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CODE OF FEDERAL REGULATIONS

Title 7
Agriculture

Part 2000 to End

Revised as of January 1, 2012

Containing a codification of documents
of general applicability and future effect

As of January 1, 2012

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To cite the regulations in this volume use title, part and section number. Thus, 7 CFR 2003.1 *refers to title 7, part 2003, section 1.*

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Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16.....as of January 1
Title 17 through Title 27.....as of April 1
Title 28 through Title 41.....as of July 1
Title 42 through Title 50.....as of October 1

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RAYMOND A. MOSLEY,
Director,
Office of the Federal Register.
January 1, 2012.

THIS TITLE

Title 7—AGRICULTURE is composed of fifteen volumes. The parts in these volumes are arranged in the following order: Parts 1–26, 27–52, 53–209, 210–299, 300–399, 400–699, 700–899, 900–999, 1000–1199, 1200–1599, 1600–1759, 1760–1939, 1940–1949, 1950–1999, and part 2000 to end. The contents of these volumes represent all current regulations codified under this title of the CFR as of January 1, 2012.

The Food and Nutrition Service current regulations in the volume containing parts 210–299, include the Child Nutrition Programs and the Food Stamp Program. The regulations of the Federal Crop Insurance Corporation are found in the volume containing parts 400–699.

All marketing agreements and orders for fruits, vegetables and nuts appear in the one volume containing parts 900–999. All marketing agreements and orders for milk appear in the volume containing parts 1000–1199.

For this volume, Susannah C. Hurley was Chief Editor. The Code of Federal Regulations publication program is under the direction of Michael L. White, assisted by Ann Worley.

Title 7—Agriculture

(This book contains part 2000 to End)

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EDITORIAL NOTE: Nomenclature changes to chapter XVIII appear at 61 FR 1109, Jan. 16, 1996, and 61 FR 2899, Jan. 30, 1996.

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AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 6941; and 7 CFR 2.17.

SOURCE: 62 FR 67259, Dec. 24, 1997, unless otherwise noted.

Subpart A—Functional Organization of the Rural Development Mission Area

§ 2003.1 Definitions.

EEO—the Equal Employment Opportunity Act of 1972, 42 U.S.C. § 2000e *et seq*.

O&M—Operations and Management.

P&P—Policy and Planning.

RBS—Rural Business-Cooperative Development Service, USDA, or any successor agency.

RHS—Rural Housing Service, USDA, or any successor agency.

RTB—Rural Telephone Bank authorized by 7 U.S.C. 944.

Rural Development—Rural Development mission area of USDA.

RUS—Rural Utilities Service, USDA, or any successor agency.

Secretary—the Secretary of USDA.

USDA—the United States Department of Agriculture.

§ 2003.2 General.

The Rural Development mission area of the Department of Agriculture was established as a result of the Department of Agriculture Reorganization Act of 1994, Title II of Pub.L. 103–354. Rural Development's basic organization consists of Headquarters in Washington, D.C. and 47 State Offices. Headquarters maintains overall planning, coordination, and control of Rural Development agency programs. Administrators head RHS, RBS, and RUS under the direction of the Under Secretary for Rural Development. State Directors head the State Offices and are directly responsible to the Under Secretary for the execution of all Rural Development agency programs within the boundaries of their states.

§§ 2003.3–2003.4 [Reserved]

§ 2003.5 Headquarters organization.

(a) The Rural Development Headquarters is comprised of:

(1) The Office of the Under Secretary;

(2) Two Deputy Under Secretaries; and,

(3) Three Administrators and their staffs.

(b) The Rural Development Headquarters is located at 1400 Independence Avenue, SW., Washington, DC. 20250–0700

§ 2003.6 Office of the Under Secretary.

In accordance with 7 CFR § 2.17 the Secretary has delegated to the Under Secretary, Rural Development, authority to manage and administer programs and support functions of the Rural Development mission area.

(a) *Office of the Deputy Under Secretary for P&P*. This office is headed by the Deputy Under Secretary for P&P. The Under Secretary, Rural Development, has delegated to the Deputy Under Secretary for P&P, responsibility for formulation and development of short-and long-range rural development policies of the Department in accordance with 7 CFR § 2.45. The Deputy Under Secretary for P&P reports directly to the Under Secretary, Rural

Development, and provides guidance and supervision for research, policy analysis and development, strategic planning, partnerships and special initiatives. For budget and accounting purposes, all of the staff offices under the Deputy Under Secretary for P&P are housed in RBS.

