

**DEPARTMENT OF AGRICULTURE****Rural Business-Cooperative Service****Rural Utilities Service****7 CFR Part 4280**

RIN 0570-AA76

**Rural Energy for America Program—  
Grants and Guaranteed Loans**

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

**ACTION:** Proposed rule.

**SUMMARY:** Rural Development, a mission area within the U.S. Department of Agriculture, is proposing grant and guaranteed loan programs for renewable energy systems and energy efficiency improvement projects as provided in the Food, Conservation, and Energy Act of 2008. The proposed rule will revise the Rural Energy for America Program (REAP) found in 7 CFR part 4280, subpart B.

**DATES:** Comments on the proposed rule must be received on or before June 11, 2013. The comment period for the information collection under the Paperwork Reduction Act of 1995 continues through June 11, 2013.

**ADDRESSES:** You may submit comments to this 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:** Kelley Oehler, Branch Chief, Energy Division, U.S. Department of Agriculture, 1400 Independence Avenue SW., Stop 3225, Washington, DC 20250-3201; telephone (202) 720-6819.

**SUPPLEMENTARY INFORMATION:****EXECUTIVE SUMMARY****I. Purpose of the Regulatory Action**

This proposed rule will revise 7 CFR part 4280, subpart B to include changes that the Agency had previously identified, but did not include in the April 2011 Interim Rule. The Agency did not include these changes in order to expedite the implementation of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) program modifications and to improve the administration of the program via an updated regulation rather than, in part, through **Federal Register** notices. This proposed rule fulfills our commitment to implement changes that were not included in the April 2011 Interim Rule.

The Agency is authorized under Section 9001 of the 2008 Farm Bill and Section 9007 of the amended Farm Security and Rural Investment Act of 2002 to continue providing to agricultural producers and rural small businesses loan guarantees and grants for the development and construction of renewable energy systems and energy efficiency improvement projects. The 2008 Farm Bill also authorized the Agency to provide grants specifically for energy audits, renewable energy development assistance, and renewable energy system feasibility studies.

**II. Summary of Major Provisions of the Regulatory Action**

The major substantive changes being proposed, along with a brief justification for each, are presented below.

- *Project eligibility.* The Agency is proposing to allow the purchase of refurbished renewable energy systems and the retrofitting of an existing renewable energy system as eligible projects under this subpart. These changes allow the Agency to provide funds to such projects in recognition of the maturation of the renewable energy industry, wherein earlier generations of systems are now being refurbished or retrofitted with more energy efficient components. To illustrate the difference between retrofitting and refurbishing, consider the following wind turbine example. A wind turbine would be considered retrofitted if new blades were put on to improve the efficiency of the turbine. If, however, the turbine is taken off site to a factory to have its gears and other worn parts replaced, it would be considered refurbished.

For energy efficiency improvement projects, the Agency is proposing several changes, including ensuring that energy efficiency improvements use less energy on an annual basis than the original building and/or equipment they improve or replace in order to be

eligible for program funding. These changes are being proposed to provide clarification and achieve consistency in the administration of the program.

- *Technical reports.* Changes being proposed for technical reports include simplifying the energy efficiency improvement technical report; simplifying the technical report for renewable energy system projects with total project costs of \$200,000 or less; revising provisions associated with what is required for an energy assessment and an energy audit; providing for a single technical report option for renewable energy systems submitted through the process for applications for projects with total project costs of \$200,000 or less; and eliminating the distinction between large and small solar and wind projects in preparing the technical reports. The Agency is proposing these changes to reduce overall burden for the program and streamline the application process.

- *Applications.* The proposed rule incorporates three grant application processes—one for projects with total project costs greater than \$200,000; one for projects with total project costs of \$200,000 or less (but more than \$80,000); and one for projects with total project costs of \$80,000 or less. The three application processes require different amounts of paperwork. With the proposed changes, the smaller the total project costs, the lesser amount of paperwork and burden associated with the process. The Agency is proposing these changes to reduce overall burden for the program and to streamline the grant application process by requesting documentation for a complete application based on total project costs.

- *Scoring criteria.* The Agency is proposing to modify several elements of the scoring criteria including eliminating the technical merit and commercial availability criteria; adding a criterion based on energy generated per dollar requested; modifying the size of the agricultural producer/small business criterion; and modifying the environmental benefits criterion. These changes are being proposed to make the scoring more objective and to better align the scoring metrics with the goals of the program.

- *Pre-commercial technology.* The Agency is proposing to remove pre-commercial technology as an eligible technology. As proposed, only commercially available technologies would be eligible for grants and guaranteed loans. The Agency is making this change to avoid overlap with the Biorefinery Assistance guaranteed loan program.

- *Energy audit requirement threshold for Energy Efficiency Improvements (EEI) applications.* The Agency is proposing to raise the threshold for requiring an energy audit (versus an energy assessment) from \$50,000 to \$200,000 in total project cost. The Agency is proposing this change because experience with the program shows that the information provided in an energy assessment for these projects is sufficient for the Agency to assess the merits of the EEI project. Additionally, this change makes it unnecessary for an applicant to incur the cost of a full energy audit for a \$50,000 project when an energy assessment provides sufficient information for the Agency to evaluate the project.

- *Energy analysis.* The Agency is proposing to allow for an energy efficiency improvement project with total project costs of \$80,000 or less to conduct an energy analysis instead of an energy assessment or an energy audit. The Agency is proposing this because the information provided by an energy analysis for these size projects is sufficient for the Agency to assess the merits of the EEI project, while at the same time reducing the costs to the applicant as an energy analysis is less costly than an energy assessment.

- *Competing guaranteed loan only applications.* The Agency is proposing to implement for guaranteed loan-only applications a quarterly competition. Guaranteed loan-only applications that achieve a minimum priority score would compete for available funds on the first business day of the second month of each Federal fiscal quarter. Guaranteed loan-only applications that do not achieve the minimum priority score would only be able to compete for funding during the last quarter of the Federal fiscal year. The change to quarterly awards is intended to make this part of REAP more appealing to lenders and prospective borrowers by ensuring funds are available all year, while competing the loan applications is intended to help ensure the most worthwhile projects receive priority for funding.

### III. Summary of Benefits and Costs

A Regulatory Impact Analysis (RIA) was undertaken to examine the benefits and costs of the proposed changes to the Interim Rule for REAP. The RIA calculated a net cost savings due to proposed improvements in the implementation of the REAP program.

The estimate of benefits under the proposed rule are not expected to differ significantly from those that would have occurred under the Interim Rule for REAP. However, the net savings

afforded to applicants and to the federal government as a result of streamlining and reduced burden will result in positive net benefits. Using the estimate of cost changes per application and the estimate of the number of applications will be affected by this rulemaking, the net benefits of this rule are estimated to be approximately \$3.7 million in Fiscal Year 2013.

In addition, these changes are not expected to affect the nature and size of the environmental and energy impacts of the REAP program. While there are expected to be job benefits from REAP funding, these jobs were not quantified.

#### Background Information

##### Executive Order 12866

This proposed rule has been reviewed under Executive Order (EO) 12866 and has been determined to be economically significant by the Office of Management and Budget. The EO defines a “significant regulatory action” as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this EO.

The Agency conducted a benefit-cost analysis to fulfill the requirements of EO 12866. In this analysis, the Agency identifies potential benefits and costs of REAP to lenders, borrowers, and the Agency. The analysis contains quantitative estimates of the burden to the public and the Federal government and qualitative descriptions of the expected economic, environmental, and energy impacts associated with REAP.

##### Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act 1995 (UMRA) (Pub. L. 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 proposed 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

Under this program, the Agency conducts a National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, review for each application received. To date, no significant environmental impacts have been reported, and Findings of No Significant Impact (FONSI) have been issued for each approved application. Taken collectively, the applications show no potential for significant adverse cumulative effects.

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, “Environmental Program.” Rural Development has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with NEPA, an Environmental Impact Statement is not required. Grant and guaranteed loan applications will be reviewed individually to determine compliance with NEPA.

##### Executive Order 12988, Civil Justice Reform

This proposed 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 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 proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The

provisions contained in the proposed 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.

In compliance with the RFA, Rural Development has determined that this action, while mostly affecting small entities, will not have a significant economic impact on a substantial number of these small entities. Rural Development made this determination based on the fact that this regulation only impacts those who choose to participate in the program. Small entity applicants will not be affected to a greater extent than large entity applicants.

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

The regulatory impact analysis conducted for this proposed 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 proposed rule will not have any adverse impacts on energy supply, distribution, or use.

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

This program is not subject to the provisions of EO 12372, which require intergovernmental consultation with State and local officials.

#### Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This EO imposes requirements on Rural Development in the development of regulatory policies that have Tribal implications or preempt Tribal laws. Rural Development has determined that the proposed rule has substantial direct effects on one or more Indian Tribe(s) or

on either the relationship or the distribution of powers and responsibilities between the Federal Government and the Indian Tribes. This rule was included in the USDA Joint Agency Regional Consultations that consolidated consultation efforts of 70 rules from the 2008 Farm Bill. USDA Rural Development sent senior level agency staff to seven regional locations and reached out to Tribal leadership in each region to consult on this proposed rule. Upon completion of the consultation process, USDA Rural Development analyzed the feedback and incorporated input from the consultation into this regulation.

For example, with the intent to increase Tribal participation in the program, the definition of a small business in this rule includes Tribal corporations chartered under Section 17 of the Indian Reorganization Act (25 U.S.C. 477) or other Tribal business entities that have similar structures and relationships with their Tribal governments as determined by the Agency. The Agency shall determine the small business status of such a Tribal entity without regard to the resources of the Tribal government.

USDA will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule. The policies contained in this rule do not have implications that preempt Tribal law.

#### Programs Affected

The Catalog of Federal Domestic Assistance program number assigned to the affected program is 10.868, Rural Energy for America Program.

#### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, USDA Rural Development will seek the Office of Management and Budget (OMB) approval of the reporting and recordkeeping requirements contained in this rule and hereby open a 60-day public comment period.

*Title:* Rural Energy for America Program.

*Type of Request:* New collection.

*Abstract:* Rural Development is providing grants and guaranteed loans for the construction or retrofitting of renewable energy systems and to make energy efficiency improvements; grants for energy audits; grants for renewable energy development assistance; and grants for feasibility studies for renewable energy systems. This financial assistance is contained in 7 CFR part 4280, subpart B.

The collection of information is vital for Rural Development to make wise

decisions regarding the eligibility of projects and borrowers in order to ensure compliance with the regulations and that the funds obtained from the Government are used appropriately (e.g., used for the purposes for which the guaranteed loans were awarded). The type of information required depends on the type of financial assistance being sought, as summarized below.

1. *Renewable energy systems (RES) and energy efficiency improvements (EEI) grants.* Persons seeking RES or EEI grants under this program will have to submit applications applicable to the size of their proposed projects. The information to be included is similar, but applications for projects with total project costs of \$200,000 or less require less information to be submitted than applications for projects with total project costs of more than \$200,000. Similarly, applications for projects with total project costs of \$80,000 or less require still less information to be submitted than the other applications.

All applications require certain forms and certifications, applicant information (or, in the case of applications for projects with total project costs of \$80,000 or less, a certification that the applicant is eligible), project information (or, in the case of applications for projects with total project costs of \$80,000 or less, a certification that the project is eligible), information on previous grants and guaranteed loans received under REAP, information on environmental benefits, and matching funds, and a technical report. Applications for projects with total project costs of more than \$200,000 also require financial information on the applicant and any affiliated companies, and, if the application is for a renewable energy system with total project costs of more than \$200,000, a feasibility study for the renewable energy system. Information in the application will be used to determine applicant and project eligibility, including if the project has technical merit.

Between grant approval and completion of project construction, grantees are required to submit semiannual performance reports, with a final project development report due once the project has been constructed.

Once the project has been completed, annual reports are required on the project. For a renewable energy system project, the outcome project performance report is required annually for 3 years following its completion. For an energy efficiency improvement project, the outcome project performance report is required annually for 2 years following its completion.

2. *Renewable energy systems and energy efficiency improvements guaranteed loans.* With one major exception, persons seeking loan guarantees under this program will have to submit applications that include the information required for grant applications of similar total project costs. For example, loan guarantee requests for total project costs of \$200,000 or less would follow the application requirements of grants with total project costs of \$200,000 or less (but more than \$80,000). The major exception is in regards to the forms, certifications, and agreements required for loan guarantee applications, which include, but are not limited to, the lender's analysis, appraisals, commercial credit reports on the borrower, and proposed loan agreement. The information included in applications for loan guarantee will be used to determine applicant and project eligibility and to ensure that funds are used for projects that are likely to be financially sound.

Once a project has been approved and the loan has been guaranteed, lenders must submit periodic reports on the status of their loan portfolios and, when applicable, bimonthly default reports. In addition, lenders are required to conduct annual inspections of each completed project.

3. *Renewable energy system feasibility study grants.* Persons seeking a renewable energy system feasibility study grant will have to submit certain standard forms; the primary North American Industry Classification System (NAICS) code applicable to the applicant's operation if known or a description of the operation in enough detail for the Agency to determine the primary NAICS code; certification that the applicant is a legal entity in good standing (as applicable), and operating in accordance with the laws of the state(s) where the applicant has a place of business; a proposed scope of work; certification that the applicant has not received any other Federal or State assistance for a feasibility study for the same renewable energy system project that is the subject of the application; if the applicant is a rural small business, certification that the feasibility study grant will be for a renewable energy system project that is located in a rural area; and certification associated with financial information to determine the applicant's size. The information included in applications will be used to determine applicant and project eligibility and to ensure that funds are used for viable projects. Beginning the first full year after the feasibility study has been completed, a grantee is

required to submit an outcome project performance report annually for 2 years on the status of the renewable energy system for which the feasibility study was completed.

4. *Energy audit and renewable energy development assistance grants.* Entities seeking an energy audit or renewable energy development assistance grant will have to submit certain standard forms; certification that the applicant is a legal entity in good standing (as applicable), and operating in accordance with the laws of the state(s) where the applicant has a place of business; and a proposed scope of work. The information included in applications for the grant will be used to determine applicant and project eligibility and to ensure that funds are used for viable projects.

While the project activities are being completed, grantees must submit semi-annual performance reports, which will, in part, compare actual accomplishments to the objectives, and a list of recipients. A final performance report is also required. Lastly, an outcome project performance report is required 1 year after submittal of the final performance report.

#### Estimate of Burden for Entire REAP Rule

The following estimates are based on the average over the first 3 years the program has been in place.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 3.9 hours per response.

*Respondents:* Agricultural producers; rural small businesses; units of State, tribal, or local government; instrumentalities of a State, tribal, or local government; land-grant colleges (including 1994 land-grant Tribal Colleges and Universities and 1890 land-grant Historically Black Colleges and Universities); universities, or other institutions of higher education; rural electric cooperatives; and public power entities.

*Estimated Number of Respondents:* 3,957.

*Estimated Number of Responses per Respondent:* 14.8.

*Estimated Number of Responses:* 58,399.

*Estimated Total Annual Burden (hours) on Respondents:* 219,347.

Copies of this information collection can be obtained from Jeanne Jacobs, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW.,

Washington, DC 20250-0742 or by calling (202) 692-0040.

#### Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of Rural Development, including whether the information will have practical utility; (b) the accuracy of the new Rural Development estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Jeanne Jacobs, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250. All responses to this proposed rule will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

#### E-Government Act Compliance

Rural Development 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

Rural Development administers a multitude of Federal programs for the benefit of rural America, ranging from housing and community facilities to infrastructure and business development. Its mission is to increase economic opportunity and improve the quality of life in rural communities by providing the leadership, infrastructure, venture capital, and technical support that enables rural communities to prosper. To achieve its mission, Rural Development provides financial support (including direct loans, grants, and loan guarantees) and technical assistance to help enhance the quality of life and provide the foundation for economic development in rural areas.

In response to the Farm Security and Rural Investment Act of 2002 (FSRIA), which established the Renewable Energy Systems and Energy Efficiency Improvements Program under Title IX,

Section 9006, Rural Business-Cooperative Service (RBS) promulgated a rule (70 FR 41264, July 18, 2005) establishing the renewable energy systems and energy efficiency improvements program (7 CFR part 4280, subpart B) for making grants, loan guarantees, and direct loans to farmers and ranchers (agricultural producers) or rural small businesses to purchase renewable energy systems and make energy efficiency improvements. Renewable energy sources eligible for funding included bioenergy, anaerobic digesters, electric geothermal, direct geothermal, solar, hydrogen, and wind.

Since it established the program, RBS has funded, through FY 2008, over 2,000 projects. Of these, nearly 1,700 projects have received grant-only funds totaling approximately \$115 million. Another 327 projects received grants and guaranteed loans, totaling approximately \$62.9 million in grant and loan funds combined, while 9 projects received only guaranteed loans totaling approximately \$71 million.

Section 9001 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) amended Title IX of the FSRIA. Under the 2008 Farm Bill and Section 9007 of the amended FSRIA, the Agency is authorized to continue providing to agricultural producers and rural small businesses loan guarantees and grants for the development and construction of renewable energy systems and energy efficiency improvement projects. In addition to the current set of renewable energy projects eligible for funding, the 2008 Farm Bill expands the program to include two new renewable energy technologies: hydroelectric and ocean energy. Further, the 2008 Farm Bill authorizes the Agency to provide grants specifically for energy audits, renewable energy development assistance, and renewable energy system feasibility studies. This newly expanded program is referred to as REAP, which continues the Agency's assistance to the adoption of both renewable energy systems and energy efficiency improvements through Federal government loan guarantees and grants.

On April 14, 2011, Rural Development published an Interim Rule for REAP (76 FR 21110). The Interim Rule established a consolidated REAP program by including each part of the program in a single subpart. Up to then, only the RES and EEI grant and guaranteed loan program requirements had been implemented under 7 CFR part 4280, subpart B and, for requirements established by the 2008 Farm Bill, through Federal Register notices. Since the 2008 Farm Bill, the

requirements for RES feasibility study grants and for energy audit and renewable energy development assistance grants had been implemented through a series of Federal Register notices. For the RES feasibility studies, these notices were published on May 26, 2009 (74 FR 24769) and August 6, 2010 (75 FR 47525). For energy audits and renewable energy development assistance, these notices were published on March 11, 2009 (74 FR 10533) and May 27, 2010 (75 FR 29706).

As noted in the April 14, 2011, **Federal Register** notice, the Agency indicated that it would publish a proposed rule following publication of the Interim Rule. This notice fulfills that intent.

## II. Discussion of Proposed Rule for REAP

In this section, the proposed rule for REAP is described. As has been noted, the Agency is proposing to revise 7 CFR part 4280, subpart B. The following paragraphs discuss the proposed changes, first by identifying several of the more significant changes and then discussing changes by sections.

### A. Summary of Significant Changes

The Agency is proposing a number of revisions to 7 CFR part 4280, subpart B based, in part, on its effort to streamline and improve the program. The major substantive changes being proposed are summarized below.

1. *Project eligibility.* The Agency is proposing to allow the purchase of a refurbished renewable energy system and the retrofitting of an existing renewable energy system as eligible projects for a RES or EEI grant, guaranteed loan or combination guaranteed loan and grant project. In addition, the Agency is clarifying several eligible projects and associated project costs, including:

- Making energy efficiency improvements that will use less energy on an annual basis than the original building and/or equipment that it will improve or replace;
- Replacing multiple pieces of equipment with one piece of equipment that will use less energy on an annual basis; and
- Constructing a new energy efficient building only when the building is used for the same purpose as the existing building, it will be more cost effective to construct a new building, and the new building will use less energy on an annual basis than improving the existing building.

In all cases, the applicant must demonstrate that less energy is used on an annual basis as documented in an

energy analysis, assessment, or audit as applicable.

2. *Technical reports.* Numerous changes are being proposed for technical reports including, but not limited to, the following: simplifying the energy efficiency improvement technical report; simplifying the technical report for renewable energy system projects with total project costs of \$200,000 or less; revising provisions associated with what is required for an energy assessment and an energy audit; providing for a single technical report option for renewable energy systems submitted through the process for applications for projects with total project costs of \$200,000 or less; and eliminating the distinction between large and small solar and wind projects in preparing the technical reports.

3. *Applications.* The Agency is proposing changes to RES and EEI applications that are intended to reduce overall burden for the program and streamline the grant application process by requesting documentation for a complete application based on total project costs. Specifically, the proposed rule has defined three grant application processes to include projects with total project costs greater than \$200,000, projects with total project costs of \$200,000 or less (but more than \$80,000), and projects with total project costs of \$80,000 or less. With the proposed changes, the smaller the total project costs, the lesser amount of paperwork and burden associated with the process.

- *Applications for projects with total project costs of less than \$200,000.* In addition to compiling applicable provisions into a single section within the rule, the Agency is proposing to remove the requirement that the Agency has to sign off on all procurement contracts for projects with total project costs of less than \$200,000 (referred to in 7 CFR part 4280, subpart B as "simplified" applications).

- *Applications for projects with total project costs of \$80,000 or less.* The Agency is proposing a new application process for projects with total project costs of \$80,000 or less. These provisions are intended to reduce the application burden for these smaller projects from the current provisions in the Interim Rule, while still providing the Agency sufficient information to determine applicant and project eligibility and to evaluate and score the applications. The Agency is proposing the \$80,000 threshold based on the set-aside for projects seeking grants of \$20,000 or less and the maximum grant portion that the Agency can provide of 25 percent of the total project costs. For

more information on how these new provisions differ from the provisions for these applications under the Interim Rule for REAP, please see the discussion on “Grant applications for projects with total project costs of \$80,000 or less” later in this preamble.

4. *Scoring criteria.* The Agency is proposing to modify several elements of the scoring criteria including eliminating the technical merit and commercial availability criteria; adding a criterion based on energy generated per dollar requested; modifying the size of the agricultural producer/small business criterion; and modifying the environmental benefits criterion. For a more detailed accounting of the changes being proposed to the scoring criteria, please see discussion for Table 1 under the “Section by section discussion of revisions to the RES and EEI Grant and Guaranteed Loan Program” later in this preamble.

5. *Pre-commercial technology.* The Agency is proposing to remove pre-commercial technology as an eligible technology. As proposed, only commercially available technologies would be eligible for grants and guaranteed loans.

6. *Energy audit requirement threshold for EEI applications.* The Agency is proposing to raise the threshold for requiring an energy audit (versus an energy assessment) from \$50,000 to \$200,000 in total project cost.

7. *Construction planning and performing development.* The Agency is proposing a major reorganization and clarification of these provisions to address confusion under 7 CFR part 4280, subpart B and to provide greater consistency in its implementation by each state.

8. *Competing guaranteed loan applications.* The Agency is proposing to establish new procedures for competing guaranteed loan applications. Major features of the new procedures are:

- Establishing quarterly competitions for guaranteed loan-only applications;
- Establishing each year a minimum score to determine whether an application is competed in each quarter (only those applications that score at or above the minimum score) or only in the last quarter of the Federal fiscal year (those applications that score below the minimum score and all other applications that were not funded);
- Procedures for making awards when there are insufficient funds available; and
- Limiting the number of competitions each application can participate for funding—four quarters for applications that score at or above

the minimum score and only the last quarter of the Federal fiscal year for applications that score below the minimum score and all other applications that were not funded.

The proposed procedures are intended to encourage more guaranteed loan applications by making awards throughout the year. This allows potential applicants more flexibility in preparing and submitting their applications. Further, the Agency is encouraging better projects by establishing a minimum score.

Section by Section Discussion of Revisions to the RES and EEI Grant and Guaranteed Loan Program

Purpose (§ 4280.101)

The only change being proposed to this section is the removal of the reference to “in rural areas” because certain projects proposed by agricultural producers may be eligible for REAP funds even though the project is located in a non-rural area. The Agency is proposing this change for two reasons.

First, the Agency has determined that there are a number of agricultural producers that operate in non-rural areas that can benefit from REAP. Such agricultural producers may include commercial nurseries and truck farms (the growing of one or more crops on a scale necessary for shipment to distant markets) that are located near urban areas.

Second, to the extent the authorizing statutes allow, the Agency wanted REAP to be consistent with the Biorefinery Assistance Program, the Repowering Assistance Program, and the Advanced Biofuel Payment Program. The three programs do not include a rural area requirement in their respective interim rules published in February 2011.

Organization of This Subpart (§ 4280.102)

The purpose of this section continues to be providing the reader with an overview of the organization of the subpart. The section has been updated to reflect the changes in the rule.

Definitions (§ 4280.103)

The Agency is revising or deleting some of the definitions, as well as cross-referencing § 4279.2 for guaranteed loan terms. The Agency is also proposing to define several new terms.

Revised Terms

- *Anaerobic digester project.* The primary revision to this term is replacing “waste” with “or other Renewable Biomass” in order to clarify that human waste is an eligible feedstock to anaerobic digesters.

- *Bioenergy project.* This term is being updated to refer to “Renewable Biomass” and is being revised by removing the last portion of the definition referring to anaerobic digesters, which the Agency determined is unnecessary to define the term.

- *Blended liquid transportation fuel.* This term is being clarified by recasting the last part of the definition to refer to Federal or State requirements, whichever of the two is higher.

- *Capacity.* This term is being clarified by replacing “load” with “output rate” and replacing “meet” with “attain.”

- *Commercially available.* This term is being revised to: (1) clarify that the proven operating history has to be for at least one year and warranties are only required on major parts, and (2) add a provision for technologies currently only available outside the United States to qualify as commercially available.

- *Design/build method.* This term is being revised by replacing “prime contractor” with “contractor.”

- *Eligible project costs.* This term is being revised by including costs that are eligible to be paid or guaranteed with program funds as part of eligible project costs.

- *Energy assessment.* This term is being revised in three ways. First, “experienced energy assessor, certified energy manager, or professional engineer” is being replaced with “Energy Auditor, Energy Assessor, or an individual supervised by either an Energy Assessor or Energy Auditor.” Second, the assessment of energy “use” is being added. Third, the details of what constitutes an energy assessment are being revised and moved from the definition section to Section C of Appendix A of this subpart.

- *Energy assessor.* This term is being revised as to who qualifies as an energy assessor under this subpart and to require that the energy assessor must be a qualified consultant.

- *Energy audit.* This term is being revised in two ways. First, “certified energy manager or professional engineer” is being replaced with “energy auditor.” Second, the details of what constitutes an energy audit are being revised and moved from the definition section to Section B of Appendix A of this subpart.

- *Energy auditor.* The term is being revised as to who qualifies as an energy auditor under this subpart and to require that the energy auditor must be a qualified consultant.

- *Energy efficiency improvement.* This term is being revised by adding “or replacement of”; by replacing “a facility, building, or process” with “an

existing building and/or equipment”; and by replacing “reduce energy consumption, or reduce energy consumed per square foot” with “reduces energy consumption on an annual basis.”

- *Feasibility study.* This term is being revised by adding “conducted by a qualified consultant.”

- *Financial feasibility.* This term is being revised by referring to “sufficient income” rather than “the income.”

- *Geothermal electric generation.* This term is being clarified by referring to “thermal energy from a geothermal source” and by removing “high pressure steam for” because it is not needed.

- *Hydroelectric energy.* The term being defined in the proposed rule is now “hydroelectric source” to conform to the terminology in the 2008 Farm Bill. In addition, the definition has been clarified to refer to it as a “Renewable Energy System producing electricity.” Lastly, the definition now includes reference to hydroelectric sources with a rated power of 30 megawatts or less, rather than having a separate definition for small hydropower.

- *Hydrogen project.* This definition is being edited for clarification.

- *Instrumentality.* Examples have been added to the definition.

- *Interconnection agreement.* This term is being revised by adding “A contract containing” to the beginning of the definition.

- *Matching funds.* This term is being clarified by referring to total eligible project costs instead of eligible project costs.

- *Passive investor.* This term is being clarified by replacing “arrangement” with “agreement.”

- *Qualified consultant.* This term is being expanded by incorporating from the definition of “qualified party” the concept of an independent third-party.

- *Renewable biomass.* The definition for renewable biomass is provided to the Agency by the 2008 Farm Bill. This term is being clarified to identify it includes “other biodegradable waste” and to state that waste material does not include unsegregated solid waste.

- *Renewable energy site assessment.* This definition is being revised through editing and presentation to be consistent with the technical report requirements contained in Sections A through C of Appendix B for renewable energy system applications submitted with a total project cost of \$200,000 or less.

- *Rural Business Cooperative Service Grant Agreement (Form RD 4280-2) or successor form.* This term is being redefined as “Grant Agreement” and is being updated to reflect the new name of the form.

- *Simple payback.* This term is being revised in several ways.

Reference to “(including REAP grants)” in several equations is being removed because the phrase is unnecessary.

The calculation of energy saved or replaced is being revised. The applicant is to calculate the actual average annual total energy used in the original building and/or equipment, as applicable, prior to the RES or EEI project over the most recent 36 months of operation or, if in operation less than 36 months, over the length of ownership. Next, the applicant is to calculate the projected average annual total energy that would have been used in the original building and/or equipment, as applicable, for this same 36-month period if the proposed project had been in place over that time period. The difference between these two values for the applicable time period represents the amount of energy saved or replaced. The Agency notes that the value of the price of energy used in the calculation of simple payback is to be calculated for this same 36-month period or period of ownership, if less than 36 months.

The adjustment for energy efficiency equipment based on the ratio of capacity is being removed. However, there may be projects where multiple pieces of equipment are being replaced by one piece of equipment. The applicant must demonstrate in an energy analysis, assessment, or audit, as applicable, that the average annual total energy used by the one piece of equipment is less than the combined average annual total energy used by the multiple pieces of equipment.

The calculation of simple payback for flexible fuel pumps is being revised to specify that only the flexible fuel pump cost, revenue, and expenses are to be included in the calculation. In addition, income is now “average net income” and is based on all energy-related revenue streams.

- *Small business.* This term is being revised by removing reference to providing service to rural consumers “on a cost-of-service basis without support from public funds or subsidy from the Government authority establishing the district.”

#### Added Terms

- *Complete application.* This term is being added to clarify the timeframe for when eligible project costs can begin to be incurred.

- *Federal fiscal year.* This term is being added to ensure clarity in implementing the subpart.

- *Energy analysis.* This term is being added because the Agency is proposing

to allow for an energy efficiency improvement project with total project costs of \$80,000 or less to conduct an energy analysis instead of an energy assessment or an energy audit. In addition, the details of what constitutes an energy analysis have been added to § 4280.119(b)(3)(iii). The Agency notes that an energy analysis covers the same areas as an energy assessment, but will have less detail than an energy assessment, as provided in Appendix A of this subpart.

- *Hybrid.* This term is being added because the program now specifically addresses projects in which more than one renewable technology is proposed.

- *Immediate family.* This term is being added to conform to a proposed change, as discussed later, replacing “close relative” with “immediate family.”

- *Inspector.* This term is being added to clarify who can perform inspections required under the subpart.

- *Retrofitting.* This term is being added because the rule addresses retrofitting as an eligible project purpose.

- *Rural Small Business.* This term is being added to clarify the applicability of certain sections of the rule.

#### Deleted Terms

The following terms are being deleted because they are already defined in § 4279.2 of this part and the Agency has determined there is no reason for the terms to be defined differently between regulations.

- Borrower.
- Holder.
- Interim financing.
- Lender.
- Participation.
- Promissory note.

The following terms are being deleted because they are no longer used in this subpart.

- Existing business.
- Fair market value of equity in real property.
- Hydropower.
- Large solar, electric.
- Large solar, thermal.
- Large wind system.
- Necessary capital improvement.
- Post-application.
- Pre-commercial technology.
- Qualified party.
- Simplified application.
- Small hydropower.
- Small solar, electric.
- Small solar, thermal.
- Small wind system.
- Spreadsheet.
- Very small business.

#### Exception Authority (§ 4280.104)

This section is being revised to focus consideration of the application of

requirement or provision on the financial interest of the Federal government when evaluating whether to make an exception.

#### Review or Appeal Rights (§ 4280.105)

This section is being revised, in part, to conform with recent energy title rulemakings to be simpler and to identify the availability of a review of an Agency decision and, in part, to clarify which parties may appeal an adverse decision associated with a guaranteed loan loss payment and with a combined funding application.

#### Conflicts of Interest (§ 4280.106)

This section is being revised to clarify and provide examples of conflict of interest situations dealing with the receipt of Federal awards, matching funds, and procurement contracts. In addition, a new paragraph specifically addressing assistance to Agency employees and their relatives and associates has been included. The Agency is adding this provision to provide greater transparency and accountability in government.

#### Laws That Contain Other Compliance Requirements (§ 4280.108)

Several references have been moved or deleted as follows:

- Reference to equal employment opportunity is being relocated from this section to the Construction Planning and Performing Development section (see § 4280.124(a)(2)).

