held by a custodian under a written agreement between you and a Portfolio Concern or lender, or any securities held in a safe deposit box, or by a licensed securities broker in an amount not exceeding the broker’s per-account insurance coverage.

(c) Preservation of records. You must retain all the records that are the basis for your financial reports. Such records must be preserved for the periods specified in this paragraph (c) and must remain readily accessible for the first two years of the preservation period.

(1) You must preserve for at least 15 years or, in the case of a Partnership RBIC or LLC RBIC, at least two years beyond the date of liquidation:

(i) All your accounting ledgers and journals, and any other records of assets, asset valuations, liabilities, equity, income, and expenses;
(ii) Your Articles, bylaws, minute books, and RBIC application; and
(iii) All documents evidencing ownership of the RBIC including ownership ledgers and ownership transfer registers.

(2) You must preserve for at least six years all supporting documentation (such as vouchers, bank statements, or canceled checks) for the records listed in paragraph (b)(1) of this section.

(3) After final disposition of any item in your Portfolio, you must preserve for at least six years:

(i) Financing applications and Financing instruments;
(ii) All loan, participation, and escrow agreements;
(iii) All certifications listed in § 4290.610 of this part;
§ 4290.610 Required certifications for Loans and Investments.

For each of your Loans and Investments, you must have the documents listed in this section. You must keep these documents in your files and make them available to the Secretary upon request.

(a) For each Financing made to a Rural Business Concern or Smaller Enterprise, a certification by the Portfolio Concern stating the basis for its qualification as a Rural Business Concern or Smaller Enterprise.

(b) For each Financing made to a Small Business Concern, a Size Status Declaration (SBA Form 480 or other USDA-approved form(s)), executed both by you and by the Portfolio Concern certifying that the concern is a Small Business Concern. For securities purchased from an underwriter in a public offering, you may substitute a prospectus showing that the concern is a Small Business Concern.

(c) A certification by the Portfolio Concern that it will not discriminate in violation of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Title V of the Equal Credit Opportunity Act.

(d) A certification by the Portfolio Concern of the intended use of the proceeds. For securities purchased from an underwriter in a public offering, you may substitute a prospectus indicating the intended use of proceeds.


§ 4290.620 Requirements to obtain information from Portfolio Concerns.

All the information required by this section is subject to the requirements of § 4290.600 and must be in English.

(a) Information for initial Financing decision. Before extending any Financing, you must require the Enterprise to submit such financial statements, plans of operation (including intended use of financing proceeds), cash flow analyses, projections, and such economic development information about the Enterprise, as are necessary to support your investment decision. The information submitted must be consistent with the size and type of the Enterprise and the amount of the proposed Financing.

(b) Updated financial and economic development information. (1) The terms of each Financing must require the Portfolio Concern to provide, at least annually, sufficient financial and economic development information to enable you to perform the following required procedures:

   (i) Evaluate the financial condition of the Portfolio Concern for the purpose of valuing your investment;
   (ii) Determine the continued eligibility of the Portfolio Concern;
   (iii) Verify the use of Financing proceeds;
   (iv) Evaluate the economic development impact of the Financing; and
   (v) In the case of any Portfolio Concern that is not a Rural Business Concern, the number and percentage of its employees residing in Rural Areas.

   (2) The president, chief executive officer, treasurer, chief financial officer, general partner, or proprietor of the Portfolio Concern must certify the information submitted to you.

   (3) For financial and valuation purposes, you may accept a complete copy of the Federal income tax return filed by the Portfolio Concern (or its proprietor) in lieu of financial statements, but only if appropriate for the size and type of the Enterprise involved.
(4) The requirements in this paragraph (b) do not apply when you acquire securities from an underwriter in a public offering (see §4290.825). In that case, you must keep copies of all reports furnished by the Portfolio Concern to the holders of its securities.

(c) Information required for examination purposes. You must obtain any information requested by the Secretary’s examiners for the purpose of verifying the certifications made by a Portfolio Concern under §4290.610. In this regard, your Financing documents must contain provisions requiring the Portfolio Concern to give you and/or the Secretary’s examiners access to its books and records for such purpose.

REPORTING REQUIREMENTS FOR RBICs

§ 4290.630 Requirement for RBICs to file financial statements and supplementary information with the Secretary.

(a) Annual filing. For each fiscal year, you must submit financial statements and supplementary information prepared on SBA Form 468 or other USDA-approved form(s). You must file SBA Form 468 (or other USDA-approved form(s)) on or before the last day of the third month following the end of your fiscal year, except for the information required under paragraphs (e) and (f) of this section, which must be filed on or before the last day of the fifth month following the end of your fiscal year.

(1) Audit of annual filing form. An independent public accountant acceptable to the Secretary must audit the annual form submitted under paragraph (a) of this section.

(2) Insurance requirement for public accountant. Unless the Secretary approves otherwise, your independent public accountant must carry at least $1,000,000 of Errors and Omissions insurance, or be self-insured and have a net worth of at least $1,000,000.

(b) Interim filings. When requested by the Secretary, you must file interim reports on SBA Form 468 or other USDA-approved form(s). The Secretary may require you to file the entire form or only certain statements and schedules. You must file such reports on or before the last day of the month following the end of the reporting period. When you submit a request for a draw under a Leverage commitment, you must also comply with any applicable filing requirements set forth in §4290.1220.

(c) Standards for preparation. You must prepare SBA Form 468 or other USDA-approved form(s) in accordance with SBA’s Accounting Standards and Financial Reporting Requirements for SBICs, which you may obtain from SBA or at http://www.sba.gov/content/accounting-standards-sbic.

(d) Where to file. Unless otherwise identified in a notice published in the FEDERAL REGISTER, submit all filings of forms under this section to the Investment Division of SBA.

(e) Reporting of economic development impact information for each Financing. Your annual filing of SBA Form 468 or other USDA-approved form(s) must include an assessment of the economic development impact of each Financing. This assessment must specify the fulltime equivalent jobs created, the impact of the Financing on the revenues and profits of the business and on taxes paid by the business and its employees, and a listing of the number and percentage of employees who reside in Rural Areas.

(f) Reporting of economic development information for certain Financings. For each Rural Business Concern Investment and each Smaller Enterprise Investment, your SBA Form 468 or other USDA-approved form(s) must include an assessment of each such Financing with respect to:

(1) The economic development benefits achieved as a result of the Financing;

(2) How and to what extent such benefits fulfilled the goals of your comprehensive business plan and Participation Agreement; and

(3) Whether you consider the Financing or the results of the Financing to have fulfilled the objectives of the RBIC program.


§ 4290.640 Requirement to file portfolio financing reports with the Secretary.

For each Financing you make (excluding guarantees), you must submit a Portfolio Financing Report on SBA
Form 1031 or other USDA-approved form(s) within 30 days of the closing date.

[76 FR 80223, Dec. 23, 2011]

§ 4290.650 Requirement to report portfolio valuations to the Secretary

You must determine the value of your Loans and Investments in accordance with § 4290.503. You must report such valuations to the Secretary within 90 days of the end of the fiscal year in the case of annual valuations, and within 30 days following the close of other reporting periods. You must report material adverse changes in valuations at least quarterly, within 30 days following the close of the quarter.

§ 4290.660 Other items required to be filed by RBIC with the Secretary.

(a) Reports to owners. You must give the Secretary a copy of any report you furnish to your investors, including any prospectus, letter, or other publication concerning your financial operations or those of any Portfolio Concern.

(b) Documents filed with SEC. You must give the Secretary a copy of any report, application or document you file with the Securities and Exchange Commission.

(c) Litigation reports. When you become a party to litigation or other proceedings, you must give the Secretary a report within 30 days that describes the proceedings and identifies the other parties involved and your relationship to them.

(1) The proceedings covered by this paragraph (c) include any action by you, or by your security holder(s) in a personal or derivative capacity, against an officer, director, Investment Adviser/Manager or other Associate of yours for alleged breach of official duty.

(2) The Secretary may require you to submit copies of the pleadings and other documents he or she may specify.

(3) Where proceedings have been terminated by settlement or final judgment, you must promptly advise the Secretary of the terms.

(4) This paragraph (c) does not apply to collection actions or proceedings to enforce your ordinary creditors’ rights.

(d) Notification of criminal charges. If any officer, director, general partner, or managing member of the RBIC, or any other person who was required by the Secretary to complete a personal history statement, is charged with or convicted of any criminal offense other than a misdemeanor involving a minor motor vehicle violation, you must report the incident to the Secretary within 5 calendar days. Such report must fully describe the facts that pertain to the incident.

(e) Reports concerning Operational Assistance grant funds. You must comply with all reporting requirements set forth in Circular A–110 of the Office of Management and Budget and any grant award document executed between you and the Secretary.

(f) Other reports. You must file any other reports the Secretary may require in writing.

§ 4290.680 Reporting changes in RBIC not subject to prior approval.

(a) Changes to be reported for post-approval. This section applies to any changes in your Articles, ownership, capitalization, management, operating area, or investment policies that do not require the Secretary’s prior approval. You must report such changes to the Secretary within 30 days after the change, for post approval.

(b) Approval by the Secretary. You may consider any change submitted under this § 4290.680 to be approved unless the Secretary notifies you to the contrary within 90 days after receiving it. Approval is contingent upon your full disclosure of all relevant facts and is subject to any conditions the Secretary may prescribe.

EXAMINATIONS OF RBICS BY THE SECRETARY FOR REGULATORY COMPLIANCE

§ 4290.690 Examinations.

All RBICs must submit to annual examinations by or at the direction of the Secretary for the purpose of evaluating regulatory compliance.
§ 4290.691 Responsibilities of RBIC during examination.

