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Part IV

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Rural Business-Cooperative Service

Rural Utilities Service

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7 CFR Part 4284

Value-Added Producer Grant Program; Final Rule

**DEPARTMENT OF AGRICULTURE****Rural Business-Cooperative Service****Rural Utilities Service****7 CFR Part 4284**

RIN 0570-AA79

**Value-Added Producer Grant Program**

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

**ACTION:** Final rule; request for comment.

**SUMMARY:** The Rural Business-Cooperative Service (Agency) is publishing this final rule for the Value-Added Producer Grant (VAPG) program. This final rule modifies the interim rule for VAPG based on comments received on the interim rule, which was published on February 23, 2011, on the Agricultural Act of 2014 (2014 Farm Bill), and on a listening session, held on April 25, 2014, on the VAPG provisions in the 2014 Farm Bill.

Under the final rule, grants will be made to help eligible producers of agricultural commodities enter into or expand value-added activities including the development of feasibility studies, business plans, and marketing strategies. The program also provides working capital for expenses such as implementing an existing viable marketing strategy.

The program provides a priority for funding for applicants that are Beginning Farmers and Ranchers, Veteran Farmers and Ranchers, Socially-Disadvantaged Farmers and Ranchers, operators of Small- and Medium-sized Family Farms and Ranches, Farmer and Rancher Cooperatives and applicants that propose a Mid-Tier Value Chain project. Additional priority points will be given to Agricultural Producer Groups, Farmer or Rancher Cooperatives, and Majority-Controlled Producer-Based Business Ventures whose projects “best contribute” to creating or increasing marketing opportunities for Beginning Farmers and Ranchers, Veteran Farmers and Ranchers, Socially-Disadvantaged Farmers and Ranchers, and operators of Small- and Medium-sized Family Farms and Ranches. Further, it creates two reserved funds, each of which will include 10 percent of program funds each year, for applications that support opportunities for Beginning and Socially-Disadvantaged Farmers and Ranchers and for proposed projects that develop mid-tier value marketing chains.

**DATES:** *Effective Date:* This final rule is effective May 8, 2015.

*Comments Due Date:* Written comments on this rule must be received on or before July 7, 2015.

**ADDRESSES:** You may submit comments on this final rule by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue SW., Washington, DC 20250-0742.

- *Hand Delivery/Courier:* Submit written comments via Federal Express Mail or other courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street SW., 7th Floor, Washington, DC 20024.

All written comments will be available for public inspection during regular work hours at the 300 7th Street SW., 7th Floor address listed above.

**FOR FURTHER INFORMATION CONTACT:** USDA, Rural Development, Rural Business-Cooperative Service, Room 4008, South Agriculture Building, Stop 3253, 1400 Independence Avenue SW., Washington, DC 20250-3253, Telephone: (202) 690-1376, Email [CPGrants@wdc.usda.gov](mailto:CPGrants@wdc.usda.gov).

**SUPPLEMENTARY INFORMATION:****Executive Summary***I. Purpose of the Regulatory Action*

This action is needed in order to implement the final rule for the Value-Added Producer Grant (VAPG) program. This final rule modifies the interim rule for VAPG based on comments received on the interim rule, which was published on February 23, 2011 (76 FR 10122), on the Agricultural Act of 2014 (2014 Farm Bill), and on a listening session, held on April 25, 2014, on the VAPG provisions in the 2014 Farm Bill. This action addresses these modifications, as well as a number of program clarifications, including but not limited to, allowing seafood producers to be able to apply under the locally-produced value-added agricultural product methodology and eligibility for tribal entities. Finally, this action gives the State Director discretion to award priority points in the event that the VAPG program is State-allocated in accordance with 7 CFR 1940.593.

*II. Summary of the Major Provisions*

1. Program. Section 6203 of Agricultural Act of 2014, Public Law 113-79 provides priority for funding applicants that are Veteran Farmers and Ranchers. It further provides additional priority points for Agricultural Producer Groups, Farmer or Rancher Cooperatives, and Majority-Controlled Producer-Based Business Ventures whose projects “best contribute” to creating or increasing marketing opportunities for Beginning Farmers and Ranchers, Veteran Farmers and Ranchers, Socially-Disadvantaged Farmers and Ranchers, and operators of Small- and Medium-sized Family Farms and Ranches.

2. Applications. Applicants must meet all program eligibility and evaluation requirements to be considered for funding. To be eligible to compete for reserved funding and/or receive priority points in the scoring process, applicants must include additional information in their grant application for their respective priority or reservation category (Beginning Farmers and Ranchers, Veteran Farmers and Ranchers, Socially-Disadvantaged Farmers and Ranchers, operators of Small- and Medium-sized Family Farms and Ranches, Farmer and Rancher Cooperatives, Mid-Tier Value Chain projects, and projects that ‘best contribute’ to new or expanded marketing opportunities for Beginning Farmers and Ranchers, Socially-Disadvantaged Farmers and Ranchers, or operators of Small-and Medium-sized Family Farms and Ranches) in accordance with the VAPG program regulation and any additional guidance provided in the annual solicitation for the program.

3. Scoring applications. The Agency will score applications based upon the VAPG program regulation and any additional guidance provided in the annual solicitation for the program. Priority points will be awarded based on the applicant’s qualification as one of the identified priority categories. Additional priority points will be awarded to Agricultural Producer Groups, Farmer or Rancher Cooperatives, and Majority-Controlled Producer-Based Business Ventures who can demonstrate, based on their current and projected composition of owners/membership, how their project “best contributes” to creating or increasing marketing opportunities for Beginning Farmers and Ranchers, Veteran Farmers and Ranchers, Socially-Disadvantaged Farmers and Ranchers, and operators of Small- and Medium-sized Family Farms and Ranches. Any reserve funds not

obligated by June 30th will roll into the general program fund. Applications will be awarded in rank order until funds are expended or the minimum score threshold under the annual solicitation is reached.

### III. Costs and Benefits

The Agency estimates the cost to complete an application to be approximately \$2,405, with changes resulting from this action estimated to amount to \$70. The Agency has identified potential offsetting benefits to prospective program participants and the Agency that are associated with this action. The primary benefit of this action is improving the availability of funds to help agricultural producer applicants in general, and priority category applicants in particular, to expand their customer base for the products or commodities that they produce.

*Comments:* While comments on the interim rule have been considered, we are issuing this final rule without opportunity for prior notice and comment on the changes made to implement the 2014 Farm Bill. The Administrative Procedure Act exempts rules “relating to agency management or personnel or to public property, loans, grants, benefits, or contracts” from the statutory requirement for prior notice and opportunity for comment. 5 U.S.C. 553(a)(2). However, we invite you to participate in this rulemaking by submitting written comments, data, or views before the noted deadline. We will consider the comments we receive and may conduct additional rulemaking based on the comments.

### Executive Order 12866

This final rule has been reviewed under Executive Order (EO) 12866 and has been determined not significant by the Office of Management and Budget (OMB).

### Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, Rural Development generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally

requires Rural Development to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

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

### Environmental Impact Statement

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

### Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under EO 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with the regulations of the Department of Agriculture’s National Appeals Division (7 CFR part 11) must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

### Executive Order 13132, Federalism

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

### Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have an economically significant impact on a

substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

Under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Agency certifies, that this action, while mostly affecting small entities, will not have a significant economic impact on a substantial number of these small entities for the reasons discussed below. This regulation only affects agricultural producers that choose to participate in the program. The Agency estimates that approximately 75 percent of the agricultural producers (operators of Family Farms and beginning and Socially-Disadvantaged applicants) that utilize the program are considered small entities, as defined by the Regulatory Flexibility Act. Therefore, the Agency has determined that this final rule will have an impact on a substantial number of small entities.

However, the economic impact of this final rule on small entities will not be significant. Many of the changes being implemented in the rule are in response to efforts to make the program more accessible to applicants in general and to smaller applicants in particular, as well as to clarify and simplify program requirements. In addition, a number of changes are in response to comments and concerns voiced by applicants and other stakeholders during listening sessions and public comment periods for the proposed and interim rules. The most significant changes in the rule that affects small producers are the addition of Veteran Farmer or Rancher applicants as a priority category and the additional priority points available for Agricultural Producer Groups, Farmer or Rancher Cooperatives, and Majority-Controlled Producer-Based Business Ventures whose projects meet the “best contribute” provision from the 2014 Farm Bill. These changes do not have a significant economic impact on small entities because the cost to applicants as estimated by the Agency in the Paperwork Reduction Act (PRA) burden package is approximately \$70 per applicant impacted by the changes. Of these applicants, those addressing the “best contributes” priority are expected to be comprised of larger entities. This is based on determining which of the estimated costs in the PRA burden package would be incurred by the applicants impacted by the incorporation of the 2014 Farm Bill provisions and the percentage of those considered “small entities.”

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

The regulatory impact analysis conducted for this final rule meets the requirements for EO 13211, which states that an agency undertaking regulatory actions related to energy supply, distribution, or use is to prepare a Statement of Energy Effects. This analysis finds that this rule will not have any adverse impacts on energy supply, distribution, or use.

### **Executive Order 12372, Intergovernmental Review of Federal Programs**

This program is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. Intergovernmental consultation will occur for the assistance to producers of agricultural commodities in accordance with the process and procedures outlined in 7 CFR part 3015, subpart V. Note that not all States have chosen to participate in the intergovernmental review process. A list of participating States is available at the following Web site: <http://www.whitehouse.gov/omb/grants/spoc.html>.

### **Executive Order 13175, Consultation and Coordination With Indian Tribes**

This rule has been reviewed in accordance with the requirements of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 requires Rural Development to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

In response to the 2008 Farm Bill USDA participated in a series of formal Tribal consultation sessions to gain input by elected Tribal officials, or their designees, concerning the impact of the Interim rule on Tribal governments, Tribal producers and Tribal members. These sessions were intended to establish a baseline of consultation for future actions and informed USDA's policy development within the VAPG program.

As a result of these consultations, USDA developed and issued guidance

on the eligibility of Tribes and Tribal entities, incorporated this guidance into application materials, and provided updated guidance to USDA field staff, Tribes and the general public on required documentation.

As the 2014 Farm Bill contained no additional requirements that had Tribal implications or substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes, USDA has determined that no further Tribal consultation is necessary. However, USDA will continue to work directly with Tribes and Tribal applicants to improve access to this program. The policies contained in this rule do not have Tribal implications that preempt Tribal law. For further information on USDA Rural Development's Tribal consultation efforts, please contact the Agency's Native American Coordinator at [aian@wdc.usda.gov](mailto:aian@wdc.usda.gov) or 720-544-2911.

#### **Programs Affected**

VAPG is listed in the Catalog of Federal Domestic Assistance under Number 10.352.

#### **Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act, the paperwork burden associated with this Notice has been approved by the Office of Management and Budget (OMB) under the currently approved OMB Control Number 0570-0039. The Agency has determined that changes contained in this regulatory action do not substantially change current data collection.

#### **E-Government Act Compliance**

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

#### **I. Background**

On February 23, 2011 (76 FR 10090-10122), the Agency published an interim rule for the VAPG program. The interim rule addressed comments that the Agency received on the VAPG proposed rule, which was published in the **Federal Register** on May 28, 2010 (75 FR 29920), and clarified proposed provisions. Changes were made throughout the rule, with many of the changes addressing definitions and how awards are made, including assigning priority. The interim rule became

effective on March 25, 2011, and the Agency provided a 60-day comment period for the public to submit comments on the interim rule.