- Reference to the Equal Credit Opportunity Act at the end of paragraph (a) of this section is being removed because it duplicates reference to it earlier in the paragraph and thus is unnecessary.

- Reference to the Americans with Disabilities Act as a separate, stand alone paragraph was removed because it is adequately covered elsewhere in this section and in the Construction Planning and Performing Development section (see § 4280.124(d)(2)).

- Reference to Executive Order 12898, which addresses the Agency's conduct of a Civil Rights Impact Analysis, is being removed because it is internal Agency policy and as such it is unnecessary to include it in a rule.

With regard to 7 CFR 4280.108(e), Environmental analysis, the Agency is proposing that, if the applicant takes any actions or incurs any obligations that would either limit the range of alternatives to be considered or that would have an adverse effect on the environment prior to the Agency completing the environmental review, such action or obligation "may" (rather than "will") result in the project being

determined by the Agency to be ineligible. This change is not intended to limit any NEPA requirements.

Actions taken by an applicant prior to Agency review that have an adverse effect on the environment, would be a basis for the Agency to determine the project ineligible for funding. Further, the Agency is proposing to clarify this provision by changing "during the time of application or application review" to "prior to the Agency completing the environmental review." Lastly, because this provision addresses any project's eligibility, it has been moved to the project eligibility section for each program.

#### General Applicant, Application, and Funding Provisions (§ 4280.110)

Several changes are being proposed for this section. Paragraph (b) is being added to address application submittal. Previously, application windows were identified through the issuance of notices in the **Federal Register**. As proposed, all applications (grants, guaranteed loans, and combination grants and guaranteed loans) may be submitted at any time throughout the year except for energy audit and renewable energy development assistance applications. The Agency will select grant and combination grant and guaranteed loan applications based on the grant application's score and subject to available funding.

All guaranteed loan-only applications will be scored. Applications that are ready for funding and that score at or above the minimum score will be competed on a quarterly basis, with higher scoring applications receiving priority. Applications ready for funding, but that score below the minimum score and all other applications that were not funded will only be competed during the last quarter of the Federal fiscal year.

Paragraph (c) is being added to set limits on the number of applications an applicant can submit each Federal fiscal year. Specifically, an applicant can submit only one application for a renewable energy system project, one application for an energy efficiency improvement project, and one application for a renewable energy system feasibility study project. Thus, for example, an applicant cannot submit applications for two renewable energy system projects in the same Federal fiscal year. This provision clarifies the Agency's intent in implementing the program to provide for a greater distribution of funds by limiting an applicant to one application for each of the three types of projects each Federal fiscal year. An applicant will still,

however, be allowed to submit a total of three applications, one for each type of project.

Paragraph (d), currently 7 CFR 4280.116(a)(1), is being clarified to refer to "types of funding requests" rather than to "types of funding applications." In addition, the Agency is moving these provisions to this section because they are more appropriately placed in the general section of the rule than in the RES/EEI grant section.

Paragraph (e) is being added to address modifications to applications once they have been submitted to the Agency, how the date of record is affected, and how the Agency will consider the modified application for selection.

In addition to retitling paragraph (f) to "Incomplete applications," the provisions associated with incomplete applications are being clarified.

Paragraph (h) is being added to address provisions common to the technical reports submitted with the application—the level of detail each is to provide; modifications to the technical report prior to the applicant's selection of a final design, equipment vendor, or contractor; and hybrid projects. For the most part, these provisions are the same as found in 7 CFR 4280, subpart B, but have been brought together in this paragraph.

Paragraph (i) addresses technical merit. The Agency will determine the technical merit of all applications submitted under this subpart, except for renewable energy system feasibility study grant applications and energy audit and renewable energy development assistance grant applications.

While projects that are without technical merit are still ineligible, the Agency is proposing to replace scoring the technical merit of a project with a process for determining whether the project has or does not have technical merit. Under the Interim Rule, technical merit is a criterion used to score and rank applications to determine which projects are funded. The Agency has determined based on its experience with REAP applications that this criterion is too subjective and has determined that it is in the best interest of the program not to continue using it to score applications. However, the very nature of REAP is such that only projects that have "technical merit" be eligible for funding. Thus, the Agency is proposing to revise the regulation such that each proposed project will be determined by the Agency either to have technical merit or not to have technical merit.

The Agency will make the technical merit determination based on the

information provided in the application, including the technical report whose purpose is to provide the details of the proposed project. The Agency will examine such items in the technical report as prior performance data of the system, experience of the installation team, resource data, and the engineering of the system in making its decision on technical merit.

If the information in the application is insufficient to allow the Agency to make a technical merit determination, the application will be considered incomplete. If the Agency determines that an application is incomplete, it will notify the applicant of the elements that made the application incomplete. The applicant will be given an opportunity to provide the missing information. If the applicant provides the missing information on or before the last applicable application deadline, the Agency will continue considering the application for funding as described in the subpart. However, if the applicant provides the missing information after the last applicable application deadline, the Agency will only consider the application for funding in subsequent funding cycles as described in the subpart.

Paragraph (j) has been added to clarify that all grants awarded under this subpart must be completed within 2 years from the date the Grant Agreement was signed by the Agency unless otherwise approved by the Agency. All grant funds must be returned to the Agency if the grantee does not meet the requirements of the Grant Agreement.

#### Notifications (§ 4280.111)

Three changes are being made to this section. First, the paragraph addressing ineligible applications was integrated into the paragraph addressing eligibility notifications. Second, reference is being made to lenders to make this section applicable to guaranteed loan applications. Third, paragraph (c), which is titled "Awards" is being retitled "Disposition of applications." This change is being made to clarify that this paragraph applies to not only applications selected for award, but to applications that are not selected for award. The Agency is also proposing to add a provision to this paragraph that it will include any applicable appeal or review rights in its notification to applicants whose applications are not funded.

Renewable Energy System and Energy Efficiency Improvements Grants

#### Applicant Eligibility (§ 4280.112)

This section provides the criteria the Agency will use to determine whether an applicant is eligible to receive an RES or EEI grant under this subpart, including identifying situations in which an applicant will be determined to be ineligible.

Paragraph (b) addresses ownership and control requirements. While a similar provision is found in 7 CFR part 4280, subpart B under project eligibility, the proposed rule clarifies and expands these requirements. It requires ownership and site ownership or control for the project at the time of application and, if an award is made, for the useful life of the project as described in the grant agreement.

Paragraph (c) addresses revenues and expenses. While a similar provision is found in 7 CFR part 4280, subpart B under project eligibility, the proposed rule clarifies and expands these requirements. It requires that the applicant have available at the time of application satisfactory sources of revenue in an amount sufficient to provide for the operation, management, maintenance, and any debt service of the project for the useful life of the project. In addition, the applicant must control the revenues and expenses of the project, including its operation and maintenance, for which the assistance is sought.

Paragraph (d) is new and clarifies that applicants are required to have the legal authority necessary to apply for and carry out the purpose of the grant. This specific provision has been part of administering the program, but it is not easily identifiable in 7 CFR part 4280, subpart B.

Paragraph (e) is new and clarifies that applicants are required to follow the Universal identifier and SAM requirements of 2 CFR unless exempt under 2 CFR 25.110.

#### Project Eligibility (§ 4280.113)

This section provides the criteria the Agency will use to determine whether a project is eligible to receive an RES or EEI grant under this subpart. These provisions of the proposed rule are similar to 7 CFR part 4280, subpart B, but there are several differences to note.

With regard to project eligibility, the Agency is proposing several changes. For renewable energy systems, the Agency is clarifying that funds can be used to purchase "new" or "Refurbished" renewable energy systems. In addition, the Agency is proposing to allow funds to be used to

retrofit existing renewable energy systems.

The Agency is proposing to include as an eligible energy efficiency improvement project, the construction of a new energy efficient building only when the building is used for the same purpose, and based on an energy audit or energy assessment, as applicable, it will be more cost effective to construct a new building and will provide more energy savings than improving the existing building.

The Agency is removing pre-commercial technology from being eligible; all projects must now be for commercially available technologies. The Agency is making this change to avoid overlap with the Biorefinery Assistance guaranteed loan program.

The Agency is adding the conditions that must be met for the construction of a new energy efficiency improvement building in order to be an eligible project. Specifically, such construction would be an eligible project only when the building is used for the same purpose, it will be more cost effective to construct a new building, and it will use less energy on an annual basis than improving the existing building. The Agency is adding a new eligibility criterion addressing duplicative grant applications. Specifically, as proposed, if the proposed energy efficiency improvement would duplicate the same energy efficiency improvement that had previously received funds under this subpart, then the proposed improvement is ineligible. For example, an applicant received a grant to replace the windows in a warehouse with more energy efficient windows. Shortly thereafter, the applicant decides to replace the new windows. An application for replacing the new windows would be ineligible for REAP funding.

As noted above, the Agency is relocating the ownership and control and revenue provisions of 7 CFR 4280.113(f) through (h) from the project eligibility section to the applicant eligibility section.

The separate technical feasibility provision is removed because an application has to pass a technical merit review as discussed previously (which technical feasibility is part of) in order to be considered for funding.

#### RES/EEI Grant Funding (§ 4280.115)

This section addresses four areas associated with grant funding, as summarized below.

*Maximum grant assistance (paragraph (a)(3)).* While the maximum amount that an individual or entity can receive in a Federal fiscal year is not

changing (it remains at \$750,000), the Agency is clarifying that this maximum amount applies to all grant assistance received under this subpart, including energy audit, renewable energy development assistance, and feasibility study grants.

*Matching funds (paragraph (b)).* The Agency is clarifying that the applicant is responsible for securing the remainder of the total project costs not covered by grant funds rather than just total eligible project costs and modifying the text found in paragraph (b)(2) of this section to clarify that equity raised from the sale of Federal tax credits is an acceptable form of passive third-party contributions.

*Eligible project costs (paragraph (c)).* The Agency is proposing several changes to the eligible project costs.

In addition to the cost being an “integral component,” the Agency is allowing as an alternative that the cost can be “directly related to and its use and purpose is limited to” the renewable energy system or energy efficiency improvement.

The Agency is replacing the term “post-application” with “after a Complete Application has been received” for clarity in determining the eligibility of certain project costs.

With regard to the purchase and installation of equipment, the Agency is removing reference to “remanufactured” equipment and relocating the exceptions for agricultural tillage equipment, used equipment, and vehicles to the ineligible project costs section.

The Agency is removing the provision associated with pro-rating eligible project costs based for energy efficiency improvement projects that have a greater capacity than the existing building and/or equipment being replaced. Under the proposed rule, no such pro-rating would be used.

The Agency is clarifying that the permit fees referred to are construction permit fees.

The Agency is clarifying that eligible project costs for professional service fees are those fees incurred for qualified consultants, contractors, installers, and other third-party services.

Reference to energy analyses, energy assessments, energy audits, technical reports, and feasibility studies has been moved to the eligible project costs section for guaranteed loans. These items are no longer considered as eligible project costs for grants. Because these items are needed as part of a complete grant application, costs incurred before the complete application is submitted to the Agency are considered ineligible project costs.

The Agency has relocated from eligible project cost provisions, the construction of a new energy efficiency facility to the project eligibility section.

*Ineligible project costs (paragraph (d)).* To provide clarity on what costs would not be eligible for funding, the Agency developed a paragraph specifically addressing ineligible project costs.

#### Grant Applications—General (§ 4280.116)

This is a new section to clarify that under paragraph (a), separate applications are to be submitted for renewable energy system and energy efficiency improvement projects and also only an original application needs to be submitted. Under the current 7 CFR part 4280, subpart B, separate applications for renewable energy system and energy efficiency improvement projects are not discussed and an original and a copy of the application are required.

Paragraph (b) of this section states which section of the rule applies to applications with total project costs of greater than \$200,000, applications with total project costs of \$200,000 or less (but more than \$80,000), and applications with total project costs of \$80,000 or less. Lastly, paragraph (c) of this section addresses how the Agency will evaluate each application. This paragraph is very similar to the paragraph (a) of 7 CFR 4280.117, but adds a reference to the technical merit of the project and having complete application documentation.

#### Grant Applications for Projects With Total Project Costs Greater Than \$200,000 (§ 4280.117)

Certifications are being required in place of documentation and some of the forms only need to be submitted at the time of award because they are not needed at the time of application. The Agency is also proposing to remove the provision requiring a Table of Contents with clear pagination and chapter identification.

To clarify their applicability, the Agency is adding a new paragraph (f) to identify the construction planning and performing development provisions that are applicable to these grant applications by cross-referencing § 4280.124.

#### Grant Applications for Projects With Total Project Costs of \$200,000 or Less (§ 4280.118)

This section incorporates the criteria for submitting such applications, which are currently found in 7 CFR 4280.114.

Under paragraph (a), the Agency is proposing that only commercially available projects be eligible for REAP (paragraph (a)(2) of § 4280.118 cross references the requirements of § 4280.113 and more specifically to § 4280.113(b) which requires the project to be “Commercially Available”). In addition, because the Agency is proposing that all projects awarded grants under REAP be completed within 2 years, the criterion requiring such applicants to complete projects within 2 years is also no longer needed.

The Agency is proposing changes to the content for these applications (see paragraph (b)), including moving forms not needed at the application stage to the award stage.

The primary change being proposed for construction planning and performing development is allowing for small acquisition and construction procedures to be utilized and not requiring the need for applicant to get Agency approval on contracts (see paragraph (c)).

The Agency is proposing a new process that clearly identifies the payment process for projects (see paragraph (d) of this section).

#### Grant Applications for RES and EEI Projects With Total Project Costs of \$80,000 or Less (§ 4280.119)

This section identifies the contents of an application for projects with total project costs of \$80,000 or less. A technical report is still required for this application process; however, it can be submitted as a narrative rather than a separate report like under the other two application processes in the proposed rule. Energy efficiency improvement projects applying under this process will have to provide 36 months of data for total energy used and projected and the total cost of the energy as well as projected.

The structure of this section parallels that for applications for projects with total project costs of less than \$200,000. Paragraph (a) identifies the criteria for submitting applications for projects with total project costs of \$80,000 or less. These criteria are identical to those for submitting applications for projects with total project costs of \$200,000 or less, except for the threshold (i.e., \$80,000 versus \$200,000).

Application content is presented in paragraph (b). In general, the Agency is proposing to simplify the application by requiring the applicant to certify to a number of items (e.g., applicant eligibility, project eligibility) rather than submit information with the application. The following identify specific differences associated with

these applications compared to the applications for the other two tiers:

- Certify that the applicant meets the criteria for submitting a “\$80,000 or less” application
- Submit a “unique” set of certifications covering:
  - Applicant and project eligibility criteria
  - Ability of project to meet its intended purpose
  - Will abide to open and free competition requirements
  - For bioenergy projects, any and all woody biomass feedstock from National forest system land or public lands cannot be used as a higher value wood-based product
  - For flexible fuel pumps, blended

- liquid transportation fuel is available and there is demand for that fuel in its service area
- Application description, including the financial information, in § 4280.117(b) is not required
- A separate project description and identification of project location is not required
- RES feasibility study (§ 4280.117(d)) does not apply and thus is not required (difference from the “>\$200,000” applications only)
- Less onerous technical reports from the other two application tiers, including for EEI applicants the submittal of an energy analysis rather than either an energy assessment or energy audit.

Paragraphs (c) and (d) presents the procurement and payment processes, which are the same as for projects with total project costs of \$200,000 or less (but more than \$80,000).

Scoring Grant Applications (§ 4280.120)

This section identifies the criteria the Agency will use to score each RES and EEI application. The Agency is including a provision that would allow it to modify the scoring through the publication of a Federal Register notice.

Numerous changes have been made to the scoring criteria as summarized in Table 1. Reasons for the changes are discussed following Table 1.

TABLE 1—SUMMARY OF SCORING CRITERIA CHANGES FOR RES/EEI GRANT APPLICATIONS

7 CFR part 4280, subpart B criteria and maximum points	Proposed criteria and maximum points	Summary of changes
1. Quantity of energy replaced, produced or saved, and flexible fuel pumps.	b. Quantity of energy generated or saved per REAP grant dollar requested, and renewable fuel dispensed through flexible fuel pumps (max 25 points).	Replaces this criterion with “Quantity of energy generated or saved per REAP grant dollar requested, and renewable fuel dispensed through flexible fuel pumps”.
2. Environmental benefits (max 10 points) .....	a. Environmental benefits (max 5 points) .....	1. Revises criterion to award points based on positive effects in three areas: resource conservation, public health, and the environment.
3. Commercial availability (max 10 points) .....	.....	2. Decreases points from 10 to 5. Removed.
4. Technical merit (max 35 points) .....	.....	Removes criterion as scoring criterion. Instead, all projects will be assessed on a pass/fail basis for technical merit.
5. Readiness (max 15 points) .....	c. Readiness (max 25 points) .....	Increases points from 15 to 25.
6. Small agricultural producer/very small business (max 10 points).	d. Size of agricultural producer or rural small business (max 10 points).	Changes metric for awarding points to size of applicant relative to the Small Business Administration’s small business size standards.
7. Simplified application/low cost projects (max 5 points).	.....	Removes criterion.
8. Previous grantees or borrowers (max 5 points).	e. Previous grantees or borrowers (max 10 points).	Increases maximum points from 5 to 10.

• *Quantity of energy replaced, produced or saved, and flexible fuel pumps.* The Agency is replacing this criterion with “Quantity of energy generated or saved per REAP grant dollar requested, and renewable fuel dispensed through flexible fuel pumps” based on Office of Inspector General audit recommendation and given that maintaining both criteria would be duplicative.

• *Environmental benefits.* The Agency is revising the method for awarding points under this criterion. Under the Interim Rule, an applicant is required to obtain a letter from an authority within the State supporting the project. While support from the State is viewed as positive, it puts extra burden on the applicant to obtain the letter and puts those applicants that do not get a letter at a disadvantage. In

addition, receiving such a letter does not make it a better project. Lastly, under the current guidance it has also been very hard to quantify environmental benefits. Therefore, for these reasons, the Agency is proposing to award points under this criterion based on the applicant providing documentation that the proposed project will have a positive effect on any of the three impact areas: resource conservation, public health, and environment.

• *Commercial availability.* The Agency is removing this criterion because only commercially available technologies are eligible for the program.

• *Technical merit.* The Agency is removing this criterion for scoring purposes because of its subjective nature. Instead, the Agency is proposing

to make technical merit an eligibility criterion. Based on the information in the technical report, the Agency will make a determination as to whether a project has technical merit or not. If the Agency determines that a project does not have technical merit, the project will be ineligible for funding.

• *Readiness.* In order to encourage applicants to provide written commitment of matching funds with the application submittal, the Agency is proposing to increase the maximum number of points awarded under this criterion from 15 to 25.

• *Small agricultural producer/very small business.* The Agency is proposing to change the basis for awarding points to size of applicant relative to the Small Business Administration’s small business size standards. Under the Interim Rule for

REAP, there are different measurement standards for determining the size of a small agricultural producer and the size of a very small business for awarding of points under this scoring criterion. The new provision will measure each applicant based on the size requirement published by the Small Business Administration. Grantees one-third or less than the SBA size requirement will get full points, while those two-thirds or less of the SBA size requirement will get one-half of the points. The Agency has determined this is a more equitable method for awarding points for this criterion between agricultural producers and rural small businesses.

- *Simplified applications/low cost projects.* The Agency is proposing to remove this criterion because it will set aside funding for grants requesting less than \$20,000 and therefore priority points are not needed.

- *Previous grantees or borrowers.* In order to encourage new applicants, the Agency is proposing to increase points awarded under this criterion from 5 to 10. Under the proposed rule, an applicant who has not received a grant in the previous two years will be awarded 5 points, while an applicant that has never received REAP funding will receive 10 points.

#### Selecting RES and EEI Grants for Award (§ 4280.121)

This is a new section and addresses the process the Agency will use to select applications for awards as summarized below. This section covers the following:

- *Application competitions (paragraphs (a) through (c)).* Paragraphs (a) through (c) describe application competitions and deadline dates to compete for funding. Paragraph (a) describes the process for State competitions, paragraph (b) is dedicated to the grants of \$20,000 or less set-aside, and paragraph (c) describes the details for national competitions. In the past, application competitions and deadlines have been published in a **Federal Register** notice on an annual basis. The proposed rule is establishing these dates in the rule to ensure that program delivery is not solely tied to the Federal budgetary process and applications can be accepted year round except for energy audit and renewable energy development assistance applications.

- *Funding selected applications (paragraph (d)).* This paragraph identifies how the Agency will handle an application selected for funding, but for which insufficient funds remain to fund the application.

- *Disposition of ranked applications not funded (paragraph (f)).* This

paragraph identifies how long an application will be held by the Agency and for which competitions the application may compete for funds as described in paragraphs (a) through (c) of this section. Disposition of ranked applications not funded was never discussed in 7 CFR part 4280, subpart B, and the Agency wants to ensure that applicants are aware of their chances for funding. Thus, this paragraph was added for clarity.

- *Commencement of the project (paragraph (g)).* Applicants are put on notice that they assume all risks if they purchase the technology proposed or start construction of the proposed project after the application has been received by the Agency, but prior to award announcement.

#### Awarding and Administering RES and EEI Grants (§ 4280.122)

This section addresses the process the Agency will use to award and administer grants. This section places in one spot in the rule, several provisions that are currently found in various places of 7 CFR part 4280, subpart B. By doing so, the proposed rule provides a clearer presentation of this process.

#### Servicing RES and EEI Grants (§ 4280.123)

This section addresses the procedures the Agency will use to service RES and EEI grants. The proposed section expands upon the provisions found in § 4280.121 and includes several provisions found in other portions of 7 CFR part 4280, subpart B.

Many of the provisions are being incorporated from the grant agreement into the text of the regulation. Some of the provisions (e.g., programmatic changes, project monitoring, transfer of obligations, and grant close-out) are similar to provisions developed by the Agency or as cited in the Department regulations when it was considering consolidating various grant programs into a single rule.

The renewable energy system and energy efficiency improvement grant outcome project performance reporting requirements in this section are very similar to those found in 7 CFR part 4280, subpart B, with the differences found in the report contents.

For the renewable energy system report, the Agency is proposing to drop from the report the documentation of any identified health and/or sanitation problem that has been solved because the Agency has determined that it provides little benefit. In its place, the Agency is proposing to add the type of technology to the report. Two other changes are to clarify that the actual

amount of energy generated will be reported as an “annual” amount and to identify how that amount is to be calculated.

For energy efficiency improvement projects, the Agency is proposing one substantive change. The Agency is adding to the report the actual jobs created or saved. While creating or saving jobs is being added to the reporting requirements, the Agency does not expect every energy efficiency project to have an impact on employment. Most energy efficiency projects may report zero jobs created or saved, because the impact of the grant was to save the applicant money on energy bills and improve their profitability.

#### Construction Planning and Performing Development (§ 4280.124)

This section replaces the current construction planning and performing development provisions found in 7 CFR 4280.119. While this section is organized differently from the current corresponding section, it covers many of the same subjects.

The primary change is the provision of exceptions to the surety requirements for: (1) Small acquisition and construction procedures, (2) equipment purchases and installation-only projects of more than \$200,000 if two conditions are met, and (3) other construction projects that have only one contractor performing work.

There are also numerous substantive changes associated with the provisions for technical services for projects with total project costs greater than \$400,000. The proposed rule clarifies that technical services may be provided by the applicant’s ‘in-house’ professional engineers or contracted professional engineers. In addition, all contracts for design services require Agency concurrence. Services performed by engineers may only be done by engineers licensed in the state in which the facility is located.

Further, the Agency is proposing an exemption from these requirements for projects with total project costs greater than \$400,000 if State or Tribal law does not require the use of a licensed professional engineer and if the project is not complex and can be completed to meet the requirements of the program without the services of a licensed professional engineer. An example to demonstrate this exemption would be a large equipment purchase that does not require changes to a structure or require State-approved plans to be installed.

## RES and EEI Guaranteed Loans

## Compliance With §§ 4279.29 Through 4279.99 (§ 4280.125)

7 CFR part 4280, subpart B required compliance with the Business and Industry (B&I) provisions found in §§ 4279.29 through 4279.99, but contained a number of exceptions. Because there is no need to maintain a distinction for loans guaranteed under REAP, the proposed rule follows the provisions of the B&I regulations, with one exception. The one exception is associated with § 4279.71, because REAP does not apply to public bodies and non-profit corporations.

One of the distinctions being removed is the current REAP provision that excludes mortgage companies that are part of a bank holding company from being an eligible lender. To the extent the B&I provisions allow such entities to be an eligible lender, so would REAP.

## Guarantee Fee/Annual Renewal Fee (§ 4280.126)

The Agency is proposing to conform the REAP guarantee fee and annual renewable fee provisions (found in 7 CFR 4280.127) to those found in the B&I rule. The one exception is that the B&I provisions for receiving a reduced guarantee fee would not apply to REAP guaranteed loans. Instead, the Agency is proposing to announce the conditions, if any, in a **Federal Register** notice that would enable a reduced guarantee fee for REAP guaranteed loans.

## Borrower Eligibility (§ 4280.127)

The Agency is proposing that eligible borrowers meet the same eligibility as RES/EEI grant applicants. However, some of the applicant requirements have been moved from other places in 7 CFR part 4280, subpart B into proposed § 4280.112 and those that are applicable to borrowers are repeated in this section (rather than cross-referencing back to § 4280.112).

## Project Eligibility (§ 4280.128)

The basic eligibility requirements for projects are the same as for RES/EEI grants, but, as noted earlier in the preamble, some of those requirements have changed. In addition, the Agency is proposing to allow loans for the purchase of a qualifying existing renewable energy system to be guaranteed. This provision would replace 7 CFR 4280, subpart B's provision for "necessary capital improvements to an existing renewable energy system."

## Guaranteed Loan Funding (§ 4280.129)

The Agency is proposing several changes to these provisions for guaranteed loan funding.

The Agency is identifying project costs that would be ineligible for payment using the guaranteed loan. These are consistent with the items identified as ineligible for payment under the RES/EEI grant provisions, except that construction or equipment costs that would be incurred regardless of the installation of a renewable energy system or energy efficiency improvement may be included as an eligible project cost for guaranteed loans. In addition, the Agency is including as ineligible project costs, paragraph (p) from the B&I provisions at 7 CFR 4279.114, which addresses loans made with the proceeds of any obligation the interest on which is excludable from income under 26 U.S.C. 103 or a successor statute.

The Agency is also proposing to refer to eligible project costs that are included under grants (7 CFR 4280.115(c)) for guaranteed loans as well as the following items:

- Working capital;
- Land acquisition;
- Routine lender fees; and
- Energy analyses, energy

assessments, energy audits, technical reports, business plans, and feasibility studies completed and acceptable to the Agency, if no portion was financed by any other Federal or State grant or payment assistance, including, but not limited to, a REAP energy analysis, assessment, or audit, feasibility study, or renewable energy development assistance grant.

The Agency is proposing that these four sets of eligible costs be "capped" at no more than 5 percent of the guaranteed loan amount. This cap is intended to ensure that these expenses do not inadvertently or otherwise consume a substantial share of funds for the actual project.

## Loan Processing (§ 4280.130)

In the proposed rule, the Agency is proposing to reduce the number of exceptions between REAP and B&I loan guarantees. The following paragraphs summarize the proposed changes.

a. *Interest rates.* In the proposed rule, the interest rate provisions for B&I guaranteed loans would apply in their entirety to REAP guaranteed loans. This would remove some changes in the determination of interest rates, but the Agency has determined that the B&I provisions are sufficient and any difference between the two programs is unnecessary.

b. *Loan terms.* In the proposed rule, the loan term provisions for B&I guaranteed loans would apply in their entirety to REAP guaranteed loans. This would change the loan term for machinery and equipment and eliminate a few specific requirements, but the Agency has determined that the B&I provisions are sufficient and any difference between the two programs is unnecessary.

c. *Insurance requirements.* The Agency is proposing to make the insurance requirement identical to those in the B&I program. 7 CFR part 4280, subpart B requires that the coverage be maintained for the life of the loan unless this requirement is waived or modified by the Agency. The Agency has determined that the provisions of the B&I program are sufficient and that this requirement is unnecessary.

d. *Appraisals.* The Agency has determined that the additional appraisal requirements found in 7 CFR part 4280, subpart B do not need to be maintained for the program. Therefore, the Agency is proposing that REAP appraisals be conducted in accordance with the B&I appraisal provisions.

e. *Construction planning and performing development.* The Interim Rule provides specific provisions for construction planning and performing development (see 7 CFR 4280.119). Under the proposed rule, the Agency is proposing that 7 CFR 4279.156 applies to guaranteed loan projects under this subpart.

## Credit Quality (§ 4280.131)

The Agency is proposing to make the credit quality requirements identical to those in the B&I program with the exception of equity. In general, with the exception of equity, conforming the REAP credit quality provisions to those in the B&I program does not create substantive changes from 7 CFR part 4280, subpart B.

With regard to the proposed equity provisions, there are substantive differences from the 7 CFR part 4280, subpart B equity provisions and the B&I guaranteed loan program equity provisions. There is no longer a distinction between the size of the loan guarantee for REAP equity requirements. For example, the cash equity injection is specified at 25 percent for all loan guarantees. The Agency is also proposing to eliminate the provision in 7 CFR 4280, subpart B that allows the fair market value of equity in real property that is to be pledged as collateral for the loan to be substituted for any portion of the cash equity requirement.

#### Financial Statements (§ 4280.132)

The proposed rule would adopt, in their entirety, the financial statement provisions found in the B&I program, except that, due to a difference in eligible applicants, the proposed rule would allow agricultural producers the option of providing financial information in the manner that is generally required by commercial lenders. The Agency notes that the financial information requested in 7 CFR 4280.140(a) is still being requested under the proposed rule, but in a different provision.

#### Personal and Corporate Guarantees (§ 4280.134)

Except for passive investors, the Agency is proposing to allow all of § 4279.149 to apply to this subpart. Currently, the 7 CFR part 4280, subpart B adopts only § 4279.149(a).

#### Scoring RES and EEI Guaranteed Loan Only Applications (§ 4280.135)

The Agency is proposing this new section to clarify how guaranteed loan-only applications will be scored. Specifically, these applications will be scored using the same criteria as for RES and EEI grants, but with the calculations, as applicable, to be made using guaranteed loan amounts and not grant amounts. This section also identifies that the Agency will establish a minimum score each year to assist in funding higher priority projects. The minimum score will also be used to determine whether or not an application is competed in each quarter. Lastly, the Agency will notify applicants whose applications are below the minimum score.

#### Application and Documentation (§ 4280.137)

A number of changes are being proposed for guaranteed loan applications, as discussed below.

##### a. *Applications for guaranteed loan requests greater than \$600,000.*

To provide flexibility for the applicant, the Agency is proposing to remove the requirement that the application be “organized pursuant to a Table of Contents format in a chapter format presented in the order shown” and provision of a project summary.

The application content still mirrors that required for RES/EEI grants and, thus, the changes described earlier in this proposed rule for those applications would apply to these guaranteed loan applications as well.

Several substantive changes were made to the lender forms, certifications, and agreements that are to be submitted with the application, as follows:

- With regard to appraisals, the Agency is proposing to add that its approval in the form of a Conditional Commitment may be issued subject to receipt of adequate appraisals.

- With regard to historical financial statements, the Agency is proposing to remove reference to Generally Accepted Accounting Principles and adding a provision to allow agricultural producers to submit these statements in the format that is generally required by commercial agricultural lenders.

- The Agency is proposing to remove reference to the business-level feasibility study because the feasibility study is required through a cross-reference to the provisions for grant applications.

- The Agency is proposing to remove the requirement for certification by the lender that it has completed a comprehensive written analysis of the proposal. This certification duplicates the requirement to submit the lender’s complete comprehensive written analysis.

- With regard to the certification by the lender that the loan is for authorized purposes, the Agency is proposing to remove the phrase “with technical merit.”

##### b. *Applications for guaranteed loan requests of \$600,000 or less.*

The Agency is proposing to remove the requirement that the application be “organized pursuant to a Table of Contents format in a chapter format presented.”

The application content will vary for these projects depending on the total project cost for the proposed project. If the total project cost is more than \$200,000, the application would contain the information specified for RES/EEI grant applications of similar size. If the total project cost is \$200,000 or less, the application would contain the information specified for RES/EEI grant applications of similar size.

Changes in the application content for these applications parallel those identified earlier in this proposed rule for RES/EEI grant applications.

With regard to forms, certifications, and agreements, the Agency is proposing to require the lender to submit the appraisal rather than keep it on file and to submit the certification by the lender that the borrower is eligible, the loan is for authorized purposes, and there is a reasonable assurance of repayment.