You must make all books, records and other pertinent documents and materials available for the examination, including any information required by the examiner under § 4290.620(c). In addition, the agreement between you and the independent public accountant performing your audit must provide that any information in the accountant’s working papers be made available to the examiners upon request.

§ 4290.692 Examination fees.

(a) General. The Secretary will assess fees for examinations in accordance with this § 4290.692. Unless the Secretary determines otherwise on a case by case basis, he or she will not assess fees for special examinations to obtain specific information.

(b) Base fee. A base fee of $9,200 + 0.015 percent of your assets will be assessed, subject to adjustment in accordance with paragraph (c) of this section.

(c) Adjustments to base fee. The base fee will be decreased based on the following criteria:

(1) If you have no outstanding regulatory violations at the time of the commencement of the examination or the Secretary did not identify any violations as a result of the most recent prior examination, you will receive a 15% discount on your base fee; and

(2) If you were fully responsive to the letter of notification of examination (that is, you provided all requested documents and information within the time period stipulated in the notification letter in a complete and accurate manner, and you prepared and had available all information requested by the examiner for on-site review), you will receive a 10% discount on your base fee.

(d) Examination delay fee. If, in the sole discretion of the Secretary, the time required to complete your examination is delayed due to your lack of cooperation or the condition of your records, the Secretary may assess an additional examination fee of up to $500 per day.


Subpart I—Financing of Enterprises by RBICs

§ 4290.700 Requirements concerning types of Enterprises to receive Financing.

(a) Rural Business Concern Investments. At the close of each of your fiscal years—

(1) At least 75 percent of your Portfolio Concerns must have received a Rural Business Concern Investment; and

(2) For all Financings you have extended, you must have invested at least 75 percent (in total dollars) in Rural Business Concern Investments.

(b) Smaller Enterprise Investments. At the close of each of your fiscal years—

(1) More than 50 percent of your Portfolio Concerns must be Smaller Enterprises that, at the time of the initial Financing to such Enterprise, meet either the net worth/net income test or the size standard set forth in the “Smaller Enterprise” definition in § 4290.50 of this part; and

(2) For all Financings that you have extended, you must have invested more than 50 percent (in total dollars) in Financings in the form of Equity Capital in such Enterprises.

(c) Small Business Concern Investments. At the close of each of your fiscal years—

(1) At least 50 percent of the Portfolio Concerns referenced in paragraph (b)(1) of this section must be Small Business Concerns; and

(2) For all Financings referenced in paragraph (b)(2) of this section, you must have invested at least 50 percent (in total dollars) in Small Business Concerns.

(d) Urban Area Investments. At the close of each of your fiscal years—

(1) No more than 10 percent of your Portfolio Concerns must have received Urban Area Investments; and

(2) For all Financings you have extended, you must not have invested more than 10 percent (in total dollars) in Urban Area Investments.

(e) Non-compliance with this section. If you have not met the percentages required in paragraphs (a), (b), (c), or (d)
§ 4290.720 Enterprises that may be ineligible for Financing.

(a) Re-lenders or re-investors. You are not permitted to finance any Enterprise that is a re-lender or re-investor. The primary business activity of re-lenders or re-investors involves, directly or indirectly, providing funds to others, purchasing debt obligations, factoring, or long-term leasing of equipment with no provision for maintenance or repair.

(b) Passive Enterprises. You are not permitted to finance a passive Enterprise.

(1) Definition. An Enterprise is passive if:

(i) It is not engaged in a regular and continuous business operation (for purposes of this paragraph (b), the mere receipt of payments such as dividends, rents, lease payments, or royalties is not considered a regular and continuous business operation); or

(ii) Its employees are not carrying on the majority of day to day operations, and the Enterprise does not provide effective control and supervision, on a day to day basis, over persons employed under contract; or

(iii) It passes through substantially all of the proceeds of the Financing to another entity.

(2) Exception for pass-through of proceeds to subsidiary. With the prior written approval of the Secretary, you may finance a passive Enterprise if it passes substantially all of the proceeds through to one or more subsidiary companies, each of which is an eligible Enterprise that is not passive. For the purpose of this paragraph (b)(2), “subsidiary company” means a company in which at least 50 percent of the outstanding voting securities are owned by the Financed passive Enterprise.

(3) Exception for certain Partnership RBICs or LLC RBICs. With the prior written approval of the Secretary, if you are a Partnership RBIC or LLC RBIC, you may form one or more wholly owned corporations in accordance with this paragraph (b)(3). The sole purpose of such corporation(s) must be to provide Financing to one or more eligible, unincorporated Enterprise. You may form such corporation(s) only if a direct Financing to such Enterprise would cause any of your investors to incur unrelated business taxable income under section 511 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 511). Your investment of funds in such corporation(s) will not constitute a violation of § 4290.730(a).

(c) Real Estate Enterprises. (1) You are not permitted to finance:

(i) Any Enterprise classified under sector 233 (Building, Developing, and General Contracting) of the NAICS Manual, or

(ii) Any Enterprise listed under sector 531 (Real Estate) unless at least 80 percent of its revenue is derived from non-Affiliate sources.

(2) You are not permitted to finance an Enterprise, regardless of NAICS classification, if the Financing is to be used to acquire or refinance real property, unless the Enterprise:

(i) Is acquiring an existing property and will use at least 51 percent of the usable square footage for an eligible business or commercial purpose; or

(ii) Is constructing or renovating a building and will use at least 67 percent of the usable square footage for an eligible business or commercial purpose; or

(iii) Occupies the subject property and uses at least 67 percent of the usable square footage for an eligible business or commercial purpose.

(d) Project Financing. You are not permitted to finance an Enterprise if:

(1) The assets of the Enterprise are to be reduced or consumed, generally without replacement, as the life of the Enterprise progresses, and the nature of the Enterprise requires that a stream of cash payments be made to the Enterprise’s financing sources, on a basis associated with the continuing sale of assets. Examples include real estate development projects and oil and gas wells; or

(2) The primary purpose of the Financing is to fund production of a single item or defined limited number of
items, generally over a defined production period, and such production will constitute the majority of the activities of the Enterprise. Examples include motion pictures.

(e) Farm land purchases. You are not permitted to finance the acquisition of farmland. Farmland means land which is or is intended to be used for agricultural or forestry purposes such as the production of food, fiber, or wood, or is so taxed or zoned.

(f) Public interest. You are not permitted to finance any business if the proceeds are to be used for purposes contrary to the public interest, including but not limited to or activities which are in violation of law, or inconsistent with free competitive enterprise.

(g) Foreign investment—(1) General rule. You are not permitted to finance an Enterprise if:

(i) The funds will be used substantially for a foreign operation; or

(ii) At the time of the Financing or within one year thereafter, more than 49 percent of the employees or tangible assets of the Enterprise are located outside the United States (unless you can show, to the Secretary’s satisfaction, that the Financing was used for a specific domestic purpose).

(2) Exception. This paragraph (g) does not prohibit a Financing used to acquire foreign materials and equipment or foreign property rights for use or sale in the United States.

(h) Financing RBICs, SBICs, or New Markets Venture Capital Companies (NMVC Companies). (1) You are not permitted to provide funds, directly or indirectly:

(i) To purchase stock in or otherwise provide capital to a RBIC, SBIC or NMVC Company; or

(ii) To repay an indebtedness incurred for the purpose of investing in a RBIC, SBIC, or NMVC Company.

(2) “NMVC Company” is defined in 13 CFR 108.50.

(i) Entities ineligible for Farm Credit System Assistance. If one or more Farm Credit System Institutions or their Affiliates owns more than 25 percent of the ownership interests of a Rural Business Investment Company, either alone or in conjunction with other Farm Credit System Institutions (or affiliates), the Rural Business Investment Company may not provide Financing to any entity that is not otherwise eligible to receive Financing from a Farm Credit System Institution under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).

(j) Gaming establishments. You are not permitted to Finance an Enterprise that derives, or is expected to derive, more than one-third of its gross annual revenue from legal gaming activities.

(k) Change of ownership of an Enterprise. You are not permitted to Finance a change of ownership of an Enterprise unless otherwise approved by the Secretary.

(2) Provide Financing to an Associate of another RBIC if one of your Associates has received or will receive any direct or indirect Financing or a Commitment from that RBIC or any other RBIC (including Financing or Commitments received under any understanding, agreement, or cross dealing, reciprocal or circular arrangement).

(3) Borrow money from:
   (i) An Enterprise Financed by you;
   (ii) An officer, director, or owner of at least a 10 percent equity interest in such Enterprise; or
   (iii) A Close Relative of any such officer, director, or equity owner.

(4) Provide Financing to an Enterprise to discharge an obligation to your Associate or free other funds to pay such obligation. This paragraph (a)(4) does not apply if the obligation is to an Associate Lending Institution and is a line of credit or other obligation incurred in the normal course of business.

(b) Rules applicable to Associates. Without the Secretary’s prior written approval, your Associates must not, directly or indirectly:

   (1) Borrow money from any Person described in paragraph (a)(3) of this section.
   (2) Receive from an Enterprise any compensation or anything of value in connection with Assistance you provide (except as permitted under §4290.825(c)), or anything of value for procuring, attempting to procure, or influencing your action with respect to such Assistance.

   (c) Applicability of other laws. You are also bound by Federal or State laws applicable to you that govern conflicts of interest and fiduciary obligations.

(d) Financings with Associates—(1) Financings with Associates requiring prior approval. Without the Secretary’s prior written approval, you may not Finance any Enterprise in which your Associate has either a voting equity interest or total equity interests (including potential interests) of at least five percent, or effective control, except as otherwise permitted under paragraph (a)(1) of this section.