On February 7, 2014, the Agricultural Act of 2014 (referred to herein as the 2014 Farm Bill) was signed into law. Among its many provisions were two that affected the VAPG program. Section 6203 of the 2014 Farm Bill authorized the Secretary of Agriculture to give priority to:

- Veteran Farmers and Ranchers and
- Agricultural Producer Groups, Farmer or Rancher Cooperatives, and Majority-Controlled Producer-Based Business Ventures whose projects best contribute to creating or increasing marketing opportunities for operators of Small- and Medium-sized Farms and Ranches that are structured as Family Farms, Beginning Farmers and Ranchers, Socially-Disadvantaged Farmers and Ranchers, and Veteran Farmers and Ranchers.

The Agency held a listening session on April 25, 2014, to receive input from interested stakeholders on how to best implement these two provisions. There were a total of two participants who provided comments and suggestions.

All of the comments received on the interim rule and during the listening session are summarized in Section III of this final rule. Most of the interim rule's provisions have been carried forward into the final rule, although there have been some additional changes. A summary of major changes to the interim rule are summarized below in Section II.

## **II. Summary of Changes to the Final Rule**

This section presents the major changes to the VAPG final rule. Most of the changes were the result of the Agency's consideration of public comments on the interim rule, during the listening session (see Section III below for specifics on comments received), and on its own experience with the program in order to improve the implementation and administration. The Agency is also making changes to the rule due to statutory changes resulting from the enactment of the 2014 Farm Bill (see Section IV below).

### **A. Definitions (§ 4284.902)**

1. The following definitions have been added:

- "Harvester" is defined to clarify that Harvesters must be able to document their legal right to access and harvest the Agricultural Commodity that is the subject of the value-added project. It further conveys that individuals or entities that merely glean, gather, or

collect residual commodities that result from an initial harvesting or production of a primary Agricultural Commodity are not considered Harvesters. This clarification is necessary because the definition in Interim Rule did not contain sufficient information to guide potential applicants in this category.

- “Steering committee”—as a subset of the Independent Producer definition—is defined to clarify that Steering Committees must be comprised wholly of Independent Producers. This clarification is necessary because there was confusion among potential applicants about the required structure for this applicant type.

- “Veteran farmer or rancher” was added to conform to the 2014 Farm Bill definition that refers to 7 U.S.C. 2279(e).

2. The definitions of “financial feasibility” and “branding” have been removed because the terms are no longer included in the regulation.

3. The following definitions have been revised:

- “Agricultural food product” was revised to include seafood products customarily sold or consumed live, to remedy the inadvertent exclusion of producers of these products from applying under the Locally-Produced Value-Added Agricultural Product methodology.

- “Agricultural producer” was revised in response to public comments, to clarify that individuals and entities that may have ownership and/or financial control without being engaged in the day-to-day labor and management will not be eligible for a value-added producer grant. Agricultural Producer was also revised to clarify that the eligibility of Tribes and Tribal entities, due to their unique structures, will be determined by the Agency without regard to day-to-day labor, management, and field operation and right to harvest status.

- “Agricultural producer group” was revised to clarify that this type of applicant must be a non-profit, to alleviate on-going confusion about the structure of this applicant type and to conform to long-used examples.

- “Beginning farmer or rancher” was revised to clarify the required composition for reserved fund applicants (100 percent of owner members must be beginning farmers or ranchers) and priority point applicants (more than 50 percent must be beginning farmers or ranchers).

- “Family farm” was revised to remove the reference to the FSA definition of family farm.

- “Farm- or Ranch-based renewable energy” was revised to clarify how generated energy must be utilized to

meet the requirement to demonstrate expanded customer base and increased revenue returned to producers.

- “Feasibility study” was revised to limit the definition to a description of the document, rather than the means by which the document is developed by eliminating reference to qualified consultant.

- “Independent producer” was revised to clarify that a “majority” of raw commodity owned by the applicant is defined as more than 50 percent. The definition was also revised to clarify that Steering Committees must apply as an Independent Producer and that a program-eligible legal entity must be established by the Steering Committee prior to Agency approval of the grant agreement. Further, it clarifies that Harvesters must apply as an Independent Producer and the eligibility requirements for Harvesters with regards to priority points and reserved funding. Independent Producer was also revised to clarify the eligibility of Tribes and Tribal entities, with regard to raw commodity ownership.

- “Marketing plan” was revised to eliminate an unnecessary reference to Qualified Consultant.

- “Medium-sized farm or ranch” was revised to conform to the Economic Research Service’s more commonly used gross sales threshold of \$1,000,000 for operators of medium-sized farms or ranches.

- “Mid-tier value chain” was revised in response to public comments to include consumers as participants of an eligible project.

- “Planning grant” was revised to limit the definition to a description of this type of grant, rather than the means by which it is developed, by eliminating reference to qualified consultant.

- “Product segregation” was revised to “physical segregation” to be consistent with the statutory language within the value-added agricultural product. In addition, an example of a physical segregated product was provided.

- “Small-sized farm or ranch” was revised to conform to the Economic Research Service’s more commonly used gross sales threshold of \$500,000 for operators of small-sized farms or ranches.

- “Socially-disadvantaged farmer or rancher” was revised to clarify eligibility requirements for individuals and entities in regards to priority points and reserved funding as per the statute.

- “Value-added agricultural product” was revised to clarify that the agricultural commodity (raw commodity) must be produced in the United States (including the Republic of

Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, or American Samoa).

#### B. Environmental Review (§ 4284.907)

The language of this section was modified to indicate that working capital awards are generally excluded from the documentation requirements in 7 CFR part 1940, subpart G.

#### C. Applicant Eligibility (§ 4284.920)

1. Type of applicant. Since information regarding the eligibility of Tribes and Tribal entities had previously been provided only in Agency guidance through an Administrative Notice, the Agency added language indicating that Tribes and Tribal entities may be eligible for the program if they meet all requirements. In addition, the availability of additional guidance from the Agency is noted.

2. Citizenship. Language providing an exemption to the requirement that applicants be comprised of at least 50 percent U.S. citizens or legally-admitted permanent residents was deleted to ensure that awards are not made to non-U.S. citizens or entities.

3. Multiple applications. Since information regarding the limitation on application submissions by affiliated entities was previously included only in the annual solicitation, the Agency added language more specifically defining “affiliated” entities and the limitations on submission of multiple applications.

#### D. Project Eligibility (§ 4284.922)

1. Purpose eligibility. While the Interim Rule indicates that applications containing ineligible costs totaling more than 10 percent of Total Project Costs will be deemed ineligible, it does not discuss the status of applications containing less than 10 percent ineligible costs. Therefore, the Agency is clarifying that applications containing ineligible expenses totaling less than 10 percent of Total Project Costs must have those expenses removed from the project budget or replaced with eligible expenses if selected for an award.

2. Working Capital. While the Interim Rule provides requirements for working capital grants, it does not include the requirement of specific quantification of the amount of commodity necessary for the project. This information instead was included in an Agency-developed application template. The Agency, therefore, is adding in this final rule the requirement that applicants quantify and document within their applications, the amount of commodity required for the project, as well as the amount they

will produce, and the amount to be procured from third-parties. This change will assist the Agency in determining whether applicants meet the eligibility requirement to supply a majority of the raw commodity needed for the project.

#### *E. Reserved Fund Eligibility (§ 4284.923)*

1. A separate section was created for Reserved fund eligibility to delineate between it and Priority point eligibility, and for ease in navigating the requirements.

2. Clarification regarding the eligibility of Independent Producer Harvesters was included.

#### *F. Priority Point Scoring Eligibility (§ 4284.924)*

1. A separate section was created for Priority point eligibility to delineate between it and Reserved fund eligibility, and for ease in navigating the requirements.

2. Priority point eligibility status of Harvesters was included.

3. Documentation requirements for Veteran Farmers and Ranchers was included.

4. The gross sales dollar threshold was changed to conform to the Economic Research Service's more commonly used definition.

5. Priority point eligibility was changed to include a new Farm Bill requirement providing points to Agricultural Producer Groups, Farmer or Rancher Cooperatives, and Majority-Controlled Producer-Based Business Ventures whose projects best contribute to creating or increasing marketing opportunities for operators of Small- and Medium-sized Farms and Ranches that are structure as Family Farms, Beginning Farmers and Ranchers, Socially-Disadvantaged Farmers and Ranchers, and Veteran Farmers and Ranchers.

6. Administrator Priority Categories was amended to give State Director discretion to award priority points in the event that the VAPG program is State-allocated in accordance with 7 CFR 1940.593.

#### *G. Ineligible Uses of Grant and Matching Funds (§ 4284.926)*

1. Use of funds for agricultural production expenses. Based on applications received and inquiries from applicants, current language on the prohibition of use of grant or matching funds for expenses related to the production of the raw commodity does not include enough specific information to fully inform prospective applicants. Therefore, the Agency is adding language to clarify that production

planning, purchase of production inputs, and delivery of raw commodity is explicitly prohibited.

2. Use of funds to pay for applicant-supplied raw commodity. While the Interim Rule is clear that applicants may use grant funds to purchase raw commodity (49 percent or less of the total necessary) from third-parties, it does not contain specific language prohibiting the use of grant funds to purchase commodity from the applicant itself. It is the long-held position of the Agency that applicants cannot use grant funds to purchase raw commodities from themselves. Thus, the Agency is adding language to indicate that applicants or applicant entities cannot use grant funds to purchase raw commodity from themselves, from applicant-owned or affiliated entities, or from member producers.

3. Use of funds to pay salaries for applicant or applicant family member was deleted from this section as it only applied to use of grant funds. This section refers to ineligible uses of both grant AND matching funds. The prohibition on use of grant funds for this purpose and an explanation of the allowability of use of applicant or family member time as an in-kind matching contribution is detailed in § 4284.925 and in § 4284.931.

#### *H. Application Package (§ 4284.931)*

1. System for Awards Management (SAM) Registration. This registration requirement became mandatory after publication of the Interim Rule and the Agency has only included it in the annual solicitation. Therefore, language is being added to clarify that all applicants must be registered in SAM.

2. Use of Grant and Matching Funds. The Interim Rule indicates that grant funds and matching funds are subject to the same use restrictions. However, there are two exceptions in § 4284.925(a) and (b). For both planning and working capital grants, grant funds cannot be used to pay applicants or family members for their time spent on the project. But, appropriately-valued applicant or family member time up to a maximum of 25 percent of Total Project Costs can be used as an in-kind matching contribution. Similarly, for working capital grants, grant funds cannot be used to pay the applicant or affiliated parties for raw commodity to be used in project. However, the raw commodity can be used as in-kind match. Therefore the Agency has revised this section to reflect this change.

3. Performance Evaluation Criteria. Required Performance evaluation criteria were modified to respond to

program metrics requirements in Section 6209 of the 2014 Farm Bill and also to ensure that data collected for program outcome and evaluation purposes is consistent, robust, and relevant to both the stated program purposes and ongoing evaluation efforts. Corresponding changes were made to § 4284.960 (Monitoring and reporting program performance) to specify that performance reports would include required data related to achieving programmatic objectives and a comparison of accomplishments with the objectives stated in the application. At a minimum, this would include information on: (i) Expansion of customer base as a result of the project; (ii) Increased revenue returned to the producer as a result of the project; (iii) Jobs created or saved as a result of the project; and (iv) Evidence of receipt of matching funds, if included or provided for in the project. The Agency also may request any additional project and/or performance data for the project for which grant funds have been received, for example, information that would promote greater understanding of the determinants of success of individual projects, inform program administration and evaluation, or that would enable the use of data for program administration or evaluation purposes.