#### Evaluation of RES and EEI Guaranteed Loan Applications (§ 4280.138)

The Agency is proposing to modify 7 CFR part 4280, subpart B provisions for

application evaluation (see 7 CFR 4280.129) in several ways.

The Agency is proposing to evaluate applicant and project eligibility using the procedures specified in 7 CFR 4279.165, except that the applicant and project eligibility criteria for REAP will be used.

The Agency has moved the provisions for technical merit determination (7 CFR 4280.129(b)) to a general section of the rule. One change being proposed is that the interest rate on the loan would not be used as a scoring criterion.

Lastly, the Agency is removing the evaluation criteria from 7 CFR 4280.129(c) and including the revised criteria in § 4280.135, as discussed earlier.

#### Loan Approval and Obligation of Funds (7 CFR 4280.139)

The Agency has determined that a separate provision for loan approval and obligation of funds in 7 CFR part 4280, subpart B is not required.

#### Selection of RES and EEI Guaranteed Loan Only Applications (§ 4280.139)

This is a new section that contains the procedures to be used for competing guaranteed loan only applications as has been described earlier. The procedures in this section apply only to guaranteed loan only applications. The process and procedures for guaranteed loan applications that are part of a combination funding request are covered under § 4280.165.

#### Conditions Precedent to the Issuance of the Loan Note Guarantee (§ 4280.142)

The Agency is proposing to conform the REAP provisions to the B&I provisions with two exceptions, which are: that all development must have been performed at a steady state operating level in accordance with the technical requirements and, when applicable, a copy of the executed power purchase agreement must be provided to the Agency before the Loan Note Guarantee can be issued.

#### Servicing Guaranteed Loans (§ 4280.152)

With two exceptions, the Agency is proposing that REAP guaranteed loans be serviced in accordance with the servicing provisions for B&I guaranteed loans. In general, this results in few changes, because 7 CFR part 4280, subpart B already cross-references most of the B&I servicing regulations with few changes.

The two remaining exceptions pertain to borrowers being determined to be eligible borrowers under the REAP regulation when they are involved in a

transfer and assumption and to loans providing additional funds in connection with a transfer and assumption must be considered as new loan application under the REAP regulation and would compete against other applications received for funding consideration in that competition cycle for the fiscal year, provided there is sufficient budget authority available to fund the project.

#### Combined Funding for Renewable Energy Systems and Energy Efficiency Improvements

Changes being proposed for applications for renewable energy systems and energy efficiency improvement projects seeking combined funding are summarized below.

- Clarifying that the grant portion of the combined funding request shall not exceed 25 percent of total eligible project costs.
- Clarifying what the contents of the guaranteed loan application are if the guaranteed loan request is greater than \$600,000 or is less than or equal to \$600,000.
- Clarifying what needs to be submitted when both applications would contain the same documentation, form, or certification.
- Requiring that the grant portion of the funding request must be at least \$1,500 for energy efficiency improvement projects and at least \$2,500 for renewable energy system projects.
- Identifying when the System for Awards Management (SAM) number and expiration date must be submitted.
- Adding a provision to identify how combined funding applications will be handled if they are ranked, but not funded.
- Adding a provision indicating that compliance reviews will be conducted.
- Revising the process for evaluating combined funding requests to refer only to the grant procedures.

#### Renewable Energy System Feasibility Study Grants

Changes being proposed for renewable energy system feasibility study grants are summarized below.

##### General Provisions (§ 4280.169)

The Agency is proposing to add a provision that would make a feasibility study application ineligible if the applicant proposes to conduct any portion of the feasibility study. In other words, the feasibility study must be conducted entirely by entities other than the applicant.

##### Applicant Eligibility (§ 4280.170)

In addition to make a few clarifying changes, the Agency is proposing to add new conditions, which would make this set of applicant eligibility requirements consistent with the other grant programs in REAP. These four provisions are:

- In lieu of being the prospective owner of the RES project, the applicant has the option of being the prospective controller of the site for the useful life of the property on which the RES would be placed; and
- The applicant must have the legal authority necessary to apply for and carry out the purpose of the grant.
- The applicant is required to follow the Universal identifier and the SAM requirements of 2 CFR unless exempt under 2 CFR 25.110.

##### Eligibility of RES Projects for Feasibility Study Grants (§ 4280.171)

In addition to several clarifications, the Agency is also proposing two substantive changes to this section.

The Agency is removing the provision that would allow the technology to be a “pre-commercial” technology to qualify. This change is consistent with the overall proposed change to RES project eligibility requirements as stated earlier in this Notice.

The Agency is adding a provision cautioning the applicant from taking any actions or incurring any obligations prior to the Agency completing the environmental review that would either limit the range of alternatives to be considered or that would have an adverse effect on the environment, such as the initiation of construction, because taking any such actions or incurring any such obligations could result in project ineligibility.

##### Application Eligibility Provisions

While the proposed rule would no longer have this section, its provisions have been incorporated elsewhere in the rule. There is one change, however, associated with the 7 CFR part 4280, subpart B requirement prohibiting a feasibility study application being submitted in the same Federal fiscal year that a renewable energy system application is submitted and vice-versa. This requirement is being replaced with one that states: “An applicant can apply for only one Renewable Energy System project, one Energy Efficiency Improvement project, and one Feasibility Study project under this subpart per Federal fiscal year.” This could, theoretically, allow an applicant to submit a feasibility study application and a renewable energy system application for the same renewable energy system in the same Federal fiscal year.

##### Grant Funding for RES Feasibility Studies (§ 4280.173)

Several substantive changes are being proposed for this section.

The Agency is proposing to increase the maximum amount of grant funds from \$50,000 to \$100,000, but still require the lesser of the \$100,000 or 25 percent of the total eligible costs.

The Agency is proposing to revise the list of items that illustrate what can be considered as eligible projects costs as follows:

- Payment of services to qualified consultants to perform the evaluations needed for the feasibility study and to complete the feasibility study; and
- Other studies or assessments to evaluate the economic, technical, market, financial, and management feasibility of the renewable energy system that are needed to complete the feasibility study (e.g., resource assessment, transmission study, or environmental study).

The reference to resource assessment, transmission study, and environmental study in 7 CFR part 4280, subpart B has been incorporated into the second item describing eligible project costs.

The Agency is proposing to add two new ineligible project costs: preparing the application package and funding of political or lobbying activities. These two new ineligible project costs are consistent with the other grant provisions.

The provision concerning the requirement to expend the grant funds within 2 years still applies to feasibility study grants, but has been relocated to the General section of the rule (see proposed § 4280.110(j)).

##### Feasibility Study Grant Applications—Content (§ 4280.176)

In addition to several clarifying and conforming edits, the following substantive changes are being proposed.

The provision requiring a Table of Contents with clear pagination and chapter identification is being removed.

The requirement to submit a copy of legal organizational documents is being removed.

Applicants would now identify the primary NAICS code applicable to their operation, if known, or a description of their operation in sufficient detail for the Agency to determine the applicable primary NAICS code.

Applicants are now certifying that they are legal entities in good standing, if applicable, and operating in accordance with the laws of the state(s) in which the applicants have a place of business.

Removed from the proposed scope of work (referred to in 7 CFR part 4280,

subpart B as the proposed work plan) is the requirement to submit a description of the feasibility study to be conducted. In addition, reference to the applicant requiring those conducting the feasibility study to consider and document within the feasibility study the important environmental factors and alternatives is being removed because such consideration is adequately covered elsewhere in the rule. The changes to the paragraphs concerning the experience of the qualified consultants and the source and amount of matching funds are clarification in nature, with emphasis on submitting written commitments in part so that the Agency can score the application.

The submittal of the applicant's DUNS number is removed because it is already required on Standard Form SF-424, "Application for Federal Assistance."

With regard to the financial information, the Agency is only requesting a certification on financial items specific to rural small businesses and agricultural producers. This information is needed for scoring purposes and rather than having an applicant submit financial statements, the Agency will accept a certification on the applicable financial items.

Evaluation of Feasibility Study Grant Applications (§ 4280.177)

The Agency has determined that the process for evaluating feasibility study

grant applications is no different than the process it will use to evaluate RES/EEI grant applications. Therefore, rather than repeating that process, as was done in 7 CFR part 4280, subpart B, the Agency is proposing to cross-reference the RES/EEI grant application process. The one difference is that a technical merit determination is not applicable to feasibility study grant applications.

Scoring Feasibility Study Grant Applications (§ 4280.178)

The Agency is proposing several substantive changes to how it will score feasibility study grant applications. These changes are summarized in Table 2.

TABLE 2—SUMMARY OF SCORING CRITERIA CHANGES FOR RES FEASIBILITY STUDY GRANT APPLICATIONS

7 CFR part 4280, subpart B	Proposed change(s)
Energy replacement or generation .....	Remove as a scoring criterion.
Commitment of funds .....	Increase maximum points from 10 to 25. Written commitments are required in order to obtain points. Distribution of points is changed.
Designation as a small agricultural producer or rural small business .....	Criterion changed to size of agricultural producer or rural small business. Points reduced from 20 to 10. Points awarded on basis of relative size of the applicant to SBA size standards for the applicant's applicable NAICS code.
Experience and qualifications .....	Points increased from 15 to 25. Distribution of points changed.
Size of grant request .....	Dollar thresholds doubled for determining points awarded.
Previous grantees and borrowers .....	New criterion for "Previous grantees and borrowers". Maximum 10 points. Consistent with change made in RES/EEI grant scoring.
Resources to implement project .....	Removed.

Selecting Feasibility Study Grant Applications for Award (§ 4280.179)

The Agency is proposing to revamp the process it will use to select feasibility study applications for award. While higher scoring applications will still receive preference, the Agency is proposing to accept applications throughout the year, with two competitions held. The first competition would be for those complete and eligible applications received by November 30; and the second, for those received by May 31. All applications would be eligible for two rounds of competitions, which could result in an application being competed across two Federal fiscal years (i.e., first competed in the May 31 competition and then again in the November 30 competition).

The Agency is revising one of the provisions associated with funding selected applications by requiring that the applicant provide the remaining total funds needs to complete the project in situations in which the applicant agrees to lower its grant

request in order to be awarded the grant. This replaces the current provision that the Agency must determine the project is financially feasible at the lower amount.

The Agency is also proposing to add a new provision that puts the applicant on notice that the applicant assumes all risk if the choice is made to purchase the technology proposed or start construction of the project to be financed in the grant application after the complete application has been received by the Agency.

Actions Prior to Grant Closing (7 CFR 4280.180)

The Agency is proposing to move the two provisions in this section to new locations within the proposed rule. The first paragraph concerning environmental assessment is covered in the proposed rule at § 4280.108(c). The second paragraph concerning evidence of funds is covered in the proposed rule at § 4280.181, which cross references § 4280.122.

Awarding and Administering Feasibility Study Grants (§ 4280.181)

The Agency has determined that, with two exceptions, the same process for awarding and administering RES/EEI grants is applicable to feasibility study grants and that there is no reason to repeat those provisions. Thus, this section has been modified to refer back to the corresponding RES/EEI grant section.

The two exceptions noted in the previous paragraph are:

- the insurance requirements in § 4280.122(b) does not apply unless equipment is purchased, and
- the power purchase agreement specified in § 4280.122(e) does not apply.

Servicing Feasibility Study Grants (§ 4280.182)

The Agency has determined that, with a few exceptions and additions, the same process for servicing RES/EEI grants is applicable to feasibility study grants and that there is no reason to

repeat those provisions. Thus, this section has been modified to refer back to the corresponding RES/EEI grant section.

The exceptions noted in the previous paragraph are:

- Feasibility study grant funds are to be expended on a pro rata basis with matching funds;
- Form SF-270, "Request for Advancement or Reimbursement," is to be used;
- The final 10 percent of grant funds will be held back until an acceptable feasibility study has been submitted;
- Upon completion of the project, the feasibility study acceptable to the Agency and Form SF-270 are to be submitted; and
- Outcome project performance reports are to be submitted beginning the first full year after completion of the feasibility study.

The Agency notes that it is proposing one change to the project performance report. This change is to add a discussion, when applicable, of why the renewable energy system is not underway.

#### Energy Audit and Renewable Energy Development Assistance Grants

Changes being proposed for energy audit and renewable energy development assistance grants are summarized below.

#### Applicant Eligibility (§ 4280.186)

Two substantive changes are being proposed to this section.

The Agency is proposing to remove the option of allowing an applicant to "obtain" the legal authority necessary such that all applicants must have the necessary legal authority at the time of application.

Currently, 7 CFR part 4280, subpart B requires that this legal authority is necessary "to carry out the purpose of the grant." The Agency is proposing an additional requirement—that the applicant has the legal authority necessary to "apply for the grant" as well.

#### Project Eligibility (§ 4280.187)

The Agency is proposing several clarifications to this section, including removing the text identifying what constitutes an energy audit, because that material is covered in Section B of Appendix A of this subpart. In addition to these clarifications, the Agency is proposing one substantive change. As it is proposing to do for the RES feasibility study grants, the Agency is adding a provision cautioning the applicant from taking any actions or incurring any obligations prior to the Agency

completing the environmental review that would either limit the range of alternatives to be considered or that would have an adverse effect on the environment, such as the initiation of construction, because taking any such actions or incurring any such obligations could result in project ineligibility.

#### Grant Funding for Energy Audit and Renewable Energy Development Assistance (§ 4280.188)

The proposed changes to the paragraph on eligible project costs are clarification-type changes, including removing unnecessary examples. One example is replacing the term "administrative expenses" with "expenses charged as a direct cost or as an indirect cost \* \* \* for administering the grant."

With regard to ineligible project costs, the Agency is proposing to add as an identified ineligible project cost, any goods or services provided by a person or entity that has a conflict of interest. The Agency is also proposing to add the leasing of equipment as an ineligible project cost. The current provision associated with the payment of costs incurred prior to the application date was removed from the list of ineligible project costs. The Agency has determined that it is unnecessarily duplicative of the provision that limits eligible project costs to only those costs that are incurred after a complete application has been received by the Agency.

In addition, the Agency is proposing to allow a grantee to use program income to further the objectives of their project or energy audit services offered during the grant period in accordance with Department regulations.

#### Energy Audit/Renewable Energy Development Assistance Grant Applications—Content (§ 4280.190)

In addition to several clarifying and conforming edits, the following substantive changes are being proposed.

The Agency is proposing that an applicant may only submit one energy audit (EA) grant application and one renewable energy development assistance (REDA) grant application each Federal fiscal year and that combination applications (one in which an applicant proposed both EA and REDA) will not be accepted. The Agency is proposing to drop several items from the application as follows.

- A copy of the applicant's organizational documents showing the applicant's legal existence and authority to perform the activities under the grant (7 CFR 4280.190(d)).

- The Executive Summary (7 CFR 4280.190(e)(1)).

- The itemized budget (7 CFR 4280.190(e)(4)).

• The narrative addressing the applicant's resources, including personnel, finances, and technology, to complete what is proposed (7 CFR 4280.190(e)(7), although the applicant is still required to demonstrate that it has sufficient resources to complete all projects if the project is located in multiple states.

- The most recent financial audit of the applicant, or subdivision thereof, that will be performing the project (7 CFR 4280.190(f)).

- The applicant's DUNS number (7 CFR 4280.190(g)), because it is contained in Standard Form SF-424.

• Dropping the "using State and Federal support" provision in 7 CFR 4280.190(e)(6)(iii) when describing the applicant's experience, resulting in a broader discussion.

The Agency is proposing to add several items to the application as follows.

- Certification that the applicant is a legal entity in good standing (as applicable) and operating in accordance with the laws of the state(s) where the applicant has a place of business.

- A description of the goals of the project.

- Identification of the specific needs for the service area and the target audience to be served.

- The name and contact information, if available, for those that will be served by the project.

- Identification of the specific needs for the service area and the target audience to be served.

• Discussing whether the applicant has any existing programs that can demonstrate the achievement of energy savings or energy generation with the agricultural producers and/or rural small businesses the applicant has served.

- If the applicant has received one or more awards within the last 5 years in recognition of its renewable energy, energy savings, or energy-based technical assistance, describing that achievement.

The Agency is proposing to revise several of the requirements, including:

- Consolidating provisions associated with the timeline and schedule for the project.

- Consolidating the requirements associated with outreach (7 CFR 4280.190(e)(9)) into a more general description of what is being requested.

Evaluation of EA and REDA Grant Applications (§ 4280.191)

The Agency has determined that the process for evaluating energy audit and REDA grant applications is no different than the process it will use to evaluate RES/EEI grant applications. Therefore,

the Agency is proposing to cross-reference the RES/EEI grant application process. The one difference is that a technical merit determination is not applicable to either EA or REDA grant applications.

Scoring EA and REDA Grant Applications (§ 4280.192)

The Agency is proposing several substantive changes to how it will score energy audit and REDA grant applications. These changes are summarized in Table 3.

TABLE 3—SUMMARY OF SCORING CRITERIA CHANGES FOR ENERGY AUDIT AND RENEWABLE ENERGY DEVELOPMENT ASSISTANCE GRANT APPLICATIONS

Interim rule	Proposed change(s)
Project proposal .....	Remove as a scoring criterion.
Use of grant funds for administrative expenses .....	Remove as a scoring criterion.
Applicant's organizational experience in completing proposed activity ...	Changed title of scoring criterion. Increased maximum points from 15 to 25. Adjusted distribution of points.
Geographic scope of project .....	Points increased from 10 to 20. Adjusted distribution of points.
Number of agricultural producers/rural small businesses to be served ...	Points increased from 15 to 20. Distribution of points changed.
Potential to produce energy savings and its attending environmental benefits.	Added a new metric to receive an additional 10 points if the applicant provides a list of ultimate recipients, including their name and contact information, that are ready to be assisted. Points decreases from 25 to 10.
Marketing and outreach plan .....	Revised distribution and how points will be awarded.
Level of commitment of other funds for the project .....	Points decreased from 10 to 5. Increased points from 5 to 20. Revised distribution and how points will be awarded.

Selecting EA and REDA Grant Applications for Award (§ 4280.193)

The Agency is proposing several substantive changes to this section.

The Agency is proposing a single competition for all complete applications received by January 31 of each year.

In selecting applications for funding, if two or more applications score the same and if remaining funds are insufficient to fund each application, the Agency is proposing to distribute the remaining funds to each such application on a pro-rata basis. While the Agency is proposing to continue the provision that unfunded applications will not be carried forward into the next Federal fiscal year, the Agency is adjusting the language to make this clear (currently the rule only refers to not carrying unfunded applications forward into Fiscal Year 2012).

Actions Prior to Grant Closing

The Agency is proposing to remove 7 CFR 4280.194.

Awarding and Administering EA and REDA Grants (§ 4280.195)

The Agency has determined that, with three exceptions, the same process for awarding and administering RES/EEI grants is applicable to energy audit and REDA grants and that there is no reason to repeat those provisions. Thus, this section has been modified to refer back

to the corresponding RES/EEI grant section.

The three exceptions noted in the previous paragraph are:

- The insurance requirements in § 4280.122(b) do not apply. Instead, the Agency is proposing that the grantee must provide satisfactory evidence to the Agency that all officers of grantee organization authorized to receive and/or disburse Federal funds are covered by such bonding and/or insurance requirements as are normally required by the grantee.

- Form RD 400–1, “Equal Opportunity Agreement,” specified in § 4280.122(c)(6) is not required.

- The power purchase agreement specified in § 4280.122(h) does not apply.

Servicing EA and REDA Grants (§ 4280.196)

The Agency has determined that, with a few exceptions and additions, the same process for servicing RES/EEI grants is applicable to energy audit and REDA grants and that there is no reason to repeat those provisions. Thus, this section has been modified to refer back to the corresponding RES/EEI grant section.

The exceptions noted in the previous paragraph are:

- Grant disbursement;
- Semi-annual reports;
- Final performance report; and

- Outcome project performance reports (referred to in 7 CFR part 4280, subpart B as Final Status Reports.)

The Agency is proposing to remove the requirement to identify the percentage of financial resources expended on contractors for the semi-annual and final performance reports.

III. Request for Comments

The Agency is interested in receiving comments on all aspects of the proposed rule. Areas in which the Agency is seeking specific comments are identified below. All comments should be submitted as indicated in the ADDRESSES section of this preamble. In addition, all written comments received under the REAP interim rule that was published in the **Federal Register** on April 14, 2011 (76 FR 21110) will be considered along with any comments received under this proposed rule. The Agency will address all written comments in a final rule in the **Federal Register**.

a. The Agency is proposing to allow projects with total project costs of no more than \$200,000 to submit applications that contain less documentation. The Agency is requesting comment on this threshold as to whether it is at an appropriate level. If you believe that the level should be different, please identify your suggested level and provide your rationale.

b. The Agency is proposing to allow projects with total project costs of no

more than \$80,000 to submit applications that contain less documentation. The Agency is requesting comment on this threshold as to whether it is at an appropriate level. If you believe that the level should be different, please identify your suggested level and provide your rationale.

c. The Agency is seeking comment on the definition of small business. This definition has changed since the original rule was developed as the Section 9006 program. The Agency is interested in alternative definitions that would simplify the identification of small businesses. Please be sure to provide your rationale.

d. As proposed, the maximum grant that would be made for a renewable energy system feasibility study is \$100,000. The Agency is interested in receiving comments on the appropriateness of this limit. If you believe that the level should be different, please identify your suggested level and provide your rationale.

e. The Agency is proposing to award points for flexible fuel pumps based on the average annual gallons of renewable fuel estimated to be sold over the first two years by the pumps per grant dollar requested. The Agency is seeking comment on this metric. For example, to what extent would this metric be a good selection criterion? The Agency is also seeking suggestions for alternative metrics. Please be sure to be specific in your comments and suggestions and provide your rationale.

f. The Agency is considering replacing the current cash equity requirement with a minimum of 25 percent tangible balance sheet equity (or a maximum debt-to-tangible net worth ratio of 3:1). Please comment on this consideration, including pros and cons on each metric (i.e. cash equity, tangible balance sheet equity) and your suggestions on the level of debt-to-tangible net worth ratio. In addition, the Agency acknowledges that Federal and State grants can be recorded differently on the balance sheet and how this can impact tangible balance sheet equity in various ways. This should also be a consideration when making comments on the proposed cash equity requirement change. Please be sure to provide your rationale for your position.

g. The Agency is seeking to encourage greater use of REAP guaranteed loans. The Agency is interested in other possible provisions to expand the use of the guaranteed loan only applications under REAP. To make informed decisions in this regard, the Agency needs a better understanding of specific rule provisions that affect the decision

to use or not use REAP guaranteed loans.

For any suggested changes to the rule that you believe will encourage more guaranteed loan only applications, please be sure to provide your rationale/basis for each suggested change. An important consideration for the Agency in making any change is the potential effect on increasing the risk of default and thus increasing the subsidy rate (which would reduce the level of funding that the Agency could use in making loan guarantees). Therefore, please be sure to address this issue and, to the extent possible, suggest ways that could mitigate increases in risk.

h. As noted in the preamble to this rule, the Agency is proposing to compete guaranteed-loan only applications on a quarterly basis. The Agency is specifically seeking comment on the frequency with which guaranteed-loan only applications are competed. Please comment on how the frequency of competition cycles such as monthly, semi-annually, and annually would meet the needs of lenders and borrowers better than quarterly competitions. Please be specific in your comments and provide your rationale.

i. The Agency is considering issuing the REAP Loan Note Guarantee prior to construction for technologies that demonstrate lower risk to the government. The Agency is interested in receiving comments on the appropriateness of this action and would like to receive suggestions on what type of technologies should be considered. Please be sure to be specific in your comments and provide your rationale.

j. The Agency is seeking comment on how a multi-farm, community digester project could be developed based upon the requirements contained in this proposed rule. Please be sure to be specific in your comments and provide your rationale.

k. The current REAP regulation allows the State Director or the Administrator to award points to an application that is “for an under-represented technology” (see § 4280.120(g)). Under Renewable Energy Systems, there are different categories or technologies: wind, solar, renewable biomass, ocean (including tidal, wave, current, and thermal), geothermal, hydroelectric source, or hydrogen derived from one of these sources. Energy efficiency only has one category.

The Agency is considering revising how it awards points for the “under-represented technology” provision for EEI technology. For example, looking at the number of prior lighting project awards compared to the number of prior

grain dryer or poultry house project awards and awarding State Director or Administrator points to those projects that are under-represented. To this end, the Agency is seeking comments on the following questions. In all cases, please provide your rationale to support your comments.

- For energy efficiency improvement projects, how would you suggest subdividing EEI projects to create “similar classes of EEI technologies” for purposes of determining “under-representation”?

- Should we determine under-represented based on the pool of applications each year or based on the historical data for the program?

#### List of Subjects in 7 CFR Part 4280

Loan programs—Business and industry, Economic development, Energy, Energy Efficiency Improvements, Feasibility studies, Grant programs, Guaranteed loan programs, Renewable Energy Systems, and Rural areas.

For the reasons set forth in the preamble, under the authority at 5 U.S.C. 301, 7 U.S.C. 1989, and 7 U.S.C. 8107, chapter XLII of title 7 of the Code of Federal Regulations is proposed to be amended as follows: Chapter XLII—Rural Business-Cooperative Service and Rural Utilities Service, Department of Agriculture

#### PART 4280—LOAN AND GRANTS

■ 1. The authority citation for part 4280 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 940c; 7 U.S.C. 8107

■ 2. Subpart B is revised as follows:

#### Subpart B—Rural Energy for America Program

##### General

Sec.	Purpose.
4280.101	Purpose.
4280.102	Organization of subpart.
4280.103	Definitions.
4280.104	Exception authority.
4280.105	Review or appeal rights.
4280.106	Conflict of interest.
4280.107	USDA Departmental regulations.
4280.108	Laws that contain other compliance requirements.
4280.109	Ineligible applicants, borrowers, and owners.
4280.110	General applicant, application, and funding provisions.
4280.111	Notifications.

##### Renewable Energy System and Energy Efficiency Improvement Grants

4280.112	Applicant eligibility.
4280.113	Project eligibility.
4280.114	[Reserved]

- 4280.115 RES and EEI grant funding.
- 4280.116 Grant applications—general.
- 4280.117 Grant applications for RES and EEI projects with total project costs greater than \$200,000.
- 4280.118 Grant applications for RES and EEI projects with total project costs of \$200,000 or less.
- 4280.119 Grant applications for RES and EEI projects with total project costs of \$80,000 or less.
- 4280.120 Scoring RES and EEI grant applications.
- 4280.121 Selecting RES and EEI grant applications for award.
- 4280.122 Awarding and administering RES and EEI grants.
- 4280.123 Servicing RES and EEI grants.
- 4280.124 Construction planning and performing development.

#### Renewable Energy System and Energy Efficiency Improvement Guaranteed Loans

- 4280.125 Compliance with §§ 4279.29 through 4279.99.
- 4280.126 Guarantee/annual renewal fee.
- 4280.127 Borrower eligibility.
- 4280.128 Project eligibility.
- 4280.129 Guaranteed loan funding.
- 4280.130 Loan processing.
- 4280.131 Credit quality.
- 4280.132 Financial statements.
- 4280.133 [Reserved]
- 4280.134 Personal and corporate guarantees.
- 4280.135 Scoring RES and EEI guaranteed loan only applications.
- 4280.136 [Reserved]
- 4280.137 Application and documentation.
- 4280.138 Evaluation of RES and EEI guaranteed loan applications.
- 4280.139 Selection of RES and EEI guaranteed loan only applications.
- 4280.140 [Reserved]
- 4280.141 Changes in borrower.
- 4280.142 Conditions precedent to issuance of loan note guarantee.
- 4280.143 Requirements after project construction.
- 4280.144–4280.151 [Reserved]
- 4280.152 Servicing guaranteed loans.
- 4280.153–4280.164 [Reserved]

#### Combined Funding for Renewable Energy Systems and Energy Efficiency Improvements

- 4280.165 Combined funding for renewable energy systems and energy efficiency improvements.
- 4280.166–4280.168 [Reserved]

#### Renewable Energy System Feasibility Study Grants

- 4280.169 General provisions.
- 4280.170 Applicant eligibility.
- 4280.171 Eligibility of RES projects for feasibility study grants.
- 4280.172 [Reserved]
- 4280.173 Grant funding for RES feasibility studies.
- 4280.174–4280.175 [Reserved]
- 4280.176 Feasibility study grant applications—content.
- 4280.177 Evaluation of feasibility study grant applications.
- 4280.178 Scoring feasibility study grant applications.

- 4280.179 Selecting feasibility study grant applications for award.
- 4280.180 [Reserved]
- 4280.181 Awarding and administering feasibility study grants.
- 4280.182 Servicing feasibility study grants.
- 4280.183–4280.185 [Reserved]

#### Energy Audit and Renewable Energy Development Assistance Grants

- 4280.186 Applicant eligibility.
  - 4280.187 Project eligibility.
  - 4280.188 Grant funding for energy audit and renewable energy development assistance.
  - 4280.189 [Reserved]
  - 4280.190 EA and REDA grant applications—content.
  - 4280.191 Evaluation of EA and REDA grant applications.
  - 4280.192 Scoring EA and REDA grant applications.
  - 4280.193 Selecting EA and REDA grant applications for award.
  - 4280.194 [Reserved]
  - 4280.195 Awarding and administering EA and REDA grants.
  - 4280.196 Servicing EA and REDA grants.
  - 4280.197–4280.199 [Reserved]
  - 4280.200 OMB control number.
- Appendix A to Part 4280—Technical Report for Energy Efficiency Improvement Projects
- Appendix B to Part 4280—Technical Reports for Renewable Energy System (RES) Projects with Total Project Costs of \$200,000 or Less
- Appendix C to Part 4280—Technical Reports for Renewable Energy System Projects with Total Project Costs of Greater than \$200,000
- Appendix D to Part 4280—Feasibility Study Content

#### General

##### § 4280.101 Purpose.

The subpart contains the procedures and requirements for providing the following financial assistance under the Rural Energy for America Program (REAP):

(a) Grants or guaranteed loans, or a combination grant and guaranteed loan, for the purpose of purchasing and installing Renewable Energy Systems (RES) and Energy Efficiency Improvements (EEI);

(b) Grants for conducting RES Feasibility Studies; and

(c) Grants to assist Agricultural Producers and Rural Small Businesses by conducting Energy Audits (EA) and providing recommendations and information on Renewable Energy Development Assistance (REDA) and improving energy efficiency.

##### § 4280.102 Organization of subpart.

(a) Sections 4280.103 through 4280.111 discuss definitions; exception authority; review or appeal rights; conflict of interest; USDA Departmental Regulations; other applicable laws;

ineligible applicants, borrowers, and owners; general applicant, application, and funding provisions; and notifications, which are applicable to all of the funding programs under this subpart.

(b) Sections 4280.112 through 4280.124 discuss the requirements specific to RES and EEI grants. Sections 4280.112 and 4280.113 discuss, respectively, applicant and project eligibility. Section 4280.115 addresses funding provisions for these grants. Sections 4280.116 through 4280.119 address grant application content and required documentation. Sections 4280.120 through 4280.123 address the scoring, selection, awarding and administering, and servicing of these grant applications. Section 4280.124 addresses construction planning and development.

(c) Sections 4280.125 through 4280.152 discuss the requirements specific to RES and EEI guaranteed loans. Sections 4280.125 through 4280.128 discuss eligibility and requirements for making and processing loans guaranteed by the Agency. Section 4280.129 addresses funding for guaranteed loans. In general, Sections 4280.130 through 4280.152 provide guaranteed loan origination and servicing requirements. These requirements apply to lenders, holders, and other parties involved in making, guaranteeing, holding, servicing, or liquidating such loans. Section 4280.137 addresses the application requirements for guaranteed loans.

(d) Section 4280.165 presents the process by which the Agency will make combined loan guarantee and grant funding available for RES and EEI projects.

(e) Sections 4280.170 through 4280.182 presents the process by which the Agency will make RES Feasibility Study grant funding available. These sections cover applicant and project eligibility, grant funding, application content, evaluation, scoring, selection, awarding and administering, and servicing.

(f) Sections 4280.186 through 4280.196 present the process by which the Agency will make EA and REDA grant funding available. These sections cover applicant and project eligibility, grant funding, application content, evaluation, scoring, selection, awarding and administering, and servicing.

(g) Appendices A through C cover technical report requirements. Appendix A applies to EEI projects; Appendix B applies to RES projects with Total Project Costs of \$200,000 or less; and Appendix C applies RES projects with Total Project Costs greater

than \$200,000. Appendix D identifies the contents of the Feasibility Study that will be required to be submitted to the Agency if funding is provided under §§ 4280.169 through 4280.182.

Appendices A and B do not apply to RES and EEI projects with Total Project Costs of \$80,000 or less, respectively. Instead, technical report requirements for these projects are found in § 4280.119.