   (2) Other Financings with Associates. If you and an Associate provide Financing to the same Enterprise, either at the same time or at different times, you must be able to demonstrate to the Secretary’s satisfaction that the terms and conditions are (or were) fair and equitable to you, taking into account any differences in the timing of each party’s financing transactions.

(3) Exceptions to paragraphs (d)(1) and (d)(2) of this section. A Financing that falls into one of the following categories is exempt from the prior approval requirement in paragraph (d)(1) of this section or is presumed to be fair and equitable to you for the purposes of paragraph (d)(2) of this section, as appropriate:

   (i) Your Associate is a Lending Institution that is providing financing under a credit facility in order to meet the operational needs of the Enterprise and the terms of such financing are usual and customary.
   (ii) Your Associate invests in the Enterprise on the same terms and conditions and at the same time as you.
   (iii) Both you and your Associate are RBICs.

(e) Use of Associates to manage Portfolio Concerns. To protect your investment, you may designate an Associate to serve as an officer, director, or other participant in the management of a Portfolio Concern. You must identify any such Associate in your records available for the Secretary’s review under §4290.600. Without the Secretary’s prior written approval, such Associate must not:

   (1) Have any other direct or indirect financial interest in the Portfolio Concern that exceeds, or has the potential to exceed, the percentages of the Portfolio Concern’s equity set forth in paragraph (a)(1) of this section.
   (2) Receive any income or anything of value from the Portfolio Concern unless it is for your benefit, with the exception of director’s fees, expenses, and distributions based upon the Associate’s ownership interest in the Concern.

(5) 1940 and 1980 Act Companies: SEC exemptions. If you are a 1940 or 1980 Act Company and you receive an exemption from the Securities and Exchange Commission for a transaction described in this §4290.730, you need not obtain the Secretary’s approval of the transaction. However, you must promptly
notify the Secretary of the transaction.

(g) Restriction on options obtained by RBIC’s management and employees. Your employees, officers, directors, managing members or general partners, or the general partners or managing members of the Investment Adviser/Manager that is providing services to you or to your general partner or managing member, may obtain options in a Portfolio Concern only if:

(1) They participate in the Financing on a pari passu basis with you; or
(2) The Secretary gives prior written approval; or
(3) The options received are compensation for service as a member of the board of directors of the Portfolio Concern, and such compensation does not exceed that paid to other outside directors. In the absence of such directors, fees must be reasonable when compared with amounts paid to outside directors of similar companies.

§ 4290.740 Portfolio diversification (“overline” limitation).

(a) Without the Secretary’s prior written approval, you may provide Financing or a Commitment to an Enterprise only if the resulting amount of your aggregate outstanding Financings and Commitments to that Enterprise and its Affiliates does not exceed 10 percent of the sum of:

(1) Your Regulatory Capital as of the date of the Financing or Commitment; plus

(2) Any permitted Distribution(s) you made during the five years preceding the date of the Financing or Commitment which reduced your Regulatory Capital; plus

(3) The total amount of Leverage provided to the Rural Business Investment Company by the Secretary since it was licensed under §4290.390.

(b) For the purposes of paragraph (a) of this section, you must measure each outstanding Financing at its original cost plus any amount of the Financing that was previously written off.

becomes ineligible because of a change in business activity more than one year after your initial Financing you may:

(1) Retain your investment; and
(2) Provide additional Financing to the Portfolio Concern to the extent necessary to protect against the loss of the amount of your original investment, subject to the overline limitations of §4290.740.

**Structuring RBIC Financing of Eligible Enterprises—Types of Financings**

§4290.800 Financings in the form of Equity Securities.

You may purchase the Equity Securities of an Enterprise. You may not, inadvertently or otherwise:

(a) Become a general partner in any unincorporated business; or
(b) Become jointly or severally liable for any obligations of an unincorporated business.

§4290.810 Financings in the form of Loans.

You are permitted to make Loans to an Enterprise only if:

(a) The maturity or term of the Loan is five years or less; and
(b) You determine that making the Loan is necessary to preserve an existing Financing (other than a Loan) in that same Enterprise.

§4290.815 Financings in the form of Debt Securities.

(a) General rule. You may purchase Debt Securities from an Enterprise.

(b) Restriction of options obtained by RBIC’s management and employees. Your employees, officers, directors, general partners, or managing members, or the general partners or managing members of your Investment Advisor/Manager, may obtain options in a Portfolio Concern only if:

(1) They participate in the Financing on a pari passu basis with you; or
(2) The Secretary gives its prior written approval; or
(3) The options received are compensation for services as a member of the board of directors of the Enterprise, and such compensation does not exceed that paid to other outside directors. In the absence of such directors, fees must be reasonable when compared with amounts paid to outside directors of similar Enterprises.

§4290.820 Financings in the form of guarantees.

(a) General rule. At the request of an Enterprise or where necessary to protect your existing Financing in a Portfolio Concern, you may guarantee the monetary obligation of an Enterprise to any non-Associate creditor.

(b) Exception. You may not issue a guaranty if:

(1) You would become subject to State regulation as an insurance, guaranty or surety business; or
(2) The amount of the guaranty plus any direct Financings to the Enterprise exceed the overline limitations of §4290.740, except that a pledge of the Equity Securities of the issuer or a subordination of your lien or creditor position does not count toward your overline.

(c) Pledge of RBIC’s assets as guaranty. For purposes of this section, a guaranty with recourse only to specific asset(s) you have pledged is equal to the fair market value of such asset(s) or the amount of the debt guaranteed, whichever is less.

§4290.825 Purchasing securities from an underwriter or other third party.

(a) Securities purchased through or from an underwriter. You may purchase the securities of an Enterprise through or from an underwriter if:

(1) You purchase such securities within 90 days of the date the public offering is first made;
(2) Your purchase price is no more than the original public offering price; and
(3) The amount paid by you for the securities (less ordinary and reasonable underwriting charges and commissions) has been, or will be, paid to the issuer, and the underwriter certifies in writing that this requirement has been met.

(b) Recordkeeping requirements. You must keep records available for the Secretary’s inspection which show the relevant details of the transaction, including but not limited to, date, price,
commissions, and the underwriter’s certifications required under paragraphs (a)(3) and (c) of this section.

(c) Underwriter’s requirements. The underwriter must certify whether it is your Associate. You may pay reasonable and customary commissions and expenses to an Associate underwriter for the portion of an offering that you purchase.

(d) Securities purchased from another RBIC. You may purchase from, or exchange with, another RBIC, Portfolio securities (or any interest therein). Such purchase or exchange may only be made on a non-recourse basis. You may not have more than one-third of your total assets (valued at cost) invested in such securities. If you have previously sold Portfolio securities (or any interest therein) on a recourse basis, you must include the amount for which you may be contingently liable in your overline computation.

(e) Purchases of securities from other non-issuers. You may purchase securities of an Enterprise from a non-issuer not previously described in this §4290.825 if such acquisition is a reasonably necessary part of the overall sound Financing of the Enterprise.

§ 4290.830 Minimum term of Financing.

(a) General rule. The minimum term of each of your Financings is one year.

(b) Restrictions on mandatory redemption of Equity Securities. If you have acquired Equity Securities, options, or warrants on terms that include redemption by the Portfolio Concern, you must not require redemption by the Portfolio Concern within the first year of your acquisition except as permitted in §4290.850.

(c) Special rules for Loans and Debt Securities—(1) Term. The minimum term for Loans and Debt Securities starts with the first disbursement of the Financing.

(2) Prepayment. You must permit voluntary prepayment of Loans and Debt Securities by the Portfolio Concern. You must obtain the Secretary’s prior written approval of any restrictions on the ability of the Portfolio Concern to prepay other than the imposition of a reasonable prepayment penalty under paragraph (c)(3) of this section.

(3) Prepayment penalties. You may charge a reasonable prepayment penalty which must be agreed upon at the time of the Financing. If the Secretary determines that a prepayment is unreasonable, you must refund the entire penalty to the Portfolio Concern. A prepayment penalty equal to five percent of the outstanding balance during the first year of any Financing, declining by one percentage point per year through the fifth year, is considered the maximum reasonable amount.

§ 4290.835 Exceptions to minimum term of Financing.

You may make a Financing with a term of less than one year but only if such Financing is in contemplation of another Financing, with a term of one year or more, to the same Enterprise.

§ 4290.840 Maximum term of Financing.

The maximum term of any Debt Security must be no longer than 20 years.

§ 4290.845 Maximum rate of amortization on Loans and Debt Securities.

The principal of any Loan, or the loan portion of any Debt Security, with a term of one year or less, cannot be amortized faster than straight line. If the term is greater than one year, the principal cannot be amortized faster than straight line for the first year.

§ 4290.850 Restrictions on redemption of Equity Securities.

(a) Restriction on redemption. A Portfolio Concern cannot be required to redeem Equity Securities earlier than one year from the date of the first closing unless:

(1) The Portfolio Concern makes a public offering, or has a change of management or control, or files for protection under the provisions of the Bankruptcy Code, or materially breaches your Financing agreement; or

(2) You make a follow-on Financing, in which case the new securities may be redeemed in less than one year, but no earlier than the redemption date associated with your earliest Financing of the Portfolio Concern.

(b) Redemption price. The redemption price must be either:
(1) A fixed amount that is no higher than the price you paid for the securities; or
(2) An amount that cannot be fixed or determined before the time of the redemption. In this case, the redemption price must be based on:
(1) A reasonable formula that reflects the performance of the Portfolio Concern (such as one based on earnings or book value); or
(2) The fair market value of the Portfolio Concern at the time of redemption, as determined by a professional appraisal performed under an agreement acceptable to both parties.