Until such time as the Agency determines that additional data may be necessary to further inform program performance, the Agency will continue to utilize the data associated with the current Office of Management and Budget approved information collection requirements for the program. If and when the Agency determines that additional data is necessary, it will submit a new information collection package to OMB for review and approval prior to publication in the **Federal Register** for public review and input.

#### *I. Filing Instructions (§ 4284.933)*

Submission requirements provide information on completeness of applications, but do not explicitly state that because the program is a nationally-competitive program, no revisions or additional information will be accepted after the application deadline. Therefore, the Agency is clarifying that no revisions or additional information will be accepted after the application deadline.

#### *J. Proposal Evaluation Criteria and Scoring Applications (§ 4284.942)*

The priority point criterion (Criterion 5) was reconfigured to accommodate awarding of points to projects that "best contribute" to the creation of or increase

in marketing opportunities for members of specified priority groups, per the 2014 Farm Bill language.

### III. Summary of Comments and Responses

The Interim Rule was published in the **Federal Register** on February 23, 2011 (76 FR 10090), with a 60-day comment period that ended April 25, 2011. The Agency also conducted a listening session on April 25, 2014, to receive comments on the VAPG provisions in the 2014 Farm Bill.

Comments on the Interim Rule were received from 11 commenters, and comments on the VAPG provisions in the 2014 Farm Bill were received from 2 commenters. Combined, these commenters provided approximately 14 similar comments. Commenters included industry and trade associations and individuals. As a result of some of the comments, the Agency made changes in the rule. The Agency sincerely appreciates the time and effort of all commenters.

Responses to the comments on the interim rule and those received during the listening session are discussed below. Comments are grouped by category and rule section.

#### A. General

##### Timing of Final Rule

*Comment:* Two commenters stated that some of the shortfalls in the Interim Rule are quite serious and deserve to be addressed shortly after conclusion of the 2010/11 grant round. The commenters urged the Agency not to leave this Interim Rule in place for more than this upcoming grant cycle and recommended that the Agency issue a second Interim Rule or a Final Rule by the time the 2012 NOSA is issued.

*Response:* While the Agency appreciates the fact that the commenters are concerned about certain provisions in the Interim Rule published in 2011, the Agency has had to continue implementing the VAPG program under the Interim Rule until it had the opportunity to consider fully all of the comments received on the Interim Rule and now to also be able to incorporate new provisions associated with the 2014 Farm Bill. Hence, the Agency is publishing this Final Rule to address all of the comments received on the Interim Rule.

##### Review Panels

*Comment:* One commenter stated that they understand the Agency chose not to put information in the Interim Rule about who will do the review and evaluation of project proposals. This

information has instead appeared in the annual NOSA. The commenter stated that they can appreciate the Agency's hesitancy in placing this type of information in the rule. The iterative NOSA process allows for the evolution of the program in a more flexible manner. The commenter stated that they believe the Agency should reflect on the experience of the program over time, especially with respect to the 2009 and 2010/11 process, and should include in either a second Interim Rule or in the Final Rule the broad outlines of the review process which could then still be adjusted within those broad parameters on a year-by-year basis.

As part of the review, the commenter strongly encourages the Agency to explore the experiences of sister agencies at USDA that also operate review panels. The program would be improved by insertion of a section in the rule on review panels, provided that it is not as specific and rigid as to not allow positive program evolution over time.

*Response:* The Agency disagrees with the recommendation to incorporate into the rule even a broad outline of the review process because of the ensuing loss of flexibility. The Agency also disagrees with the suggestion to include a section in the rule concerning review panels. Compared to some programs that use a review panel process, the VAPG program has a much higher volume of applications and applications that are more diverse in nature. Because of these two characteristics, a set review panel process, in the Agency's estimation, does not offer any benefits compared to the current process in which applications are scored by both Rural Development state office personnel and assigned, qualified, non-federal independent reviewers. Therefore, the Agency has not incorporated either of the commenter's suggestions in the Final Rule.

#### B. Purpose (§ 4284.901)

*Comment:* One commenter stated that the "Purpose" section of the rule speaks to the major activities of the program—"to develop businesses that produce and market value-added agricultural products"—but does not actually address the underlying purpose of the program. The commenter recommended the addition of language that speaks to the purpose of the program, namely to "create expanded marketing opportunities, increase producer income, and enhance community economic development."

*Response:* In consideration of this comment, the Agency has included reference to creating marketing

opportunities for businesses in the Purpose section.

#### C. Definitions (§ 4284.902)

##### Agricultural Producer

*Comment:* Two commenters noted that the definition of "agricultural producer" has been expanded from individuals and entities actively engaged in production to also include those who maintain ownership and financial control of an operation without being actively engaged in labor and management.

The commenters claimed that this change could "open the floodgates" to non-farm passive investors and landlords to reap the benefits of a program clearly intended to raise incomes for producers. The commenters urge USDA to amend the definition of "agricultural producer" to read as follows:

"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" through substantially participating in the labor, management, and field operations."

*Response:* The Agency agrees with the basic concerns expressed by the commenters and has revised the definition by removing reference to agricultural producers who only maintain ownership and financial control of the agricultural operation.

##### Beginning Farmer or Rancher

*Comment:* Two commenters expressed concern over the definition of beginning farmer or rancher.

One of the commenters stated that a citation for a very lengthy statutory definition (4 pages) is provided in the Interim Rule as part of this VAPG program definition for "beginning farmer or rancher," even though the majority of the requirements in the statutory definition apply only to FSA loan programs and do not appear applicable to RD grant programs.

The commenter recommended that the Agency drop the statutory citation in the Interim Rule and simply specify the eligibility requirements that are applicable to beginning farmers and ranchers. The other commenter stated that the "beginning farmer or rancher" definition, as well as the related language in § 4284.922(c)(1)(i), must be fixed to make its meaning clear and precise. According to the commenter, the definition in the Interim Rule is extremely convoluted, could be difficult

for users, administrators, and review panels to interpret in its current form, and thus needs to be clearer and cleaner.

*Response:* The Agency agrees with both commenters that the definition needs to be both simpler and clearer. The Agency has removed the statutory

citation and added reference to Independent Producer to address the “substantial participation” concern. In addition, we have reformatted the definition to make clearer the definitional requirement to be eligible for priority points and for the reserved

funding pool that includes beginning farmers and ranchers. The following table illustrates the application of the definition for determining whether the applicant qualifies as a beginning farmer or rancher for priority points or the above mentioned reserved funding pool.

If the applicant is . . .	and has the following characteristics	Is the applicant a beginning farmer or rancher eligible for . . .	
		Priority points?	Reserved funding?
An Independent Producer Individual .....	<ul style="list-style-type: none"> <li>• More than 10 years of experience .....</li> <li>• 10 years or less of experience .....</li> </ul>	No	No
An eligible entity (agricultural producer, a farmer/rancher cooperative, or an independent producer other than a harvester).	<ul style="list-style-type: none"> <li>• 50 percent or less of the members have 10 years or less of experience.</li> <li>• More than 50 percent of the members have 10 years or less of experience.</li> <li>• 100 percent of the members have 10 years or less of experience.</li> </ul>	Yes	Yes
		No	No
		Yes	No
		Yes	Yes

**Farm- or Ranch-Based Renewable Energy**

*Comment:* Two commenters stated that USDA should clarify that an accepted new added value of an agricultural commodity is its use in qualifying for a tradable carbon credit if the production of renewable energy destroys, reduces or mitigates the production of green-house gases (GHG), or possibly for a renewable energy credit. If this new added value of an agricultural commodity is accepted, then the Agency needs to clarify in the rule, where appropriate, that equipment used to measure and monitor greenhouse gases for trading purposes is a legitimate expense covered by the program.

*Response:* The Agency is not revising the rule as suggested by the commenter because the Agency is bound by the authorizing statute to consider only the following, whether the agricultural product: (1) Has undergone a change in physical state, (2) was produced in a manner that enhances the value of the agricultural commodity, (3) is physically segregated in a manner that results in the enhancement of the value-added agricultural commodity, (4) is a source of farm- or ranch-based renewable energy, including E-85 fuel, and (5) is aggregated and marketed as a locally produced agricultural food product.

*Comment:* One commenter stated that this definition requires on-farm generation of renewable energy by an Independent Producer that produces the agricultural commodity used to generate the renewable energy on-farm as a value-added product. The commenter then stated that the Agency needs to

clarify its policy regarding whether these projects fulfill the statutory eligibility requirement that all VAPG projects demonstrate an increase in customer base and an increase in revenues returning to the producers as a result of the VA project. Specifically, the Agency needs to clarify whether on-farm energy savings that result from bio-based net metering of electricity, or utilizing methane for thermal energy, or utilizing liquid fuels for farm machinery operations will qualify (in other words, whether a farmer can use his own value-added products to reduce his own operating costs to demonstrate increased customer base and revenues).

*Response:* The Agency agrees with the commenter that all VAPG projects must demonstrate an increase in customer base and an increase in revenues returning to the producers as a result of the value-added project. A farmer that uses a value-added product to simply reduce the farm’s operating costs does not meet the intent of these two conditions and would not qualify (see Scenario 3 below). Thus, there is no “perk” as characterized by the commenter and as such there is no effect on the other product eligibility categories to put them at a disadvantage.

The Agency acknowledges, however, that there are situations where making such determinations with regards to renewable energy are not necessarily clear. To help understand the application of this definition with regard to determining project eligibility, consider the following scenarios.

Scenario 1. A farmer installs an anaerobic digester to use cow manure to produce electricity and sells that electricity to the local utility. The

electricity generated by the digester qualifies as renewable energy. The local utility represents an increase in the customer base and the farmer sees a direct increase in revenues from the sale of the electricity to the utility. Thus, this project qualifies as a value-added project eligible for consideration for a grant.

Scenario 2. Same scenario as Scenario 1, except that, instead of selling the electricity to the local utility, the farmer uses it to generate heat and power for a hydroponics facility on the farm from which a value-added product is produced. In this second example, the renewable energy project also qualifies. By producing the value-added product, the farmer is expanding his customers to those customers buying the value-added product. The farmer is seeing an increase in his revenue either directly as the result of sales of the new value-added product or indirectly as a reduction in operating costs of the farm. Thus, this project also qualifies as a value-added project eligible for consideration for a grant.

Scenario 3. Same scenario as Scenario 1, except under Scenario 3 the farmer uses all of the electricity generated by the anaerobic digester to replace electricity purchased from the local utility to help power current farm operations. While the farmer sees an indirect increase in revenues through a reduction in operating costs (as in Scenario 2), there is no increase in the customer base for the farmer. Therefore, both conditions are not met and the project would not be eligible for a VAPG grant.

The Agency revised the subject definition in order to clarify how the definition is to be applied.

*Comment:* One commenter, as a marketer of photovoltaic solar systems, believes that the elimination of grants for renewable energy systems is not a step we can take if we want to move forward as a nation.