#### § 4280.103 Definitions.

Terms used in this subpart are defined in either § 4279.2 of this chapter or in this section. If a term is defined in both § 4279.2 and this section, it will have, for purposes of this subpart only, the meaning given in this section. Terms used in this subpart that have the same meaning as the terms defined in this section have been capitalized in this subpart.

**Administrator.** The Administrator of Rural Business-Cooperative Service within the Rural Development Mission Area of the U.S. Department of Agriculture.

**Agency.** The Rural Business-Cooperative Service (RBS) or successor agency assigned by the Secretary of Agriculture to administer the Rural Energy for America Program. References to the National Office, Finance Office, State Office, or other Agency offices or officials should be read as prefaced by "Agency" or "Rural Development" as applicable.

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

**Anaerobic digester project.** A Renewable Energy System that uses animal or other Renewable Biomass and may include other organic substrates, via anaerobic digestion, to produce biomethane that is used to produce thermal or electrical energy or that is converted to a compressed gaseous or liquid state.

**Annual receipts.** The total income or gross income (sole proprietorship) plus cost of goods sold.

**Applicant.** (1) Except for EA and REDA grants, the Agricultural Producer or Rural Small Business that is seeking a grant, guaranteed loan, or a combination of a grant and loan, under this subpart.

(2) For EA and REDA grants, a unit of state, tribal, or local government; a land-grant college or university or other Institution of Higher Education; a rural

electric cooperative; a Public Power Entity; or an Instrumentality of a State, Tribal, or local government that is seeking an EA or REDA grant under this subpart.

**Assignment Guarantee Agreement (Form RD 4279-6, or successor form).**

The signed agreement among the Agency, the lender, and the holder containing the terms and conditions of an assignment of a guaranteed portion of a loan, using the single note system.

**Bioenergy project.** A Renewable Energy System that produces fuel, thermal energy, or electric power from a Renewable Biomass source only.

**Blended liquid transportation fuel.** A fuel used for transportation that:

(1) Is composed of one or more fuel types, at least one of which must meet the Renewable Fuel Standard, and

(2) Results in a blended fuel that exceeds the highest Federal or State percentage volume, if any, for a renewable fuel required for each retail service station for the respective jurisdiction. For example, if the Federal government required E15 be dispensed at all retail service stations and a State required E30 be dispensed at all retail service stations in this State, then Applicants in that State would be eligible for funds under this program only if the Flexible Fuel Pump to be installed would dispense a Blended Liquid Transportation Fuel higher than E30 (e.g., E50, E85).

**Capacity.** The maximum output rate that an apparatus or heating unit is able to attain on a sustained basis as rated by the manufacturer.

**Commercially available.** A system that has a proven operating history for at least one year specific to the proposed application. Such a system is based on established design and installation procedures and practices. Professional service providers, trades, large construction equipment providers, and labor are familiar with installation procedures and practices. Proprietary and balance of system equipment and spare parts are readily available. Service is readily available to properly maintain and operate the system. An established warranty exists for major parts and labor. If the system is currently Commercially Available only outside of the U.S., authoritative evidence of the foreign operating history, performance and reliability is required in order to address the proven operating history.

**Complete application.** An application that contains all parts necessary for the Agency to determine Applicant and project eligibility, to score the application, and, where applicable, to enable the Agency to perform a technical evaluation of the project.

**Conditional Commitment (Form RD 4279-3, or successor form).** The Agency's notice to the lender that the loan guarantee it has requested is approved subject to the completion of all conditions and requirements set forth by the Agency and outlined in the Conditional Commitment.

**Departmental regulations.** The regulations of the Department of Agriculture's Office of Chief Financial Officer (or successor office) as codified in 2 CFR part 417 and 7 CFR parts 3000 through 3099, including, but not necessarily limited to, 7 CFR parts 3015 through 3019, 7 CFR part 3021, and 7 CFR part 3052, and successor regulations to these parts.

**Design/build method.** A method of project development whereby all design, engineering, procurement, construction, and other related project activities are performed under a single contract. The contractor is solely responsible and accountable for successful delivery of the project to the grantee and/or borrower as applicable.

**Eligible project costs.** The Total Project Costs that are eligible to be paid or guaranteed with program funds.

**Energy analysis.** An Agency-approved report prepared by an individual or entity who has at least 3 years experience and completed at least five energy analyses, energy assessments, or energy audits on similar type projects, assessing energy use, cost and efficiency by analyzing energy bills and surveying the target building and/or equipment sufficiently to provide an Agency-approved energy analysis.

**Energy assessment.** An Agency-approved report prepared by an Energy Auditor, Energy Assessor, or an individual supervised by either an Energy Assessor or Energy Auditor, assessing energy use, cost, and efficiency by analyzing energy bills and surveying the target building and/or equipment sufficiently to provide an Agency-approved energy assessment. The final energy assessment must be validated and signed by the Energy Assessor or Energy Auditor who conducted the assessment or by the supervising Energy Assessor or Energy Auditor of the individual who conducted the assessment, as applicable.

**Energy assessor.** A Qualified Consultant who has at least 3 year experience and completed at least five Energy Assessments or Energy Audits on similar type projects and who adheres to generally recognized engineering principles and practices.

**Energy audit (EA).** A comprehensive report that meets an Agency approved standard prepared by an Energy Auditor

or an individual supervised by an Energy Auditor that documents current energy usage; recommended potential improvements, typically called energy conservation measures, and their costs; energy savings from these improvements; dollars saved per year; and Simple Payback. The methodology of the energy audit must meet professional and industry standards. The final energy audit must be validated and signed off by the Energy Auditor who conducted the audit or by the supervising Energy Auditor of the individual who conducted the audit, as applicable.

**Energy auditor.** A Qualified Consultant that meets one of the following criteria:

- (1) A Certified Energy Auditor certified by the Association of Energy Engineers;
- (2) A Certified Energy Manager certified by the Association of Energy Engineers;
- (3) A Licensed Professional Engineer in the State in which the audit is conducted with at least 1 year experience and who has completed at least two similar type Energy Audits; or
- (4) An individual with a four-year engineering or architectural degree with at least 3 years experience and who has completed at least five similar type Energy Audits.

**Energy efficiency improvement (EEI).** Improvements to or replacement of an existing building and/or equipment that reduces energy consumption on an annual basis.

**Feasibility study.** An analysis conducted by a qualified consultant of the economic, market, technical, financial, and management feasibility of a proposed project or business.

**Federal fiscal year.** The 12-month period beginning October 1 of any given year and ending on September 30 of the following year.

**Financial feasibility.** The ability of a project or business to achieve sufficient income, credit, and cash flow to financially sustain a project over the long term. The concept of financial feasibility includes assessments of the cost-accounting system, the availability of short-term credit for seasonal businesses, and the adequacy of raw materials and supplies.

**Flexible fuel pump.** A retail pump that combines and dispenses a Blended Liquid Transportation Fuel or dispenses a Blended Liquid Transportation Fuel. If a flexible fuel pump dispenses more than one blend of liquid transportation fuel, at least one of the blends must meet the definition of Blended Liquid Transportation Fuel found in this section.

**Geothermal direct generation.** A system that uses thermal energy directly from a geothermal source.

**Geothermal electric generation.** A system that uses thermal energy from a geothermal source to produce electricity.

**Grant agreement (Form RD 4280–2, Rural Business Cooperative Service Grant Agreement, or successor form).** An agreement between the Agency and the grantee setting forth the provisions under which the grant will be administered.

**Hybrid.** A combination of two or more Renewable Energy technologies that are incorporated into a unified system to support a single project.

**Hydroelectric source.** A Renewable Energy System producing electricity using various types of moving water including, but not limited to, diverted run-of-river water, in-stream run-of-river water, and in-conduit water. For the purposes of this subpart, only those hydroelectric sources with a Rated Power of 30 megawatts or less are eligible.

**Hydrogen project.** A system that produces hydrogen from a Renewable Energy source or that uses hydrogen produced from a Renewable Energy source as an energy transport medium in the production of mechanical or electric power or thermal energy.

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

**Inspector.** A Qualified Consultant with at least 3 year experience and who has completed at least five inspections on similar type projects. A project might require one or more inspectors to perform the required inspections.

**Institution of higher education.** As defined in 20 U.S.C. 1002(a).

**Instrumentality.** An organization recognized, established, and controlled by a State, Tribal, or local government, for a public purpose or to carry out special purposes (e.g., a Water District, Resource Conservation and Development Council, etc.).

**Interconnection agreement.** A contract containing the terms and conditions governing the interconnection and parallel operation of the grantee's or borrower's electric generation equipment and the utility's electric power system.

**Lender's Agreement (Form RD 4279–4, or successor form).** Agreement between the Agency and the lender setting forth the lender's loan responsibilities.

**Loan Note Guarantee (Form RD 4279–5, or successor form).** A guarantee issued and executed by the Agency containing the terms and conditions of the guarantee.

**Matching funds.** The funds needed to pay for the portion of the Total Project Costs not funded or guaranteed by the Agency. Unless authorized by statute, other Federal grant funds cannot be used to meet a Matching Funds requirement.

**Ocean energy.** Energy created by use of various types of moving water in the ocean and other large bodies of water (e.g., Great Lakes) including, but not limited to, tidal, wave, current, and thermal changes.

**Passive investor.** An equity investor that does not actively participate in management and operation decisions of the business entity as evidenced by a contractual agreement.

**Power purchase agreement.** The terms and conditions governing the sale and transportation of electricity produced by the grantee or borrower to another party.

**Public power entity.** Is defined using the definition of "state utility" as defined in section 217(A)(4) of the Federal Power Act (16 U.S.C. 824q(a)(4)). As of this writing, the definition "means a State or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or a corporation that is wholly owned, directly or indirectly, by any one or more of the foregoing, competent to carry on the business of developing, transmitting, utilizing, or distributing power."

**Qualified consultant.** An independent third-party individual or entity possessing the knowledge, expertise, and experience to perform the specific task required.

**Rated power.** The maximum amount of energy that can be created at any given time.

**Refurbished.** Refers to a Renewable Energy System or equipment that has been brought into a facility, thoroughly inspected, and worn parts replaced. A refurbished system or equipment will typically have some type of warranty.

**Renewable biomass.** (1) Materials, pre-commercial thinnings, or invasive species from National Forest System land or public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)) that:

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

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

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

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

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

(ii) Waste material, including crop residue; other vegetative waste material (including wood waste and wood residues); animal waste and byproducts (including fats, oils, greases, and manure); and food waste, yard waste, and other biodegradable waste. (Waste material does not include unsegregated solid waste.)

*Renewable energy.* Energy derived from:

(1) A wind, solar, Renewable Biomass, ocean (including tidal, wave, current, and thermal), geothermal or Hydroelectric Source; or

(2) Hydrogen derived from Renewable Biomass or water using wind, solar, ocean (including tidal, wave, current, and thermal), geothermal or Hydroelectric Sources.

*Renewable energy development assistance (REDA).* Assistance provided by eligible grantees to Agricultural Producers and Rural Small Businesses to become more energy efficient and to use Renewable Energy technologies and resources. The renewable energy development assistance may consist of Renewable Energy site assessment and/or Renewable Energy Technical Assistance.

*Renewable energy site assessment.* A report provided to an Agricultural Producer or Rural Small Business providing information regarding and recommendations for the use of Commercially Available Renewable Energy technologies in its operation. The report must be prepared by a Qualified Consultant and must contain the information specified in Sections A through C of Appendix B.

*Renewable energy system (RES).* A system that produces or produces and delivers a usable energy from a

Renewable Energy source, or is a Flexible Fuel Pump.

*Renewable energy technical assistance.* Assistance provided to Agricultural Producers and Rural Small Businesses on how to use Renewable Energy technologies and resources in their operations.

*Retrofitting.* The modification of a Renewable Energy System to incorporate features not included in the original design or for the replacement of existing components with ones that improve the original design.

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

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

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

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

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

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

(6) The determination that an area is "rural in character" will be made by the Under Secretary of Rural Development. The process to request a determination

under this provision is outlined in paragraph (6)(ii) of this definition.

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

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

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

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

*Rural Small Business.* A Small Business that is located in a Rural Area or that can demonstrate the proposed project for which assistance is being applied for under this subpart is located in a Rural Area.

*Simple payback.* The estimated simple payback of a project funded under this subpart as calculated using paragraph (1), (2), or (3), as applicable, of this definition.

(1) For energy generation projects, Simple Payback is calculated as follows:

(i) Simple Payback = (Total Project Costs)/(Average Net Income + Interest Expense + Depreciation Expense (for the project))

(ii) Average Net Income:

(A) Is based on all energy related revenue streams which include monetary benefits from production tax credit, renewable energy credit, carbon credits, revenue from byproducts produced by the energy system, fair market value of byproducts produced by and used in the project or related enterprises, and other incentives that can be annualized.

(B) Is based on income remaining after all project obligations are paid (operating and maintenance), except interest and depreciation as noted above.

(C) Is based on the Agency's review and acceptance of the project's typical year income (which is after the project is operating and stabilized) projections at the time of application submittal.

(D) Does not allow Investment Tax Credits, State tax incentives, or other one-time construction and investment related benefits that cannot be annualized to be included as income or reduce total Eligible Project Costs.

(2) For EEI projects, Simple Payback is calculated as follows:

(i) Simple Payback = (Total Project Costs)/Dollar Value of Energy Generated or Saved (as applicable)

(ii) Dollar Value of Energy Generated or Saved incorporates the following:

(A) All energy related revenue streams, which include monetary benefits from production tax credit, renewable energy credit, carbon credits, revenue from byproducts produced by the energy system, and other monetary incentives that can be annualized.

(B) Energy saved or replaced will be calculated on the quantity of energy saved or replaced (as determined by subtracting the result obtained under paragraph (2)(ii)(B)(2) from the result obtained under paragraph (2)(ii)(B)(1) of this definition, and converted to a monetary value using a constant value or price of energy (as determined under paragraph (2)(ii)(B)(3) of this definition).

(1) Actual energy used in the original building and/or equipment, as applicable, prior to the RES or EEI project, shall be based on the actual average annual total energy used (BTU) over the most recent 36 months of operation or, if in operation for less than 36 months, the length of ownership.

(2) Projected energy use if the proposed RES or EEI project had been in place for the original building and/or equipment, as applicable, for the same time period used to determine that

actual energy use under paragraph (2)(ii)(B)(1) of this definition.

(3) Value or price of energy shall be the actual average price paid over the same time period used to calculate the actual energy used under paragraph (2)(ii)(B)(1) of this definition.

(C) Does not allow Energy Efficiency Improvements to monetize benefits other than the dollar amount of the energy savings the Agricultural Producer or Rural Small Business realizes as a result of the improvement.

(D) Does not allow investment tax credits, State tax incentives, or other one-time construction and investment related benefits that cannot be annualized to be included as income or reduce total Eligible Project Costs.

(3) For Flexible Fuel Pumps, only the costs for the Flexible Fuel Pump and any equipment and tanks directly associated with the Flexible Fuel Pump, revenue, and expenses will be included in the calculation for Simple Payback as follows:

(i) Simple Payback = (Total Project Costs)/(Average Net Income + Interest Expense + Depreciation Expense (for the project))

(ii) Average Net Income is based on:

(A) All energy-related revenue streams, which include monetary benefits from tax credits and other credits or incentives that can be annualized.

(B) Income remaining after all project obligations are paid (operating and maintenance), except interest and depreciation as noted above.

(C) The Agency's review and acceptance of the project's typical year income (which is after the project is operating and stabilized) projections at the time of application submittal.

(D) Does not allow State tax incentives or other one-time construction and investment related benefits that cannot be annualized to be included as income or reduce total Eligible Project Costs.

*Small business.* An entity is considered a small business in accordance with the Small Business Administration's (SBA) small business size standards categorized by the North American Industry Classification System (NAICS) found in 13 CFR part 121. A private entity, including a sole proprietorship, partnership, corporation, cooperative (including a cooperative qualified under section 501(c)(12) of the Internal Revenue Code), and an electric utility (including a Tribal or governmental electric utility) that provides service to rural consumers provided such utilities meet SBA's definition of small business. These entities must operate independent of

direct Government control except for Tribal corporations chartered under Section 17 of the Indian Reorganization Act (25 U.S.C. 477) or other Tribal business entities that have similar structures and relationships with their Tribal governments as determined by the Agency. The Agency shall determine the small business status of such a Tribal entity without regard to the resources of the Tribal government. With the exception of the entities described above, all other non-profit entities are excluded.

*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.

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

*Used equipment.* Any equipment that has been used in any previous application and is provided in an "as is" condition.

#### § 4280.104 Exception authority.

The Administrator may, with the concurrence of the Secretary of Agriculture, make an exception, on a case-by-case basis, to any requirement or provision of this subpart that is not inconsistent with any authorizing statute or applicable law, if the Administrator determines that application of the requirement or provision would adversely affect the Federal government's financial interest.

#### § 4280.105 Review or appeal rights.

An Applicant, lender, holder, borrower, or grantee may seek a review of an Agency decision or appeal to the National Appeals Division in accordance with 7 CFR part 11.

(a) *Guaranteed loan.* In cases where the Agency has denied or reduced the amount of final loss payment to the lender, the adverse decision may be appealed by the lender only. An adverse decision that only impacts the holder may be appealed by the holder only. A decision by a lender adverse to the interest of the borrower is not a decision by the Agency, whether or not concurred in by the Agency.

(b) *Combined guaranteed loan and grant.* For an adverse decision involving a combination guaranteed loan and grant funding request, only the party that is adversely affected may request the review or appeal.

#### § 4280.106 Conflict of interest.

(a) *General.* No conflict of interest or appearance of conflict of interest will be

allowed. For purposes of this subpart, conflict of interest includes, but is not limited to, distribution or payment of grant, guaranteed loan funds, and Matching Funds or award of project contracts to an individual owner, partner, or stockholder, or to a beneficiary or Immediate Family of the Applicant or borrower when the recipient will retain any portion of ownership in the Applicant's or borrower's project. 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.

(b) *Assistance to employees, relatives, and associates.* The Agency will process any requests for assistance under this subpart in accordance with 7 CFR part 1900, subpart D.

(c) *Member/delegate clause.* No member of or delegate to Congress shall receive any share or part of this grant or any benefit that may arise there from; but this provision shall not be construed to bar, as a contractor under the grant, a publicly held corporation whose ownership might include a member of Congress.

#### **§ 4280.107 USDA Departmental regulations.**

All projects funded under this subpart are subject to the provisions of the Departmental Regulations, as applicable, which are incorporated by reference herein.

#### **§ 4280.108 Laws that contain other compliance requirements.**

(a) *Equal opportunity and nondiscrimination.* The Agency will ensure that equal opportunity and nondiscrimination requirements are met in accordance with the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*) and 7 CFR part 15d, Nondiscrimination in Programs and Activities Conducted by the United States Department of Agriculture. The Agency will not discriminate against Applicants on the basis of race, color, religion, national origin, sex, marital status, or age (provided that the Applicant has the capacity to contract); because all or part of the Applicant's income derives from any public assistance program; or because the Applicant has in good faith exercised any right under the Consumer Credit Protection Act (15 U.S.C. 1601 *et seq.*)

(b) *Civil rights compliance.* Recipients of grants must comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*), Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C.

794). This may include collection and maintenance of data on the race, sex, and national origin of the recipient's membership/ownership and employees. These data must be available to conduct compliance reviews in accordance with 7 CFR 1901.204.

(1) Initial compliance reviews will be conducted by the Agency prior to funds being obligated.

(2) Grants will require one subsequent compliance review following project completion. This will occur after the last disbursement of grant funds has been made.

(c) *Environmental analysis.* 7 CFR part 1940, subpart G or successor regulation outlines environmental procedures and requirements for this subpart. Prospective Applicants are advised to contact the Agency to determine environmental requirements as soon as practicable after they decide to pursue any form of financial assistance directly or indirectly available through the Agency.

(1) Any required environmental review must be completed by the Agency prior to the Agency obligating any funds.

(2) The Applicant will be notified of all specific compliance requirements, including, but not limited to, the publication of public notices, and consultation with State Historic Preservation Offices and the U.S. Fish and Wildlife Service.

(3) A site visit by the Agency may be scheduled, if necessary, to determine the scope of the review.

(d) *Discrimination complaints.*

(1) *Who may file.* Persons or a specific class of persons believing they have been subjected to discrimination prohibited by this section may file a complaint personally, or by an authorized representative with USDA, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250.

(2) *Time for filing.* A complaint must be filed no later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the designated officials of USDA or Rural Development.

#### **§ 4280.109 Ineligible Applicants, borrowers, and owners.**

Applicants, borrowers, and owners will be ineligible to receive funds under this subpart as discussed in paragraphs (a) and (b) of this section.

(a) If an Applicant, borrower, or owner has an outstanding judgment obtained by the U.S. in a Federal Court (other than in the United States Tax Court), is delinquent in the payment of Federal income taxes, or is delinquent

on a Federal debt, the Applicant, borrower, or owner is not eligible to receive a grant or guaranteed loan until the judgment is paid in full or otherwise satisfied or the delinquency is resolved.

(b) If an Applicant, borrower, or owner is debarred from receiving Federal assistance, the Applicant, borrower, or owner is not eligible to receive a grant or guaranteed loan under this subpart.

#### **§ 4280.110 General Applicant, application, and funding provisions.**

(a) *Satisfactory progress.* An Applicant that has received one or more grants and/or guaranteed loans under this program must make satisfactory progress, as determined by the Agency, toward completion of any previously funded projects before the Applicant will be considered for subsequent funding.

(b) *Application submittal.* Applications must be submitted in accordance with the provisions of this subpart unless otherwise specified in a **Federal Register** notice. Grant applications, guaranteed loan only applications, and combined guaranteed loan and grant applications for financial assistance under this subpart may be submitted at any time except for EA and REDA applications. The application competition deadline for EA and REDA applications is identified in § 4280.193.

(1) *Grant applications.* Complete grant applications will be accepted on a continuous basis, with awards made based on the application's score and subject to available funding. EA and REDA applications will be accepted as identified in § 4280.193.

(2) *Guaranteed loan only applications.* Each complete guaranteed loan-only applications received by the Agency will be scored. Each application that is ready for funding and that scores at or above the minimum score will be competed on the first business day of the second month of each Federal fiscal quarter, with higher scoring applications receiving priority. Each application ready for funding that scores below the minimum score will be competed during the last fiscal quarter.

(3) *Combined guaranteed loan and grant applications.* Applications requesting a RES or EEI grant and a guaranteed loan under this subpart will be accepted on a continuous basis, with awards made based on the grant application's score and subject to available funding.

(c) *Limit on number of applications.* An Applicant can apply for only one Renewable Energy System project, one Energy Efficiency Improvement project,

and one Feasibility Study project under this subpart per Federal Fiscal Year.

(d) *Limit on type of funding requests.* An Applicant can submit only one type of funding request (grant-only, guaranteed loan-only or combined funding) for each project under this subpart per Federal Fiscal Year.

(e) *Application modification.* Once submitted and prior to Agency award, if an Applicant modifies its application, the application will be treated as a new application. The submission date of record for such modified applications will be the date the Agency receives the modified application, and the application will be processed by the Agency as a new application under this subpart.

(f) *Incomplete applications.* Applicants must submit Complete Applications in order to be considered for funding. If an application is incomplete, the Agency will identify those parts of the application that are incomplete and return it, with a written explanation, to the Applicant for possible future resubmission. Upon receipt of a Complete Application by the appropriate Agency office, the Agency will complete its evaluation and will compete the application in accordance with the procedures specified in §§ 4280.121, 4280.179 or 4280.193 as applicable of this subpart.

(g) *Application withdrawal.* During the period between the submission of an application and the execution of loan and/or grant award documents for an application selected for funding, 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 and/or the application withdrawn.

(h) *Technical report.* Each technical report submitted under this subpart, as specified in §§ 4280.117(e), 4280.118(b)(4), and 4280.119(b)(3) and 4280.119(b)(4) must comply with the provisions specified in paragraphs (h)(1) through (h)(3), as applicable, of this section.

(1) *Technical report format and detail.* The information in the technical report must follow the format specified in § 4280.119(b)(3), § 4280.119(b)(4), and Appendices A through C of this subpart, as applicable. Supporting information may be submitted in other formats. Design drawings and process flowcharts are encouraged as exhibits. In addition, the information must be of sufficient detail to:

(i) Allow the Agency to determine the technical merit of the Applicant's

project under paragraph (i) of this section; and

(ii) Demonstrate that the Renewable Energy System or Energy Efficiency Improvement will operate or perform over the project's useful life in a reliable, safe, and a cost-effective manner. Such demonstration shall address project design, installation, operation, and maintenance.

(2) *Technical report modifications.* If a technical report is prepared prior to the Applicant's selection of a final design, equipment vendor, or contractor, or other significant decision, it may be modified and resubmitted to the Agency, provided that the overall scope of the project is not materially changed as determined by the Agency. Changes in the technical report might require an updated Form RD 1940-20, "Request for Environmental Information."

(3) *Hybrid projects.* If the application is for a Hybrid project, technical reports must be prepared for each technology that comprises the Hybrid project.

(i) *Technical merit.* The Agency will determine the technical merit of all applications submitted under this subpart. The Agency's determination of a project's technical merit will be based on the information provided in the application. The Agency may engage the services of other government agencies or other recognized industry experts in the applicable technology field, at its discretion, to evaluate and rate the application.

(1) Projects that are determined to have technical merit are eligible for funding under this subpart. Projects that are determined to be without technical merit will be deemed ineligible for funding under this subpart.

(2) If the information in the application is insufficient to allow the Agency to make a technical merit determination, the application will be considered by the Agency to be incomplete and such applications will be processed according to the procedures specified in paragraph (f) of this section.

(j) *Time limit on use of grant funds.* (1) Grant funds not expended within 2 years from the date the Grant Agreement was signed by the Agency will be returned to the Agency. However, the Agency may extend this period if the Agency determines, at its sole discretion, that the grantee is unable to complete the project for reasons beyond the grantee's control. Grantees must submit a request for the no-cost extension no later than 30 days before the expiration date of the Grant Agreement. This request must describe the extenuating circumstances that were

beyond their control to complete the project for which the grant was awarded, and why an approval is in the Government's best interest.

(2) Funds remaining after grant closeout that exceed the amount the grantee is entitled to receive under the Grant Agreement will be returned to the Agency.

#### § 4280.111 Notifications.

(a) *Eligibility.* If an Applicant and/or their application is determined by the Agency to be eligible for participation, the Agency will notify the Applicant or lender, as applicable, in writing.

(b) *Ineligibility.* If an Applicant and/or their application is determined to be ineligible at any time, the Agency will inform the Applicant or lender, as applicable, in writing of the decision, reasons therefore, and any appeal rights. No further evaluation of the application will occur.

(c) *Disposition of applications.* Each Applicant and/or lender, as applicable, will be notified of the Agency's decision on their application. If the Agency's decision is not to fund an application, the Agency will include in the notification any applicable appeal or review rights.

#### Renewable Energy System and Energy Efficiency Improvement Grants

##### § 4280.112 Applicant eligibility.

To receive a RES or EEI grant under this subpart, an Applicant must meet the requirements specified in paragraphs (a) through (e) of this section. If an award is made to an Applicant, that Applicant (grantee) must continue to meet the requirements specified in this section. If the grantee does not, then grant funds may be recovered from the grantee by the Agency in accordance with Departmental Regulations.

(a) *Type of Applicant.* The Applicant must be an Agricultural Producer or Rural Small Business.

(b) *Ownership and control.* The Applicant must:

(1) Own or be the prospective owner of the project; and

(2) Own or control the site for the project described in the application at the time of application and, if an award is made, for the useful life of the project as described in the Grant Agreement.

(c) *Revenues and expenses.* The Applicant must have available at the time of application satisfactory sources of revenue in an amount sufficient to provide for the operation, management, maintenance, and any debt service of the project for the useful life of the project. In addition, the Applicant must control the revenues and expenses of

the project, including its operation and maintenance, for which the assistance is sought. Notwithstanding the provisions of this paragraph, the Applicant may employ a Qualified Consultant under contract to manage revenues and expenses of the project and its operation and/or maintenance.

(d) *Legal authority and responsibility.* Each Applicant must have the legal authority necessary to apply for and carry out the purpose of the grant.

(e) *Universal identifier and System for Awards Management (SAM).* Unless exempt under 2 CFR 25.110, the Applicant must:

(1) Be registered in the SAM prior to submitting an application or plan;

(2) Maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by the Agency; and

(3) Provide its DUNS number in each application or plan it submits to the Agency. Generally, the DUNS number is included on Standard Form-424, "Application for Federal Assistance."

#### **§ 4280.113 Project eligibility.**

For a project to be eligible to receive a RES or EEI grant under this subpart, the proposed project must meet each of the requirements specified in paragraphs (a) through (e) of this section.

(a) Be for:

(1) The purchase of a new Renewable Energy System;

(2) The purchase of a Refurbished Renewable Energy System;

(3) The Retrofitting of an existing Renewable Energy System; or

(4) Making Energy Efficiency Improvements that will use less energy on an annual basis than the original building and/or equipment that it will improve or replace as demonstrated in an Energy Analysis, Energy Assessment, or Energy Audit as applicable.

(i) Eligible Energy Efficiency Improvements include, but are not limited to:

(A) Efficiency improvements to existing Renewable Energy Systems and

(B) Construction of a new energy efficient building only when the building is used for the same purpose as the existing building, and, based on an Energy Analysis, Energy Audit, or Energy Assessment, as applicable, it will be more cost effective to construct a new building and will use less energy on annual basis than improving the existing building.

(ii) If the proposed Energy Efficiency Improvement would duplicate the same Energy Efficiency Improvement that had previously received funds under this

subpart, then the proposed improvement is ineligible. For example, an Applicant received a grant to replace the windows in a warehouse with more energy efficient windows. Shortly thereafter, the Applicant decides to replace the new windows. An application for replacing the new windows would be ineligible for funding under this subpart.

(b) Be for a Commercially Available and replicable technology;

(c) Have technical merit, as determined using the procedures specified in § 4280.110(i); and

(d) Be located in a Rural Area in a State if the type of Applicant is a Rural Small Business, or in a Rural or non-Rural area in a State if the type of Applicant is an Agricultural Producer. If the Agricultural Producer's operation is in a non-Rural area, then the application can only be for Renewable Energy Systems or Energy Efficiency Improvements on integral components of or that are directly related to the agricultural production operation, such as vertically integrated operations, and are part of and co-located with the agricultural production operation.

(e) The Applicant is cautioned against taking any actions or incurring any obligations prior to the Agency completing the environmental review that would either limit the range of alternatives to be considered or that would have an adverse effect on the environment, such as the initiation of construction. If the Applicant takes any such actions or incurs any such obligations, it could result in project ineligibility.

#### **§ 4280.114 [Reserved]**

#### **§ 4280.115 RES and EEI grant funding.**

(a) *Grant amounts.* The amount of grant funds that will be made available to an eligible RES or EEI project under this subpart will not exceed 25 percent of total Eligible Project Costs. Eligible Project Costs are specified in paragraph (c) of this section.

(1) *Minimum request.* Unless otherwise specified in a **Federal Register** notice, the minimum request for a RES grant application is \$2,500 and the minimum request for an EEI grant application is \$1,500.

(2) *Maximum request.* Unless otherwise specified in a **Federal Register** notice, the maximum request for a RES grant application is \$500,000 and the maximum request for an EEI grant application is \$250,000.

(3) *Maximum grant assistance.* Unless otherwise specified in a **Federal Register** notice, the maximum amount of grant assistance to one individual or

entity under this subpart will not exceed \$750,000 per Federal Fiscal Year.

(b) *Matching Funds.* The Applicant is responsible for securing the remainder of the Total Project Costs not covered by grant funds.

(1) Without specific statutory authority, other Federal grant funds cannot be used to meet the Matching Funds requirement. A copy of the statutory authority must be provided to the Agency to verify if the other Federal grant funds can be used to meet the Matching Funds requirement under this subpart.

(2) Passive third-party equity contributions are acceptable for RES projects, including equity raised from the sale of Federal tax credits.

(c) *Eligible Project Costs.* Eligible Project Costs are only those costs incurred after a Complete Application has been received by the Agency and are associated with the items identified in paragraphs (c)(1) through (c)(5) of this section. Each item identified in paragraphs (c)(1) through (c)(5) is only an Eligible Project Cost if it is either an integral component of or directly related to and its use and purpose is limited to the Renewable Energy System or Energy Efficiency Improvement.

(1) Purchase and installation of new or Refurbished equipment.

(2) Construction, Retrofitting, and improvements.

(3) Energy Efficiency Improvements identified in the applicable Energy Analysis, Energy Assessment, or Energy Audit.