(c) Method. Any method for determining the redemption price must be agreed upon no later than the date of the first (or only) closing of the Financing.

§ 4290.860 Financing fees and expense reimbursements a RBIC may receive from an Enterprise.

(a) General rule. You may collect Financing fees and receive expense reimbursements from an Enterprise only as permitted under this § 4290.860.

(b) Application fee. You may collect a nonrefundable application fee from an Enterprise to review its Financing application. The application fee may be collected at the same time as the closing fee under paragraph (d) or (e) of this section, or earlier. The fee must be:
(1) No more than one percent of the amount of Financing requested (or, if two or more RBICs participate in the Financing, their combined application fees are no more than one percent of the total Financing requested); and
(2) Agreed to in writing by the Financing applicant.

(c) The Secretary’s review of application fees. For any fiscal year, if the number of application fees you collect is more than twice the number of Financings closed, the Secretary in its sole discretion may determine that you are engaged in activities not contemplated by the Act, in violation of § 4290.500.

(d) Closing fee—Loans. You may charge a closing fee on a Loan if:
(1) The fee is no more than two percent of the Financing amount (or, if two or more RBICs participate in the Financing, their combined closing fees are no more than two percent of the total Financing amount); and
(2) You charge the fee no earlier than the date of the first disbursement.

(e) Closing fee—Debt or Equity Financings. You may charge a Closing Fee on a Debt Security or Equity Security Financing if:
(1) The fee is no more than four percent of the Financing amount (or, if two or more RBICs participate in the Financing, their combined closing fees are no more than four percent of the total Financing amount); and
(2) You charge the fee no earlier than the date of the first disbursement.

(f) Limitation on dual fees. If another RBIC or an Associate of yours collects a transaction fee under § 4290.900(e) in connection with your Financing of an Enterprise, the sum of the transaction fee and your application and closing fees cannot exceed the maximum application and closing fees permitted under this § 4290.860.

(g) Expense reimbursements. You may charge an Enterprise for the reasonable out-of-pocket expenses, other than Management Expenses, that you incur to process its Financing application. If the Secretary determines that any of your reimbursed expenses are unreasonable or are Management Expenses, the Secretary will require you to refund them to the Enterprise.

(h) Breakup fee. If an Enterprise accepts your Commitment and then fails to close the Financing because it has accepted funds from another source, you may charge a “breakup fee” equal to the closing fee that you would have been permitted to charge under paragraph (d) or (e) of this section.

§ 4290.880 Assets acquired in liquidation of Portfolio securities.

(a) General rule. You may acquire assets in full or partial liquidation of a Portfolio Concern’s obligation to you under the conditions permitted by this § 4290.880. The assets may be acquired from the Portfolio Concern, a guarantor of its obligation, or another party.

(b) Timely disposition of assets. You must dispose of assets acquired in liquidation of a Portfolio security within a reasonable period of time.
(c) Permitted expenditures to preserve assets. (1) You may incur reasonably necessary expenditures to maintain and preserve assets acquired.
(2) You may incur reasonably necessary expenditures for improvements to render such assets saleable.
(3) You may make payments of mortgage principal and interest (including amounts in arrears when you acquired the asset), pay taxes when due, and pay for necessary insurance coverage.

(d) The Secretary’s approval of expenditures. This paragraph (d) applies if you have outstanding Leverage or are applying for Leverage. Any application for the Secretary’s approval under this paragraph must specify all expenses estimated to be necessary pending disposal of the assets. Without the Secretary’s prior written approval:
(1) Your total expenditures under paragraphs (c)(1) and (c)(2) of this section plus your total Financing(s) to the Portfolio Concern must not exceed your overline limit under §4290.740; and
(2) Your total expenditures under paragraph (b) of this section plus your total Financing(s) to the Portfolio Concern must not exceed 35 percent of your Regulatory Capital.

LIMITATIONS ON DISPOSITION OF ASSETS

§ 4290.885 Disposition of assets to RBIC’s Associates or to competitors of Portfolio Concerns.

Except with the Secretary’s prior written approval, you are not permitted to dispose of assets (including assets acquired in liquidation) to any Associate or to competitors of Portfolio Concerns if you have outstanding Leverage. As a prerequisite to such approval, you must demonstrate that the proposed terms of disposal are at least as favorable to you as the terms obtainable elsewhere.

§ 4290.900 Management fees for services provided to an Enterprise by RBIC or its Associate.

(a) General. This §4290.900 applies to management services that you or your Associate provide to a Portfolio Concern during the term of a Financing or prior to Financing. It does not apply to management services that you or your Associate provide to an Enterprise that you do not finance.

(b) The Secretary’s approval. You must obtain the Secretary’s prior written approval of any management services fees and other fees described in this section that you or your Associate charge.

(c) Permitted management fees. You or your Associate may provide management services to a Portfolio Concern financed by you if:
(1) You or your Associate have entered into a written contract with the Portfolio Concern;
(2) The fees charged are for services actually performed;
(3) Services are provided on an hourly fee, project fee, or other reasonable basis;
(4) You can demonstrate to the Secretary, upon request, that the rate does not exceed the prevailing rate charged for comparable services by other organizations in the geographic area of the Portfolio Concern; and
(5) All of the management services fees paid to your Associate by a Portfolio Concern for management services provided by the Associate are allocated back to you for your benefit.

(d) Fees for service as a board member. You or your Associate may receive fees in the form of cash, warrants, or other payments, for services provided as members of the board of directors of a Portfolio Concern Financed by you. The fees must not exceed those paid to other outside board members. In the absence of such board members, fees must be reasonable when compared with amounts paid to outside directors of similar companies. At least 50 percent of any board member services fees paid to your Associate by a Portfolio Concern for board member services provided by the Associate must be allocated back to you for your benefit.

(e) Approval required. You must obtain the Secretary’s prior written approval of any management contract that does not satisfy paragraphs (c) or (d) of this section.

(f) Transaction fees. (1) You or your Associate may charge reasonable transaction fees for work performed preparing an Enterprise for a public offering, private offering, or sale of all or part of the business, and for assisting with the transaction. Compensation may be in the form of cash, notes,
stock, and/or options. All of the transaction services fees paid to your Associate by a Portfolio Concern for transaction services provided by the Associate must be allocated back to you for your benefit.

(2) Your Associate may charge market rate investment banking fees to a Portfolio Concern on that portion of a Financing that you do not provide.

(g) Recordkeeping Requirements. You must keep a record of hours spent and amounts charged to the Portfolio Concern, including expenses charged.

Subpart J—Financial Assistance for RBICs (Leverage)

GENERAL INFORMATION ABOUT OBTAINING LEVERAGE

§ 4290.1100 Type of Leverage and application procedures.

(a) Type of Leverage available. You may apply for Leverage from the Secretary in the form of a guarantee of your Debentures.

(b) Applying for Leverage. The Leverage application process has two parts. You must first apply for the Secretary’s conditional commitment to reserve a specific amount of Leverage for your future use. You may then apply to draw down Leverage against the commitment. See §§ 4290.1200 through 4290.1240.

(c) Where to send your application. Send all Leverage draw-down applications to Funding Control Officer, Investment Division, U.S. Small Business Administration, 409 Third Street, SW., Suite 6300, Mail Code 7050, Washington, DC 20416.

§ 4290.1120 General eligibility requirements for Leverage.

To be eligible for Leverage, you must be in compliance with the Act, the regulations in this part, and your Participation Agreement.

§ 4290.1130 Leverage fees payable by RBIC.

(a) Leverage fee. You must pay the Secretary a non-refundable leverage fee for each issuance of a Debenture. The fee is 3 percent of the face amount of the Debenture issued, and will be deducted from the proceeds remitted to you.

(b) Additional charge. You must pay the Secretary an additional annual charge of 1 percent of the outstanding amount of your Debenture.

(c) Other Leverage fees. The Secretary may establish a fee structure for services performed by the Central Registration Agent (CRA). The Secretary will not collect any fee for its guarantee of TCs.

§ 4290.1140 RBIC’s acceptance of remedies under § 4290.1810.

If you issue Leverage, you automatically agree to the terms and conditions in § 4290.1810 as it exists at the time of issuance. The effect of these terms and conditions is the same as if they were fully incorporated in the terms of your Leverage.

MAXIMUM AMOUNT OF LEVERAGE FOR WHICH A RBIC IS ELIGIBLE

§ 4290.1150 Maximum amount of Leverage for a RBIC.

The face amount of a RBIC’s outstanding Debentures may not exceed the lesser of 200 percent of its Leverageable Capital or $105,000,000.

CONDITIONAL COMMITMENTS TO RESERVE LEVERAGE FOR A RBIC

§ 4290.1200 Leverage commitment to a RBIC—application procedure, amount, and term.

(a) General. Under the provisions in §§ 4290.1200 through 4290.1240, you may apply for the Secretary’s conditional commitment to reserve a specific amount of Leverage and type of Debenture (standard or discounted) for your future use. You may then apply to draw down Leverage against the commitment.

(b) Applying for a Leverage commitment. The Secretary will notify you when requests for Leverage commitments are being accepted, and upon receipt of your request, will send you a complete application package.

(c) Limitations on the amount of a Leverage commitment. The amount of a Leverage commitment must be a multiple of $5,000. The Secretary in his or her discretion may determine a minimum
§ 4290.1230 Draw-downs by RBIC under Leverage commitment.