*Response:* The definition for “Farm- or Ranch-based renewable energy” states, in part, that on-farm generation of energy from wind, solar, geothermal, or hydro sources are not eligible. The project eligibility category related to renewable energy was set by the 2008 Farm Bill and states that a Value-Added Agricultural Product is “a source of farm- or ranch-based renewable energy, including E-85 fuel.” Notwithstanding the virtues of solar systems as described by the commenter, it is the Agency’s position that solar is not an agricultural commodity or a Value-Added agricultural product. The Agency notes that agricultural producers and rural small businesses may apply for grants under the Rural Energy for America Program for solar projects as described by the applicant.

Feasibility Study, Marketing Plan, and Planning Grant

*Comment:* Two commenters recommended adding a sentence cross-referencing the up to 25 percent in-kind match option in § 4284.923(a) and (b), as is already done for the “conflict of interest” definition and the “matching grant” definition. According to the commenters, the addition of the cross reference will remove confusion that is otherwise created as to whether the definitions override the exception.

One of the commenters stated that another viable option with respect to the feasibility study, marketing plan, and planning grant definitions is to simply describe the study, plan or grant, without reference to the qualified consultant as has been done in the case of “business plan.” The commenter further stated that they would support either option.

*Response:* The Agency has decided to adopt the second suggestion in order to minimize the confusion identified by the commenters and thus has revised the three definitions by removing reference to “qualified consultant.”

Independent Producers

*Comment:* Three commenters were concerned that the definition of “harvester” within the Independent Producer definition needed clarification.

Two of the commenters stated that clarifications may be in order to ensure

that third-party entities used to build, manage and operate anaerobic digesters are considered to be “harvesters of an agricultural commodity” (e.g., animal manure) and eligible for participation in the VAPG Program as an “Independent Producer.”

The third commenter stated that the Interim Rule lacks sufficient detail to demonstrate “what and who” qualifies as a “harvester.” Because the definition is limited to an Independent Producer Agricultural Producer who has the “legal right to harvest an agricultural commodity,” it raises a potential, yet unintended, conflict with the primary program purpose that all Independent Producers “currently own and produce the agricultural commodity to which value will be added.”

This commenter recommended that the Agency clarify “what and who” qualifies in the “harvester” category, and specifically state whether or not a simple collection or gathering of any agricultural commodity suffices. According to the commenter, simple collection of an agricultural commodity by a non-agricultural producer would not meet the stated intention of the program. The commenter provided the following examples: (1) A logger who has the legal right to harvest logs from a land owner would be eligible, but a non-logger wanting to simply collect unwanted slash from the landing of a land-owner or logger would not be eligible, and (2) a non-agricultural producer business simply wanting to collect dairy manure from various farming operations to convert it to renewable energy would not be eligible. The commenter stated that, for these reasons, the Interim Rule needs to clarify these eligibility distinctions.

*Response:* The Agency agrees with the commenters that the meaning of “Harvester” needs to be clarified and strengthened and has done so (including adding a definition for Harvester).

The Agency disagrees, however, with the two commenters that the third-party entities collecting animal manure for use in anaerobic digesters, as described by the two commenters, are eligible for the program. The Agency agrees with the examples provided by the third commenter as to which “Harvesters” would or would not be eligible to participate in the VAPG program.

For the purposes of the VAPG program, the Agency has determined that entities and individuals, such as those described by the commenter, that merely glean, gather or collect residual commodities that result from an initial harvesting or production of a primary agricultural commodity are not considered “Harvesters” and are not

eligible for this program. For example, see the 2014 NOFA for the program (78 FR 70261, November 25, 2013). In the added definition, the Agency has clarified that the entity’s (or individual’s) harvest must be a “primary” agricultural commodity in order to be eligible; a harvester cannot merely glean, gather, or collect residual commodities. So for example, a logger who has a legal right to access and harvest logs from the forest that are then converted into boards would be an eligible applicant, as would a fisherman that has the legal right to access and harvest fish from the ocean or river that are then processed.

*Comment:* One commenter recommended revising the definition of “Independent Producers” and elsewhere as appropriate to clarify whether “harvesters” are eligible for priority points and reserved funds for certain applicant types. Specifically, one or more definitions need to clarify whether “harvesters” are the equivalent of “farmers” and, if so, the Interim Rule needs to specify their eligibility for both priority points and reserved funds in applicable categories.

*Response:* As indicated by the commenter, harvesters may only apply as an Independent Producer applicant type in order to be eligible for the VAPG program. However, harvester operations do not meet the definition requirements for a Farm or Ranch and, as such, harvesters are not equivalent to farmers or ranchers. Harvester applicants, therefore, are not eligible to receive reserve funds for a Beginning Farmer or Rancher or a Socially-Disadvantaged Farmer or Rancher; and are not eligible to receive Priority Points for a Beginning Farmer or Rancher, a Socially-Disadvantaged Farmer or Rancher, Operator of a Small or Medium-sized Farm or Ranch structured as a Family Farm, or a Farmer or Rancher Cooperative.

However, if the harvester is proposing a mid-tier value chain project, then the harvester would be eligible for priority points and for competing for mid-tier value chain reserve funding. The Agency has revised the rule to clarify who is eligible for priority points (see § 4284.924) and who is eligible for reserved funding (see § 4284.923).

Medium-Sized Farm

*Comment:* One commenter supported the increase from \$700,000 to \$1 million in the annual gross sales-based definition of medium-sized farm or ranch. The commenter believes this will more adequately reflect commodity, enterprise, and regional differences, while ensuring program funds are

targeted to the “disappearing middle” of agriculture.

*Response:* The Agency thanks the commenter for supporting the change made to this definition in the Interim Rule and has retained the \$1 million ceiling in the Final Rule.

#### Mid-Tier Value Chain

*Comment:* Four commenters recommended expanding the definition of a Mid-Tier to include direct sales to consumers as well as to businesses and cooperatives.

*Response:* The Agency agrees with the recommendation and has added reference to “consumers” to the definition in the rule.

#### D. Applicant Eligibility (7 CFR 4284.920)

*Comment:* One commenter recommended that, because many local food initiatives have been created as community based non-profits, non-profit entities that are benefitting small and medium producer or ranchers be included as a fifth type of eligible applicant type for the reserve funds for the Mid-Tier Value Chain.

*Response:* The Agency has not revised the rule as requested by the commenter because the authorizing statute identifies the applicant types that are eligible for the VAPG program and the Agency cannot add another applicant type without statutory authority.

#### E. Project Eligibility (§ 4284.922)

##### Branding

*Comment:* Three commenters oppose the removal of limitations on branding activity costs. One of the commenters stated that the VAPG program should not promote advertising as a primary project function.

One of the commenters agreed that, though branding is an essential part of developing a new product, it should not be the sole focus of a VAPG project. Even a complete marketing plan (of which branding is just one part) is only a fraction of what’s needed for any good VAPG project—one which helps farmers develop new value-added products.

The commenter recommended that the Final Rule stress § 4284.922(a)(1) in stating that projects that are primarily branding projects do not meet the criteria of VAPG. The commenter suggested that one way this could be done is to include relevant language from the past NOSAs. The 2009 NOFA under the section titled “Other Eligibility Requirements” and from the Proposed Rule, under § 4284.922(c): “Applications that propose only branding, packaging, or other similar

means of product differentiation are not eligible in any category. However, applications may propose branding, packaging, or other product differentiation activities as a component of a value-added strategy for products otherwise eligible in one of the above categories.”

One of the commenters stated that, by eliminating this section, the Agency gives the impression that it is endorsing projects that are 100 percent for branding. This is in direct contradiction to the requirement under § 4284.222(a)(1) that the project must focus on adding value to a product in one of five defined ways. The commenter stated that, by permitting all grant funds to be used for branding, the Agency would be opening the floodgates to becoming a program to support the advertising and branding budgets as if it were a domestic equivalent of the Market Access Program.

*Response:* As stated in the response to comments on branding in the Interim Rule, the Agency recognizes that branding and packaging are important components of value-added marketing strategies. The program’s authorizing statute is clear that creation of marketing opportunities is an important component of the program. The use of funds to develop plans and strategies to create marketing opportunities necessarily includes product differentiation and promotional activities, without which, there would be no ability to accomplish two key program requirements: Expansion of customer base and increased revenue returned to the producers of the value-added product. All applicants, including those with significant branding or advertising components must still meet all other program eligibility requirements, including meeting one of the five value-added project methodology categories. Therefore, no changes related to branding have been made.

##### Purpose Eligibility

*Comment:* Two commenters noted that, in § 4284.922(b)(6)(i) of the Interim Rule, a new provision exempts Independent Producers with existing products from applying for working capital grants of \$50,000 or more from providing feasibility studies. The commenters stated that they recognize that in theory this modification to the rule could serve individual farmers in need of marketing assistance for their value-added products. However, the commenters worry that, without limitations, VAPG could easily become a program for marketing rather than predominantly for developing value-

added products. One of the commenters encouraged the Agency to comprehensively track applications and awards for this subset of the program and to monitor the extent to which it modifies the current success of VAPG.

The other commenter stated that this new provision seems to open a loophole for any old products that need a new advertising campaign.

*Response:* The program’s authorizing statute provides that only Agricultural Producer Groups, Farmer or Rancher Cooperatives, and Majority Controlled Producer-Based Business Ventures are subject to the ‘emerging market’ requirement. That leaves otherwise qualified Independent Producer applicants free to propose projects that expand markets for existing value-added products. As such, the Agency deems the long-standing requirement of a business or marketing plan in lieu of a feasibility study as sufficient and plans no changes in rule. In addition, as stated in response to the comments above regarding branding and advertising, it is the Agencies position that the use of grant funds to create marketing opportunities through product differentiation and promotional campaigns are important components in accomplishing program objectives.

##### Reserved Funds Eligibility

*Comment:* One commenter stated that a problem occurs in § 4284.922(c)(1)(i) (as found in the Interim Rule) in the last sentence of that paragraph. According to the commenter, the sentence appears to mean that any independent farm, in order to qualify for the beginning farmer set-aside or priority, must be a farm in which all owners are beginning farmers. The way the sentence is stated, however, it could also mean that any applicant entity, made up of multiple farms, must be entirely made up of beginning farmers.

In support, the commenter pointed out that § 4284.922(c)(1)(i) says “For applicant entities with multiple owners, all owners must be eligible beginning farmers or ranchers” while (d)(1) says “For entities with multiple owners or members, 51 percent of owners or members must be eligible beginning farmers or ranchers.” This is contradictory and requires a simple clarification of terms to distinguish between eligible farms and eligible entities under the beginning farmer priority and set-aside.

*Response:* While the commenter is correct in identifying the differences between the paragraphs, the differences are not in error. As stated earlier in response to a comment on the definition of “Beginning Farmer or Rancher,” there

is an eligibility distinction with regard to priority points versus reserved funding. Specifically, to be eligible for priority points, at least 51 percent of the farmers in an entity composed of multiple farmers must each have no more than 10 years of experience. (**Note:** In the Final Rule, “at least 51 percent” has been changed to “more than 50 percent”.) However, to be eligible for the reserved funding that includes beginning farmers and ranchers, all of the farmers (100 percent) in an entity composed of multiple farmers must have no more than 10 years of experience. This is based on the differences contained in the authorizing language in the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill), resulting in two separate priority categories. The Food, Conservation, and Energy Act of 2008 in section 6002(6) stated that the Secretary shall give priority to projects that “contribute to opportunities” for beginning and socially disadvantaged farmers and ranchers, while subparagraph (7)(C) stated that the Secretary shall reserve 10 percent of the amounts made available for each fiscal year under this paragraph to fund projects “that benefit: beginning farmers or ranchers or socially-disadvantaged farmers or ranchers.” While the Agricultural Act of 2014 does not contain the “contribute to opportunities” language, it still contains separate language in paragraph (6) that gives “priority” to beginning farmers or ranchers and socially-disadvantaged farmers or ranchers. The Agency has revised the rule to clarify this.