(4) Fees for construction permits and licenses.

(5) Professional service fees for Qualified Consultants, contractors, installers, and other third-party services.

(d) *Ineligible project costs.* Ineligible project costs for RES and EEI projects include, but are not limited to:

(1) Agricultural tillage equipment, Used Equipment, and vehicles;

(2) Residential RES or EEI projects;

(3) Construction or equipment costs that would be incurred regardless of the installation of a Renewable Energy System or Energy Efficiency Improvement shall not be included as an Eligible Project Costs. For example, the foundation for a building where a Renewable Energy System is being installed, storage only grains bins connected to drying systems, and the roofing of a building where solar panels are being attached;

(4) Businesses that derive more than 10 percent of annual gross revenue (including any lease income from space or machines) from gambling activity, excluding State or Tribal-authorized

lottery proceeds, as approved by the Agency, conducted for the purpose of raising funds for the approved project;

(5) Businesses deriving income from activities of a sexual nature or illegal activities;

(6) The guarantee of lease payments;

(7) Guaranteeing loans made by other Federal agencies;

(8) Any project that creates a conflict of interest or an appearance of a conflict of interest as provided in § 4280.106;

(9) Funding of political or lobbying activities; and

(10) To pay off any Federal direct or guaranteed loans.

(e) *Award amount considerations.* In determining the amount of a RES or EEI grant awarded, the Agency will take into consideration the following six criteria:

(1) The type of Renewable Energy System to be purchased;

(2) The estimated quantity of energy to be generated by the Renewable Energy System;

(3) The expected environmental benefits of the Renewable Energy System;

(4) The quantity of energy savings expected to be derived from the activity, as demonstrated by an Energy Audit;

(5) The estimated period of time for the energy savings generated by the activity to equal the cost of the activity; and

(6) The expected energy efficiency of the Renewable Energy System.

#### § 4280.116 Grant applications—general.

(a) *General.* Separate applications must be submitted for RES and EEI projects. An original of each application is required.

(b) *Application content.* Applications for RES projects or EEI projects must contain the information specified in § 4280.117 unless the requirements of either § 4280.118(a) or § 4280.119(a) are met. If the requirements of § 4280.118(a) are met, the application may contain the information specified in § 4280.118(b). If the requirements of § 4280.119(a) are met, the application may contain the information specified in § 4280.119(b).

(c) *Evaluation of applications.* The Agency will evaluate each RES and EEI grant application and make a determination as to whether:

(1) The grant application documentation is complete;

(2) The Applicant is eligible;

(3) The proposed grant is for an eligible project; and

(4) The proposed project has technical merit.

#### § 4280.117 Grant applications for RES and EEI projects with Total Project Costs greater than \$200,000.

Grant applications for RES and EEI projects with Total Project Costs greater than \$200,000 must provide the information specified in this section.

This information must be presented in the order shown in paragraphs (a) through (f), as applicable, of this section. Each Applicant is encouraged, but is not required, to self-score the project using the evaluation criteria in § 4280.120 and to submit with their application the total score, including appropriate calculations and attached documentation or specific cross-references to information elsewhere in the application.

(a) *Forms and certifications.* Each application must contain the forms and certifications specified in paragraphs (a)(1) through (a)(9), as applicable, of this section, except that Form AD 2106, “Form to Assist in Assessment of USDA Compliance with Civil Rights Laws,” is optional.

(1) Form SF-424.

(2) Form SF-424C, “Budget Information-Construction Programs.”

(3) Form SF-424D, “Assurances-Construction Programs.”

(4) Form AD 2106. Although this form is optional, if the applicant has previously submitted the form to the Agency or another Federal agency, the applicant does not need to resubmit the form.

(5) Form RD 1940-20 with documentation attached for the appropriate level of environmental assessment. The Applicant should contact the Agency to determine what documentation is required to be provided.

(6) The Applicant must identify whether or not the Applicant has a known relationship or association with an Agency employee. If there is a known relationship, the Applicant must identify each Agency employee with whom the Applicant has a known relationship.

(7) Certification that the Applicant is a legal entity in good standing (as applicable), and operating in accordance with the laws of the State(s) or Tribe where the Applicant has a place of business.

(8) Certification by the Applicant that the equipment required for the project is available, can be procured and delivered within the proposed project development schedule, and must be installed in conformance with manufacturer's specifications and design requirements. This would not be applicable when equipment is not part of the project.

(9) Certification by the Applicant that the project will be constructed in accordance with applicable laws, regulations, agreements, permits, codes, and standards.

(b) *Applicant information.* Provide information to allow the Agency to determine the eligibility of the Applicant.

(1) *Type of Applicant.* Demonstrate that the Applicant meets the definition of Agricultural Producer or Rural Small Business, including appropriate information necessary to demonstrate that the Applicant meets the Agricultural Producer's percent of gross income derived from agricultural operations or the Rural Small Business' size, as applicable, requirements identified in these definitions. Include a description of the Applicant's farm/ranch/business operation.

(i) *Rural Small Businesses.* Identify the primary NAICS code applicable to the Applicant's operation. Provide sufficient information to determine total Annual Receipts for the past 3 years and number of employees of the business and any parent, subsidiary, or affiliates at other locations to demonstrate that the Applicant meets the definition of Small Business. If the Rural Small Business Applicant has not engaged in business operations for the past 3 years, than information for as long as the Rural Small Business Applicant has been in business must be submitted. New businesses that do not have any Annual Receipts must provide projections based upon a typical operating year for a 2-year time period.

(ii) *Agricultural producers.* Provide the gross market value of the Applicant's agricultural products, gross agricultural income of the Applicant, and gross nonfarm income of the Applicant for the calendar year preceding the year in which the application is being submitted.

(2) *Applicant description.* Describe the ownership of the Applicant, including the following information if applicable.

(i) *Ownership and control.* Describe how the Applicant meets the ownership and control requirements.

(ii) *Affiliated companies.* For entities (e.g., corporate parents, affiliates, subsidiaries), provide a list of the individual owners with their contact information of those entities. Describe the relationship between the Applicant and these other entities, including management and products exchanged.

(3) *Financial information.* Financial information is required on the total operation of the Agricultural Producer/Rural Small Business and its parent, subsidiary, or affiliates at other

locations. All information submitted under this paragraph must be substantiated by authoritative records.

(i) *Historical financial statements.* Provide historical financial statements prepared in accordance with Generally Accepted Accounting Practices (GAAP) for the past 3 years, including income statements and balance sheets. If Agricultural Producers are unable to present this information in accordance with GAAP, they may instead present financial information in the format that is generally required by commercial agriculture lenders.

(ii) *Current balance sheet and income statement.* Provide a current balance sheet and income statement prepared in accordance with GAAP and dated within 90 days of the application. Agricultural producers can present financial information in the format that is generally required by commercial agriculture lenders.

(iii) *Pro forma financial statements.* Provide pro forma balance sheet at start-up of the Agricultural Producer's/Rural Small Business' business that reflects the use of the loan proceeds or grant award; and 3 additional years, indicating the necessary start-up capital, operating capital, and short-term credit; and projected cash flow and income statements for 3 years supported by a list of assumptions showing the basis for the projections.

(4) *Previous grants and loans.* State whether the Applicant has received any grants and/or loans under this subpart. If the Applicant has, identify each such grant and/or loan and describe the progress the Applicant has made on each project for which the grant and/or loan was received, including projected schedules and actual completion dates.

(c) *Project information.* Provide information concerning the proposed project as a whole and its relationship to the Applicant's operations, including the following:

(1) Identification as to whether the project is for a RES or an EEI project. Include a description and the location of the project.

(2) A description of the process that will be used to conduct all procurement transactions to demonstrate compliance with § 4280.124(a)(1).

(3) Describe how the proposed project will have a positive effect on resource conservation (e.g., water, soil, forest), public health (e.g., potable water, air quality), and the environment (e.g., compliance with the U.S. Environmental Protection Agency's renewable fuel standard(s), greenhouse gases, emissions, particulate matter).

(4) Identify the amount of Matching Funds and the source(s) the Applicant

is proposing to use for the project. Provide written commitments for Matching Funds at the time the application is submitted to receive points under the readiness scoring criterion.

(d) *Feasibility Study for Renewable Energy Systems.* If the application is for a RES project with Total Project Costs greater than \$200,000, a Feasibility Study must be submitted as specified in Appendix D of this subpart. The Feasibility Study must be conducted by a Qualified Consultant.

(e) *Technical report.* Each application must contain a technical report prepared in accordance with § 4280.110(h) and Appendix A or C, as applicable, of this subpart.

(f) *Construction planning and performing development.* Each application submitted must be in accordance with § 4280.124 for planning, designing, bidding, contracting, and constructing RES and EEI projects as applicable.

**§ 4280.118 Grant applications for RES and EEI projects with Total Project Costs of \$200,000 or less.**

Grant applications for RES and EEI projects with Total Project Costs of \$200,000 or less may provide the information specified in this section or, if the Applicant elects to do so, the information specified in § 4280.117. In order to submit an application under this section, the criteria specified in paragraph (a) of this section must be met. The content for applications submitted under this section is specified in paragraph (b) of this section. Unless otherwise specified in this subpart, the construction planning and performing development procedures and the payment process that will be used for awards for applications submitted under this section are specified in paragraphs (c) and (d), respectively, of this section.

(a) *Criteria for submitting applications for projects with Total Project Costs of \$200,000 or less.* In order to submit an application under this section, each of the conditions specified in paragraphs (a)(1) through (a)(7) of this section must be met.

(1) The Applicant must be eligible in accordance with § 4280.112.

(2) The project must be eligible in accordance with § 4280.113.

(3) Total Project Costs must be \$200,000 or less.

(4) Construction planning and performing development must be performed in compliance with paragraph (c) of this section. The Applicant or the Applicant's prime contractor assumes all risks and responsibilities of project development.

(5) The Applicant or the Applicant's prime contractor is responsible for all interim financing, including during construction.

(6) The Applicant agrees not to request reimbursement from funds obligated under this program until after project completion.

(7) The Applicant must maintain insurance as required under § 4280.122(b), except business interruption insurance is not required.

(b) *Application content.* Applications submitted under this section must contain the information specified in paragraphs (b)(1) through (b)(4) of this section and must be presented in the same order. Each Applicant is encouraged, but is not required, to self-score the project using the evaluation criteria in § 4280.120 and to submit with their application the total score, including appropriate calculations and attached documentation or specific cross-references to information elsewhere in the application.

(1) *Forms and certifications.* The application must contain the items identified in § 4280.117(a). In addition, the Applicant must submit a certification that the Applicant meets each of the criteria for submitting an application under this section as specified in paragraph (a) of this section.

(2) *Applicant information.* The application must contain the items identified in § 4280.117(b), except that the information specified in § 4280.117(b)(3) is not required.

(3) *Project information.* The application must contain the items identified in § 4280.117(c).

(4) *Technical report.* Each application must contain a technical report in accordance with § 4280.110(h) and Appendix A or B, as applicable, of this subpart.

(c) *Construction planning and performing development.* Applicants submitting applications under this section must comply with the requirements specified in paragraphs (c)(1) through (c)(3) of this section for construction planning and performing development.

(1) *General.* Paragraphs (a)(1), (a)(2), and (a)(4) of § 4280.124 apply.

(2) *Small acquisition and construction procedures.* Small acquisition and construction procedures are those relatively simple and informal procurement methods that are sound and appropriate for a procurement of services, equipment and construction of a RES or EEI project with a Total Project Cost of not more than \$200,000. The Applicant is solely responsible for the execution of all contracts under this

procedure, and Agency review and approval is not required.

(3) *Contractor forms.* Applicants must have each contractor sign, as applicable:

(i) Form RD 400–6, “Compliance Statement,” for contracts exceeding \$10,000; and

(ii) Form AD–1048, “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions,” for contracts exceeding \$25,000.

(d) *Payment process for applications for RES and EEI projects with Total Project Costs of \$200,000 or less.* (1) Upon completion of the project, the grantee must submit to the Agency a copy of the contractor’s certification of final completion for the project and a statement that the grantee accepts the work completed. At its discretion, the Agency may require the Applicant to have an Inspector certify that the project is constructed and installed correctly.

(2) The RES or EEI project must be constructed, installed, and operating as described in the technical report prior to disbursement of funds. For Renewable Energy Systems, the system must be operating at the steady state operating level described in the technical report for a period of not less than 30 days, unless this requirement is modified by the Agency, prior to disbursement of funds. Any modification to the 30-day steady state operating level requirement will be based on the Agency’s review of the technical report and will be incorporated into the Letter of Conditions.

(3) Prior to making payment, the Agency will be provided with Form RD 1924–9, “Certificate of Contractor’s Release,” and Form RD 1924–10, “Release by Claimants,” or similar forms, executed by all persons who furnished materials or labor in connection with the contract.

**§ 4280.119 Grant applications for RES and EEI projects with Total Project Costs of \$80,000 or less.**

Grant applications for RES and EEI projects with Total Project Costs of \$80,000 or less must provide the information specified in this section or, if the Applicant elects to do so, the information specified in either §§ 4280.117 or 4280.118. In order to submit an application under this section, the criteria specified in paragraph (a) of this section must be met. The content for applications submitted under this section is specified in paragraph (b) of this section. Unless otherwise specified in this subpart, the construction planning and performing development procedures and the payment process that will be used for

awards for applications submitted under this section are specified in paragraphs (c) and (d), respectively, of this section.

(a) *Criteria for submitting applications for RES and EEI projects with Total Project Costs of \$80,000 or less.* In order to submit an application under this section, each of the conditions specified in paragraphs (a)(1) through (a)(7) of this section must be met.

(1) The Applicant must be eligible in accordance with § 4280.112.

(2) The project must be eligible in accordance with § 4280.113.

(3) Total Project Costs must be \$80,000 or less.

(4) Construction planning and performing development must be performed in compliance with paragraph (c) of this section. The Applicant or the Applicant’s prime contractor assumes all risks and responsibilities of project development.

(5) The Applicant or the Applicant’s prime contractor is responsible for all interim financing, including during construction.

(6) The Applicant agrees not to request reimbursement from funds obligated under this program until after project completion.

(7) The Applicant must maintain insurance as required under § 4280.122(b), except business interruption insurance is not required.

(b) *Application content.* Applications submitted under this section must contain the information specified in paragraphs (b)(1) through (b)(4), as applicable, of this section and must be presented in the same order. Each Applicant is encouraged, but is not required, to self-score the project using the evaluation criteria in § 4280.120 and to submit with their application the total score, including appropriate calculations and attached documentation or specific cross-references to information elsewhere in the application.

(1) *Forms and certifications.* Each application must contain the forms and certifications specified in paragraphs (b)(1)(i) through (b)(1)(ix), as applicable, of this section except that Form AD 2106 is optional.

(i) Form SF–424.

(ii) Form SF–424C.

(iii) Form SF–424D.

(iv) Form AD 2106. Although this form is optional, if the applicant has previously submitted the form to the Agency or another Federal agency, the applicant does not need to resubmit the form.

(v) Form RD 1940–20 with documentation attached for the appropriate level of environmental assessment. The Applicant should

contact the Agency to determine what documentation is required to be provided.

(vi) Certification by the Applicant that:

(A) The Applicant meets each of the Applicant eligibility criteria found in § 4280.112;

(B) The proposed project meets each of the project eligibility requirements found in § 4280.113;

(C) The design, engineering, testing, and monitoring will be sufficient to demonstrate that the proposed project will meet its intended purpose;

(D) The equipment required for the project is available, can be procured and delivered within the proposed project development schedule, and will be installed in conformance with manufacturer’s specifications and design requirements. This would not be applicable when equipment is not part of the project;

(E) The project will be constructed in accordance with applicable laws, regulations, agreements, permits, codes, and standards;

(F) The Applicant meets the criteria for submitting an application for projects with Total Project Costs of \$80,000 or less;

(G) The Applicant will abide by the open and free competition requirements in compliance with § 4280.124(a)(1);

(H) For Bioenergy Projects, any and all woody biomass feedstock from National forest system land or public lands cannot be otherwise used as a higher value wood-based product; and

(I) For applications for the installation of equipment and tanks directly associated with Flexible Fuel Pumps, Blended Liquid Transportation Fuel is available and there is demand for that fuel in its service area.

(vii) State whether the Applicant has received any grants and/or loans under this subpart. If the Applicant has, identify each such grant and/or loan and describe the progress the Applicant has made on each project for which the grant and/or loan was received, including projected schedules and actual completion dates.

(viii) The Applicant must identify whether or not the Applicant has a known relationship or association with an Agency employee. If there is a known relationship, the Applicant must identify each Agency employee with whom the Applicant has a known relationship.

(ix) The Applicant is a legal entity in good standing (as applicable), and operating in accordance with the laws of the State(s) or Tribe where the Applicant has a place of business.

(2) *General*. For both RES and EEI project applications:

(i) Identify whether the project is for a RES or an EEI project;

(ii) Identify the primary NAICS code applicable to the Applicant's operation if known or a description of the operation in enough detail for the Agency to determine the primary NAICS code;

(iii) Describe in detail or document how the proposed project will have a positive effect on resource conservation (e.g., water, soil, forest), public health (e.g., potable water, air quality), and the environment (e.g., compliance with the U.S. Environmental Protection Agency's renewable fuel standard(s), greenhouse gases, emissions, particulate matter); and

(iv) Identify the amount of Matching Funds and the source(s) the Applicant is proposing to use for the project. In order to receive points under the readiness scoring criterion, written commitments for Matching Funds (e.g., a Letter of Commitment, bank statement) must be submitted when the application is submitted.

(3) *Technical report for energy efficiency improvements*. Each EEI application submitted under this section must include a technical report in accordance with § 4280.110(h) and paragraphs (b)(3)(i) through (b)(3)(v) of this section.

(i) *Project description*. Provide a description of the proposed Energy Efficiency Improvement, including its intended purpose.

(ii) *Qualifications of EEI provider(s)*. Provide a resume or other evidence of the contractor or installer's qualifications and experience with the proposed EEI technology. Any contractor or installer with less than 2 years of experience may be required to provide additional information in order for the Agency to determine if they are a qualified installer/contractor.

(iii) *Energy Analysis*. For the most recent 36 months, or the length of ownership if in operation for less than 36 months, prior to the date the application is submitted, provide both the total amount and the total cost of energy used for the original building and/or equipment, as applicable, for each improvement identified in the potential project. In addition, provide for each improvement identified in the potential project an estimate of the total amount energy that would have been used and the total cost that would have been incurred if the proposed project was in operation for this same time period.

(iv) *Simple Payback*. Estimate Simple Payback.

(v) *Qualifications of Energy Analysis provider*. Provide the qualifications of the individual or entity which completed the Energy Analysis specified in paragraph (b)(3)(iii) of this section.

(4) *Technical report for Renewable Energy Systems*. Each RES application submitted under this section must include a technical report in accordance with § 4280.110(h) and paragraphs (b)(4)(i) through (b)(4)(iv) of this section.

(i) *Project and resource descriptions*. Provide a description of the project, including its intended purpose and a summary of how the project will be constructed and installed. Identify the project's location and describe the project site. Describe the quality and availability of the renewable resource at the project site.

(ii) *Energy generation*. Identify the amount of Renewable Energy that will be generated once the proposed system is operating at its steady state operating level.

(iii) *Project economic assessment*. Describe the projected financial performance of the proposed project. The description must address Total Project Costs, energy savings, and revenues, including applicable investment and other production incentives accruing from government entities. Revenues to be considered shall accrue from the sale of energy, offset or savings in energy costs, byproducts, and green tags. Information must be provided to allow the calculation of Simple Payback.

(iv) *Qualifications of key service providers*. Describe the key service providers, including the number of similar systems installed and/or manufactured, professional credentials, licenses, and relevant experience. If specific numbers are not available for similar systems, you may submit an estimation of the number of similar systems.

(c) *Construction planning and performing development for applications submitted under this section*. All Applicants submitting applications under this section must comply with the requirements specified in paragraphs (c)(1) through (c)(3) of this section for construction planning and performing development.

(1) *General*. Paragraphs (a)(1), (a)(2), and (a)(4) of § 4280.124 apply.

(2) *Small acquisition and construction procedures*. Small acquisition and construction procedures are those relatively simple and informal procurement methods that are sound and appropriate for a procurement of services, equipment and construction of a RES or EEI project with a Total Project

Cost of not more than \$80,000. The Applicant is solely responsible for the execution of all contracts under this procedure, and Agency review and approval is not required.

(3) *Contractor forms*. Applicants must have each contractor sign, as applicable:

(i) Form RD 400-6 for contracts exceeding \$10,000; and

(ii) Form AD-1048 for contracts exceeding \$25,000.

(d) *Payment process for applications for RES and EEI projects with Total Project Costs of \$80,000 or less*. (1) Upon completion of the project, the grantee must submit to the Agency a copy of the contractor's certification of final completion for the project and a statement that the grantee accepts the work completed. At its discretion, the Agency may require the Applicant to have an Inspector certify that the project is constructed and installed correctly.

(2) The RES or EEI project must be constructed, installed, and operating as described in the technical report prior to disbursement of funds. For Renewable Energy Systems, the system must be operating at the steady state operating level described in the technical report for a period of not less than 30 days, unless this requirement is modified by the Agency, prior to disbursement of funds. Any modification to the 30-day steady state operating level requirement will be based on the Agency's review of the technical report and will be incorporated into the Letter of Conditions.

(3) Prior to making payment, the grantee must provide the Agency with Form RD 1924-9 and Form RD 1924-10, or similar forms, executed by all persons who furnished materials or labor in connection with the contract.

#### **§ 4280.120 Scoring RES and EEI grant applications.**

Agency personnel will score each eligible RES and EEI application based on the scoring criteria specified in this section, unless otherwise specified in a **Federal Register** notice, with a maximum score of 100 points possible.

(a) *Environmental benefits*. Five points will be awarded for this criterion if the Applicant has documented in the application that the proposed project will have a positive effect on any of the three impact areas: resource conservation (e.g., water, soil, forest), public health (e.g., potable water, air quality), and the environment (e.g., compliance with the U.S. Environmental Protection Agency's renewable fuel standard(s), greenhouse gases, emissions, particulate matter).

(b) *Quantity of energy generated or saved per REAP grant dollar requested*,

and renewable fuel dispensed through Flexible Fuel Pumps. For RES and EEI projects, points will be awarded for either the amount of energy generation per grant dollar requested, which includes those projects that are replacing energy usage with a renewable source, or the average annual energy savings over the most recent 36 months per grant dollar requested; points will not be awarded for more than one category. For Flexible Fuel Pumps, points will be awarded based on the average annual gallons of renewable fuel estimated to be sold over the first 2 years per grant dollar requested. Ratios of energy generated and energy savings per grant dollar requested and of average annual gallons of renewable fuel estimated to be sold over the first 2 years per grant dollar requested that fall between the levels identified below will be assigned points based on Equations 1, 2, or 3, as applicable, rounded to the nearest hundredth of a point.

(1) *Renewable Energy Systems.* The quantity of energy generated per grant dollar requested will be determined by dividing the projected total annual energy generated by the Renewable Energy System, which will be converted to BTUs, by the grant dollars requested. Points will be awarded based on the annual amount of energy generated per grant dollar requested for the proposed Renewable Energy System as determined using paragraphs (b)(1)(i) and (b)(1)(ii) of this section. A maximum of 25 points will be awarded under this criterion.

(i) The annual energy generated per grant dollar requested will be calculated using Equation 1.

$$\text{Equation 1: } EG/\$ = (EG_{12}/GR)$$

Where:

$EG/\$$  = Energy generated per grant dollar requested.

$EG_{12}$  = Energy generated (BTUs) by the proposed Renewable Energy System over the most recent 12-month period.

$GR$  = Grant amount requested under this subpart.

(ii) If the annual energy generated per grant dollar requested calculated under paragraph (b)(1)(i) of this section is:

(A) Less than 25,000 BTUs annual energy generated per grant dollar requested, points will be awarded as follows: Points awarded =  $(EG/\$)/25,000 \times 25$  points, where the points awarded are rounded to the nearest hundredth of a point.

(B) 25,000 BTUs annual energy generated per grant dollar or higher, 25 points will be awarded. For example, An Applicant has requested a \$2,500 grant to install a small wind Renewable Energy System which will generate

5,000 kilowatt hours (kWh) per year, or 17,060,000 BTUs per year (one kWh equals 3,412 BTUs). Thus, there are 6,824 BTUs per grant dollar requested (17,060,000 BTUs/\$2,500). Because this is less than 25,000 BTUs annual energy generated per grant dollar requested, points will be awarded as follows:

$$\text{Points awarded} = 6,824 \text{ BTUs}/25,000 \text{ BTUs} \times 25 = 6.824$$

This would be rounded to the nearest hundredth, or to 6.82.

(2) *Energy efficiency improvements.* Energy savings per grant dollar requested will be determined by dividing the average annual energy projected to be saved as determined by the Energy Analysis, Energy Assessment, or Energy Audit for the Energy Efficiency Improvement, which will be converted to BTUs, by the grant dollars requested. Points will be awarded based on the average annual amount of energy saved per grant dollar requested for the proposed Energy Efficiency Improvement as determined using paragraphs (b)(2)(i) and (b)(2)(ii) of this section. A maximum of 25 points will be awarded under this criterion.

(i) The average annual energy saved per grant dollar requested shall be calculated using Equation 2.

$$\text{Equation 2: } ES/\$ = (ES_{36}/GR)$$

Where:

$ES/\$$  = Average annual energy saved per grant dollar requested.

$ES_{36}$  = Average annual energy saved by the proposed Energy Efficiency Improvement over the most recent 36-month period as identified in the Energy Analysis, Energy Assessment, or Energy Audit, as applicable.

$GR$  = Grant amount requested under this subpart.

(ii) If the average annual energy saved per grant dollar requested calculated under paragraph (b)(2)(i) of this section is:

(A) Less than 25,000 BTUs average annual energy saved per grant dollar requested, points will be awarded as follows: Points awarded =  $(ES/\$)/25,000 \times 25$  points, where the points awarded are rounded to the nearest hundredth of a point.

(B) 25,000 BTUs average annual energy saved per grant dollar requested or higher, 25 points will be awarded. For example, an Applicant has requested a \$1,500 grant to install a new boiler. The average BTU usage of the existing boiler for the most recent 36 months prior to submittal of the application was 125,555,000 BTUs per year. If the new boiler had been in place for those same 36 months, the annual average BTU usage is estimated to be 100,000,000 BTUs. Thus, the new boiler

is projected to save the Applicant 25,555,000 BTUs per year. Based on this example, there are 17,036.6667 BTUs saved per grant dollar requested (25,555,000 BTUs/\$1,500). Because this is less than 25,000 BTUs average annual energy saved per grant dollar requested, points will be awarded as follows:

$$\text{Points awarded} = 17,036.6667 \text{ BTUs}/25,000 \text{ BTUs} \times 25 = 17.03667$$

This would be rounded to the nearest hundredth, or to 17.04 points.

(3) *RES—flexible fuel pump(s) for renewable fuels.* If the proposed project is for Flexible Fuel Pump(s), points will be awarded based on the average annual gallons of renewable fuel estimated to be sold over the first 2 years by the pumps per grant dollar requested for the proposed Flexible Fuel Pumps to be installed, as determined using paragraphs (b)(3)(i) and (b)(3)(ii) of this section. A maximum of 25 points will be awarded under this criterion.

(i) The average annual gallons of renewable fuel estimated to be sold over the first 2 years per grant dollar shall be calculated using Equation 3.

$$\text{Equation 3: } RG_{24}/\$ = (RG_{24}/GR)$$

Where:

$RG_{24}/\$$  = Renewable fuel gallons estimated to be sold over the first 2 years per grant dollar requested.

$RG_{24}$  = Average annual renewable gallons estimated to be sold by the Applicant over the first 24-month period.

$GR$  = Grant amount requested under this subpart.

(ii) If the average annual renewable fuel gallons estimated to be sold over the first 2 years per grant dollar requested calculated under paragraph (b)(3)(i) of this section is:

(A) Less than 25 gallons of average annual renewable fuel estimated to be sold over the first 2 years per grant dollar requested, points will be awarded as follows: Points awarded =  $(RG_{24}/\$)/25 \times 25$  points, where the points awarded are rounded to the nearest hundredth of a point.

(B) 25 gallons of annual average renewable fuel estimated to be sold over the first 2 years per grant dollar or higher, 25 points will be awarded. For example, an Applicant has requested a \$7,500 grant to install a Flexible Fuel Pump at a gas station that, based on the technical report, is estimated to sell 100,000 gallons of renewable fuel in the first year and 225,000 gallons of renewable fuel in the second year, for an average annual sales over the first 2 years of 162,500 gallons. This equates to approximately 21.67 renewable fuel gallons per grant dollar requested (162,500 gallons/\$7,500). Because this is less than 25 gallons estimated to be sold

annually per grant dollar, points will be awarded as follows:

$$\text{Points awarded} = ((162,500 \text{ gallons} / \$7,500) / 25) \times 25 = 21.6667$$

This would be rounded to the nearest hundredth, or to 21.67 points.

(c) *Readiness*. A maximum of 25 points will be awarded based on the level of written commitment an Applicant has from its Matching Fund sources that are documented with a Complete Application. If the Applicant has written commitments from the source(s) confirming commitment of:

- (1) 100 percent of the Matching Funds, 25 points will be awarded.
- (2) 75 percent up to but not including 100 percent of the Matching Funds, 10 points will be awarded.
- (3) 50 percent up to but not including 75 percent of the Matching Funds, 5 points will be awarded.

(4) Less than 50 percent, no points will be awarded.

(d) *Size of Agricultural Producer or Rural Small Business*. Applicants will be awarded points under this criterion based on Applicant size compared to the SBA Small Business size standards categorized by the NAICS found in 13 CFR 121.201. A maximum of 10 points will be awarded under this criterion. For Applicants that are:

(1) One-third or less of the maximum size standard identified by SBA, 10 points will be awarded.

(2) Greater than one-third up to and including two-thirds of the maximum size standard identified by SBA, 5 points will be awarded.

(3) Larger than two-thirds of the maximum size standard identified by SBA, no points will be awarded. *For example*, most agricultural production NAICS codes are limited to \$750,000 in Annual Receipts. An Agricultural Producer within one of the agricultural production NAICS codes with Annual Receipts of \$250,000 or less would be awarded 10 points, while an Agricultural Producer with Annual Receipts of more than \$250,000 Annual Receipts up to and including \$500,000, would be awarded 5 points.

(e) *Previous grantees and borrowers*. Points under this scoring criterion will be awarded based on whether the Applicant has received a grant or guaranteed loan under this subpart. A maximum of 10 points will be awarded.

(1) If the Applicant has never received a grant and/or guaranteed loan under this subpart, 10 points will be awarded.

(2) If the Applicant has not received a grant and/or guaranteed loan under this subpart within the 2 previous Federal Fiscal Years, 5 points will be awarded.

(f) *Simple Payback*. A maximum of 15 points will be awarded for either Renewable Energy Systems or Energy Efficiency Improvements; points will not be awarded for more than one category. In either case, points will be awarded based on the Simple Payback of the project.

(1) *Renewable Energy Systems, including Flexible Fuel Pumps*. If the Simple Payback of the proposed project is:

- (i) Less than 10 years, 15 points will be awarded;
- (ii) 10 years up to but not including 15 years, 10 points will be awarded;
- (iii) 15 years up to and including 20 years, 5 points will be awarded; or
- (iv) Longer than 20 years, no points will be awarded.

(2) *Energy Efficiency Improvements*. If the Simple Payback of the proposed project is:

- (i) Less than 4 years, 15 points will be awarded;
- (ii) 4 years up to but not including 8 years, 10 points will be awarded;
- (iii) 8 years up to and including 12 years, 5 points will be awarded; or
- (iv) Longer than 12 years, no points will be awarded.

(g) *State Director and Administrator priority points*.

A State Director, for its State allocation under this subpart, or the Administrator, for making awards from the National Office reserve, may award up to 10 points to an application if the application is for an under-represented technology or for Flexible Fuel Pumps or if selecting the application would help achieve geographic diversity. In no case shall an application receive more than 10 points under this criterion.

#### **§ 4280.121 Selecting RES and EEI grant applications for award.**

(a) *State competitions*. Complete RES and EEI grant applications will be competed against each other twice each calendar year. Complete RES and EEI grant applications received by the Agency by 4:30 p.m. local time on November 30 will be competed against each other. Complete RES and EEI applications received by the Agency by 4:30 p.m. local time on May 31, including any Complete Applications competed in the November 30 competition, but that were not funded, will be competed against each other. If November 30 or May 31 falls on a weekend or a Federally-observed holiday, the next Federal business day will be considered the last day for receipt of a Complete Application.