(a) RBIC’s authorization of the Secretary to guarantee securities. By submitting a request for a draw against the Leverage commitment, you authorize the Secretary, or the Secretary’s designated agent or trustee, to guarantee your Debenture and to sell it with the Secretary’s guarantee.

(b) Limitations on amount of draw. The amount of a draw must be a multiple of $5,000. The Secretary, in his or her discretion, may determine a minimum dollar amount for draws against Leverage commitments. Any such minimum amounts will be published in Notices in the Federal Register from time to time.

(c) Effect of regulatory violations on RBIC’s eligibility for draws—(1) General rule. You are eligible to make a draw against your Leverage commitment only if you are in compliance with all applicable provisions of the Act and this part (i.e., no unresolved statutory or regulatory violations) and your Participation Agreement.

(2) Exception to general rule. If you are not in compliance, you may still be eligible for draws if:

(i) The Secretary determines that your outstanding violations are of non-substantive provisions of the Act or this part or your Participation Agreement and that you have not repeatedly violated any non-substantive provisions; or

(ii) You have agreed with the Secretary in writing on a course of action to resolve your violations and such agreement does not prevent you from issuing Leverage.

(d) Procedures for funding draws. You may request a draw at any time during the term of the commitment. With each request, submit the following documentation:

(1) A statement certifying that there has been no material adverse change in your financial condition since your last filing of SBA Form 468 or other USDA-approved form(s).

(2) If your request is submitted more than 30 days following the end of your fiscal year, but before you have submitted your annual filing of SBA Form 468 or other USDA-approved form(s) in accordance with § 4290.630(a), a preliminary unaudited annual financial statement on SBA Form 468 (Short Form) or other USDA-approved form(s).

(3) A statement certifying that to the best of your knowledge and belief, you are in compliance with all provisions of the Act and this part (i.e., no unresolved regulatory or statutory violations) and your Participation Agreement, or a statement listing any specific violations you are aware of. Either statement must be executed by one of the following:

(i) An officer of the RBIC;

(ii) An officer of a corporate general partner or managing member of the RBIC;

(iii) An individual who is authorized to act as or for a general partner of the RBIC; or

§ 4290.1220 Requirement for RBIC to file financial statements at the time of request for a draw.

(a) If you submit a request for a draw against your Leverage commitment more than 90 days following your submission of an annual SBA Form 468 or a SBA Form 468 (Short Form) or other USDA-approved form(s), you must:

(1) Give the Secretary a financial statement on Form 468 (Short Form) or other USDA-approved form(s), and

(2) File a statement of no material adverse change in your financial condition since your last filing of SBA Form 468 or other USDA-approved form(s).

(b) You will not be eligible for a draw if you are not in compliance with this § 4290.1220.

§ 4290.1240 Funding of RBIC's draw request through sale to third-party.

(a) RBIC’s authorization of the Secretary to arrange sale of Debentures to third-party. By submitting a request for a draw of Debenture Leverage, you authorize the Secretary, or any agent or trustee the Secretary designates, to enter into any agreements (and to bind you to such agreements) necessary to accomplish:

1. The sale of your Debenture to a third-party at a price approved by the Secretary; and

2. The purchase of your Debenture from the third-party and the pooling of your Debenture with other Debentures with the same maturity date.

(b) Sale of Debentures to a third-party. If the Secretary arranges for the sale of your Debenture to a third-party, the sale price may be an amount discounted from the face amount of the Debenture.

DISTRIBUTIONS BY RBICs WITH OUTSTANDING LEVERAGE

§ 4290.1500 Restrictions on distributions to RBIC investors while RBIC has outstanding Leverage.

(a) Restriction on distribution. If you have outstanding Leverage, whenever you make a distribution to your investors you must make, at the same time, a prepayment to or for the benefit of the third-party holder of the Debenture sold pursuant to § 4290.1240 of this part, accrued unpaid interest and the principal, in whole or in part, of one or more of your Debentures outstanding as of the date of the distribution (subject to the terms of such Debentures).

(b) Amount of prepayment. You must calculate the amount due the third-party holder by multiplying the total amount you intend to distribute by a fraction whose numerator is the outstanding principal of your Debenture(s) immediately preceding your distribution, and whose denominator is the sum of your Leverageable Capital as of that time plus the outstanding principal amount of your Debentures. For purposes of the preceding sentence “principal” means both the net proceeds and interest accrued to date of a discounted Debenture. The amount of any payment received under this section will be credited first against unpaid interest accrued to the date of distribution and then to the principal in whole or in part of the first Debenture you select to prepay and then to the interest and principal in whole or in part of such other Debenture(s) as you select to prepay. You may elect to prepay in whole any discounted Debenture under this section only within five years of its maturity date. Payments under this section must be made on the next occurring March 1 or September 1.

(c) Effect of prepayment. Subject to the terms of the Debenture(s), you may voluntarily prepay additional principal, but neither mandatory nor voluntary prepayment will increase your future Leverage eligibility.
FUNDING LEVERAGE BY USE OF GUARANTEED TRUST CERTIFICATES ("TCs")

§ 4290.1600 Secretary's authority to issue and guarantee Trust Certificates.

(a) Authorization. Section 384F of the Act authorizes the Secretary to issue TCs and to guarantee the timely payment of the principal and interest thereon. Any such guarantee of such TC is limited to the principal and interest due on the Debentures in any Trust or Pool backing such TC. The full faith and credit of the United States is pledged to the payment of all amounts due under the guarantee of any TC.

(b) Authority to arrange public or private fundings of Leverage. The Secretary in his or her discretion may arrange for public or private financing under his or her guarantee authority. Such financing may be accomplished by the sale of individual Debentures, aggregations of Debentures, or Pools or Trusts of Debentures.

(c) Pass-through provisions. TCs shall provide for a pass-through to their holders of all amounts of principal and interest paid on the Debentures in the Pool or Trust against which they are issued.

(d) Formation of a Pool or Trust holding Leverage Securities. The Secretary shall approve the formation of each Pool or Trust. The Secretary may, in his or her discretion, establish the size of the Pools and their composition, the interest rate on the TCs issued against Trusts or Pools, discounts, premiums and other charges made in connection with the Pools, Trusts, and TCs, and any other characteristics of a Pool or Trust he or she deems appropriate. Notwithstanding § 4290.1130(c), any agent of the Secretary may collect a fee for the functions described in 7 U.S.C. 2008cc-5(e)(2) that does not exceed $500.

§ 4290.1610 Effect of prepayment or early redemption of Leverage on a Trust Certificate.

(a) The rights, if any, of a RBIC to prepay any Debenture is established by the terms of such security, and no such right is created or denied by the regulations in this part.

(b) The Secretary’s rights to purchase or prepay any Debenture without premium are established by the terms of the Guaranty Agreement relating to the Debenture.

(c) Any prepayment of a Debenture pursuant to the terms of the Guaranty Agreement relating to such security shall reduce the Secretary’s guarantee of timely payment of principal and interest on a TC in proportion to the amount of principal that such prepaid Debenture represents in the Trust or Pool backing such TC.

(d) The Secretary shall be discharged from his or her guarantee obligation to the holder or holders of any TC, or any successor or transferee of such holder, to the extent of any such prepayment, whether or not such successor or transferee shall have notice of any such prepayment.

(e) Interest on prepaid Debentures shall accrue only through the date of prepayment.

(f) In the event that all Debentures constituting a Trust or Pool are prepaid, the TCs backed by such Trust or Pool shall be redeemed by payment of the unpaid principal and interest on the TCs; provided, however, that in the case of the prepayment of a Debenture pursuant to the provisions of the Guaranty Agreement relating to the Debenture, the Central Registration Agent (CRA) shall pass through pro rata to the holders of the TCs any such prepayments including any prepayment penalty paid by the obligor RBIC pursuant to the terms of the Debenture.

§ 4290.1620 Functions of agents, including Central Registration Agent, Selling Agent and Fiscal Agent.

(a) Agents. The Secretary may appoint or cause to be appointed agent(s) to perform functions necessary to market and service Debentures or TCs pursuant to this part.

(1) Selling Agent. As a condition of guaranteeing a Debenture, the Secretary may cause each RBIC to appoint a Selling Agent to perform functions that include, but are not limited to:

(i) Selecting qualified entities to become pool or Trust assemblers ("Poolers").
(ii) Receiving guaranteed Debentures as well as negotiating the terms and conditions of sales or periodic offerings of Debentures and/or TCs on behalf of RBICs.

(iii) Directing and coordinating periodic sales of Debentures and/or TCs.

(iv) Arranging for the production of Offering Circulars, certificates, and such other documents as may be required from time to time.

(2) Fiscal Agent. The Secretary shall appoint a Fiscal Agent to:

(i) Establish performance criteria for Poolers.

(ii) Monitor and evaluate the financial markets to determine those factors that will minimize or reduce the cost of funding Debentures.

(iii) Monitor the performance of the Selling Agent, Poolers, CRA, and the Trustee.

(iv) Perform such other functions as the Secretary, from time to time, may prescribe.

(3) Central Registration Agent. Pursuant to a contract entered into with the Secretary, the CRA, as the Secretary's agent, will do the following with respect to the Pools or Trust Certificates for the Debentures:

(i) Form an approved Pool or Trust;

(ii) Issue the TCs in the prescribed form;

(iii) Transfer the TCs upon the sale of original issue TCs in any secondary market transaction;

(iv) Receive payments from RBICs;

(v) Make periodic payments as scheduled or required by the terms of the TCs, and pay all amounts required to be paid upon prepayment of Debentures;

(vi) Hold, safeguard, and release all Debentures constituting Trusts or Pools upon instructions from the Secretary;

(vii) Remain custodian of such other documentation as the Secretary shall direct by written instructions;

(viii) Provide for the registration of all pooled Debentures, all Pools and Trusts, and all TCs; and

(ix) Perform such other functions as the Secretary may deem necessary to implement the provisions of this section.