*Comment:* Four commenters who recommended that the definition of a Mid-Tier be expanded to include direct sales to consumers, recommended the following change to § 4284.922(c)(2)(ii) (as found in the Interim Rule): Describe at least two alliances, linkages, or partnerships within the value chain that link independent producers with businesses, cooperatives or consumers directly 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.

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

*Comment:* Four commenters stated that they recognize the requirements in § 4284.922(c)(2)(v) (as found in the Interim Rule) and the critical importance of the raw agricultural product being utilized for the value-added product comes from the project participants. However, in the case of the

Mid-Tier Value Chain, the commenters feel that 50 percent ownership of the product should not be required of the applicant organization because this organization is not an agricultural producer. Rather, the benefiting agricultural farmers and ranchers of the applicant organization should be required to adhere to this rule. The commenters proposed the following change to the Interim Rule for this section: Demonstrate that the benefiting small or medium sized farms or ranches that are structured as a family farm of 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.

*Response:* The Agency agrees with the commenter and applies this provision in the Final Rule as described by the commenter. As a reminder, however, the applicant organization must be a producer-based organization. So for example, if an applicant organization is composed of wheat growers and rice growers and that organization is proposing a VAPG project that benefits only the wheat growers, the Agency applies this provision by looking at whether the wheat growers own and produce more than 50 percent of the raw agricultural commodity that will be used for the VAPG project. To clarify this, the Agency has revised this paragraph to indicate that the members of the applicant organization that are benefiting from the proposed project must currently own and produce 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.

#### *F. Eligible Uses of Grant and Matching Funds (§ 4284.923)*

*Comment:* One commenter suggested that, in order to keep business and enterprise planning of VAPG projects farmer-centered, farmers and ranchers directly participate in the development of VAPG projects and be allowed to count their time as an in-kind contribution toward the program’s matching requirements. The Interim Rule responded to this suggestion by allowing time to count as an in-kind contribution up to 25 percent of the total project costs.

The commenter applauded the Agency for this decision and believes it is a step in the right direction. The commenter urged the Agency to do a detailed assessment of the 25 percent cap, including a survey of applicants after the next grant round to get detailed reactions to the 25 percent cap. If the

assessment, including the survey, reveals the 25 percent cap is a barrier to the program meeting its objectives, including participation by the statutory priority groups, they would then urge the Agency to raise the cap.

*Response:* The Agency appreciates the commenter’s support of the change, which is retained in the Final Rule. The Agency will take under advisement the commenter’s suggestion for an assessment of the 25 percent cap.

#### *G. Simplified Application (§ 4284.932)*

*Comment:* One commenter commended the Agency’s commitment to developing a simplified application form, as required by statute, in the annual Notice of Solicitation of Applications (NOSA) for the program. The commenter stated that they trust it will appear in the NOSA for FY 2010/11 funding and thereafter and further stated that they will comment on the simplified application when it appears in the NOSA.

*Response:* The Agency acknowledges the comment and looks forward to continuing to help improve the simplified application for the program.

#### *H. Priority Points (§ 4284.942)*

The 2014 Farm Bill added Veteran Farmers and Ranchers as an additional priority group. The Agency is including this group in the Final Rule as a priority group and is implementing provisions consistent with the provisions identified in the March 24, 2014 notice published in the **Federal Register** (79 FR 16277) that extended the application deadline and added priority for Veteran Farmers and Ranchers.

The Agency also received the comments concerning scoring associated with priority groups as presented below.

#### *Priority Groups*

*Comment:* One commenter opposed the changes in point scoring that appear to reduce the priority awarded to statutory priority groups, which is important to meeting the goals of the VAPG program.

A second commenter stated that they had recommended that the Agency increase the percentage of total proposal evaluation ranking points for projects that foster the program’s statutory priority for small and medium-sized family farms and beginning and Socially-Disadvantaged farmers, from 15 to 25 out of a total of 100 points. They further stated that the Interim Rule, however, moves in the exactly the opposite direction, decreasing those ranking points from 15 to 10 points.

The commenter stated that it strains the meaning of the word “priority” to assign it a ten percent factor. Ten percent might be appropriate in a “bonus” situation in which the factor might be considered a minor distinguishing item, but it certainly does not come close to being a priority factor.

The commenter stated that they are deeply concerned that, if this decision is not reversed, non-priority applicants will push aside priority applicants and one of the intended goals of the program will not be realized. The commenter strongly urged the Agency to issue a Final Rule that provides a real priority to the statutory priority classes. The commenter recommended that 25 percent of the total point value be assigned to statutory priorities, with review panels then assessing which projects best foster the priority for small and mid-sized family farms and beginning and Socially-Disadvantaged farmers and ranchers and providing evaluative ranking points accordingly.

*Response:* Through the 2008 Farm Bill, the Agency was instructed to give priority to certain categories of applicants. Giving priority does not mean that the program should only fund applications submitted by those groups, but rather, all things being equal, the applications from such groups should receive priority. The Final Rule does just that—making the priority groups eligible for points that are not available to applicants in non-priority groups. The distribution of points during application scoring process from the last few application rounds, since the Interim Rule was implemented, has resulted in the majority of awards being made to applicants from the priority categories. Thus, the Agency has not revised the distribution of points in response to this comment.

#### Rural Areas

*Comment:* Two commenters were concerned over the elimination in the Interim Rule of the potential for applicants to receive 10 points for being located in a rural area. While the commenters agree that VAPG projects cannot be strictly limited to rural areas, they disagree that the program should not prioritize rural projects.

Commenters indicated that there are good reasons to assign ranking points to projects that are located in rural areas, even if the markets they serve are both rural and urban. A key purpose of the program is to raise farm income and improve the economy in farming communities. This purpose can be legitimately advanced by providing some amount of ranking points to projects located in rural areas.

Furthermore, when compared to urban agricultural producers, rural farmers and ranchers face heightened challenges in accessing markets for their products. The commenter recommended reinstating 10 points for rural projects, thus demonstrating a continued commitment to rural economic development.

A third commenter also opposed removing the priority points for rural projects, which is important, according to the commenter, to meeting the goals of the VAPG program.

*Response:* The statute does not include a rural area requirement for this program and it is the opinion of the agency that priority points for rural areas was not practical in the implementation of this program. Therefore, a rural requirement has never been implemented. And therefore, this provision does not provide priority points for rural projects.

#### I. Award Process (§ 4284.950)

The 2014 Farm Bill includes a provision that requires the Agency to give priority to Agricultural Producer Groups, Farmer or Rancher Cooperatives, and Majority-Controlled Producer-Based Business Ventures whose projects (including farmer or rancher cooperative projects) best contribute to creating or increasing marketing opportunities for operators of Small- and Medium-size Farms and Ranches that are structured as Family Farms, Beginning Farmers and Ranchers, Socially-Disadvantaged Farmers and Ranchers, and Veteran Farmers and Ranchers. The Agency received comments from stakeholders on this provision during the April 25th listening session. In addition, the Agency received comments on very similar language the Agency included in the preamble to the Interim Rule. The following summarizes the comments on this provision and then presents the Agency’s response as to how this provision is implemented in the Final Rule.

*Comment:* In commenting on the Interim Rule, one commenter stated that they had recommended that, when proposals are equally ranked, those targeting the VAPG priority groups—small and medium-sized family farms, beginning farmers and ranchers, and Socially-Disadvantaged farmers and ranchers—receive priority and commended its inclusion in the preamble to the Interim Rule. Without it also appearing in the rule itself, however, they fear it will be overlooked by review panels in the future. The commenter, therefore, recommended that the Agency incorporate language as

a new subsection (b) in § 4284.942 and as a revision to subsection (a) in § 4284.950, as follows.

*Response:* The Agency has not revised the rule in response to these comments. The Administrator has the final authority and discretion in assigning points to any application based upon unserved or underserved areas; geographic diversity; emergency conditions and priority mission area plans, goals, and objectives. Based upon this authority, there would never be a need for breaking a tie in the manner suggested.

#### IV. 2014 Farm Bill Implementation

The 2014 Farm Bill required the Agency to make changes to the VAPG program in two areas regarding priority:

- Priority to Veteran Farmers and Ranchers
- Priority to Agricultural Producer Groups, Farmer or Rancher Cooperatives, and Majority-Controlled Producer-Based Business Ventures for projects that ‘best contribute’ to new or expanded marketing opportunities for Beginning Farmers and Ranchers, Socially-Disadvantaged Farmers and Ranchers, or operators of Small- and Medium-sized Family Farms and Ranches) The following paragraphs discuss how the Agency is implementing these priorities in the Final Rule.

##### A. Veteran Farmer or Rancher Priority

The 2014 Farm Bill added a new priority for Veteran Farmers and Ranchers. The definition of a Veteran Farmer or Rancher, as provided by the 2014 Farm Bill, is a farmer or rancher who has served in the Armed Forces, as defined in section 101(10) of title 38 United States Code, and who either has not operated a farm or ranch or has operated a farm or ranch for not more than 10 years.

To qualify for priority points for projects that contribute to increasing opportunities for Veteran Farmers and Ranchers, applicants must submit form DD-214, Report of Separation from the U.S. Military and meet the requirements for Beginning Farmers or Ranchers at 7 CFR 4284.922(d) and in the application guides, as well as all other program requirements.

##### B. Best Contributing Priority

The 2014 Farm Bill added a new priority for Agricultural Producer Groups, Farmer and Rancher Cooperatives, and Majority-Controlled Producer-Based Business Ventures (applicant group) whose projects “best contribute to creating or increasing marketing opportunities” for operators

of Small- and Medium-sized Farms and Ranches that are structured as Family Farms, Beginning Farmers and Ranchers, Socially-Disadvantaged Farmers and Ranchers, and Veteran Farmers and Ranchers (priority groups). Applications must contain sufficient information as described in the annual solicitation and application package to enable the Agency to make the appropriate determinations for awarding points for this priority. If the application does not contain sufficient information, the Agency will not award points accordingly.

The Agency is implementing this priority by awarding up to 5 additional points based on documentation of the composition of the applicant's existing membership and anticipated expansion of membership as a way to assess creating or increasing marketing opportunities for the four priority groups. The Agency will use the following three criteria to award up to five points for this new priority.

1. If the existing membership of the applicant group is comprised of either more than 75 percent of any one of the four priority groups or more than 75 percent of any combination of the four priority groups, the application is eligible for two points.

2. If the existing membership of the applicant group is comprised of two or more of the priority groups, the application is eligible to receive one point. One point is awarded regardless of whether a group's membership is comprised of two, three, or all of the four priority groups.

3. If the proposed project in the applicant group's application will increase the number of priority groups that comprise the applicant group's membership by one or more priority groups, the application is eligible to receive two points. However, if an applicant group's membership is already comprised of all four priority groups, such an applicant would not be eligible for points under this criterion because there is no opportunity to increase the number of priority groups. Note also that this criterion does not consider either the percentage of the existing membership that is comprised of the four priority groups or the number of priority groups currently comprising the applicant group's membership.