(b) *Set-aside funding for grants of \$20,000 or less*. There will be one State competition for grants of \$20,000 or less

competing for set-aside funds. Complete RES and EEI grant applications for grants of \$20,000 or less received by the Agency by 4:30 p.m. local time on April 30 will be competed against each other. If April 30 falls on a weekend or a Federally-observed holiday, the next Federal business day will be considered the last day for receipt of a Complete Application.

(c) *National competition*. All unfunded eligible State applications that competed in the May 31 State competition and the April 30 set-aside competition for grant of \$20,000 or less will be competed against other applications from other States or Tribes at a final National competition.

(d) *Ranking of applications*. Complete applications will be evaluated, processed, and subsequently ranked, and will compete for funding, subject to the availability of grant funding, as described in paragraph (a) of this section. Higher scoring applications will receive first consideration.

(e) *Funding selected applications*. As applications are funded, if insufficient funds remain to fund the next highest scoring application, the Agency may elect to fund a lower scoring application. Before this occurs, the Agency will provide the Applicant of the higher scoring application the opportunity to reduce the amount of the Applicant's grant request to the amount of funds available. If the Applicant agrees to lower its grant request, the Applicant must certify that the purposes of the project will be met and provide the remaining total funds needed to complete the project. At its discretion, the Agency may also elect to allow any remaining multi-year funds to be carried over to the next fiscal year rather than selecting a lower scoring application.

(f) *Disposition of ranked applications not funded*. (1) Based on the availability of funding, a ranked application might not be funded in the first semiannual competition for which it is eligible. All applications not selected for funding will be retained by the Agency for consideration in the next subsequent semiannual competition. Applications not selected for funding after a total of two semiannual competitions will not be considered for funding in future semiannual competitions. However, the application may compete in one National competition as described in paragraph (c) of this section within the Federal Fiscal Year received. If an application is not selected for funding after competing in a total of two semiannual competitions and one National competition, the Agency will discontinue considering the application for potential funding.

(2) Applications not selected for funding in the set-aside competition for grants of \$20,000 or less will not be considered for funding in future set-aside competitions. However, applications can compete in the May 31 semiannual State competition and the National competition as described in paragraph (c) of this section within the fiscal year received. If an application is not selected for funding after the May 31 semiannual State competition and the National competition, the Agency will discontinue considering the application for potential funding.

(g) *Commencement of the project.* The Applicant assumes all risks if the choice is made to purchase the technology proposed or start construction of the project to be financed in the grant application after the Complete Application has been received by the Agency, but prior to award announcement.

**§ 4280.122 Awarding and administering RES and EEI grants.**

The Agency will award and administer RES and EEI grants in accordance with Departmental Regulations and with paragraphs (a) through (h) of this section.

(a) *Letter of conditions.* A Letter of Conditions will be prepared by the Agency, establishing conditions that must be agreed to by the Applicant before any obligation of funds can occur. Upon reviewing the conditions and requirements in the Letter of Conditions, the Applicant must complete, sign, and return the Form RD 1942-26, "Letter of Intent to Meet Conditions," and Form RD 1940-1, "Request for Obligation of Funds," to the Agency if they accept the conditions of the grant; or if certain conditions cannot be met, the Applicant may propose alternate conditions to the Agency. The Agency must concur with any changes proposed to the Letter of Conditions by the Applicant before the application will be further processed.

(b) *Insurance requirements.* Agency approved insurance coverage must be maintained for 3 years after the Agency has approved the final performance report unless this requirement is waived or modified by the Agency in writing. Insurance coverage shall include, but is not limited to:

(1) Property insurance, such as fire and extended coverage, will normally be maintained on all structures and equipment.

(2) Liability.

(3) National flood insurance is required in accordance with 7 CFR part 1806, subpart B, of this title, if applicable.

(4) Business interruption insurance for projects with Total Project Costs of more than \$200,000.

(c) *Forms and certifications.* The forms specified in paragraphs (c)(1) through (c)(8) of this section will be attached to the Letter of Conditions referenced in paragraph (a) of this section. The forms specified in paragraphs (c)(1) through (c)(7) of this section and all of the certifications must be submitted prior to grant approval. The form specified in paragraph (c)(8) of this section, which is to be completed by contractors, does not need to be returned to the Agency, but must be kept on file by the Grantee.

(1) Form RD 1942-46, "Letter of Intent to Meet Conditions."

(2) Form RD 1940-1.

(3) Form AD-1049, "Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative 1-For Grantees Other than Individuals."

(4) Form SF-LLL, "Disclosure of Lobbying Activities," if the grant exceeds \$100,000 and/or if the grantee has made or agreed to make payment using funds other than Federal appropriated funds to influence or attempt to influence a decision in connection with the application.

(5) Form AD-1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transactions."

(6) Form RD 400-1, "Equal Opportunity Agreement," or successor form.

(7) Form RD 400-4, "Assurance Agreement," or successor form.

(8) Form AD-1048, as signed by the contractor or other lower tier party.

(d) *Evidence of Matching Funds.* If an Applicant submitted written evidence of Matching Funds with the application, the Applicant is responsible for ensuring that such written evidence is still in effect (i.e., not expired) when the grant is executed. If the Applicant did not submit written evidence of Matching Funds with the application, the Applicant must submit such written evidence that is in effect before the Agency will execute the Grant Agreement. In either case, written evidence of Matching Funds must be provided to the Agency before execution of the Grant Agreement and must be in effect (i.e., must not have expired) at the time Grant Agreement is executed.

(e) *SAM number.* Before the Grant Agreement can be executed, the number and expiration date of the Applicant's SAM number are required.

(f) *Grant Agreement.* Once the requirements specified in paragraphs (a) through (e) of this section have been met, the *Grant Agreement* can be

executed by the grantee and the Agency. The grantee must abide by all requirements contained in the Grant Agreement, this subpart, and any other applicable Federal statutes or regulations. Failure to follow these requirements might result in termination of the grant and adoption of other available remedies.

(g) *Grant approval.* The grantee will be sent a copy of the executed Form RD 1940-1, the approved scope of work, and the Grant Agreement.

(h) *Power Purchase Agreement.* Where applicable, the grantee shall provide to the Agency a copy of the executed Power Purchase Agreement within 12 months from the date that the Grant Agreement is executed, unless otherwise approved by the Agency.

**§ 4280.123 Servicing RES and EEI grants.**

The Agency will service RES and EEI grants in accordance with the requirements specified in Departmental Regulations; 7 CFR part 1951, subparts E and O; the Grant Agreement; and paragraphs (a) through (k) of this section.

(a) *Inspections.* Grantees must permit periodic inspection of the project records and operations by a representative of the Agency.

(b) *Programmatic changes.* The grantee must obtain prior Agency approval for any change to the costs, scope, or contractor or vendor of the approved project. Failure to obtain prior approval of any such change could result in such remedies as suspension, termination, and recovery of grant funds. Requests for changes must be submitted in writing to the Agency.

(1) *Changes in project cost or scope.* If there is a significant reduction in project cost or changes in project scope, then the Applicant's funding needs, eligibility, and scoring, as applicable, will be reassessed. Decreases in Agency funds will be based on revised project costs and other factors, including Agency regulations used at the time of grant approval.

(2) *Change of contractor or vendor.* When seeking a change, the grantee must submit to the Agency a written request for approval. The proposed contractor or vendor must have qualifications and experience acceptable to the Agency. The written request must contain sufficient information, which may include a revised technical report as required under § 4280.117(e), § 4280.118(b)(4), § 4280.119(b)(3), or § 4280.119(b)(4), as applicable, to demonstrate to the Agency's satisfaction that such change maintains project integrity. If the Agency determines that project integrity continues to be

demonstrated, the grantee may make the change. If the Agency determines that project integrity is no longer demonstrated, the change will not be approved and the grantee has the following options: continue with the original contractor or vendor; find another contractor or vendor that has qualifications and experience acceptable to the Agency to complete the project; or terminate the grant by providing a written request to the Agency. No additional funding will be available from the Agency if costs for the project have increased. The Agency decision will be provided in writing.

(c) *Transfer of obligations.* Prior to the construction of the project, the grantee may request, in writing, a transfer of obligation to a different (substitute) grantee. Subject to Agency approval provided in writing, an obligation of funds established for a grantee may be transferred to a substitute grantee provided:

- (1) The substituted grantee
  - (i) Is eligible;
  - (ii) Has a close and genuine relationship with the original grantee; and
  - (iii) Has the authority to receive the assistance approved for the original grantee; and

(2) The type of RES or EEI technology, the project cost and scope of the project for which the Agency funds will be used remain unchanged.

(d) *Transfer of ownership.* After the construction of the project, the grantee may request, in writing, a transfer of the Grant Agreement to another entity. Subject to Agency approval provided in writing, the Grant Agreement may be transferred to another entity provided:

- (1) The entity is determined by the Agency to be an eligible entity under this subpart; and
- (2) The type of RES or EEI technology and the scope of the project for which the Agency funds will be used remain unchanged.

(e) *Disposition of acquired property.* Grantees must abide by the disposition requirements outlined in Departmental Regulations.

(f) *Financial management system and records.* The grantee must provide for financial management systems and maintain records as specified in paragraphs (f)(1) and (f)(2) of this section.

(1) *Financial management system.* The grantee will provide for a financial system that will include:

- (i) Accurate, current, and complete disclosure of the financial results of each grant;
- (ii) Records that identify adequately the source and application of funds for

grant-supporting activities, together with documentation to support the records. Those records must contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income; and

(iii) Effective control over and accountability for all funds. The grantee must adequately safeguard all such assets and must ensure that funds are used solely for authorized purposes.

(2) *Records.* The grantee will retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least 3 years after completion of grant activities except that the records must be retained beyond the 3-year period if audit findings have not been resolved or if directed by the United States. The Agency and the Comptroller General of the United States, or any of their duly authorized representatives, must have access to any books, documents, papers, and records of the grantee that are pertinent to the specific grant for the purpose of making audit, examination, excerpts, and transcripts.

(g) *Audit requirements.* If applicable, grantees must provide an annual audit in accordance with 7 CFR part 3052. The Agency may exercise its right to do a program audit after the end of the project to ensure that all funding supported Eligible Project Costs.

(h) *Grant Disbursement.* As applicable, grantees must disburse grant funds as scheduled in accordance with the appropriate construction and inspection requirements in §§ 4280.118, 4280.119 or 4280.124 as applicable of this subpart. Unless required by third parties providing cost sharing payments to be provided on a pro-rata basis with other Matching Funds, grant funds will be disbursed after all other Matching Funds have been expended.

(1) Unless authorized by the Agency to do so, grantees may submit requests for reimbursement no more frequently than monthly. Ordinarily, payment will be made within 30 days after receipt of a proper request for reimbursement.

(2) Grantees must not request reimbursement for the Federal share of amounts withheld from contractors to ensure satisfactory completion of work until after it makes those payments.

(3) Payments will be made by electronic funds transfer.

(4) Grantees must use SF-271, "Outlay Report and Request for Reimbursement for Construction Programs," or other format prescribed by the Agency to request grant reimbursements.

(5) For a grant awarded to a project with Total Project Costs over \$200,000, grant funds will be disbursed in accordance with the above through 90 percent of grant disbursement. The final 10 percent of grant funds will be held by the Agency until construction of the project is completed, the project is operational, and the project has met or exceeded the steady state operating level as set out in the grant award requirements. In addition, the Agency reserves the right to request additional information or testing if upon a final site visit the 30 day steady state operating level is not found acceptable to the Agency.

(i) *Monitoring of project.* Grantees are responsible for ensuring that all activities are performed within the approved scope of work and that funds are only used for approved purposes.

(1) Grantees shall constantly monitor performance to ensure that:

- (i) Time schedules are being met;
- (ii) Projected work by time periods is being accomplished;
- (iii) Financial resources are being appropriately expended by contractors (if applicable); and

(iv) Any other performance objectives identified in the scope of work are being achieved.

(2) To the extent that resources are available, the Agency will monitor grantees to ensure that activities are performed in accordance with the Agency-approved scope of work and to ensure that funds are expended for approved purposes. The Agency's monitoring of grantees neither:

(i) Relieves the grantee of its responsibilities to ensure that activities are performed within the scope of work approved by the Agency and that funds are expended for approved purposes only; nor

(ii) Provides recourse or a defense to the grantee should the grantee conduct unapproved activities, engage in unethical conduct, engage in activities that are or that give the appearance of a conflict of interest, or expend funds for unapproved purposes.

(j) *Reporting requirements.* Financial and project performance reports must be provided by grantees and contain the information specified in paragraphs (j)(1) through (j)(3) of this section.

(1) *Federal financial reports.* Between grant approval and completion of project (i.e., construction), SF-425, "Federal Financial Report" will be required of all grantees as applicable on a semiannual basis. The grantee will complete the project within the total sums available to it, including the grant, in accordance with the scope of work and any necessary modifications thereof

prepared by grantee and approved by the Agency.

(2) *Project performance reports.*

Between grant approval and completion of project (i.e., construction), grantees must provide semiannual project performance reports and a final project development report containing the information specified in paragraphs (j)(2)(i) and (j)(2)(ii) of this section. These reports are due 30 working days after June 30 and December 31 of each year.

(i) *Semiannual project performance reports.* Each semiannual project performance report must include the following:

(A) A comparison of actual accomplishments to the objectives for that period;

(B) Reasons why established objectives were not met, if applicable;

(C) Reasons for any problems, delays, or adverse conditions which will affect attainment of overall program objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular objectives during established time periods. This disclosure must be accompanied by a statement of the action taken or planned to resolve the situation; and

(D) Objectives and timetables established for the next reporting period.

(ii) *Final project development report.* The final project development report must be submitted 90 days after project completion and include:

(A) A detailed project funding and expense summary; and

(B) A summary of the project's installation/construction process, including recommendations for development of similar projects by future Applicants to the program.

(3) *Outcome project performance reports.* Once the project has been constructed, the grantee must provide the Agency periodic reports. These reports will include the information specified in paragraphs (j)(3)(i) or (j)(3)(ii) of this section, as applicable.

(i) *Renewable Energy Systems.* For RES projects, commencing the first full calendar year following the year in which project construction was completed and continuing for 3 full years, provide a report detailing the information specified in paragraphs (j)(3)(i)(A) through (j)(3)(i)(G) of this section.

(A) Type of technology;

(B) The actual annual amount of energy generated in BTUs, kilowatt-hours, or similar energy equivalents;

(C) Annual income for systems that are selling energy, if applicable, and/or

energy savings of the Renewable Energy System;

(D) A summary of the cost of operations and maintenance;

(E) A description of any associated major maintenance or operational problems;

(F) Recommendations for development of future similar projects; and

(G) Actual number of jobs created or saved as a result of the REAP funding.

(ii) *Energy Efficiency Improvements.* For EEI projects, commencing the first full calendar year following the year in which project construction was completed and continuing for 2 full years, provide a report detailing, including calculations and any assumptions:

(A) The actual amount of energy saved annually as determined by the difference between:

(1) The annual amount of energy used by the project with the project in place and

(2) The annual average amount of energy used for the 36 month period prior to application submittal as reported in the application; and

(B) Actual number of jobs created or saved as a result of the REAP funding.

(k) *Grant close-out.* Grant close-out must be performed in accordance with the requirements specified in Departmental Regulations.

**§ 4280.124 Construction planning and performing development.**

(a) *General.* The following requirements are applicable to all procurement methods specified in paragraph (f) of this section.

(1) *Maximum open and free competition.* All procurement transactions, regardless of procurement method and dollar value, must be conducted in a manner that provides maximum open and free competition. Procurement procedures must not restrict or eliminate competition. Competitive restriction examples include, but are not limited to, the following: placing unreasonable requirements on firms in order for them to qualify to do business; noncompetitive practices between firms; organizational conflicts of interest; and unnecessary experience and bonding requirements. In specifying material(s), the grantee and its consultant will consider all materials normally suitable for the project commensurate with sound engineering practices and project requirements. The Agency will consider any recommendation made by the grantee's consultant concerning the technical design and choice of materials to be used for such a project. If the

Agency determines that a design or material, other than those that were recommended, should be considered by including them in the procurement process as an acceptable design or material in the project, the Agency will provide such Applicant or grantee with a comprehensive justification for such a determination. The justification will be documented in writing.

(2) *Equal employment opportunity.*

For all construction contracts and grants in excess of \$10,000, the contractor must comply with Executive Order 11246, as amended by Executive Order 11375, and as supplemented by applicable Department of Labor regulations (41 CFR part 60). The Applicant, or the lender and borrower, as applicable, is responsible for ensuring that the contractor complies with these requirements.

(3) *Surety.* Any contract exceeding \$100,000 for procurement will require surety, except as provided for in paragraph (a)(3)(v) of this section.

(i) Surety covering both performance and payment will be required. The United States, acting through the Agency, will be named as co-obligee on all surety unless prohibited by State or Tribal law. Surety may be provided as specified in paragraphs (a)(3)(i)(A) or (a)(3)(i)(B) of this section.

(A) Surety in the amount of 100 percent of the contract cost may be provided using either:

(1) A bank letter of credit; or

(2) Performance bonds and payment bonds. Companies providing performance bonds and payment bonds must hold a certificate of authority as an acceptable surety on Federal bonds as listed in Treasury Circular 570 as amended and be legally doing business in the State where the project is located.

(B) Cash deposit in escrow of at least 50 percent of the contract amount. The cash deposit cannot be from funds awarded under this subpart.

(ii) The surety will normally be in the form of performance bonds and payment bonds; however, when other methods of surety are necessary, bid documents must contain provisions for such alternative types of surety. The use of surety other than performance bonds and payment bonds requires concurrence by the Agency after submission of a justification to the Agency together with the proposed form of escrow agreement or letter of credit.

(iii) For contracts of lesser amounts, the grantee may require surety.

(iv) When surety is not provided, contractors will furnish evidence of payment in full for all materials, labor, and any other items procured under the contract. Forms RD 1924-9 and RD

1924–10 can be obtained at the local Rural Development office and used for this purpose. Other similar forms may be used with Rural Development State Office concurrence.

(v) Exceptions may be granted to surety for any of the following situations:

(A) Small acquisition and construction procedures as specified in § 4280.118(c)(2) or § 4280.119(c)(2) as applicable are used.

(B) The proposed project is for equipment purchase and installation only and the contract costs for the equipment purchase and installation are \$200,000 or less.

(C) The proposed project is for equipment purchase and installation only and the contract costs for the equipment purchase and installation are more than \$200,000 and the following requirements can be met:

(1) The project involves two or fewer subcontractors; and

(2) The equipment manufacturer or provider must act as the general contractor.

(D) Other construction projects that have only one contractor performing work.

(4) *Grantees accomplishing work.* In some instances, grantees may wish to perform a part of the work themselves. Grantees may accomplish construction by using their own personnel and equipment, provided the grantees possess the necessary skills, abilities, and resources to perform the work. For a grantee to provide a portion of the work, with the remainder to be completed by a contractor:

(i) A clear understanding of the division of work must be established and delineated in the contract;

(ii) Grantees are not eligible for payment for their own work as it is not an Eligible Project Cost;

(iii) Warranty requirements applicable to the technology must cover the grantee's work;

(iv) Inspection and acceptance of the grantee's work will be completed by either:

(A) An Inspector that will:

(1) Inspect, as applicable, and accept construction; and

(2) Furnish inspection reports.

(B) A licensed engineer that will:

(1) Prepare design drawings and specifications;

(2) Inspect, as applicable, and accept construction; and

(3) Furnish inspection reports.

(b) *Forms used.* Technical service and procurement documents must be approved by the Agency and may be used only if they are customarily used in the area and protect the interest of the

Applicant and the Government with respect to compliance with items such as the drawings, specifications, payments for work, inspections, completion, nondiscrimination in construction work and acceptance of the work. The Agency will not become a party to a construction contract or incur any liability under it. No contract will become effective until concurred in writing by the Agency. Such concurrence statement must be attached to and made a part of the contract.

(c) *Technical services.* Unless the requirements of paragraph (c)(4) of this section can be met, all RES and EEI projects with Total Project Costs greater than \$400,000 require:

(1) The design, installation monitoring, testing prior to commercial operation, and project completion certification be completed by a licensed professional engineer (PE) or team of licensed PEs. Licensed PEs may be "in-house" PEs or contracted PEs.

(2) Any contract for design services must be subject to Agency concurrence.

(3) Engineers must be licensed in the State where the project is to be constructed.

(4) The Agency may grant an exception to the requirements of paragraphs (c)(1) through (c)(3) of this section if the following requirements are met:

(i) State or Tribal law does not require the use of a licensed PE; and

(ii) The project is not complex, as determined by the Agency, and can be completed to meet the requirements of this program without the services of a licensed PE.

(d) *Design policies.* Final plans and specifications must be reviewed by the Agency and approved prior to the start of construction. Facilities funded by the Agency must meet the following design requirements, as applicable:

(1) *Environmental review.* Facilities financed by the Agency must undergo an environmental analysis in accordance with the National Environmental Policy Act and 7 CFR part 1940, subpart G of this title. Project planning and design must not only be responsive to the grantee's needs but must consider the environmental consequences of the proposed project. Project design must incorporate and integrate, where practicable, mitigation measures that avoid or minimize adverse environmental impacts.

Environmental reviews serve as a means of assessing environmental impacts of project proposals, rather than justifying decisions already made. Applicants may not take any action on a project proposal that will have an adverse environmental impact or limit the choice of reasonable

project alternatives being reviewed prior to the completion of the Agency's environmental review. If such actions are taken, the Agency has the right to withdraw and discontinue processing the application.

(2) *Architectural barriers.* All facilities intended for or accessible to the public or in which physically handicapped persons may be employed must be developed in compliance with the Architectural Barriers Act of 1968 (42 U.S.C. 4151 *et seq.*) as implemented by 41 CFR 101–19.6, section 504 of the Rehabilitation Act of 1973 (42 U.S.C. 1474 *et seq.*) as implemented by 7 CFR parts 15 and 15b, and Titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*).

(3) *Energy/environment.* Project design shall consider cost effective energy-efficient and environmentally-sound products and services.

(4) *Seismic safety.* All new structures, fully or partially enclosed, used or intended for sheltering persons or property will be designed with appropriate seismic safety provisions in compliance with the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 *et seq.*), and Executive Order 12699, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction. Designs of components essential for system operation and substantial rehabilitation of structures that are used for sheltering persons or property shall incorporate seismic safety provisions to the extent practicable as specified in 7 CFR part 1792, subpart C.

(e) *Contract Methods.* This paragraph identifies the three types of contract methods that can be used for projects funded under this subpart. The procurement methods, which are applicable to each of these contract methods, are specified in paragraph (f) of this section.

(1) *Traditional method or design-bid-build.* The services of the consulting engineer or architect and the general construction contractor shall normally be procured from unrelated sources in accordance with the following paragraphs.

(i) *Solicitation of offers.* Solicitation of offers must:

(A) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description must not, in competitive procurements, contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary will set forth those

minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equal” description may be used to define the performance or other salient requirements of a procurement. The specific features of the named brands which must be met by offerors must be clearly stated.

(B) Clearly specify all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(ii) *Contract pricing.* Cost plus a percentage of cost method of contracting must not be used.

(iii) *Unacceptable bidders.* The following will not be allowed to bid on, or negotiate for, a contract or subcontract related to the construction of the project:

(A) An engineer or architect as an individual or entity who has prepared plans and specifications or who will be responsible for monitoring the construction;

(B) Any entity in which the grantee’s architect or engineer is an officer, employee, or holds or controls a substantial interest in the grantee;

(C) The grantee’s governing body officers, employees, or agents;

(D) Any member of the grantee’s Immediate Family or partners in paragraphs (e)(1)(iii)(A), (e)(1)(iii)(B), or (e)(1)(iii)(C) of this section; or

(E) An entity which employs, or is about to employ, any person in paragraph (e)(1)(iii)(A), (e)(1)(iii)(B), (e)(1)(iii)(C), or (e)(1)(iii)(D) of this section.

(iv) *Contract award.* Contracts must be made only with responsible parties possessing the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration must include, but not be limited to, matters such as integrity, record of past performance, financial and technical resources, and accessibility to other necessary resources. Contracts must not be made with parties who are suspended or debarred.

(2) *Design/Build Method.* The Design/Build Method, where the same person or entity provides design and engineering work, as well as construction or installation, may be used with Agency written approval.

(i) *Concurrence information.* The Applicant will request Agency concurrence by providing the Agency at least the information specified in paragraphs (e)(2)(i)(A) through (e)(2)(i)(H) of this section.

(A) The grantee’s written request to use the Design/Build Method with a description of the proposed method.

(B) A proposed scope of work describing in clear, concise terms the technical requirements for the contract. It shall include a nontechnical statement summarizing the work to be performed by the contractor, the results expected, and a proposed construction schedule showing the sequence in which the work is to be performed.

(C) A proposed firm-fixed-price contract for the entire project which provides that the contractor will be responsible for any extra cost which result from errors or omissions in the services provided under the contract, as well as compliance with all Federal, State, local, and Tribal requirements effective on the contract execution date.

(D) Where noncompetitive negotiation is proposed and found, by the Agency, to be an acceptable procurement method, then the Agency will evaluate documents indicating the contractor’s performance on previous similar projects in which the contractor acted in a similar capacity.

(E) A detailed listing and cost estimate of equipment and supplies not included in the construction contract but which are necessary to properly operate the project.

(F) Evidence that a qualified construction Inspector who is independent of the contractor has or will be hired.

(G) Preliminary plans and outline specifications. However, final plans and specifications must be completed and reviewed by the Agency prior to the start of construction.

(H) The grantee’s attorney’s opinion and comments regarding the legal adequacy of the proposed contract documents and evidence that the grantee has the legal authority to enter into and fulfill the contract.

(ii) *Agency concurrence of Design/Build Method.* The Agency will review the material submitted by the Applicant. When all items are acceptable, the Agency approval official will concur in the use of the Design/Build Method for the proposal.

(iii) *Forms used.* Agency approved contract documents must be used provided they are customarily used in the area and protect the interest of the Applicant and the Agency with respect to compliance with items such as the drawings, specifications, payments for work, inspections, completion, nondiscrimination in construction work, and acceptance of the work. The Agency will not become a party to a construction contract or incur any liability under it. No contract shall

become effective until concurred, in writing, by the Agency. Such concurrence statement must be attached to and made a part of the contract.

(iv) *Contract provisions.* Contracts will have a listing of attachments and must contain the following:

(A) The contract sum;

(B) The dates for starting and completing the work;

(C) The amount of liquidated damages, if any, to be charged;

(D) The amount, method, and frequency of payment;

(E) Surety provisions that meet the requirements of paragraph (a)(3) of this section;

(F) The requirement that changes or additions must have prior written approval of the Agency as identified in the letter of conditions;

(G) *Contract review and concurrence.* The grantee’s attorney will review the executed contract documents, including performance and payment bonds, and will certify that they are in compliance with Federal, State, or Tribal law, and that the persons executing these documents have been properly authorized to do so. The contract documents, engineer’s recommendation for award, and bid tabulation sheets will be forwarded to the Agency for concurrence prior to awarding the contract. All contracts will contain a provision that they are not effective until they have been concurred, in writing, by the Agency;

(H) This part does not relieve the grantee of any responsibilities under its contract. The grantee is responsible for the settlement of all contractual and administrative issues arising out of procurement entered into in support of Agency funding. These include, but are not limited to, source evaluation, protests, disputes, and claims. Matters concerning violation of laws are to be referred to the applicable local, State, Tribal, or Federal authority; and

(3) *Construction Management.* Construction Managers as a Constructor (CMc) acts in the capacity of a General Contractor and is financially and professionally responsible for the construction. This type of Construction Management is also referred to as Construction Manager “At Risk.” The construction contract is between the grantee and the CMc. The CMc in turn subcontracts for some or all of the work. The CMc will need to carry the Agency required 100 percent surety and insurance, as required under paragraph (a)(3) of this section. Projects using construction management must follow the requirements of (e)(2)(i) through (e)(2)(iv) of this section.

(f) *Procurement methods.* Procurement must be made by one of the following methods: competitive sealed bids (formal advertising); competitive negotiation; or noncompetitive negotiation. Competitive sealed bids (formal advertising) are the preferred procurement method for construction contracts.

(1) *Competitive sealed bids.* In competitive sealed bids (formal advertising), sealed bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest, price and other factors considered. When using this method, the following will apply:

(i) At a sufficient time prior to the date set for opening of bids, bids must be solicited from an adequate number of qualified sources. In addition, the invitation must be publicly advertised.

(ii) The invitation for bids, including specifications and pertinent attachments, must clearly define the items or services needed in order for the bidders to properly respond to the invitation under paragraph (f)(1) of this section.

(iii) All bids must be opened publicly at the time and place stated in the invitation for bids.

(iv) A firm-fixed-price contract award must be made by written notice to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. When specified in the bidding documents, factors such as discounts and transportation costs will be considered in determining which bid is lowest.

(v) The Applicant, with the concurrence of the Agency, will consider the amount of the bids or proposals, and all conditions listed in the invitation. On the basis of these considerations, the Applicant will select and notify the lowest responsible bidder. The contract will be awarded using Form RD 1924-6, "Construction Contract," or a similar Agency-approved document.

(vi) Any or all bids may be rejected by the grantee when it is in their best interest.

(2) *Competitive negotiation.* In competitive negotiations, proposals are requested from a number of sources. Negotiations are normally conducted with more than one of the sources submitting offers (offerors). Competitive negotiation may be used if conditions are not appropriate for the use of formal advertising and where discussions and bargaining with a view to reaching

agreement on the technical quality, price, other terms of the proposed contract and specifications are necessary. If competitive negotiation is used for procurement, the following requirements will apply:

(i) Proposals must be solicited from two qualified sources, unless otherwise approved by the Agency, to permit reasonable competition consistent with the nature and requirements of the procurement.

(ii) The Request for Proposal must identify all significant evaluation factors, including price or cost where required, and their relative importance.

(iii) The grantee must provide mechanisms for technical evaluation of the proposals received, determination of responsible offerors for the purpose of written or oral discussions, and selection for contract award.

(iv) Award may be made to the responsible offeror whose proposal will be most advantageous to the grantee, price and other factors considered. Unsuccessful offerors must be promptly notified.

(v) Owners may utilize competitive negotiation procedures for procurement of architectural/engineering and other professional services, whereby the offerors' qualifications are evaluated and the most qualified offeror is selected, subject to negotiations of fair and reasonable compensation.

(3) *Noncompetitive negotiation.* Noncompetitive negotiation is procurement through solicitation of a proposal from only one source. Noncompetitive negotiation may be used when the award of a contract is not feasible under small acquisition and construction procedures, competitive sealed bids (formal advertising) or competitive negotiation procedures. Circumstances under which a contract may be awarded by noncompetitive negotiations are limited to the following:

(i) After solicitation of a number of sources, competition is determined inadequate; or

(ii) No acceptable bids have been received after formal advertising.

(4) *Additional procurement methods.* The grantee may use additional innovative procurement methods provided the grantee receives prior written approval from the Agency. Contracts will have a listing of attachments and the minimum provisions of the contract will include:

(i) The contract sum;

(ii) The dates for starting and completing the work;

(iii) The amount of liquidated damages to be charged;

(iv) The amount, method, and frequency of payment;

(v) Whether or not surety bonds will be provided; and

(vi) The requirement that changes or additions must have prior written approval of the Agency.

(g) *Contracts awarded prior to applications.* Applicants awarding contracts prior to filing an application must comply with 7 CFR 1780.74.

(h) *Contract administration.* Contract administration must comply with 7 CFR 1780.76. If another authority, such as a Federal, State, or Tribal agency, is providing funding and requires oversight of inspections, change orders, and pay requests, the Agency will accept copies of their reports or forms as meeting oversight requirements of the Agency.

### **Renewable Energy System and Energy Efficiency Improvement Guaranteed Loans**

#### **§ 4280.125 Compliance with §§ 4279.29 through 4279.99.**

All loans guaranteed under this subpart must comply with the provisions found in §§ 4279.29 through 4279.99 of this chapter, except that the provisions of § 4279.71 of this chapter are not applicable.

#### **§ 4280.126 Guarantee/annual renewal fee.**

Except for the conditions for receiving reduced guarantee fee and unless otherwise specified in a **Federal Register** notice, the provisions specified in § 4279.107 of this chapter apply to loans guaranteed under this subpart.

#### **§ 4280.127 Borrower eligibility.**

To receive a RES or EEI guaranteed loan under this subpart, a borrower must be eligible under § 4280.109. In addition, borrower must meet the requirements of paragraphs (a) through (e) of this section. Borrowers who receive a loan guaranteed under this subpart must continue to meet the requirements specified in this section.