(b) Functions. Either the Secretary or an agent appointed by the Secretary may perform the function of locating purchasers, and negotiating and closing the sale of Debentures and TCs. Nothing in the regulations in this part shall be interpreted to prevent the CRA from acting as the Secretary's agent for this purpose.

§ 4290.1630 Regulation of Brokers and Dealers and disclosure to purchasers of Leverage or Trust Certificates.

(a) Brokers and Dealers. Each broker, dealer, and Pool or Trust assembler approved by the Secretary pursuant to these regulations shall either be regulated by a Federal financial regulatory agency, or be a member of the National Association of Securities Dealers (NASD), and shall be in good standing in respect to compliance with the financial, ethical, and reporting requirements of such body. It also shall be in good standing with the Secretary as determined by the SBA official with delegated authority to make this determination (see paragraph (c) of this section) and shall provide a fidelity bond or insurance in such amount as the Secretary may require.

(b) Suspension and/or termination of Broker or Dealer. The Secretary shall exclude from the sale and all other dealings in Debentures or TCs any broker or dealer:

(1) If such broker's or dealer's authority to engage in the securities business has been revoked or suspended by a supervisory agency. When such authority has been suspended, the Secretary will suspend such broker or dealer for the duration of such suspension by the supervisory agency.

(2) If such broker or dealer has been indicted or otherwise formally charged with a misdemeanor or felony bearing on its fitness, such broker or dealer may be suspended while the charge is pending. Upon conviction, participation may be terminated.

(3) If such broker or dealer has suffered an adverse final civil judgment holding that such broker or dealer has committed a breach of trust or violation of law or regulation protecting the integrity of business transactions or relationships, participation in the market for Debentures or TCs may be terminated.
(c) Termination/suspension proceedings. A broker’s or dealer’s participation in the market for Debentures or TCs will be conducted in accordance with 7 CFR part 11. The Secretary may, for any of the reasons stated in paragraphs (b)(1) through (3) of this section, suspend the privilege of any broker or dealer to participate in this market. The Secretary shall give written notice at least ten business days prior to the effective date of such suspension. Such notice shall inform the broker or dealer of the opportunity for a hearing pursuant to 7 CFR part 11.

§ 4290.1640 Secretary’s access to records of the CRA, Brokers, Dealers and Pool or Trust assemblers.

The CRA and any broker, dealer and Pool or Trust assembler operating under the regulations in this part shall make all books, records and related materials associated with Debentures and TCs available to the Secretary for review and copying purposes. Such access shall be at such party’s primary place of business during normal business hours.

MISCELLANEOUS

§ 4290.1700 Secretary’s transfer of interest in a RBIC’s Leverage security.

Upon such conditions and for such consideration as he or she deems reasonable, the Secretary may sell, assign, transfer, or otherwise dispose of any Debenture held by or on behalf of the Secretary. Upon notice by the Secretary, a RBIC will make all payments of principal and interest as shall be directed by the Secretary. A RBIC will be liable for all damage or loss which the Secretary may sustain by reason of the RBIC’s failure to follow such payment instructions, up to the amount of the RBIC’s liability under such security, plus court costs and reasonable attorney’s fees incurred by the Secretary.

§ 4290.1710 Secretary’s authority to collect or compromise claims.

The Secretary may, upon such conditions and for such consideration as he or she deems reasonable, collect or compromise all claims relating to obligations he or she holds or has guaranteed, and all legal or equitable rights accruing to him or her.

§ 4290.1720 Characteristics of Secretary’s guarantee.

If the Secretary agrees to guarantee a RBIC’s Debentures, such guarantee will be unconditional, irrespective of the validity, regularity or enforceability of the Debentures or any other circumstances that might constitute a legal or equitable discharge or defense of a guarantor. Pursuant to its guarantee, the Secretary will make timely payments of principal and interest on the Debentures.

Subpart K—RBIC’s Noncompliance With Terms of Leverage

§ 4290.1810 Events of default and the Secretary’s remedies for RBIC’s noncompliance with terms of Debentures.

(a) Applicability of this section. Upon acceptance of a license to operate as an RBIC, you automatically agree to the terms, conditions and remedies in this section, as in effect at the time of issuance of the license and as fully set forth in all documents relating to the license, including, without limitation, the Participation Agreement and Debentures.

(b) Automatic events of default. The occurrence of one or more of the events in this paragraph (b) causes the remedies in paragraph (c) of this section to take effect immediately.

(1) Insolvency. You become equitably or legally insolvent.

(2) Voluntary assignment. You make a voluntary assignment for the benefit of creditors without the Secretary’s prior written approval.

(3) Bankruptcy. You file a petition to begin any bankruptcy or reorganization proceeding, receivership, dissolution or other similar creditors’ rights proceeding, or such action is initiated against you and is not dismissed within 60 days.

(c) Remedies for automatic events of default. Upon the occurrence of one or more of the events in paragraph (b) of this section:

(1) Without notice, presentation or demand, the entire indebtedness evidenced by your Debentures, including
accrued interest, and any other amounts owed with respect to your Debentures, is immediately due and payable; and

(2) You automatically consent to the appointment of the Secretary or his or her designee, as your receiver under section 384M of the Act.

(d) Events of default with notice. For any occurrence (as determined by the Secretary) of one or more of the events in this paragraph (d), the Secretary may avail him or herself of one or more of the remedies in paragraph (e) of this section.

(1) Fraud. You commit a fraudulent act that causes detriment to the Secretary’s position as a creditor or guarantor.

(2) Fraudulent transfers. You make any transfer or incur any obligation that is fraudulent under the terms of 11 U.S.C. 548.

(3) Willful conflicts of interest. You willfully violate §4290.730.

(4) Willful non-compliance. You willfully violate one or more of the substantive provisions of the Act or any substantive regulation promulgated under the Act or any substantive provision of your Participation Agreement.

(5) Repeated Events of Default. At any time after being notified of the occurrence of an event of default under paragraph (f) of this section, you engage in similar behavior that results in another occurrence of the same event of default.

(6) Transfer of Control. You willfully violate §4290.410, and as a result of such violation you undergo a transfer of Control.

(7) Non-cooperation under §4290.1810(h). You fail to take appropriate steps, satisfactory to the Secretary, to accomplish any action the Secretary may have required under paragraph (h) of this section.

(8) Non-notification of Events of Default. You fail to notify the Secretary as soon as you know or reasonably should have known that any event of default exists under this section.

(9) Non-notification of defaults to others. You fail to notify the Secretary in writing within ten days from the date of a declaration of an event of default or nonperformance under any note, debenture or indebtedness of yours, issued to or held by anyone other than the Secretary.

(e) Remedies for events of default with notice. Upon written notice to you of the occurrence (as determined by the Secretary) of one or more of the events in paragraph (d) of this section:

(1) The Secretary may declare the entire indebtedness evidenced by your Debentures, including accrued interest and/or any other amounts owed the Secretary with respect to your Debentures, immediately due and payable: and

(2) The Secretary may avail himself or herself of any remedy available under the Act, specifically including institution of proceedings for his or her, or his or her designee’s appointment as your receiver under section 384M(c) of the Act.

(f) Events of default with opportunity to cure. For any occurrence (as determined by the Secretary) of one or more of the events in this paragraph (f), the Secretary may avail him or herself of one or more of the remedies in paragraph (g) of this section.

(1) Excessive Management Expenses. Without the Secretary’s prior written consent, you incur Management Expenses in excess of those permitted under §§4290.510 and 4290.520.

(2) Improper Distributions. You make any Distribution to your shareholders or partners, except with the Secretary’s prior written consent, other than:

(i) Distributions permitted under §4290.585; and

(ii) Payments from Retained Earnings Available for Distribution based on either the shareholders’ or members’ pro-rata interests or the provisions for profit distributions in your partnership agreement, as appropriate.

(3) Failure to make payment. Unless otherwise approved by the Secretary, you fail to make timely payment of any amount due under any security or obligation of yours that is issued to, held or guaranteed by the Secretary.

(4) Failure to maintain Regulatory Capital. You fail to maintain the minimum Regulatory Capital required under these regulations or, without the Secretary’s prior written consent, you reduce your Regulatory Capital except as permitted by §4290.585.
(5) Capital Impairment. You have a condition of Capital Impairment as determined under §4290.1830.

(6) Cross-default. An obligation of yours that is greater than $100,000 becomes due or payable (with or without notice) before its stated maturity date, for any reason including your failure to pay any amount when due. This provision does not apply if you pay the amount due within any applicable grace period or contest the payment of the obligation in good faith by appropriate proceedings.

(7) Nonperformance. You violate or fail to perform one or more of the terms and conditions of any security or obligation of yours that is issued to, held or guaranteed by the Secretary, or of any agreement (including your Participation Agreement) with or conditions imposed by the Secretary in the administration of the Act and the regulations promulgated under the Act.

(8) Noncompliance. Except as otherwise provided in paragraph (d)(5) of this section, the Secretary determines that you have violated one or more of the substantive provisions of the Act or any substantive regulation promulgated under the Act.

(9) Failure to maintain diversity. You fail to maintain diversity between management and ownership as required by §4290.150.

(g) Remedies for events of default with opportunity to cure. (1) Upon written notice to you of the occurrence (as determined by the Secretary) of one or more of the events of default in paragraph (f) of this section, and subject to the conditions in paragraph (g)(2) of this section:

(i) The Secretary may declare the entire indebtedness evidenced by your Debentures, including accrued interest, and/or any other amounts owed the Secretary with respect to your Debentures, immediately due and payable; and

(ii) The Secretary may avail himself or herself of any remedy available under the Act, specifically including institution of proceedings for the appointment of the Secretary or a designee as your receiver under §348M of the Act.