#### List of Subjects in 7 CFR Part 4284

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

For the reasons set forth in the preamble, under the authority at 5

U.S.C. 301 and 7 U.S.C. 1989, chapter XLII of title 7 of the Code of Federal Regulations (CFR) is amended as follows:

#### CHAPTER XLII—RURAL BUSINESS-COOPERATIVE SERVICE AND RURAL UTILITIES SERVICE, U.S. DEPARTMENT OF AGRICULTURE

#### PART 4284—GRANTS

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

**Authority:** 5 U.S.C. 301 and 7 U.S.C. 1989. Subpart F also issued under 7 U.S.C. 1932(e). Subpart G also issued under 7 U.S.C. 1926(a)(11). Subpart J also issued under 7 U.S.C. 1632(a). Subpart K also issued under 7 U.S.C. 1621 note.

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

#### Subpart J—Value-Added Producer Grant Program

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##### 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 Agricultural Production) to develop businesses that produce and market Value-Added Agricultural Products and to create marketing opportunities for such businesses. The provisions of this subpart constitute the entire provisions applicable to this Program; the provisions of subpart A of this part do not apply to this subpart.

##### § 4284.902 Definitions.

The following definitions apply to this subpart:

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

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

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

*Agricultural food product.*

Agricultural food products can be raw, cooked, or processed edible substances, beverages, or ingredients intended for human consumption. These products cannot be animal feed, live animals (except for seafood products customarily sold and/or consumed live), non-harvested plants, fiber, medicinal products, cosmetics, tobacco products, or narcotics.

*Agricultural producer.* (1) An individual or entity that produces an Agricultural Commodity through participation in the day-to-day labor, management, and field operations; or that has the legal right to harvest an Agricultural Commodity that is the subject of the VAPG project.

(2) The Agency shall determine the Agricultural producer status of Tribes and Tribal entities without regard to day-to-day labor, management, and field operation and right to harvest status.

*Agricultural producer group.* A non-profit 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 Venture.

*Beginning farmer or rancher.* (1) For the purposes of determining eligibility to receive priority points under § 4284.924, a Beginning Farmer or Rancher is either:

(i) An individual Independent Producer (other than a Harvester) that has operated a Farm or Ranch for no more than 10 years or

(ii) An eligible Applicant entity, other than a Harvester, that has an Applicant ownership or membership of more than 50 percent farmers or ranchers each of whom have operated a Farm or Ranch for no more than 10 years.

(2) For the purposes of determining eligibility to receive funding reserved for Beginning Farmers and Ranchers under § 4284.923, a Beginning Farmer or Rancher is either:

(i) An individual Independent Producer (other than a Harvester) that has operated a Farm or Ranch for no more than 10 years or

(ii) An eligible Applicant entity, other than a Harvester, that has an Applicant ownership or membership comprised entirely of (*i.e.*, 100 percent) farmers or ranchers that have operated a Farm or Ranch for no more than 10 years.

*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 Agricultural 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 Agricultural 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; young plants, seedlings or 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 apply to the use of grant funds for purchases and hires, and 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 § 4284.925(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 2 CFR parts 200 and 400 and any successor regulations to these parts.

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

*Family farm.* A Farm (or Ranch) that produces agricultural commodities for sale in sufficient quantity to be recognized as a farm and not a rural

residence; whose owners are primarily responsible for daily physical labor and strategic management; whose hired help only supplements family labor; and, whose 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, such that the generated renewable energy, is utilized in such a way that the applicant can demonstrate expanded customer base and increased revenues returning to the producers of the agricultural commodity as a result of the project. On-farm generation of energy from wind, solar, geothermal or hydro sources is not eligible for this program.

*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 of the economic, market, technical, financial, and management capabilities of a proposed Project or business in terms of the Project's expectation for success.

*Fiscal year.* The Federal government's fiscal year.

*Harvester.* An Independent Producer of an Agricultural Commodity that is an individual or entity that can document that it has a legal right to access and harvest the majority of a primary Agricultural Commodity that will be used for the Value-Added Agricultural Product. Individuals and entities that merely glean, gather, or collect residual commodities that result from an initial harvesting or production of a primary Agricultural Commodity are not considered Harvesters and are not eligible for this program.

*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 Producer.* (1) Individual Agricultural Producers or entities that are solely owned and controlled by Agricultural Producers. Independent

Producers must produce and own more than 50 percent 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 Agricultural Product. Producers who produce the Agricultural Commodity under contract for another entity, but do not own the Agricultural Commodity or Value-Added Agricultural 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 must apply as an Independent Producer and form a program-eligible legal entity prior to execution of the grant agreement by the Agency. The Steering Committee and entity subsequently formed must meet all other program eligibility requirements.

(3) A Harvester must apply as an Independent Producer because harvester operations do not meet the definition requirements for a Farm or Ranch. Harvester applicants are therefore not eligible to receive Reserved Funds and/or Priority Points for a 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, or a Farmer or Rancher Cooperative, but may request Reserved Funds and/or Priority Points for qualified Mid-Tier Value Chain projects.

(4) The Agency shall determine the Independent Producer status of Tribes or Tribal entities without regard to ownership of the commodity to which value will be added so long as the tribal member participant, tribal entity and/or Tribe own and control at least 50 percent of the raw commodity necessary for the project, per the definition of Independent Producer in § 4284.902.

*Local or regional supply network.* An interconnected group of individuals and/or 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 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 provided for in the approved budget, must be necessary and reasonable for accomplishment of project or program objectives and can 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 § 4284.925(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). Matching funds cannot be paid by the Federal Government under another Federal award and are not included as contributions for any other Federal Award. See examples of ineligible Matching Funds and Matching Funds verification requirements in §§ 4284.926 and 4284.931.

*Medium-sized farm or ranch.* A Farm or Ranch that is structured as a Family Farm that has averaged \$500,001 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, cooperatives, or consumers that market Value-Added Agricultural Products in a manner that:

(1) Targets and strengthens the profitability and competitiveness of Small- and Medium-sized Farms or 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 Agricultural Product ownership and transfer arrangements may be necessary. Consequently, Applicant ownership of the raw Agricultural Commodity and Value-Added Agricultural Product from raw through value-added stages is not necessarily required, as long as the Mid-tier Value Chain application 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 conducting and developing 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.

*Physical 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. An example of a segregated product is non-GMO corn separated from GMO corn.

*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 the grant under this subpart 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-sized farm or ranch.* A Farm or Ranch that is structured as a Family Farm that has averaged \$500,000 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 in section 355(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2003(e)): Socially-Disadvantaged Farmer or Rancher means a farmer or rancher who is a member of a "Socially-Disadvantaged Group."

(1) For the purposes of determining eligibility to receive priority points under § 4284.924, if there are multiple farmer or rancher owners of the Applicant organization, more than 50 percent of the ownership must be held by members of a Socially-Disadvantaged Group.

(2) For the purposes of determining eligibility to received funding reserved for Socially-Disadvantaged Farmers and Ranchers under § 4284.923, if there are multiple farmer or rancher owners of the Applicant organization, all farmer and rancher owners (*i.e.*, 100 percent) must be members of a Socially-Disadvantaged Group.

*Socially-Disadvantaged group.* 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.

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

*Steering committee.* An unincorporated group comprised wholly of specifically identified Independent Producers in the process of organizing one of the four program eligible entity types (Independent Producer, Agricultural Producer Group, Farmer or Rancher Cooperative or Majority-Controlled Producer-Based Business Venture.

*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 produced in the U.S. (including the Republic of Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, or American Samoa), 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.

*Veteran farmer or rancher.* A farmer or rancher who has served in the Armed Forces, as defined in section 101(10) of title 38 United States Code, and who either has not operated a Farm or Ranch or has operated a Farm or Ranch for not more than 10 years.

(1) For the purposes of determining eligibility to receive priority points under § 4284.924, a Veteran Farmer or Rancher is either:

- (i) An individual Independent Producer (other than a Harvester) that has either never operated a Farm or Ranch or has operated a Farm or Ranch for no more than 10 years or
- (ii) An eligible Applicant entity, other than a Harvester, that has an Applicant ownership or membership of more than 50 percent Veteran Farmers or Ranchers each of whom have either never operated a Farm or Ranch or operated a Farm or Ranch for no more than 10 years.

(2) [Reserved]

*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 Agricultural Product that are eligible uses of grant funds.

#### § 4284.903 Review or appeal rights.

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

#### § 4284.904 Exception authority.

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

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

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

#### § 4284.905 Nondiscrimination and compliance with other Federal laws.

(a) *Other Federal laws.* Applicants must comply with other applicable Federal laws, including the Equal

Employment Opportunities Act of 1972, the Americans with

Disabilities Act, the Equal Credit Opportunity Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and 7 CFR part 1901, subpart E.

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

(c) *Civil rights compliance.* Recipients of grants must comply with Title VI of the Civil Rights Act of 1964, and 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, compliance reviews will be conducted after the grantee signs the applicable Assurance Agreement, and after the last disbursement of grant funds have been made and the facility or program 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. Civil Rights 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. Applications for both Planning and Working Capital grants are generally excluded from the environmental review process by 7 CFR 1940.333.

**§ 4284.908 Compliance with other regulations.**

(a) *Departmental regulations.* Applicants must comply with all applicable Departmental regulations and Office of Management and Budget regulations concerning grants in 2 CFR chapter IV.

(b) *Cost principles.* Applicants must comply with the cost principles found in 2 CFR parts 200, subpart E, 2 CFR part 400, and in 48 CFR subpart 31.2.

(c) *Definitions.* If a term is defined differently in the Departmental Regulations, 2 CFR parts 200 through 400 or 48 CFR subpart 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's Web site and at any Rural Development office.

**§§ 4284.910–4284.914 [Reserved]**

**Funding and Programmatic Change Notifications**

**§ 4284.915 Notifications.**

In implementing this subpart, the Agency will issue public 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, the minimum and maximum grant amounts, and any additional funding information as determined by the Agency; and

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

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

(1) Priority categories to be used for awarding Administrator or State Director points, which may include any of the following:

- (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 application filing instructions specified in § 4284.933.

(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. If a funding level is not known at the time of notification, it will be posted to the program Web site once an appropriation is enacted. In addition, all information will be available at any Rural Development office.

(d) *Timing.* The Agency will issue notices under this section as follows:

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

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

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

**§§ 4284.916–4284.919 [Reserved]**

**Eligibility**

**§ 4284.920 Applicant eligibility.**

To be eligible for a grant under this subpart, an Applicant must demonstrate that they meet the requirements specified in paragraphs (a) through (d) of this section, as applicable, and are subject to the limitations specified in paragraphs (e) and (f) of this section.

(a) *Type of Applicant.* The Applicant, including any Federally-recognized Tribes and tribal entities (Rural Development State Offices and posted application guidelines will provide additional information on Tribal eligibility), 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 more than 50 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.

(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. Multiple applications from separate entities with identical or greater than 75 percent common ownership, or from a parent, subsidiary or affiliated organization (with "affiliation" defined by Small Business Administration regulation 13 CFR 121.103, or successor regulation) are not permitted. Further, Applicants who have already received a Planning Grant for the proposed project cannot receive another Planning Grant for the same project. Applicants who have already received a Working Capital Grant for the proposed project cannot receive any additional grants for that project.

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

#### § 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

(b) *Purpose eligibility.* (1) The grant funds requested must not exceed any maximum amounts specified in the annual solicitation for Planning and Working Capital Grant requests, per § 4284.915.