(a) *Type of borrower.* The borrower must be an Agricultural Producer or Rural Small Business.

(b) *Ownership.* The borrower must: (1) Own or be the prospective owner of the project; and

(2) Own or control the site for the project at the time of application and, if the loan is guaranteed under this subpart, for the term of the loan.

(c) *Revenues and expenses.* The borrower must have available, at the time of application, satisfactory sources of revenue in an amount sufficient to provide for the operation, management, maintenance, and any debt service of the project for the term of the loan. In

addition, the borrower must control the revenues and expenses of the project, including its operation and maintenance, for which the loan is sought. Notwithstanding the provisions of this paragraph, the borrower may employ a Qualified Consultant under contract to manage revenues and expenses of the project and its operation and/or maintenance.

(d) *Legal authority and responsibility.* Each borrower and lender must have the legal authority necessary to apply for and carry out the purpose of the guaranteed loan.

(e) *Universal identifier and SAM.* Unless exempt under 2 CFR 25.110, the borrower must:

(1) Be registered in the SAM prior to submitting an application or plan;

(2) Maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by the Agency; and

(3) Provide its DUNS number in each application or plan it submits to the Agency.

#### § 4280.128 Project eligibility.

For a RES or EEI project to be eligible to receive a guaranteed loan under this subpart, the project must meet each criteria specified in § 4280.113(a) through (e). In addition, the purchase of an existing RES that meets the criteria specified in § 4280.113(b) through (f) is an eligible project under this section.

#### § 4280.129 Guaranteed loan funding.

(a) The amount of the loan that will be made available to an eligible project under this subpart will not exceed 75 percent of total Eligible Project Costs. Eligible Project Costs are specified in paragraph (e) of this section. Ineligible project costs are identified in paragraph (f) of this section.

(b) The minimum amount of a guaranteed loan made to a borrower will be \$5,000, less any program grant amounts. The maximum amount of a guaranteed loan made to a borrower is \$25 million.

(c) The percentage of guarantee, up to the maximum allowed by this section, will be negotiated between the lender and the Agency. The maximum percentage of guarantee is:

(1) 85 percent for loans of \$600,000 or less;

(2) 80 percent for loans greater than \$600,000 up to and including \$5 million;

(3) 70 percent for loans greater than \$5 million up to and including \$10 million; and

(4) 60 percent for loans greater than \$10 million.

(d) The total amount of the loans guaranteed under this subpart to one borrower, including the guaranteed and unguaranteed portion, the outstanding principal, and interest balance of any existing loans guaranteed under this program and the new loan request, must not exceed \$25 million.

(e) Eligible Project Costs are only those costs associated with the items identified in § 4280.115(c) and paragraphs (e)(1) through (e)(4) of this section, as long as the items are an integral and necessary part of the Renewable Energy System or Energy Efficiency Improvement. The Eligible Project Costs identified in paragraphs (e)(1) through (e)(4) of this section cannot exceed more than 5 percent of the loan amount.

(1) Working capital.

(2) Land acquisition.

(3) Routine lender fees, as described in § 4279.120(a) of this chapter.

(4) Energy Analyses, Energy Assessments, Energy Audits, technical reports, business plans, and Feasibility Studies completed and acceptable to the Agency, except if any portion was financed by any other Federal or State grant or payment assistance, including, but not limited to, a REAP Energy Analysis, Energy Assessment, or Energy Audit, Feasibility Study, or REDA grant.

(f) Ineligible project costs include, but are not limited to costs identified in §§ 4280.115(d)(1), (d)(2), and (d)(4) through (d)(9) and loans made with the proceeds of any obligation the interest on which is excludable from income under 26 U.S.C. 103 or a successor statute. Funds generated through the issuance of tax-exempt obligations may neither be used to purchase the guaranteed portion of any Agency guaranteed loan nor may an Agency guaranteed loan serve as collateral for a tax-exempt issue. The Agency may guarantee a loan for a project which involves tax-exempt financing only when the guaranteed loan funds are used to finance a part of the project that is separate and distinct from the part which is financed by the tax-exempt obligation, and the guaranteed loan has at least a parity security position with the tax-exempt obligation.

(g) In determining the amount of a loan awarded, the Agency will take into consideration the criteria specified in § 4280.115(e).

#### § 4280.130 Loan processing.

(a) Processing RES and EEI guaranteed loans under this subpart must comply with the provisions found in §§ 4279.120 through 4279.187 of this chapter, except for those sections specified in paragraph (b) of this

section, and as provided in §§ 4280.131 through 4280.142.

(b) The provisions found in §§ 4279.150, 4279.155, 4279.161, and 4279.175 of this chapter do not apply to loans guaranteed under this subpart.

#### § 4280.131 Credit quality.

Except for § 4279.131(d) of this chapter, the credit quality provisions of § 4279.131 of this chapter apply to this subpart. Instead of complying with § 4279.131(d), borrowers must demonstrate evidence of cash equity injection in the project of not less than 25 percent of total Eligible Project Costs. Cash equity injection must be in the form of cash. For guaranteed loan only requests, Federal grant funds may be counted as cash equity.

#### § 4280.132 Financial statements.

All financial statements must be in accordance with § 4279.137 of this chapter except that, for Agricultural Producers, the borrower may provide financial information in the manner that is generally required by agricultural commercial lenders.

#### § 4280.133 [Reserved]

#### § 4280.134 Personal and corporate guarantees.

All personal and corporate guarantees must be in accordance with § 4279.149 of this chapter. In addition, except for Passive Investors, unconditional personal and corporate guarantees for those owners with a beneficial interest greater than or equal to 20 percent of the borrower will be required where legally permissible.

#### § 4280.135 Scoring RES and EEI guaranteed loan only applications.

(a) *Evaluation criteria.* The Agency will score each guaranteed loan only application received using the evaluation criteria specified in § 4280.120, except that, in § 4280.120(b), the calculation will be made on the loan amount requested and not on the grant amount requested.

(b) *Minimum score.* The Agency will announce each year in a **Federal Register** notice the minimum score guaranteed loan-only applications must meet in order to be considered for funding in quarterly competitions, as specified in § 4280.138(b). Any application that does not meet the applicable minimum score is only eligible to compete during the last quarter of the Federal Fiscal Year, as specified in § 4280.138(b).

(c) *Notification.* The Agency will notify in writing each lender and borrower whose application does not meet the applicable minimum score.

**§ 4280.136 [Reserved]****§ 4280.137 Application and documentation.**

The requirements in this section apply to guaranteed loan applications for RES and EEI projects under this subpart.

(a) *General.* Guaranteed loan applications must be submitted in accordance with the guaranteed loan requirements specified in § 4280.110 and in this section.

(b) *Application content for guaranteed loans greater than \$600,000.* Each guaranteed loan only application for greater than \$600,000 must contain the information specified in paragraphs (b)(1) and (b)(2) of this section.

(1) *Application content.* Each application submitted under this paragraph must contain the information specified in §§ 4280.117(a)(6) through (a)(9) and (b) through (e) and as specified in paragraph (b)(2) of this section, and must present the information in the same order as shown in § 4280.117.

(2) *Lender forms, certifications, and agreements.* Each application submitted under paragraph (b) of this section must contain applicable forms, certifications, and agreements specified in paragraphs (b)(2)(i) through (b)(2)(xi) of this section instead of the forms and certifications specified in § 4280.117(a).

(i) A completed Form RD 4279–1, “Application for Loan Guarantee.”

(ii) Form RD 1940–20.

(iii) Form AD 2106. Although this form is optional, if the applicant has previously submitted the form to the Agency or another Federal agency, the applicant does not need to resubmit the form.

(iv) A personal credit report from an Agency approved credit reporting company for each owner, partner, officer, director, key employee, and stockholder owning 20 percent or more interest in the borrower’s business, except Passive Investors and those corporations listed on a major stock exchange.

(v) Appraisals completed in accordance with § 4279.144 of this chapter. Completed appraisals should be submitted when the application is filed. If the appraisal has not been completed when the application is filed, the Applicant must submit an estimated appraisal. Agency approval in the form of a Conditional Commitment may be issued subject to receipt of adequate appraisals. In all cases, a completed appraisal must be submitted prior to the loan being closed.

(vi) Commercial credit reports obtained by the lender on the borrower

and any parent, affiliate, and subsidiary firms.

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

(viii) Financial information is required on the total operation of the Agricultural Producer/Rural Small Business and its parent, subsidiary, or affiliates at other locations. All information submitted under this paragraph must be substantiated by authoritative records.

(A) *Historical financial statements.* Provide 3 years of historical financial statements including income statements and balance sheets. Agricultural producers may present historical financial information in the format that is generally required by commercial agriculture lenders.

(B) *Current balance sheet and income statement.* Provide a current balance sheet and income statement presented in accordance with GAAP and dated within 90 days of the application submittal. Agricultural producers may present financial information in the format that is generally required by commercial agriculture lenders or in a similar format used when submitting the same information in support of the borrower’s Federal income tax returns.

(C) *Pro forma financial statements.* Provide pro forma balance sheet at start-up of the borrower’s business that reflects the use of the loan proceeds or grant award; 3 additional years of financial statements, indicating the necessary start-up capital, operating capital, and short-term credit; and projected cash flow and income statements for 3 years supported by a list of assumptions showing the basis for the projections.

(ix) Lender’s complete comprehensive written analysis in accordance with § 4280.131.

(x) A certification by the lender that the borrower is eligible, the loan is for authorized purposes, and there is reasonable assurance of repayment ability based on the borrower’s history, projections, equity, and the collateral to be obtained.

(xi) A proposed loan agreement or a sample loan agreement with an attached list of the proposed loan agreement provisions. The following requirements must be addressed in the proposed or sample loan agreement:

(A) Prohibition against assuming liabilities or obligations of others;

(B) Restriction on dividend payments;

(C) Limitation on the purchase or sale of equipment and fixed assets;

(D) Limitation on compensation of officers and owners;

(E) Minimum working capital or current ratio requirement;

(F) Maximum debt-to-net worth ratio;

(G) Restrictions concerning consolidations, mergers, or other circumstances;

(H) Limitations on selling the business without the concurrence of the lender;

(I) Repayment and amortization provisions of the loan;

(J) List of collateral and lien priority for the loan, including a list of persons and corporations guaranteeing the loan with a schedule for providing the lender with personal and corporate financial statements. Financial statements for corporate and personal guarantors must be updated at least annually once the guarantee is provided;

(K) Type and frequency of financial statements to be required from the borrower for the duration of the loan;

(L) The addition of any requirements imposed by the Agency in its Conditional Commitment;

(M) A reserved section for any Agency environmental requirements; and

(N) A provision for the lender or the Agency to have reasonable access to the project and its performance information during its useful life or the term of the loan, whichever is longer, including the periodic inspection of the project by a representative of the lender or the Agency.

(c) *Application content for guaranteed loans of \$600,000 or less.* Each guaranteed loan only application for \$600,000 or less must contain the information specified in paragraphs (c)(1) and (c)(2) of this section.

(1) *Application Contents.* If the application is for \$200,000 or less, the application must contain the information specified in § 4280.118(b), except as specified in paragraph (c)(2) of this section (e.g., the grant forms under § 4280.117(a) are not required to be submitted), and must present the information in the same order as shown in § 4280.118(b). If the application is for more than \$200,000, the application must contain the information specified in § 4280.117, except as specified in paragraph (c)(2) of this section, and must present the information in the same order as shown in § 4280.117.

(2) *Lender forms, certifications, and agreements.* Each application submitted under paragraph (c) of this section must use Form RD 4279–1A, “Application for Loan Guarantee, Short Form,” and the forms and certifications specified in paragraphs (b)(2)(ii), (b)(2)(iii) (if not previously submitted), (b)(2)(v), (b)(2)(viii), (b)(2)(ix), (b)(2)(x), and (b)(2)(xi) of this section. The lender must have the documentation contained in paragraphs (b)(2)(iv), (b)(2)(vi), and

(b)(2)(vii) available in its files for the Agency's review.

**§ 4280.138 Evaluation of RES and EEI guaranteed loan applications.**

The provisions of § 4279.165 of this chapter apply to this subpart, although the Agency will determine borrower and project eligibility in accordance with the provisions of this subpart.

**§ 4280.139 Selection of RES and EEI guaranteed loan only applications.**

Complete and eligible guaranteed loan-only applications that are ready to be approved will be processed according to this section, unless otherwise modified by the Agency in a notice published in the **Federal Register**. Guaranteed loan applications that are part of a grant-guaranteed loan combination request will be processed according to § 4280.165(d).

(a) *Competing applications.* On the first business day of the second month of each Federal fiscal quarter, the Agency will compete each eligible application that is ready to be funded and that has a priority score, as determined under § 4280.135, that meets or exceeds the applicable minimum score. An application that does not meet the minimum score will be competed against all other applications during the last quarter of the Federal Fiscal Year. Higher scoring applications will receive first consideration.

(b) *Funding selected applications.* As applications are funded, the remaining guaranteed funding authority may be insufficient to fund the next highest scoring application or applications in those cases where two or more applications receive the same priority score. The procedures described in paragraphs (b)(1) and (b)(2) of this section may be repeated as necessary in order to consider all applications as appropriate.

(1) If the remaining funds are insufficient to fund the next highest scoring project completely, the Agency will notify the lender and offer the lender the opportunity to accept the level of funds available. If the lender does not accept the offer, the Agency will process the next highest scoring application.

(2) If the remaining funds are insufficient to fund each project that receives the same priority score, the Agency will notify each lender and offer the lender the opportunity to accept the level of funds available and the level of funds the Agency offers to each lender will be proportional to the amount of the lenders' requests. If funds are still remaining, the Agency may

consider funding the next highest scoring project.

(3) Any lender offered less than the full amount requested under either paragraph (b)(1) or (b)(2) of this section may either accept the funds available or can request to compete in the following quarter's competition. Under no circumstances would there be an assurance that the project(s) would be funded in subsequent competitions.

(4) If a lender agrees to the lower loan funding offered by the Agency under either paragraph (b)(1) or (b)(2) of this section, the lender must certify that the purpose(s) of the project can still be met at the lower funding level and must provide documentation that the borrower has obtain the remaining total funds needed to complete the project.

(c) *Disposition of ranked applications not funded.* How the Agency disposes of ranked applications that have not received funding depends on whether the application's priority score is equal to or greater than the minimum score or is less than the minimum score.

(1) An application with a priority score equal to or greater than the minimum score that is not funded in a quarterly competition will be retained by the Agency for consideration in subsequent quarterly competitions. If an application is not selected for funding after four quarterly competitions, including the first quarter in which the application was competed, the application will be withdrawn by the Agency from further funding consideration.

(2) An application with a priority score less than the applicable minimum priority score will be competed during the last quarter of the Federal Fiscal Year in which the application is ready for funding. If the application is not funded, the application will be withdrawn by the Agency from further funding consideration.

(d) *Unused funding.* At the end of each Federal fiscal quarter, the Agency will roll any remaining guaranteed funding authority into the next Federal fiscal quarter. At the end of each Federal Fiscal Year, the Agency may elect at its discretion to allow any remaining multi-year funds to be carried over to the next Federal Fiscal Year rather than selecting a lower scoring application.

(e) *Commencement of the project.* The applicant assumes all risks if the choice is made to purchase the technology proposed or start construction of the project to be financed in the guaranteed loan only application after the complete application has been received by the Agency, but prior to award announcement.

**§§ 4280.139–4280.140 [Reserved]**

**§ 4280.141 Changes in borrower.**

All changes in borrowers must be in accordance with § 4279.180 of this chapter, but the eligibility requirements of this subpart apply.

**§ 4280.142 Conditions precedent to issuance of Loan Note Guarantee.**

In addition to complying with § 4279.181 of this chapter, paragraphs (a) and (b) of this section must be met as applicable.

(a) The project has been performing at a steady state operating level in accordance with the technical requirements, plans, and specifications, conforms with applicable Federal, State, and local codes, and costs have not exceeded the amount approved by the lender and the Agency.

(b) Where applicable, the lender must provide to the Agency a copy of the executed Power Purchase Agreement.

**§ 4280.143 Requirements after project construction.**

Once the project has been constructed, the lender must provide the Agency reports from the borrower in accordance with § 4280.123(j)(3), as applicable.

**§§ 4280.144–4280.151 [Reserved]**

**§ 4280.152 Servicing guaranteed loans.**

Except as specified in paragraphs (a) and (b) of this section, all loans guaranteed under this subpart must be in compliance with the provisions found in § 4287.101(b) and in §§ 4287.107 through 4287.199 of this chapter.

(a) *Documentation of request.* In complying with § 4287.134(a) of this chapter, all transfers and assumptions must be to eligible borrowers in accordance with § 4280.127.

(b) *Additional loan funds.* In complying with § 4287.134(e) of this chapter, loans to provide additional funds in connection with a transfer and assumption must be considered as a new loan application under § 4280.137.

**§§ 4280.153–4280.164 [Reserved]**

**Combined Funding for Renewable Energy Systems and Energy Efficiency Improvements**

**§ 4280.165 Combined funding for Renewable Energy Systems and Energy Efficiency Improvements.**

The requirements for a RES or EEI project for which an Applicant is seeking a combined grant and guaranteed loan are specified in this section.

(a) *Eligibility.* All Applicants must be eligible under the requirements

specified in § 4280.109. If the Applicant is seeking a grant, the Applicant must also meet the Applicant eligibility requirements specified in § 4280.112. If the Applicant is seeking a loan, the Applicant must also meet the borrower eligibility requirements specified in § 4280.127. Projects must meet the project eligibility requirements specified in §§ 4280.113 and 4280.128, as applicable.

(b) *Funding.* Funding provided under this section is subject to the limits described in paragraphs (b)(1) and (b)(2) of this section.

(1) The amount of any combined grant and guaranteed loan shall not exceed 75 percent of total Eligible Project Costs and the grant portion shall not exceed 25 percent of total Eligible Project Costs. For purposes of combined funding requests, total Eligible Project Costs are based on the total costs associated with those items specified in §§ 4280.115(c) and 4280.129(e). The Applicant must provide the remaining total funds needed to complete the project.

(2) The minimum combined funding request allowed is \$5,000, with the grant portion of the funding request being at least \$1,500 for EEI projects and at least \$2,500 for RES projects.

(c) *Application and documentation.* When applying for combined funding, the Applicant must submit separate applications for both types of assistance (grant and guaranteed loan). The separate applications must be submitted simultaneously by the lender.

(1) Each application must meet the requirements, including the requisite forms and certifications, specified in §§ 4280.117, 4280.118, 4280.119, and 4280.137, as applicable, and as follows:

(i) Notwithstanding Form RD 4279–1, the SAM number and its expiration date must be provided prior to obligation of funds;

(ii) A combined funding request for a guaranteed loan greater than \$600,000 must contain the information specified in § 4280.137(b)(1) and (2); and

(iii) A combined funding request for a guaranteed loan of \$600,000 or less must contain the information specified in § 4280.137(c)(1) and (c)(2).

(2) Where both the grant application and the guaranteed loan application provisions request the same documentation, form, or certification, such documentation, form, or certification may be submitted once; that is, the combined application does not need to contain duplicate documentation, forms, and certifications.

(d) *Evaluation.* The Agency will evaluate each application according to § 4280.116(c). The Agency will select

applications according to applicable procedures specified in § 4280.121 unless modified by this section. A combination loan and grant request will be selected based upon the grant score of the project.

(e) *Interest rate and terms of loan.* The interest rate and terms of the guaranteed loan for the loan portion of the combined funding request will be determined based on the procedures specified in §§ 4279.125 and 4279.126 of this chapter for guaranteed loans.

(f) *Other provisions.* In addition to the requirements specified in paragraphs (a) through (e) of this section, the combined funding request is subject to the other requirements specified in this subpart, including, but not limited to, processing and servicing requirements, as applicable, as described in paragraphs (f)(1) through (f)(6) of this section.

(1) All other provisions of §§ 4280.101 through 4280.111 apply to the combined funding request.

(2) All other provisions of §§ 4280.112 through 4280.123 apply to the grant portion of the combined funding request and § 4280.124 applies if the project for which the grant is sought has a Total Project Cost over \$200,000.

(3) All other provisions of §§ 4280.125 through 4280.152 apply to the guaranteed loan portion of the combined funding request.

(4) All guarantee loan and grant combination applications that are ranked, but not funded, will be processed in accordance with provisions found in § 4280.121(d), (e), and (f).

(5) Applicants whose combination applications are approved for funding must utilize both the loan and the grant. The guaranteed loan will be closed prior to grant funds being disbursed. The Agency reserves the right to reduce the total loan guarantee and grant award as appropriate.

(6) Compliance reviews will be conducted on a combined grant and guaranteed loan request. The compliance review will encompass the entire operation, program, or activity to be funded with Agency assistance.

#### §§ 4280.166–4280.168 [Reserved]

#### Renewable Energy System Feasibility Study Grants

##### § 4280.169 General provisions.

Grants for Feasibility Studies must be for specific Renewable Energy Systems that meet the project eligibility criteria specified for RES projects under this subpart. Applications for industry-level feasibility studies, also known as feasibility study templates or guides, are not eligible because the assistance is not

provided to a specific project. In addition, any application in which the Applicant proposes to conduct any portion of the Feasibility Study is not eligible. The Feasibility Study completed for the proposed RES project must conform to Appendix D of this subpart.

##### § 4280.170 Applicant eligibility.

To be eligible for a RES Feasibility Study grant under this subpart, the Applicant must meet the criteria specified in paragraphs (a) through (d) of this section.

(a) The Applicant must be an Agricultural Producer or a Rural Small Business;

(b) The Applicant must be the prospective owner of the Renewable Energy System for which the Feasibility Study grant is sought and must be the prospective owner or controller of the site for the useful life of the property on which said Renewable Energy System would be placed; and

(c) The Applicant must have the legal authority necessary to apply for and carry out the purpose of the grant.

(d) Unless exempt under 2 CFR 25.110, the Applicant must

(1) Be registered in the SAM prior to submitting an application or plan;

(2) Maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by the Agency; and

(3) Provide its DUNS number in each application or plan it submits to the Agency.

##### § 4280.171 Eligibility of RES projects for Feasibility Study grants.

Only RES projects that meet the requirements specified in this section are eligible for Feasibility Study grants under this subpart. The RES project for which the Feasibility Study grant is sought shall meet the requirements specified in paragraphs (a) through (e) of this section.

(a) Be for a project as described in § 4280.113 (a)(1) through (a)(3) and (a)(4)(i) or § 4280.128.

(b) Be for a project located in a Rural Area if the Applicant is a Rural Small Business, or in a Rural or non-Rural Area if the Applicant is an Agricultural Producer. If the Agricultural Producer's operation is in a non-Rural Area, then the Feasibility Study can only be for a Renewable Energy System on integral components of or directly related to the Agricultural Producer's operation, such as vertically integrated operations, and are part of and co-located with the agricultural production operation.

(c) Be for technology that is Commercially Available, and that is replicable.

(d) Not have had a Feasibility Study already completed for it with Federal and/or State assistance.

(e) The project must be located in the same State where the Applicant has a place of business.

(f) The Applicant is cautioned against taking any actions or incurring any obligations prior to the Agency completing the environmental review that would either limit the range of alternatives to be considered or that would have an adverse effect on the environment, such as the initiation of construction. If the Applicant takes any such actions or incurs any such obligations, it could result in project ineligibility.

**§ 4280.172 [Reserved]**

**§ 4280.173 Grant funding for RES Feasibility Studies.**

(a) *Maximum grant amount.* The maximum amount of grant funds that will be made available for an eligible RES Feasibility Study project under this subpart to any one recipient will not exceed \$100,000 or 25 percent of the total Eligible Project Cost of the study, whichever is less. Eligible Project Costs are specified in paragraph (b) of this section.

(b) *Eligible Project Costs.* Only those costs incurred after the date a Complete Application has been received by the Agency will be considered eligible. Eligible Project Costs for RES Feasibility Studies must be specific to the completion of the Feasibility Study and can include, but are not limited to, the items listed in paragraphs (b)(1) and (b)(2) of this section.

(1) Payment of services to Qualified Consultant(s) to perform the necessary evaluations needed for the Feasibility Study and to complete the Feasibility Study.

(2) Other studies or assessments to evaluate the economic, technical, market, financial, and management feasibility of the Renewable Energy System that are needed to complete the Feasibility Study (e.g., resource assessment, transmission study, or environmental study).

(c) *Ineligible project costs.* Ineligible project costs for RES Feasibility Studies include, but are not limited to:

(1) Costs associated with selection of engineering, architectural, or environmental services;

(2) Designing, bidding, or contract development for the proposed project;

(3) Permitting and other licensing costs required to construct the project;

(4) Payment of any judgment or debt owed to the United States.

(5) Any goods or services provided by a person or entity who has a conflict of interest as provided in § 4280.106;

(6) Any costs of preparing the application package for funding under this subpart; and

(7) Funding of political or lobbying activities.

**§§ 4280.174–4280.175 [Reserved]**

**§ 4280.176 Feasibility Study grant applications—content.**

Applications for Feasibility Study grants must contain the information specified in paragraphs (a) through (n) of this section, except that Form AD 2106 is optional, and must be presented in the same order.

(a) Form SF–424.

(b) Form SF–424A, “Budget Information—Non-Construction Programs” (as applicable).

(c) Form SF–424B, “Assurances—Non-Construction Programs” (as applicable).

(d) Form SF–424C (as applicable).

(e) Form SF–424D (as applicable).

(f) Form AD 2106. Although this form is optional, if the applicant has previously submitted the form to the Agency or another Federal agency, the applicant does not need to resubmit the form.

(g) Form RD 1940–20 (as applicable).

(h) Identify the primary NAICS code applicable to the Applicant’s operation if known or a description of the operation in enough detail for the Agency to determine the primary NAICS code;

(i) Certification that the Applicant is a legal entity in good standing (as applicable), and operating in accordance with the laws of the state(s) where the Applicant has a place of business.

(j) The Applicant must identify whether or not the Applicant has a known relationship or association with an Agency employee. If there is a known relationship, the Applicant must identify each Agency employee with whom the Applicant has a known relationship.

(k) A proposed scope of work, which includes:

(1) A brief description of the proposed Renewable Energy System that the Feasibility Study will evaluate;

(2) The timeframe for completion of the Feasibility Study;

(3) The experience of the Qualified Consultant completing the Feasibility Study, including the number of similar Feasibility Studies the Qualified Consultant has performed, the number of years the Qualified Consultant has

been performing a similar service, and corresponding resumes; and

(4) The identification of the amount and source of Matching Funds the Applicant is proposing to use for the proposed Feasibility Study and the amount of funds for which the Applicant has received written commitments at the time the application is submitted. Include documentation verifying the written commitment(s) that the Applicant has received from its Matching Funding sources;

(l) A certification that the Applicant has not received any other Federal or State assistance for a Feasibility Study for the subject Renewable Energy System.

(m) If the Applicant is a Rural Small Business, certification that the Feasibility Study grant will be for a RES project that is located in a Rural Area.

(n) A certification providing:

(1) For Rural Small Businesses, the total Annual Receipts for the past 3 years and number of employees of the business and any parent, subsidiary or affiliates at other locations for Rural Small Businesses. If the Rural Small Business Applicant has not engaged in business operations for the past 3 years, than information for as long as the Rural Small Business Applicant has been in business must be submitted. New businesses that do not have any Annual Receipts must provide projections based upon a typical operating year for a 2-year time period; or

(2) For Agricultural Producers, the gross market value of the Applicant’s agricultural products, gross agricultural income of the Applicant, and gross nonfarm income of the Applicant for the calendar year preceding the year in which the application is being submitted.

**§ 4280.177 Evaluation of Feasibility Study grant applications.**

Section 4280.116(c) applies to this subpart, except for § 4280.116(c)(4).

**§ 4280.178 Scoring Feasibility Study grant applications.**

The Agency will score each Feasibility Study application based on the evaluation criteria specified in paragraphs (a) through (f) of this section, with a maximum score of 100 points possible.

(a) *Commitment of funds for the RES Feasibility Study.* A maximum of 25 points will be awarded based on the level of written commitment an Applicant has from its Matching Funds source(s) that are documented with a Complete Application. If the Applicant has written commitments from the source(s) confirming commitment of:

(1) 100 percent of the Matching Funds, 25 points will be awarded.

(2) 75 percent up to but not including 100 percent of the Matching Funds, 10 points will be awarded.

(3) 50 percent up to but not including 75 percent of the Matching Funds, 5 points will be awarded.

(4) Less than 50 percent, no points will be awarded.

(b) *Size of Agricultural Producer or Rural Small Business.* Applicants will be awarded points under this criterion based on Applicant size compared to the SBA Small Business size standards categorized by the NAICS codes found in 13 CFR 121.201. A maximum of 10 points will be awarded under this criterion. For Applicants that are:

(1) One-third or less of the maximum size standard identified by SBA, 10 points will be awarded.

(2) Greater than one-third up to and including two-thirds of the maximum size standard identified by SBA, 5 points will be awarded.

(3) Larger than two-thirds of the maximum size standard identified by SBA, no points will be awarded. For example, most agricultural production NAICS codes are limited to \$750,000 in Annual Receipts. An Agricultural Producer within one of the agricultural production NAICS codes with Annual Receipts of \$250,000 or less would be awarded 10 points, while an Agricultural Producer with Annual Receipts of more than \$250,000 Annual Receipts up to and including \$500,000, would be awarded 5 points.

(c) *Experience with the proposed technology of the Qualified Consultant identified to perform the RES Feasibility Study.* A maximum of 25 points can be awarded under this section. If the entity's experience in the field of study for the technology being proposed is:

(1) 10 or more years, 25 points will be awarded.

(2) 5 or more years, but less than 10 years, 20 points will be awarded.

(3) 2 or more years, but less than 5 years, 10 points will be awarded.

(4) Less than 2 years, no points will be awarded.

(d) *Size of RES Feasibility Study grant request.* A maximum of 20 points can be awarded under this criterion. If the grant request is:

(1) \$20,000 or less, 20 points will be awarded.

(2) Greater than \$20,000 up to and including \$50,000, 10 points will be awarded.

(3) Greater than \$50,000, no points will be awarded.

(e) *Resources to implement project.* Points will be awarded under this criterion depending on whether the RES

project for which the Applicant is seeking to conduct a Feasibility Study qualifies for local or State program assistance for the construction of the proposed RES project or, once it has been constructed, for its operation. Points can be awarded for both types of assistance, for a maximum of 10 points.

(1) If the Applicant has identified local programs, 5 points will be awarded.

(2) If the Applicant has identified State programs, 5 points will be awarded.

(f) *Previous grantees and borrowers.* Points under this scoring criterion will be awarded based on whether the Applicant has received a grant or guaranteed loan under this subpart. A maximum of 10 points will be awarded.

(1) If the Applicant has never received a grant and/or guaranteed loan under this subpart, 10 points will be awarded.

(2) If the Applicant has not received a grant and/or guaranteed loan under this subpart within the 2 previous Federal Fiscal Years, 5 points will be awarded.

#### **§ 4280.179 Selecting Feasibility Study grant applications for award.**

(a) *Application competitions.* Complete RES Feasibility Study grant applications will be competed against each other twice each calendar year. Complete RES Feasibility Study grant applications received by the Agency by 4:30 p.m. local time on November 30 will be competed against each other. Complete RES Feasibility Study grant applications received by the Agency by 4:30 p.m. local time on May 31, including any Complete Applications competed in the November 30 competition, but that were not funded, will be competed against each other. If November 30 or May 31 falls on a weekend or a Federally-observed holiday, the next Federal business day will be considered the last day for receipt of a Complete Application.

(b) *Ranking of applications.* Complete applications will be evaluated, processed, and subsequently ranked, and will compete for funding, subject to the availability of grant funding, as described in paragraph (a) of this section. Higher scoring applications will receive first consideration.

(c) *Funding selected applications.* As applications are funded, if insufficient funds remain to fund the next highest scoring application, the Agency may elect to fund a lower scoring application. Before this occurs, the Administrator will provide the Applicant of the higher scoring application the opportunity to reduce the amount of the Applicant's grant

request to the amount of funds available. If the Applicant agrees to lower its grant request, the Applicant must certify that the purposes of the project will be met and provide the remaining total funds needed to complete the project. At its discretion, the Agency may also elect to allow any remaining multi-year funds to be carried over to the next fiscal year rather than selecting a lower scoring application.

(d) *Disposition of ranked applications not funded.* Based on the availability of funding, a ranked application might not be funded in the first semiannual competition for which it is eligible. All applications not selected for funding will be retained by the Agency for consideration in the next subsequent semiannual competition. The Agency will discontinue considering the application for potential funding after the application has competed in a total of two semiannual competitions.