(2) The Secretary may invoke the remedies in paragraph (g)(1) of this section only if:

(i) You have been given at least 15 days to cure the default(s); and

(ii) You fail to cure the default(s) to the Secretary’s satisfaction within the allotted time.

(h) Repeated non-substantive violations. If you repeatedly fail to comply with one or more of the non-substantive provisions of the Act or any non-substantive regulation promulgated under the Act, the Secretary, after written notification to you and until you cure such condition to the Secretary’s satisfaction, may deny you additional Leverage and/or require you to take such actions as the Secretary may determine to be appropriate under the circumstances.

(i) Consent to removal of officers, directors, or general partners and/or appointment of receiver. The Articles of each RBIC must include the following provisions as a condition to the purchase or guarantee of Leverage. Upon the occurrence of any of the events specified in paragraphs (d)(1) through (d)(6) or (f)(1) through (f)(3) of this section as determined by the Secretary, the Secretary shall have the right, and you consent to the Secretary’s exercise of such right:

(1) With respect to a Corporate RBIC, upon written notice, to require you to replace, with individuals approved by the Secretary, one or more of your officers and/or such number of directors of your board of directors as is sufficient to constitute a majority of such board; or

(2) With respect to a Partnership RBIC or an LLC RBIC, upon written notice, to require you to remove the person(s) responsible for such occurrence and/or to remove the general partner or manager of the RBIC, which general partner or manager shall then be replaced in accordance with the RBIC’s Articles by a new general partner or manager approved by the Secretary; and/or

(3) With respect to a Corporate RBIC, Partnership RBIC, or LLC RBIC, to obtain the appointment of the Secretary or his or her designee as your receiver under section 384M of the Act for the purpose of continuing your operations.
The appointment of a receiver to liquidate an RBIC is not within such consent, but is governed instead by the relevant provisions of the Act.


§ 4290.1830 RBIC’s Capital Impairment definition and general requirements.

(a) Significance of Capital Impairment condition. If you have a condition of Capital Impairment, you are not in compliance with the terms of your Leverage. As a result, the Secretary has the right to impose the applicable remedies you for noncompliance in § 4290.1810(g).

(b) Definition of Capital Impairment condition. You have a condition of Capital Impairment if your Capital Impairment Percentage, as computed pursuant to the procedures set forth in § 4290.1840, exceeds 70 percent.

(c) Quarterly computation requirement and procedure. You must determine whether you have a condition of Capital Impairment as of the end of each fiscal quarter. You must notify the Secretary promptly if you are Capitally Impaired.

(d) The Secretary’s right to determine RBIC’s Capital Impairment condition. The Secretary may make his or her own determination of your Capital Impairment condition at any time.

§ 4290.1840 Computation of RBIC’s Capital Impairment Percentage.

(a) General. This section contains the procedures you must use to determine your Capital Impairment Percentage. You must compare your Capital Impairment Percentage to the maximum permitted under § 4290.1830(b) to determine whether you have a condition of Capital Impairment.

(b) Preliminary impairment test. If you satisfy the preliminary impairment test, your Capital Impairment Percentage is zero and you do not have to perform any more procedures in this § 4290.1840. Otherwise, you must continue with paragraph (c) of this section. You satisfy the test if each of the following amounts is zero or greater:

1. The sum of Undistributed Net Realized Earnings, as reported on SBA Form 468 or other USDA-approved form(s) and Includible Non-Cash Gains.
2. Unrealized Gain (Loss) on Securities Held.
3. How to compute your Capital Impairment Percentage. (1) If you have an Unrealized Gain on Securities Held, compute your Adjusted Unrealized Gain using paragraph (d) of this section. If you have an Unrealized Loss on Securities Held, continue with paragraph (c)(2) of this section.
4. Add together your Undistributed Net Realized Earnings, your Includible Non-cash Gains, and either your Unrealized Loss on Securities Held or your Adjusted Unrealized Gain.
5. If the sum in paragraph (c)(2) of this section is zero or greater, your Capital Impairment Percentage is zero.
6. If the sum in paragraph (c)(2) of this section is less than zero, drop the negative sign, divide by your Regulatory Capital (excluding Treasury Stock), and multiply by 100. The result is your Capital Impairment Percentage.

(d) How to compute your Adjusted Unrealized Gain. (1) Subtract Unrealized Depreciation from Unrealized Appreciation. This is your “Net Appreciation”.
2. Determine your Unrealized Appreciation on Publicly Traded and Marketable securities. This is your “Class I Appreciation”.
3. Determine your Unrealized Appreciation on securities that are not Publicly Traded and Marketable and meet the following criteria, which must be substantiated to the Secretary’s satisfaction (this is your “Class 2 Appreciation”):
   (i) The Portfolio Concern that issued the security received a significant subsequent equity financing by an investor whose objectives were not primarily strategic and at a price that conclusively supports the Unrealized Appreciation;
   (ii) Such financing represents a substantial investment in the form of an arm’s-length transaction by a sophisticated new investor in the issuer’s securities; and
   (iii) Such financing occurred within 24 months of the date of the Capital
Impairment computation, or the Portfolio Concern’s pre-tax cash flow from operations for its most recent fiscal year was at least 10 percent of its average contributed capital for such fiscal year.

(4) Perform the appropriate computation from the table in 13 CFR 107.1840(d)(4).

(5) Reduce the gain computed in paragraph (d)(4) of this section by your estimate of related future income tax expense. Subject to any adjustment required by paragraph (d)(6) of this section, the result is your Adjusted Unrealized Gain for use in paragraph (c)(2) of this section.

(6) If any securities that are the source of either Class 1 or Class 2 Appreciation are pledged or encumbered in any way, you must reduce the Adjusted Unrealized Gain computed in paragraph (d)(5) of this section by the amount of the related borrowing or other obligation, up to the amount of the Unrealized Appreciation on the securities.


Subpart L—Ending Operations as a RBIC

§ 4290.1900 Termination of participation as a RBIC.

You may not terminate your participation as a RBIC without the Secretary’s prior written approval. Your request for approval must be accompanied by an offer of immediate repayment of all of your outstanding Leverage (including any prepayment penalties thereon), or by a plan satisfactory to the Secretary for the orderly liquidation of the RBIC.

Subpart M—Miscellaneous

§ 4290.1910 Non-waiver of rights or terms of Leverage security.

The Secretary’s failure to exercise or delay in exercising any right or remedy under the Act or the regulations in this part does not constitute a waiver of such right or remedy. The Secretary’s failure to require you to perform any term or provision of your Leverage does not affect the Secretary’s right to enforce such term or provision. Similarly, the Secretary’s waiver of, or failure to enforce, any term or provision of your Leverage or of any event or condition set forth in §4290.1810 does not constitute a waiver of any succeeding breach of such term or provision or condition.

§ 4290.1920 RBIC’s application for exemption from a regulation in this part 4290.

(a) General. You may file an application in writing with the Secretary to have a proposed action exempted from any procedural or substantive requirement, restriction, or prohibition to which it is subject under this part, unless the provision is mandated by the Act. The Secretary may grant an exemption for such applicant, conditionally or unconditionally, provided the exemption would not be contrary to the purposes of the Act.

(b) Contents of application. Your application must be accompanied by supporting evidence that demonstrates to the Secretary’s satisfaction that:

(1) The proposed action is fair and equitable; and

(2) The exemption requested is reasonably calculated to advance the best interests of the RBIC program in a manner consistent with the policy objectives of the Act and the regulations in this part.

§ 4290.1930 Effect of changes in this part 4290 on transactions previously consummated.

The legality of a transaction covered by the regulations in this part is governed by the regulations in this part in effect at the time the transaction was consummated, regardless of later changes. Nothing in this part bars enforcement action with respect to any transaction consummated in violation of provisions applicable at the time, but no longer in effect.

§ 4290.1940 Integration of this part with other regulations applicable to USDA’s programs.

(a) Intergovernmental review. To the extent applicable to this part, the Secretary will comply with subpart V of 7 CFR part 3015, “Intergovernmental Review of Department of Agriculture Programs and Activities.” The Secretary
has not delegated this responsibility to SBA pursuant to §4290.45 of this part.
(b) National flood insurance. To the extent applicable to this part, the Secretary will comply with subpart B of 7 CFR part 1806. The Secretary has not delegated this responsibility to SBA pursuant to §4290.45 of this part.
(c) Clean Air Act and Water Pollution Control Act requirements. To the extent applicable to this part, the Secretary will comply with the requirements of the Clean Air Act, section 306; the Clean Water Act, section 508; Executive Order 11738; and 40 CFR part 32. The Secretary has not delegated this responsibility to SBA pursuant to §4290.45 of this part.
(d) Historic preservation requirements. To the extent applicable to this part, the Secretary will comply with subpart F of 7 CFR part 1901. The Secretary has not delegated this responsibility to SBA pursuant to §4290.45 of this part.
(e) Lead-based paint requirements. To the extent applicable to this part, the Secretary will comply with subpart A of 7 CFR part 1924. The Secretary has not delegated this responsibility to SBA pursuant to §4290.45 of this part.
(f) Conflict of interest. To the extent applicable to this part, the Secretary will comply with 7 CFR part 1900 and RD Instruction 2045–BB. The Secretary has not delegated this responsibility to SBA pursuant to §4290.45 of this part.
(g) Civil rights impact analysis. To the extent applicable to this part, the Secretary will comply with RD Instruction 2006–P, “Civil Rights Impact Analysis.” The Secretary has not delegated this responsibility to SBA pursuant to §4290.45 of this part.
(h) Environmental requirements. To the extent applicable to this part, the Secretary will comply with subpart G of 7 CFR part 1940. The Secretary has not delegated this responsibility to SBA pursuant to §4290.45 of this part.
(i) Appeals to the National Appeals Division for review of adverse decisions. Applicants and RBICs have the right to request review by the National Appeals Division within the USDA of adverse decisions, as defined in 7 CFR 11.1, pursuant to 7 CFR part 11.