(2) The Matching Funds required for the project budget must be eligible and without a real or apparent Conflict of Interest, available during the project period, and source verified in the application.

(3) The proposed project must be limited to eligible planning or working capital activities as defined at § 4284.925, as applicable, with eligible tasks directly related to the processing and/or marketing of the subject Value-Added Agricultural 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. Applicants who submit applications containing ineligible expenses totaling less than 10 percent of Total Project Costs must remove those expenses from the project budget or replace with eligible expenses, if selected for an award.

(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 Agricultural 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 Agricultural 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 Plan or Marketing Plan for the value-added project in lieu of a Feasibility Study. The Applicant must still adequately document increased customer base and increased revenues returning to the Applicant producers as a result of the project in their application, 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) All applicants applying for Working Capital Grant funds must document the quantity of the raw Agricultural Commodity that will be used for the Value-Added Agricultural Product, expressed in an appropriate unit of measure (pounds, tons, bushels, etc.) to demonstrate the scale of the applicant's project. This quantification must include an estimated total quantity of the Agricultural Commodity needed for the project, the quantity that will be provided (produced and owned) by the Agricultural Producers of the applicant organization, and the quantity that will be purchased or donated from third-party sources.

(8) All Applicants requesting Working Capital grant 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.

**§ 4284.923 Reserved funds eligibility.**

The Applicant must meet the requirements specified in this section, as applicable, if the Applicant chooses to compete for reserved funds. A Harvester is not eligible to compete for reserved funds under paragraph (a) of this section, but is eligible to compete for reserved funds under paragraph (b) of this section. In accordance with application deadlines, all eligible, but unfunded reserved funds applications will be eligible to compete for general funds in that same Fiscal Year, as funding levels permit.

(a) 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 of the requirements for the applicable definition found in § 4284.902.

(1) For beginning farmers and ranchers (including veterans), 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.

(2) 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.

(b) If the Applicant is applying for Mid-Tier Value Chain reserved funds, the Applicant must be one of the four VAPG Applicant types. The application must:

(1) Provide documentation demonstrating that the project meets the definition of Mid-Tier Value Chain;

(2) 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 Agricultural 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;

(3) Describe at least two alliances, linkages, or partnerships within the value chain that link Independent Producers with businesses, cooperatives, or consumers that market value-added agricultural commodities or Value-Added Agricultural Products in a manner that benefits Small- or Medium-sized Farms and Ranches that are structured as a Family Farm, including the names of the parties and the nature of their collaboration;

(4) Demonstrate how the project, due to the manner in which the Value-Added Agricultural 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 or Ranches 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 or appropriate certifications evidencing eligible farm income is sufficient.

(5) Document that the eligible Agricultural Producer Group/Farmer or Rancher 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/Farmer or Rancher Cooperative/Majority-Controlled Producer-Based Business Venture engaged in the value-chain on a marketing strategy;

(i) 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.

(ii) Independent Producer Applicants must provide documentation to confirm that the non-applicant Agricultural Producer Group/Farmer or Rancher 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;

(6) Demonstrate that the members of the Applicant organization that are benefiting from the proposed project currently own and produce more than 50 percent of the raw Agricultural Commodity that will be used for the Value-Added Agricultural Product that is the subject of the proposal; and

(7) 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.

**§ 4284.924 Priority scoring eligibility.**

Applicants that demonstrate eligibility may apply for priority points if their applications: Propose projects

that contribute to increasing opportunities for Beginning Farmers or Ranchers, Socially-Disadvantaged Farmers or Ranchers, Veteran Farmers or Ranchers, or Operators of Small- or Medium-sized Farms or Ranches that are structured as a Family Farm; or propose Mid-Tier Value Chain projects; or are a Farmer or Rancher Cooperative. A Harvester is eligible for priority points only if the Harvester is proposing a Mid-Tier Value Chain project.

(a) Applicants seeking priority points as Beginning Farmers or Ranchers or as Socially Disadvantaged Farmers or Ranchers must provide the documentation specified in § 4284.923(a)(1) or (2), as applicable.

(b) Applicants seeking priority points as Veteran Farmers or Ranchers must provide the documentation specified in § 4284.923(a)(1) or (2), as applicable, and must submit form DD-214, "Report of Separation from the U.S. Military," or subsequent form.

(c) Applicants seeking priority points as Operators of Small- or Medium-sized Farms or Ranches that are structured as a Family Farm must:

- (1) Be structured as a Family Farm;
- (2) Meet all requirements in the associated definitions; and
- (3) Provide the following documentation:

(i) 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 or ranch in the previous three years, not to exceed \$500,000 for operators of small-sized farms or ranches or \$1,000,000 for operators of medium-sized farms or ranches;

(ii) The names and identification of the blood or marriage relationships of all Applicant/owners of the farm; and

(iii) 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.

(d) 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 § 4284.923(b)(1) through (7), demonstrating that the project meets the Mid-Tier Value Chain definition.

(e) Applicants seeking priority points for a Farmer or Rancher Cooperative must:

(1) 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;

(2) 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 substantially participates in the production of the majority of the Agricultural Commodity to which value will be added; and

(3) Provide evidence of "good standing" as a cooperatively operated business in the State of incorporation or operations, as applicable.

(f) Applicants applying as Agricultural Producer Groups, Farmer and Rancher Cooperatives, or Majority-Controlled Producer-Based Business Ventures (group Applicants) may request additional priority points for projects that "best contribute to creating or increasing marketing opportunities" for operators of Small- and Medium-sized Farms and Ranches that are structured as Family Farms, Beginning Farmers and Ranchers, Socially-Disadvantaged Farmers and Ranchers, and Veteran Farmers and Ranchers. The annual solicitation and Agency application package will provide instructions and documentation requirements for group Applicants to apply for these additional priority points.

#### **§ 4284.925 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 Grant 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.

(1) Planning Grant funds may not be used to compensate Applicants or family members for participation in Feasibility Studies.

(2) In-kind contribution of Matching Funds to cover Applicant or family member participation in planning activities is allowed so long as the value of such contribution does not exceed a maximum of 25 percent of the Total Project Costs and an adequate

explanation of the basis for the valuation, referencing comparable market values, salary and wage data, expertise or experience of the contributor, per unit costs, industry norms, etc., is provided. Final valuation for Applicant or family member in-kind contributions is at the discretion of the Agency. Planning funds may not be used to evaluate the agricultural production of the commodity itself, other than to determine the project's input costs related to the feasibility of processing and marketing the Value-Added Agricultural 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 Agricultural Product.

(1) 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 Agricultural Product to consumers, paying for raw commodity inventory (less than 50 percent of the amount required for the project) from an unaffiliated third party, necessary to produce the Value-Added Agricultural Product, and paying for a marketing campaign for the Value-Added Agricultural Product.

(2) 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.

#### **§ 4284.926 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 § 4284.925 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 § 4284.925(a) and (b);

(b) Pay costs for scenarios with noncompetitive trade practices;

(c) Plan, repair, rehabilitate, acquire, or construct a building or facility (including a processing facility);

(d) Purchase, lease purchase, or install fixed equipment, including processing equipment;

(e) Purchase or repair vehicles, including boats;

(f) Pay for the preparation of the grant application;

(g) Pay expenses not directly related to the funded project for the processing and marketing of the Value-Added Agricultural Product;

(h) Fund research and development;

(i) Fund political or lobbying activities;

(j) Fund any activities prohibited by 2 CFR parts 200 through 400, 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, but not limited to production planning, purchase of seed or rootstock or other production inputs, labor for cultivation or harvesting crops, and delivery of raw 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 for goods or services from a person or entity that employs the owner or an Immediate Family member;

(o) Duplicate current services or replace or substitute support previously provided;

(p) 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;

(q) Pay any judgment or debt owed to the United States;

(r) Purchase land;

(s) Pay for costs associated with illegal activities; or

(t) Purchase the Agricultural Commodity to which value will be added (raw commodity) from the applicant entity; applicant-owned or related entity, or members of the applicant entity.

#### § 4284.927 Funding limitations.

(a) Grant funds may be used to pay up to 50 percent of the Total 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 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 Business Ventures 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 of total program funding to fund projects that benefit Beginning Farmers or Ranchers or Socially-Disadvantaged Farmers or Ranchers; and

(2) 10 percent of total program funding 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 subpart to eligible applicants in the general funds competition.

#### §§ 4284.928–4284.929 [Reserved]

#### Applying for a Grant

##### § 4284.930 Preliminary review.

The Agency encourages Applicants to contact their State Office well in

advance of the application submission deadline, to ask questions and to discuss Applicant and Project eligibility potential. At its option, the Agency may establish a preliminary review deadline in accordance with § 4284.915, 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.

##### § 4284.931 Application package.

All Applicants are required to submit a complete application package that is comprised of all of the elements in this section.

(a) *Application forms.* The application must include all forms listed in the annually published notice for the program. The following application forms (or their successor forms) must be completed when applying for a grant under this subpart.

(1) “Application for Federal Assistance.”

(2) “Budget Information-Non-Construction Programs.”

(3) “Assurances—Non-Construction Programs.”

(4) All Applicants (including individuals and sole proprietorships) are required to have a DUNS number and maintain registration with the System for Award Management (SAM).

(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 §§ 4284.925 and 4284.926 are met; and

(iv) Funding limitation requirements in § 4284.927 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.* The overall goal of this program and the projects it supports is to create and serve new markets, with a resulting increase in jobs, customer base and revenues returning to the producer. Applicants must provide specific information about plans to track and evaluate progress toward these outcomes as a way for the Agency to ascertain whether or not the primary program goals and project goals proposed in the work plan are likely to be accomplished during the project

period. The application package will provide additional instruction to assist Applicants when responding to this criterion. The required data, including accomplishments as outlined in § 4284.960 and 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 each award. At a minimum, data included in each application submission must include both target outcomes and timeframes for achieving results:

(A) The number of jobs anticipated to be created or saved as a direct result of the project.

(B) The current baseline number of customers.

(C) The estimated expansion of customer base as a direct result of the project.

(D) The current baseline of revenue.

(E) The estimated increase in revenue as a direct result of the project.

(F) Applicants for both Working Capital and Planning Grants are invited to suggest additional benchmarks for evaluation that are specific to proposed project activities or outcomes and the corresponding timeframes for accomplishing them; these should be informed by the program objectives, stated above, related to new markets, expansion of customer base, and revenues returning to producer Applicants; as well as to the practical and/or logistical activities and tasks to be accomplished during the project period.

(ii) *Proposal evaluation criteria.* Applicants for both Planning and Working Capital Grants must address each proposal evaluation criterion identified in § 4284.942 in narrative form, in the application package.

(3) *Certification of Matching Funds.* Using the format prescribed by the application package, Applicants must certify that:

(i) Cost-share Matching Funds will be spent in advance of grant funding, such that for every dollar of grant funds disbursed, not less than an equal amount of Matching Funds will have been expended prior to submitting the request for reimbursement; and

(ii) If Matching Funds are proposed in an amount exceeding the grant amount, those Matching Funds must be spent at a proportional rate equal to the match-to-grant ratio identified in the proposed budget.