(e) *Commencement of the project.* The Applicant assumes all risks if the choice is made to purchase the technology proposed or start construction of the project to be financed in the grant application after the Complete Application has been received by the Agency.

#### **§ 4280.180 [Reserved]**

#### **§ 4280.181 Awarding and administering Feasibility Study grants.**

The Agency will award and administer RES Feasibility Study grants in accordance with Departmental Regulations and with the procedures and requirements specified in § 4280.122, except as specified in paragraphs (a) and (b) of this section.

(a) The insurance specified in § 4280.122(b) does not apply, unless equipment is purchased.

(b) The Power Purchase Agreement specified in § 4280.122(h) does not apply.

#### **§ 4280.182 Servicing Feasibility Study grants.**

The Agency will service RES Feasibility Study grants in accordance with the requirements specified in Departmental Regulations; 7 CFR part 1951, subparts E and O; the Grant Agreement; and the requirements in § 4280.123 except as specified in paragraph (a) through (c) of this section.

(a) *Grant disbursement.* RES Feasibility Study grant funds will be expended on a pro rata basis with Matching Funds.

(1) Form SF-270, "Request for Advance or Reimbursement," or other format prescribed by the Agency shall be used to request grant reimbursements.

(2) RES Feasibility Study grant funds will be disbursed in accordance with the above through 90 percent of grant disbursement. The final 10 percent of grant funds will be held by the Agency until a Feasibility study acceptable to the Agency has been submitted.

(b) *Final deliverables.* Upon completion of the Feasibility Study, the grantee shall submit the following to the Agency:

(1) A Feasibility Study acceptable to the Agency; and

(2) Form SF-270.

(c) *Outcome project performance reports.* Beginning the first full year after the Feasibility Study has been completed, grantees must report annually for 2 years on the following:

(1) Is the RES project for which the Feasibility Study was conducted underway? If "yes," describe how far along the RES project is (e.g., financing has been secured, site has been secured, construction contracts are in place, project is completed). If "no," discuss why the RES project is not underway.

(2) Is the RES project complete? If so, what is the actual amount of energy being produced?

#### §§ 4280.183–4280.185 [Reserved]

#### Energy Audit (EA) and Renewable Energy Development Assistance (REDA) Grants

##### § 4280.186 Applicant eligibility.

To be eligible for an EA grant or a REDA grant under this subpart, the Applicant must meet each of the criteria, as applicable, specified in paragraphs (a) through (d) of this section. The Agency will determine an Applicant's eligibility.

(a) The Applicant must be one of the following:

- (1) A unit of State, Tribal, or local government;
- (2) A land-grant college or university, or other Institution of Higher Education;
- (3) A rural electric cooperative;
- (4) A Public Power Entity; or
- (5) An Instrumentality of a State, Tribal, or local government.

(b) The Applicant must have sufficient capacity to perform the EA or REDA activities proposed in the application to ensure success. The Agency will make this assessment based on the information provided in the application.

(c) The Applicant must have the legal authority necessary to apply for and carry out the purpose of the grant.

(d) Unless exempt under 2 CFR 25.110, the Applicant must:

- (1) Be registered in the SAM prior to submitting an application or plan;
- (2) Maintain an active SAM registration with current information at

all times during which it has an active Federal award or an application or plan under consideration by the Agency; and

(3) Provide its DUNS number in each application or plan it submits to the Agency. Generally, the DUNS number is included on Standard Form-424.

##### § 4280.187 Project eligibility.

To be eligible for an EA or a REDA grant, the grant funds for a project must be used by the grantee to assist Agricultural Producers or Rural Small Businesses in one or both of the purposes specified in paragraphs (a) and (b) of this section, and must also comply with paragraphs (c) through (f) of this section.

(a) Conducting and promoting Energy Audits.

(b) Conducting and promoting Renewable Energy Development Assistance by providing to Agricultural Producers and Rural Small Businesses recommendations and information on how to improve the energy efficiency of their operations and to use Renewable Energy technologies and resources in their operations.

(c) Energy Audit and Renewable Energy Development Assistance can be provided only to a project located in a Rural Area unless the grantee of such project is an Agricultural Producer. If the project is owned by an Agricultural Producer, the project for which such services are being provided may be located in either a Rural or non-Rural Area. If the Agricultural Producer's project is in a non-Rural Area, then the Energy Audit or Renewable Energy Development Assistance can only be for a Renewable Energy System or Energy Efficiency Improvement on integral components of or directly related to the Agricultural Producer's project, such as vertically integrated operations, and are part of and co-located with the agricultural production operation.

(d) The Energy Audit or Renewable Energy Development Assistance must be provided to a recipient in a State.

(e) The Applicant must have a place of business in a State.

(f) The Applicant is cautioned against taking any actions or incurring any obligations prior to the Agency completing the environmental review that would either limit the range of alternatives to be considered or that would have an adverse effect on the environment, such as the initiation of construction. If the Applicant takes any such actions or incurs any such obligations, it could result in project ineligibility.

##### § 4280.188 Grant funding for Energy Audit and Renewable Energy Development Assistance.

(a) *Maximum grant amount.* The maximum aggregate amount of EA and REDA grants awarded to any one recipient under this subpart cannot exceed \$100,000. Grant funds awarded for EA and REDA projects may be used only to pay Eligible Project Costs, as described in paragraph (b) of this section. Ineligible project costs are listed in paragraph (c) of this section.

(b) *Eligible Project Costs.* Eligible Project Costs for Energy Audits and Renewable Energy Development Assistance are those costs incurred after the date a Complete Application has been received by the Agency and that are directly related to conducting and promoting Energy Audits and Renewable Energy Development Assistance, which include but are not limited to:

- (1) Salaries;
- (2) Travel expenses;
- (3) Office supplies (e.g., paper, pens, file folders); and
- (4) Expenses charged as a direct cost or as an indirect cost of up to a maximum of 5 percent for administering the grant.

(c) *Ineligible project costs.* Ineligible project costs for EA and REDA grants include, but are not limited to:

- (1) Payment for any construction-related activities;
- (2) Purchase or lease of equipment;
- (3) Payment of any judgment or debt owed to the United States;
- (4) Any goods or services provided by a person or entity who has a conflict of interest as provided in § 4280.106;
- (5) Any costs of preparing the application package for funding under this subpart; and
- (6) Funding of political or lobbying activities.

(d) *Energy Audits.* A grantee that conducts an Energy Audit must require that, as a condition of providing the Energy Audit, the Agricultural Producer or Rural Small Business pay at least 25 percent of the cost of the Energy Audit. Further, the amount paid by the Agricultural Producer or Rural Small Business will be retained by the grantee as a contribution towards the cost of the Energy Audit and considered program income. The grantee may use the program income to further the objectives of their project or EA services offered during the grant period in accordance with Departmental Regulations.

**§ 4280.189 [Reserved]****§ 4280.190 EA and REDA grant applications—content.**

(a) Unless otherwise specified in a **Federal Register** notice, Applicants may only submit one EA grant application and one REDA grant application each Federal Fiscal Year. No combination (Energy Audit and Renewable Energy Development Assistance) applications will be accepted.

(b) Applicants must submit Complete Applications consisting of the elements specified in paragraphs (b)(1) through (b)(7) of this section, except that Form AD 2106 is optional.

(1) Form SF-424.

(2) Form SF-424A.

(3) Form SF-424B.

(4) Form AD 2106. Although this form is optional, if the applicant has previously submitted the form to the Agency or another Federal agency, the applicant does not need to resubmit the form.

(5) Certification that the Applicant is a legal entity in good standing (as applicable), and operating in accordance with the laws of the State(s) or Tribe where the Applicant has a place of business.

(6) The Applicant must identify whether or not the Applicant has a known relationship or association with an Agency employee. If there is a known relationship, the Applicant must identify each Agency employee with whom the Applicant has a known relationship.

(7) A proposed scope of work to include the following items:

(i) A brief summary including a project title describing the proposed project;

(ii) Goals of the proposed project;

(iii) Geographic scope or service area of the proposed project and the method and rationale used to select the service area;

(iv) Identification of the specific needs for the service area and the target audience to be served. The number of Agricultural Producers and/or Rural Small Businesses to be served shall be identified including name and contact information, if available, as well as the method and rationale used to select the Agricultural Producers and/or Rural Small Businesses;

(v) Timeline describing the proposed tasks to be accomplished and the schedule for implementation of each task. Include whether organizational staff, consultants, or contractors will be used to perform each task. If a project is located in multiple states, resources must be sufficient to complete all projects;

(vi) Marketing strategies to include a discussion on how the Applicant will be marketing and providing outreach activities to the proposed service area ensuring that Agricultural Producers and/or Rural Small Businesses are served;

(vii) Applicant's experience as follows:

(A) If applying for a REDA grant, the Applicant's experience in completing similar REDA activities, including the number of similar projects the Applicant has performed and the number of years the Applicant has been performing a similar service.

(B) If applying for an EA grant, the number of Energy Audits and Energy Assessments the Applicant has completed and the number of years the Applicant has been performing those services;

(C) For all Applicants, the amount of experience in administering EA, REDA, or similar activities as applicable to the purpose of the proposed project. Provide discussion if the Applicant has any existing programs that can demonstrate the achievement of energy savings or energy generation with the Agricultural Producers and/or Rural Small Businesses the Applicant has served. If the Applicant has received one or more awards within the last 5 years in recognition of its renewable energy, energy savings, or energy-based technical assistance, please describe the achievement; and

(viii) Identify the amount of Matching Funds and the source(s) the Applicant is proposing to use for the project. Provide written commitments for Matching Funds at the time the application is submitted.

**§ 4280.191 Evaluation of EA and REDA grant applications.**

Section 4280.116(c) applies to EA and REDA grants, except for § 4280.116(c)(4).

**§ 4280.192 Scoring EA and REDA grant applications.**

The Agency will score each EA and REDA application using the criteria specified in paragraphs (a) through (f) of this section, with a maximum score of 100 points possible.

(a) *Applicant's organizational experience in completing the EA or REDA proposed activity.* The Applicant will be scored based on the experience of the organization in providing Energy Audits or Renewable Energy Development Assistance as applicable to the purpose of the proposed project. The organization must have been in business and provided services for the number of years as identified in the

paragraphs below. A maximum of 25 points can be awarded.

(1) More than 10 years of experience, 25 points will be awarded.

(2) At least 5 years and up to and including 10 years of experience, 20 points will be awarded.

(3) At least 2 years and up to and including 5 years of experience, 10 points will be awarded.

(4) Less than 2 years of experience, no points will be awarded.

(b) *Geographic scope of project in relation to identified need.* A maximum of 20 points can be awarded.

(1) If the Applicant's proposed or existing service area is State-wide or includes all or parts of multiple states, and the scope of work has identified needs throughout that service area, 20 points will be awarded.

(2) If the Applicant's proposed or existing service area consists of multiple counties in a single State and the scope of work has identified needs throughout that service area, 15 points will be awarded.

(3) If the Applicant's service area consists of a single county or municipality and the scope of work has identified needs throughout that service area, 10 points will be awarded.

(c) *Number of Agricultural Producers/Rural Small Businesses to be served.* Applicants will be awarded points based on the proposed number of ultimate recipients to be assisted and if the Applicant can identify an actual list of ultimate recipients to be assisted. A maximum of 20 points can be awarded.

(1) If the Applicant plans to provide Energy Audits or Renewable Energy Development Assistance to:

(i) Up to 10 ultimate recipients, 2 points will be awarded.

(ii) Between 11 and up to and including 25 ultimate recipients, 5 points will be awarded.

(iii) More than 25 ultimate recipients, 10 points will be awarded.

(2) If the Applicant provides a list of ultimate recipients, including their name and contact information, that are ready to be assisted, an additional 10 points may be awarded.

(d) *Potential of project to produce energy savings or generation and its attending environmental benefits.* Applicants can be awarded points under both paragraphs (d)(1) and (d)(2) of this section. A maximum of 10 points can be awarded.

(1) If the Applicant has an existing program that can demonstrate the achievement of energy savings or energy generation with the Agricultural Producers and/or Rural Small Businesses it has served, 5 points will be awarded.

(2) If the Applicant provides evidence that it has received one or more awards within the last 5 years in recognition of its renewable energy, energy savings, or energy-based technical assistance, up to a maximum of 5 points will be awarded as follows:

(i) International/national—3 points for each.

(ii) Regional/state—2 points for each.

(iii) Local—1 point for each.

(e) *Marketing and outreach plan.* If the scope of work included in the application provides a satisfactory discussion of each of the following criteria, one point for each (a maximum of 5 points) can be awarded.

(1) The goals of the project;

(2) Identified need;

(3) Targeted ultimate recipients;

(4) Timeline and action plan; and

(5) Marketing and outreach strategies and supporting data for strategies.

(f) *Commitment of Matching Funds for the Total Project Cost.* In order to receive points under this criterion, written documentation from each source providing Matching Funds is required when the application is submitted. A maximum of 20 points can be awarded.

(1) If the Applicant proposes to match 50 percent or more of the grant funds requested, 20 points will be awarded.

(2) If the Applicant proposes to match 20 percent or more but less than 50 percent of the grant funds requested, 15 points will be awarded.

(3) If the Applicant proposes to match 5 percent or more but less than 20 percent of the grant funds requested, 10 points will be awarded.

(4) If the Applicant proposes to match less than 5 percent of the grant funds requested, no points will be awarded.

#### **§ 4280.193 Selecting EA and REDA grant applications for award.**

(a) *Application competition.* Complete EA and REDA applications received by the Agency by 4:30 p.m. local time on January 31 will be competed against each other. If January 31 falls on a weekend or a Federally-observed holiday, the next Federal business day will be considered the last day for receipt of a Complete Application. Unless otherwise specified in a **Federal Register** notice, the two highest scoring applications from each State, based on the scoring criteria established under § 4280.192, will compete for funding.

(b) *Ranking of applications.* All applications submitted to the National Office under paragraph (a) of this section will be ranked in priority score order. All applications that are ranked will be considered for selection for funding.

(c) *Selection of applications for funding.* Using the ranking created

under paragraph (a) of this section, the Agency will consider the score an application has received compared to the scores of other ranked applications, with higher scoring applications receiving first consideration for funding. If two or more applications score the same and if remaining funds are insufficient to fund each such application, the Agency will distribute the remaining funds to each such application on a pro-rata basis. At its discretion, the Agency may also elect to allow any remaining multi-year funds to be carried over to the next fiscal year rather than funding on a pro-rata basis.

(d) *Disposition of ranked applications not funded.* Based on the availability of funding, a ranked application submitted for EA and/or REDA funds may not be funded. Such ranked applications will not be carried forward into the next Federal Fiscal Year's competition.

#### **§ 4280.194 [Reserved]**

#### **§ 4280.195 Awarding and administering EA and REDA grants.**

The Agency will award and administer EA and REDA grants in accordance with Departmental Regulations and with the procedures and requirements specified in § 4280.122, except as specified in paragraphs (a) through (c) of this section.

(a) Instead of complying with § 4280.122(b), the grantee must provide satisfactory evidence to the Agency that all officers of grantee organization authorized to receive and/or disburse Federal funds are covered by such bonding and/or insurance requirements as are normally required by the grantee.

(b) Form RD 400–1 specified in § 4280.122(c)(6) is not required.

(c) The Power Purchase Agreement specified in § 4280.122(h) is not required.

#### **§ 4280.196 Servicing EA and REDA grants.**

The Agency will service EA and REDA grants in accordance with the requirements specified in Departmental Regulations, the Grant Agreement, 7 CFR part 1951, subparts E and O, and the requirements in § 4280.123, except as specified in paragraphs (a) through (d) of this section.

(a) *Grant disbursement.* The Agency will determine, based on the applicable Departmental Regulations, whether disbursement of a grant will be by advance or reimbursement. Form SF–270 must be completed by the grantee and submitted to the Agency no more often than monthly to request either advance or reimbursement of funds.

(b) *Semiannual performance reports.* Project performance reports shall

include, but not be limited to, the following:

(1) A comparison of actual accomplishments to the objectives established for that period (e.g., the number of Energy Audits performed, number of recipients assisted and the type of assistance provided for Renewable Energy Development Assistance);

(2) A list of recipients, each recipient's location, and each recipient's NAICS code;

(3) Problems, delays, or adverse conditions, if any, that have in the past or will in the future affect attainment of overall project objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation;

(4) Objectives and timetable established for the next reporting period.

(c) *Final performance report.* A final performance report will be required with the final Federal financial report within 90 days after project completion. The final performance report must contain the information specified in paragraphs (c)(2)(i) or (c)(2)(ii), as applicable, of this section.

(1) For EA projects, the final performance report must provide complete information regarding:

(i) The number of audits conducted,

(ii) A list of recipients (Agricultural Producers and Rural Small Businesses) with each recipient's NAICS code,

(iii) The location of each recipient,

(iv) The cost of each audit and documentation showing that the recipient of the Energy Audit provided 25 percent of the cost of the audit, and

(v) The expected energy saved for each audit conducted if the audit is implemented.

(2) For REDA projects, the final performance report must provide complete information regarding:

(i) The number of recipients assisted and the type of assistance provided,

(ii) A list of recipients with each recipient's NAICS code,

(iii) The location of each recipient, and

(iv) The expected Renewable Energy that would be generated if the projects were implemented.

(d) *Outcome project performance report.* One year after submittal of the final performance report, the grantee will provide the Agency a final status report on the number of projects that are proceeding with the grantee's recommendations, including the

amount of energy saved and the amount of Renewable Energy generated, as applicable.

**§§ 4280.197–4280.200. [Reserved]**

**Appendix A to Part 4280—Technical Report for Energy Efficiency Improvement Projects**

For all Energy Efficiency Improvement (EEI) projects with Total Project Costs of more than \$80,000, provide the information specified in Sections A and D and in Section B or Section C, as applicable. If the application is for an EEI project with Total Project Costs of \$80,000 or less, please see § 4280.119(b)(3) for the technical report information to be submitted with your application.

If the application is for an EEI project with Total Project Costs of more than \$200,000, you must conduct an Energy Audit. However, if the application is for an EEI project with a Total Project Costs of \$200,000 or less, you may conduct either an Energy Assessment or an Energy Audit.

*Section A—Project information.* Describe how all the improvements to or replacement of an existing building and/or equipment meet the requirements of being Commercially Available. Describe how the design, engineering, testing, and monitoring are sufficient to demonstrate that the proposed project will meet its intended purpose, ensure public safety, and comply with applicable laws, regulations, agreements, permits, codes, and standards. Describe how all equipment required for the Energy Efficiency Improvement(s) is available and able to be procured and delivered within the proposed project development schedule. In addition, present information regarding component warranties and the availability of spare parts.

*Section B—Energy Audit.* If conducting an Energy Audit, provide the following information.

(1) *Situation report.* Provide a narrative description of the existing building and/or equipment, its energy system(s) and usage, and activity profile. Also include average price per unit of energy (electricity, natural gas, propane, fuel oil, renewable energy, etc.) paid by the customer for the most recent 36 months or, if in operation less than 36 months, the length of ownership for the building and equipment being audited. Any energy conversion should be based on use rather than source.

(2) *Potential improvement description.* Provide a narrative summary of the potential improvement and its ability to reduce energy consumption or improve energy efficiency, including a discussion of reliability and durability of the improvements.

(i) Provide preliminary specifications for critical components.

(ii) Provide preliminary drawings of project layout, including any related structural changes.

(iii) Identify significant changes in future related operations and maintenance costs.

(iv) Describe explicitly how outcomes will be measured.

(3) *Technical analysis.* Give consideration to the interactions among the potential

improvements and the current energy system(s).

(i) For the most recent 36 months, or the length of ownership if in operation for less than 36 months, prior to the date the application is submitted, provide both the total amount and the total cost of energy used for the original building and/or equipment, as applicable, for each improvement identified in the potential project. In addition, provide for each improvement identified in the potential project an estimate of the total amount of energy that would have been used and the total cost that would have been incurred if the proposed project was in operation for this same time period.

(ii) Calculate all direct and attendant indirect costs of each improvement; and

(iii) Rank potential improvements measures by cost-effectiveness.

(4) *Qualifications of the auditor.* Provide the qualifications of the individual or entity which completed the audit.

*Section C—Energy Assessment.* If conducting an Energy Assessment, provide the following information.

(1) *Situation report.* Provide a narrative description of the existing building and/or equipment, its energy system(s) and usage, and activity profile. Also include average price per unit of energy (electricity, natural gas, propane, fuel oil, renewable energy, etc.) paid by the customer for the most recent 36 months or, if in operation less than 36 months, the length of ownership for the building and equipment being evaluated. Any energy conversion shall be based on use rather than source.

(2) *Potential improvement description.* Provide a narrative summary of the potential improvement and its ability to reduce energy consumption or improve energy efficiency.

(3) *Technical analysis.* Giving consideration to the interactions among the potential improvements and the current energy system(s), provide the information specified in paragraphs (3)(i) through (3)(iii) of this section.

(i) For the most recent 36 months, or the length of ownership if in operation for less than 36 months, prior to the date the application is submitted, provide both the total amount and the total cost of energy used for the original building and/or equipment, as applicable, for each improvement identified in the potential project. In addition, provide for each improvement identified in the potential project an estimate of the total amount of energy that would have been used and the total cost that would have been incurred if the proposed project was in operation for this same time period.

(ii) Document baseline data compared to projected consumption, together with any explanatory notes on source of the projected consumption data. When appropriate, show before-and-after data in terms of consumption per unit of production, time, or area.

(iii) Estimate Simple Payback.

(4) *Qualifications of the assessor.* Provide the qualifications of the individual or entity which completed the assessment.

*Section D—Qualifications.* Provide a resume or other evidence of the contractor or installer's qualifications and experience with

the proposed energy efficiency improvement technology. Any contractor or installer with less than 2 years of experience may be required to provide additional information in order for the Agency to determine if they are qualified installer/contractor.

**Appendix B to Part 4280—Technical Reports for Renewable Energy System (RES) Projects With Total Project Costs of \$200,000 or Less**

Provide the information specified in Sections A through D for each technical report prepared under this appendix. A Renewable Energy Site Assessment may be used in lieu of Sections A through C if the Renewable Energy Site Assessment contains the information requested in Sections A through C. In such instances, the technical report would consist of Section D and the Renewable Energy Site Assessment.

**Note:** If the Total Project Cost for the RES project is \$80,000 or less, this appendix does not apply. Instead, for such projects, please provide the information specified in § 4280.119(b)(4).

*Section A—Project description.* Provide a description of the project, including descriptions of the project site and its location and the quality and availability of the Renewable Energy resource. Describe how all the major equipment and construction meet the requirements of being Commercially Available. Identify the amount of Renewable Energy generated through the deployment of the proposed system. If applicable, also identify the percentage of energy being replaced by the system.

If the application is for a Bioenergy Project, provide documentation that demonstrates that any and all woody biomass feedstock from National forest system land or public lands cannot be used as a higher value wood-based product.

If the application is for the installation of equipment and tanks directly associated with Flexible Fuel Pumps, provide documentation that demonstrates the availability of Blended Liquid Transportation Fuel and the demand for that fuel in its service area.

*Section B—Project economic assessment.* Describe the projected financial performance of the proposed project. The description must address Total Project Costs, energy savings, and revenues, including applicable investment and other production incentives accruing from government entities. Revenues to be considered shall accrue from the sale of energy, offset or savings in energy costs, byproducts, and green tags. Information must be provided to allow the calculation of Simple Payback.

*Section C—Project construction and equipment information.* Describe how the design, engineering, testing, and monitoring are sufficient to demonstrate that the proposed project will meet its intended purpose, ensure public safety, and comply with applicable laws, regulations, agreements, permits, codes, and standards. Describe how all equipment required for the Renewable Energy System is available and able to be procured and delivered within the proposed project development schedule. In addition, present information regarding

component warranties and the availability of spare parts.

*Section D—Qualifications of key service providers.* Describe the key service providers, including the number of similar systems installed and/or manufactured, professional credentials, licenses, and relevant experience. When specific numbers are not available for similar systems, estimations will be acceptable.

### Appendix C to Part 4280—Technical Reports for Renewable Energy System Projects With Total Project Costs of Greater than \$200,000

Provide the information specified in Sections A through G for each technical report prepared under this appendix. Provide the resource assessment under Section C that is applicable to the project.

*Section A—Qualifications of the project team.* Describe the project team, their professional credentials, and relevant experience. The description shall support that the project team key service providers have the necessary professional credentials, licenses, certifications, and relevant experience to develop the proposed project.

*Section B—Agreements and permits.* Describe the necessary agreements and permits (including any for local zoning requirements) required for the project and the anticipated schedule for securing those agreements and permits. For example, Interconnection Agreements and Power Purchase Agreements are necessary for all renewable energy projects electrically interconnected to the utility grid.

*Section C—Resource assessment.* Describe the quality and availability of the renewable resource and the amount of Renewable Energy generated through the deployment of the proposed system. For all Bioenergy Projects, except Anaerobic Digesters, complete Section C.3. For Anaerobic Digester projects, complete Section C.7.

1. *Wind.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the source of the wind data and the conditions of the wind monitoring when collected at the site or assumptions made when applying nearby wind data to the site.

2. *Solar.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the source of the solar data and assumptions.

3. *Bioenergy Project.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the type, quantity, quality, and seasonality of the Renewable Biomass resource, including harvest and storage, where applicable. Where applicable, also indicate shipping or receiving method and required infrastructure for shipping. For proposed projects with an established resource, provide a summary of the resource. Document that any and all woody biomass feedstock from National forest system land or public lands cannot be used as a higher value wood-based product.

4. *Flexible Fuel Pumps.* Applications for the installation of equipment and tanks directly associated with Flexible Fuel Pumps must document availability of Blended

Liquid Transportation Fuel and the demand for that fuel in its service area.

5. *Geothermal Electric Generation.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the quality of the geothermal resource, including temperature, flow, and sustainability and what conversion system is to be installed. Describe any special handling of cooled geothermal waters that may be necessary. Describe the process for determining the geothermal resource, including measurement setup for the collection of the geothermal resource data. For proposed projects with an established resource, provide a summary of the resource and the specifications of the measurement setup.

6. *Geothermal Direct Generation.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the quality of the geothermal resource, including temperature, flow, and sustainability and what direct use system is to be installed. Describe any special handling of cooled geothermal waters that may be necessary. Describe the process for determining the geothermal resource, including measurement setup for the collection of the geothermal resource data. For proposed projects with an established resource, provide a summary of the resource and the specifications of the measurement setup.

7. *Anaerobic digester.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the substrates used as digester inputs, including animal wastes or other Renewable Biomass in terms of type, quantity, seasonality, and frequency of collection. Describe any special handling of feedstock that may be necessary. Describe the process for determining the feedstock resource. Provide either tabular values or laboratory analysis of representative samples that include biodegradability studies to produce gas production estimates for the project on daily, monthly, and seasonal basis.

8. *Hydrogen Project.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the type, quantity, quality, and seasonality of the Renewable Biomass resource. For solar, wind, or geothermal sources of energy used to generate hydrogen, indicate the renewable resource where the hydrogen system is to be installed. Local resource maps may be used as an acceptable preliminary source of renewable resource data. For proposed projects with an established renewable resource, provide a summary of the resource.

9. *Hydroelectric/Ocean Energy projects.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the quality of the resource, including temperature (if applicable), flow, and sustainability of the resource, including a summary of the resource evaluation process and the specifications of the measurement setup and the date and duration of the evaluation process and proximity to the proposed site. If less than 1 year of data is used, a Qualified Consultant must provide a detailed analysis of the correlation between the site data and a nearby, long-term measurement site.

*Section D—Design and engineering.* Describe the intended purpose of the project and the design, engineering, testing, and monitoring needed for the proposed project. The description shall support that the system will be designed, engineered, tested, and monitored so as to meet its intended purpose, ensure public safety, and comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, identify that all major equipment is Commercially Available, including proprietary equipment, and justify how this unique equipment is needed to meet the requirements of the proposed design. In addition, information regarding component warranties and the availability of spare parts must be presented.

*Section E—Project development.* Describe the overall project development method, including the key project development activities and the proposed schedule, including proposed dates for each activity. The description shall identify each significant historical and projected activity, its beginning and end, and its relationship to the time needed to initiate and carry the activity through to successful project completion. The description shall address Applicant project development cash flow requirements. Details for equipment procurement and installation shall be addressed in Section F of this Appendix.

*Section F—Equipment procurement and installation.* Describe the availability of the equipment required by the system. The description shall support that the required equipment is available and can be procured and delivered within the proposed project development schedule. Describe the plan for site development and system installation, including any special equipment requirements. In all cases, the system or improvement shall be installed in conformance with manufacturer's specifications and design requirements, and comply with applicable laws, regulations, agreements, permits, codes, and standards.

*Section G—Operations and maintenance.* Describe the operations and maintenance requirements of the system, including major rebuilds and component replacements necessary for the system to operate as designed over its useful life. The warranty shall cover and provide protection against both breakdown and a degradation of performance. The performance of the renewable energy system or energy efficiency improvement shall be monitored and recorded as appropriate to the specific technology.

### Appendix D to Part 4280—Feasibility Study Content

Elements in an acceptable Feasibility Study include, but are not necessarily limited to, the elements specified in Sections A through G, as applicable, of this appendix.

*Section A. Executive Summary.* Provide an introduction and overview of the project. In the overview, describe the nature and scope of the proposed project, including purpose, project location, design features, Capacity, and estimated total capital cost. Include a summary of each of the elements of the Feasibility Study, including:

- (1) Economic feasibility determinations;
  - (2) Market feasibility determinations;
  - (3) Technical feasibility determinations;
  - (4) Financial Feasibility determinations;
  - (5) Management feasibility determinations;
- and
- (6) Recommendations for implementation of the proposed project.

*Section B. Economic Feasibility.* Provide information regarding the project site; the availability of trained or trainable labor; and the availability of infrastructure, including utilities, and rail, air and road service to the site. Discuss feedstock source management, including feedstock collection, pre-treatment, transportation, and storage, and provide estimates of feedstock volumes and costs. Discuss the proposed project's potential impacts on existing manufacturing plants or other facilities that use similar feedstock if the proposed technology is adopted. Provide projected impacts of the proposed project on resource conservation, public health, and the environment. Provide an overall economic impact of the proposed project including any additional markets created (e.g., for agricultural and forestry products and agricultural waste material) and potential for rural economic development. Provide the proposed project's plans for working with producer associations or cooperatives including estimated amount of annual feedstock and biofuel and byproduct dollars from producer associations and cooperatives.

*Section C. Market Feasibility.* Provide information on the sales organization and management. Discuss the nature and extent of market and market area and provide marketing plans for sale of projected output, including both the principal products and

the by-products. Discuss the extent of competition including other similar facilities in the market area. Provide projected total supply of and projected competitive demand for raw materials. Describe the procurement plan, including projected procurement costs and the form of commitment of raw materials (e.g., marketing agreements, etc.). Identify commitments from customers or brokers for both the principal products and the by-products. Discuss all risks related to the industry, including industry status.

*Section D. Technical Feasibility.* The technical feasibility report shall be based upon verifiable data and contain sufficient information and analysis so that a determination may be made on the technical feasibility of achieving the levels of income or production that are projected in the financial statements. If no other individual or firm with the expertise necessary to make such a determination is reasonably available to perform the function, an individual or firm that is not independent may be used.

(1) Identify any constraints or limitations in the financial projections and any other project or design-related factors that might affect the success of the enterprise. Identify and estimate project operation and development costs and specify the level of accuracy of these estimates and the assumptions on which these estimates have been based.

(2) Discuss all risks related to construction of the project and regulatory and governmental action as they affect the technical feasibility of the project.

*Section E. Financial Feasibility.* Discuss the reliability of the financial projections and assumptions on which the financial

statements are based including all sources of project capital both private and public, such as Federal funds. Provide 3 years (minimum) projected Balance Sheets, Income Statements, and cash flow projections for the life of the project. Discuss the ability of the business to achieve the projected income and cash flow. Provide an assessment of the cost accounting system. Discuss the availability of short-term credit or other means to meet reasonable business costs and the adequacy of raw materials and supplies. Provide a sensitivity analysis, including feedstock and energy costs. Discuss all risks related to the project, financing plan, the operational units, and tax issues.

*Section F. Management Feasibility.* Discuss the continuity and adequacy of management. Identify Applicant and/or management's previous experience concerning the receipt of Federal financial assistance, including amount of funding, date received, purpose, and outcome. Discuss all risks related to the Applicant as a company (e.g., Applicant is at the development stage) and conflicts of interest, including appearances of conflicts of interest.

*Section G. Qualifications.* Provide a resume or statement of qualifications of the author of the Feasibility Study, including prior experience.

Dated: March 21, 2013.

**Doug O'Brien,**

*Deputy Under Secretary, Rural Development.*

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