Subpart N—Requirements for Operational Assistance Grants to RBICs

§ 4290.2000 Operational Assistance Grants to RBICs.
(a) Regulations governing. Regulations governing Operational Assistance grants to RBICs may be found in subparts D and E of this part 4290 and in this §4290.2000.
(b) Restrictions on use. A RBIC must use Operational Assistance grant funds only to provide Operational Assistance to Smaller Enterprises to which it either has made, or expects to make, a Financing.
(c) Amount of grant. Each RBIC will receive an Operational Assistance grant award equal to the lesser of 10 percent of the Regulatory Capital raised by the RBIC at the time of licensing or $1,000,000.
(d) Term. Operational Assistance grants made under this part will be made for a multiyear period (not to exceed 10 years) under such terms as the Secretary may require.
(e) Reporting and recordkeeping requirements. Policies governing reporting, record retention, and recordkeeping requirements applicable to RBICs may be found in subpart H of this part 4290.

Subpart O—Additional Requirements for Non-Leveraged Licensees and Exceptions to Regulations

SOURCE: 76 FR 30285, Dec. 23, 2011, unless otherwise noted.

§ 4290.3000 Non-leveraged RBICs—General.

This subpart identifies provisions specific to RBICs seeking a non-leveraged license, including exceptions and additions to provisions associated with subparts A through N of this part.

§§ 4290.3001–4290.3002 [Reserved]

§ 4290.3003 Responsibilities for implementing Non-leveraged RBICs.

Section 4290.45 does not apply to Non-leveraged RBICs. Instead, for the purposes of this part as it applies to Non-
leverage RBICs, all authorities and responsibilities assigned to the Secretary under this part shall be carried out by the Secretary. Thus, when applying subparts A through N of this part to Non-leveraged RBICs, all references to the Small Business Administration (SBA) or Administrator on behalf of USDA shall be read as the Secretary. All forms shall be submitted to USDA or its designee.

[77 FR 4885, Feb. 1, 2012]

§ 4290.3004 [Reserved]

§ 4290.3005 Qualifications for the Non-leveraged RBIC Program.

(a) Business form. In addition to complying with the applicable provisions of § 4290.100 not otherwise modified by this section, paragraphs (a)(1) through (a)(4) of this section apply.

(1) For RBICs applying for non-leveraged status, the types of investors eligible to invest in a RBIC must have been approved by the Secretary. Investors seeking approval must submit a request to the Secretary with sufficient documentation to support their request. The USDA will announce such approved categories and types of investors in a public notice published in the Federal Register from time to time. Subsequent notices that modify the types of investors eligible to invest in a RBIC will not be applied retroactively.

(2) In lieu of complying with § 4290.100(d)(1)(i), you must have a minimum duration of 10 years. After 10 years, the Partnership RBIC may be terminated by a vote of your partners.

(3) In lieu of complying with § 4290.100(d)(2), if you are a LLC RBIC, you must have a minimum duration of 10 years. After 10 years, the LLC RBIC may be terminated by a vote of your members.

(4) In lieu of complying with § 4290.100(d)(3), if you are a Corporate RBIC, you must have a duration of not less than 30 years unless earlier dissolved by the shareholders.

(b) Approval of initial Management Expenses. Section 4290.140 does not apply to Non-leveraged RBICs. However, the Secretary will provide a cap on these expenses in each Federal Register notice soliciting applications for Non-leveraged RBICs.

(c) Management and ownership diversity requirements. A Non-leveraged RBIC is subject to the provisions of § 4290.150 unless it is exempted from these provisions by the Secretary. Exemptions will only be granted when the applicant establishes, to the satisfaction of the Secretary, that granting the exemption will not unduly impair the integrity and soundness of the Non-leveraged RBIC.

(d) Special rules for Partnership RBICs and LLC RBICs. Paragraph (c) of § 4290.160 does not apply to Non-leveraged RBICs.

§§ 4290.3006–4290.3009 [Reserved]

§ 4290.3010 Application and Approval Process for RBIC licensing without Leverage.

(a) The provisions of § 4290.300 notwithstanding, the Secretary will accept, at any time, applications for consideration as a Non-leveraged RBIC. The number of applications that the Agency will receive each year, and any fees and conditions, will be announced annually in a Federal Register notice.

(b) The provision for evaluating applicants on a competitive basis, as specified in § 4290.340(a), does not apply to this subpart.

(c) The provisions specified in § 4290.370(m) do not apply to this subpart.


§§ 4290.3011–4290.3014 [Reserved]

§ 4290.3015 Evaluation and selection of Non-leveraged RBICs.

(a) General. Notwithstanding any other provision in this part, when selecting applications for non-leveraged status, the Secretary may select one or more applications, or none, for further consideration based on the evaluation criteria of this part.

(b) Eligibility and completeness. In addition to the requirements specified in § 4290.350, an Applicant under this subpart must complete a written application that includes information not otherwise exempted by the Secretary, in
his or her sole discretion. The Secretary may, on his or her own initiative, exempt material from a Non-leveraged RBIC application where the Secretary determines it impedes an expedited process without a commensurate benefit to the program. To the extent that the Secretary’s exemption applies to the entire program, an announcement of the exemption will be published in the FEDERAL REGISTER. The Secretary shall make a decision as to licensing an Applicant after the receipt of a complete application and will enter into a Participation Agreement with the RBIC if approved.

(c) Effect of a RBIC license. Paragraphs (d)(2) and (d)(3) of §4290.390 do not apply to Non-leveraged RBICs.

§§ 4290.3016–4290.3019 [Reserved]

§ 4290.3020 Changes in Ownership, Structure, or Control.

Paragraph (b) in §4290.440 does not apply to Non-leveraged RBICs.

§§ 4290.3021–4290.3024 [Reserved]

§ 4290.3025 Managing the Operations of a RBIC.

(a) Nonperformance. In addition to the provisions specified in §4290.507, failure of an approved Non-leveraged RBIC to maintain sound investment practice, as determined by the Secretary, may result in loss of approval for participating in this program.

(b) Employment of USDA or SBA officials. Paragraph (a)(2) of §4290.509 does not apply to Non-leveraged RBICs.

(c) Approval of RBIC’s Investment Adviser/Manager. In addition to complying with §4290.510, a Non-leveraged RBIC must notify the Secretary of the Management Expenses to be incurred under such contract, or of any subsequent material changes in such Management Expenses, within 30 days of execution.

(d) Management Expenses of a RBIC. When complying with §4290.520, Non-leveraged RBICs do not need prior approval of initial Management Expenses and any increases in those expenses.

(e) Restrictions on investments of idle funds by RBICs. The provisions of §4290.530 apply to Non-leveraged RBICs only when the Non-leveraged RBIC engages in activities not contemplated by the Act.

(f) Prior approval of secured third-party debt of RBICs. The provisions of §4290.550 do not apply to Non-leveraged RBICs.

(g) Voluntary decrease in Regulatory Capital. When complying with §4290.585, Non-leveraged RBICs do not need to obtain prior approval for decreases in Regulatory Capital of more than 2 percent (but not below the minimum required under this Act or these regulations). However, Non-leveraged RBICs must report the reduction to the Secretary within 30 days.

§§ 4290.3026–4290.3029 [Reserved]

§ 4290.3030 Financing of Enterprises by RBICs.

(a) Non-compliance with this section. The last sentence of §4290.700(e) does not apply to Non-leveraged RBICs.

(b) Enterprises that may be ineligible for Financing. The provisions associated with real estate enterprises found in §4290.720(c) apply to Non-leveraged RBICs unless the Non-leveraged RBIC requests, and has received, an irrevocable exemption from the Secretary in accordance with §4290.1920.

(c) Farmland purchases. The provisions associated with farmland purchases found in §4290.720(e) apply to Non-leveraged RBICs unless the Non-leveraged RBIC requests, and has received, an irrevocable exemption from the Secretary in accordance with §4290.1920.

(d) Purchasing securities from an underwriter or other third party. Non-leveraged RBICs are exempt from the recordkeeping requirements and fee limitations in §4290.825(b) and (c), respectively, for securities purchased through or from an underwriter.

(e) Assets acquired in liquidation of Portfolio securities. The provisions of §4290.880 do not apply to Non-leveraged RBICs.

§§ 4290.3031–4290.3034 [Reserved]

§ 4290.3035 Recordkeeping, Reporting, and Examination Requirements for RBICs.

Except for §4290.600(d), Subpart H, Recordkeeping, Reporting, and Examination Requirements for RBICs, of this part applies to Non-leveraged RBICs.

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§ 4290.3040 Financial Assistance for RBICs.

Subpart J, Financial Assistance for RBICs (Leveraged), of this part does not apply to Non-leveraged RBICs.

§ 4290.3041 Events of default and the Secretary’s remedies for RBIC’s noncompliance with terms of licensure.

In addition to complying with the provisions of § 4290.1810, a RBIC’s failure to comply with the terms of this part may result in the Secretary revoking the Non-leveraged RBIC’s license issued under this part.