(4) *Verification of cost-share Matching Funds.* Using the format prescribed by the application package, the Applicant must demonstrate and provide authentic

documentation from the source to confirm the eligibility and availability of both cash and in-kind contributions that meet the definition requirements for Matching Funds and Conflict of Interest in § 4284.902, as well as the following criteria:

(i) Except as provided at § 4284.925(a) and (b), 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 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 § 4284.925(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, applicant and 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 § 4284.925(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 solicitation issued pursuant to § 4284.915. Applicants requesting Working Capital Grants of less than \$50,000 are not required to provide Feasibility Studies or Business Plans, but must provide information demonstrating increases in customer base and revenue returns to the producers supplying the majority of the Agricultural Commodity as a result of the project. See § 4284.922(b)(6)(ii).

#### **§ 4284.933 Filing instructions.**

Unless otherwise specified in a notification issued under § 4284.915, the requirements specified in paragraphs (a) through (e) of this section apply to all applications.

(a) *When to submit.* Complete applications must be received by the Agency on or before the application deadline established for a Fiscal Year to be considered for funding for that Fiscal Year. Applications received by the Agency after the application deadline established for a Fiscal Year will not be considered. Revisions or additional information will not be accepted after the application deadline.

(b) *Incomplete applications.* Incomplete applications will be rejected. Applicants will be informed of the elements that made the application incomplete. If a resubmitted application is received by the applicable application deadline, the Agency will reconsider the application.

(c) *Where to submit.* All applications must be submitted to the State Office of Rural Development in the State where the project primarily takes place, or online through grants.gov.

(d) *Format.* Applications may be submitted as paper copy, or electronically via grants.gov. If submitted as paper copy, only one original copy should be submitted. An application submission must contain all required components in their entirety. Emailed or faxed submissions will not be acknowledged, accepted or processed by the Agency.

(e) *Other forms and instructions.* Upon request, the Agency will make available to the public the necessary forms and instructions for filing applications. These forms and instructions may be obtained from any State Office of Rural Development, or the Agency's Value-Added Producer Grant program Web site in [http://www.rurdev.usda.gov/BCP\\_VAPG.html](http://www.rurdev.usda.gov/BCP_VAPG.html).

#### §§ 4284.934–4284.939 [Reserved]

### Processing and Scoring Applications

#### § 4284.940 Processing applications.

(a) *Initial review.* Upon receipt of an application on or before the application submission deadline for each Fiscal Year, the Agency will conduct a review to determine if the Applicant and project are eligible, and if the application is complete and sufficiently responsive to program requirements.

(b) *Notifications.* After the review in paragraph (a) of this section has been conducted, if the Agency has determined that either the Applicant or project is ineligible or that the application is not complete to allow evaluation of the application or sufficiently responsive to program requirements, the Agency will notify the Applicant in writing and will include in the notification the reason(s) for its determination(s).

(c) *Resubmittal by Applicants.* Applicants may submit revised applications to the Agency in response to the notification received under paragraph (b) of this section. If a revised grant application is received on or before the application deadline, it will be processed by the Agency. If a revised application is not received by the specified application deadline, the Agency will not process the application and will inform the Applicant that their application was not reviewed due to tardiness.

(d) *Subsequent ineligibility determinations.* If at any time an application is determined to be ineligible, the Agency will notify the Applicant in writing of its determination.

#### § 4284.941 Application withdrawal.

During the period between the submission of an application and the execution of award documents, the Applicant must notify the Agency in writing if the project is no longer viable or the Applicant no longer is requesting financial assistance for the project. When the Applicant notifies the Agency, the selection will be rescinded or the application withdrawn.

#### § 4284.942 Proposal evaluation criteria and scoring applications.

(a) *General.* The Agency will only score applications for which it has determined that the Applicant and project are eligible, the application is complete and sufficiently responsive to program requirements. Any Applicant whose application will not be reviewed because the Agency has determined it fails to meet the preceding criteria will be notified of appeal rights pursuant to § 4284.903. Each such viable application the Agency receives on or before the application deadline in a Fiscal Year will be scored in the Fiscal Year in which it was received. Each application will be scored based on the information provided and 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 (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 Agricultural Product, and the expected increase in revenue returns to the producer-owners providing the majority of the raw Agricultural Commodity to the project. Applications that demonstrate high likelihood of success in these areas will receive more points than those that demonstrate less potential in these areas.

(2) *Qualifications of Project Personnel (graduated score 0–20 points).* Identify the individuals who will be responsible for completing the proposed tasks in the work plan, including the roles and activities that owners, staff, contractors, consultants or new hires may perform;

and demonstrate that these individuals have the necessary qualifications and expertise, including those hired to do market or feasibility analyses, or to develop a business operations plan for the value-added venture. Include the qualifications of those individuals responsible to lead or manage the total project (Applicant owners or project managers), as well as those individuals responsible for actually conducting the various individual tasks in the work plan (such as consultants, contractors, staff or new hires). Demonstrate the commitment and the availability of any consultants or other professionals to be hired for the project. If staff or consultants have not been selected at the time of application, provide specific descriptions of the qualifications required for the positions to be filled. Applications that demonstrate the strong credentials, education, capabilities, experience and availability of project personnel that will contribute to a high likelihood of project success will receive more points than those that demonstrate less potential for success in these areas.

(3) *Commitments and Support (graduated score 0–10 points).* Producer commitments to the project will be evaluated based on the number of Independent Producers currently involved in the project; and the nature, level and quality of their contributions. End-user commitments will be evaluated on the basis of potential or identified markets and the potential amount of output to be purchased, as evidenced by letters of intent or contracts from potential buyers referenced within the application. Other Third-Party commitments to the project will be evaluated based on the critical and tangible nature of the contribution to the project, such as technical assistance, storage, processing, marketing, or distribution arrangements that are necessary for the project to proceed; and the level and quality of these contributions. Applications that demonstrate the project has strong direct financial, technical and logistical support to successfully complete the project will receive more points than those that demonstrate less potential for success in these areas.

(4) *Work Plan and Budget (graduated score 0–20 points).* In accord with § 4284.922(b)(5), Applicants must submit a comprehensive work plan and budget. The work plan must provide specific and detailed narrative descriptions of the tasks and the key project personnel that will accomplish the project's goals. The budget must present a detailed breakdown of all estimated costs associated with the

activities and allocate those costs among the listed tasks. The source and use of both grant and Matching Funds must be specified for all tasks. An eligible start and end date for the project itself and for individual project tasks must be clearly indicated and may not exceed Agency specified timeframes for the grant period. Points may not be awarded unless sufficient detail is provided to determine that both grant and Matching Funds are being used for qualified purposes and are from eligible sources without a Conflict of Interest. It is recommended that Applicants utilize the budget format templates provided in the Agency's application package.

(5) *Priority Points (up to 10 points)*. Priority points may be awarded in both the General Funds competition and the Reserved Funds competitions. Qualifying applications may be awarded priority points under paragraphs (b)(5)(i) and (ii) of this section, for up to a total of 10 points.

(i) *Priority categories (lump sum score of 0 or 5 points)*. Qualifying Applicants may request priority points under this paragraph if they meet the requirements for one of the following categories and provide the documentation specified in § 4284.924, as applicable. Priority categories are: Beginning Farmer or Rancher, Socially-Disadvantaged Farmer or Rancher, Veteran 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 § 4284.924. Applications from qualifying priority categories will be awarded 5 points. Applicants will not be awarded more than 5 points even if they qualify for more than one of the priority categories.

(ii) *Best contributing (up to 5 points)*. Applications from Agricultural Producer Groups, Farmer or Rancher Cooperatives, and Majority-Controlled Producer-Based Business Ventures (applicant groups) may be awarded up to 5 additional points for contributing to the creation of or increase in marketing opportunities for Beginning Farmers or Ranchers, Socially-Disadvantaged Farmers or Ranchers, Veteran Farmers or Ranchers, or Operators of a Small- or Medium-sized Farm or Ranch that are structured as a Family Farm (priority groups). Applicant groups must submit documentation on the percentage of existing membership that is comprised of one or a combination of the above priority groups and on the anticipated

expansion of membership to one or more additional priority groups. Applications must contain sufficient information as described in the annual solicitation and application package to enable the Agency to make the appropriate determinations for awarding points. If the application does not contain sufficient information, the Agency will not award points accordingly.

(6) *Priority Categories (graduated score 0–10 points)*. Unless otherwise specified in a notification issued under § 4284.915(b)(1), the Administrator or State Director has discretion to award up to 10 points to an application to improve the geographic diversity of awardees in a Fiscal Year. In the event of a National competition, the Administrator will award points and for a State-allocated competition, the State Director will award points.

#### §§ 4284.943–4284.949 [Reserved]

#### Grant Awards and Agreement

##### § 4284.950 Award process.

(a) *Selection of applications for funding and for potential funding*. The Agency will select and rank applications for funding based on the score an application has received in response to the proposal evaluation criteria, compared to the scores of other value-added applications received in the same Fiscal Year. Higher scoring applications will receive first consideration for funding. The Agency may set a minimally acceptable score for funding, which will be noted in the published program notice. 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. This is prior to the signing of a Grant Agreement. 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, an applicable Letter of Intent to Meet Conditions. If the Applicant believes that certain conditions cannot be met, the Applicant may propose alternate conditions to the Agency. The Agency must concur with any proposed changes to the Letter of Conditions by the Applicant before the application will be further processed. If the Agency agrees to any proposed changes, the Agency will issue a revised or amended Letter of Conditions that defines the final conditions under which the grant will be made.

(b) *Grant agreement and conditions*. Each grantee will be required to sign a grant agreement that outlines the approved use of funds and actions under the award, as well as the restrictions and applicable laws and regulations that pertain to the award.

(c) *Other documentation*. The grantee will execute additional documentation in order to obligate the award of funds; including, but not limited to:

- (1) "Request for Obligation of Funds;"
- (2) "Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transaction;"
- (3) "Certification Regarding Drug-Free Workplace Requirements;"
- (4) "Assurance Agreement (under Title VI, Civil Rights Act of 1964);"
- (5) "ACH Vendor/Miscellaneous Payment Enrollment Form;" or
- (6) "Disclosure of Lobbying Activities."

(d) *Grant disbursements*. Grant disbursements will be made in accordance with the Letter of Conditions, and/or the grant agreement, as applicable.

#### §§ 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 will 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 narrative and financial performance reports, as prescribed by the Agency in the grant agreement, that include required data elements related to achieving programmatic objectives and a comparison of accomplishments with the objectives stated in the application. At a minimum, these include comparisons of anticipated activities and outcomes and timeframes for achieving:

- (1) Expansion of customer base as a result of the project;
- (2) Increased revenue returned to the producer as a result of the project;
- (3) Jobs created or saved as a result of the project;
- (4) Evidence of receipt of matching funds, if included or provided for in project.

(i) 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.

(ii) 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.

(iii) 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.

(iv) 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:

(A) Information that will enable evaluation of the economic impact of program awards, such as:

- (1) Business starts and clients served;
- (2) Data associated with producer market expansion, new market penetration, and changes in customer base or revenues.

(B) Information that would promote greater understanding of the key determinants of the success of individual projects or inform program administration and evaluation, such as:

- (1) The producer's experience related to financial management, budgeting, and running a business enterprise.
- (2) 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
- (3) Recommendations from Beginning Farmers or Ranchers, Socially-Disadvantaged Farmers or Ranchers, or Veteran Farmers or Ranchers.

(C) Information that would inform or enable the aggregation of data for

program administration or evaluation purposes.

(v) 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.

#### **§§ 4284.963–4284.999 [Reserved]**

Dated: April 28, 2015.

**Lisa Mensah,**

*Under Secretary, Rural Development.*

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