(1) The Budget Analysis Division assesses potential impacts of alternative policies on the mission area's programs and operations and develops recommendations for change. The units are headed by the Chief Budget Officer, who individually serves as the top policy advisor to the Under Secretary and Deputy Under Secretary on all matters relating to mission area budget policy.

(2) The Research, Analysis and Information Division analyzes information on rural conditions and the strategies and techniques for promoting rural development. The division performs, or arranges to have conducted, short-term and major research studies needed to formulate policy.

(3) The Reinvention and Capacity Building Division coordinates the mission area's strategic planning initiatives, both at the National level and in the State Offices. The division assists the Rural Development agencies in their implementation of the Government Performance and Results Act (GPRA) and special initiatives of the Administration, USDA, and the Office of the Under Secretary.

(4) The Rural Initiatives and Partnership Division manages the mission area's involvement and coordination with other Federal and state departments and agencies to assess rural issues and develop model partnerships and initiatives to achieve shared rural development goals. The division is responsible for managing the National Rural Development Partnership and providing support and oversight of 37 State Rural Development Councils.

(b) *Office of the Deputy Under Secretary for O&M*. In accordance with 7 CFR 2.45, the Under Secretary, Rural Development, has delegated to the Deputy Under Secretary for O&M responsibility for providing leadership in planning, developing, and administering overall administrative management program policies and operational activities of the Rural Development mission area. The Deputy Under Secretary for O&M reports directly to the Under Secretary, Rural Development.

(1) *Office of the Deputy Administrator for O&M*. Headed by the Deputy Administrator for O&M, this office reports directly to the Deputy Under Secretary for O&M, and is responsible for directing and coordinating the consolidated administrative and financial management functions for Rural Development. This office provides overall guidance and supervision for budget and financial management, human resources management and personnel services, administrative and procurement services, information resources management and automated data systems. For budget and accounting purposes, all of the staff offices under the Deputy Administrator for O&M are housed in RHS.

(i) *Office of the Controller*. Headed by the Chief Financial Officer, this office supports the Deputy Administrator for O&M in executing Rural Development requirements related to compliance with the Chief Financial Officers Act of 1990 and provides leadership, coordination, and oversight of all financial management matters and financial execution of the budget for the Rural Development agencies. This office also has full responsibility for Rural Development agencies' accounting, financial, reporting, and internal controls. The office provides direct oversight to the Headquarters Budget Division, Financial Management Division, and the Office of the Assistant Controller, located in St. Louis, Missouri.

(ii) *Office of Assistant Administrator for Procurement and Administrative Services*. Headed by the Assistant Administrator for Procurement and Administrative Services, this office is responsible to the Deputy Administrator for O&M for overseeing the Procurement Management Division, the Property and Supply Management Division, and the Support Services Division:

(A) The Procurement Management Division is responsible for developing, implementing, and interpreting procurement and contracting policies for the Rural Development mission area. Major functions include planning outreach efforts and goals for small and disadvantaged businesses, providing

staff assistance reviews in State and Local Offices, administering the Contracting Officer Professionalism Warrant program for Rural Development agencies, and coordinating the development of Rural Development's acquisition plans.

(B) The Property and Supply Management Division is responsible for developing office space acquisition and utilization policies, providing training to field office leasing officers, administering the Leasing Officer Warrant program, assuring accessibility compliance in Rural Development's work sites, administering Rural Development's Physical Security program, and establishing and providing oversight to the worksite Energy Conservation program. This office operates a nationwide supply warehousing and distribution program, and oversees a nationwide Personal Property Management and Utilization Program, manages the U.S. Department of Agriculture (USDA) Excess Personal Property Program for field level activities, and provides direct support services to Rural Development's St. Louis facilities.

(C) The Support Services Division has responsibility for designing, developing, administering, and controlling Rural Development's directives management and issuance system, coordinating Rural Development's Regulatory Agenda and Regulatory Program submissions to USDA and OMB, serving as FEDERAL REGISTER liaison, and analyzing and coordinating regulatory work plans for the Under Secretary. This office submits Paperwork Reduction Act public burden clearances to OMB, administers all printing programs, manages Rural Development travel policies and programs, and manages Freedom of Information Act, Privacy Act and Tort Claims programs.

(iii) *Office of Information Resources Management (IRM)*. Headed by the Chief Information Officer, this office is responsible to the Deputy Administrator for O&M for developing Rural Development's IRM policies, regulations, standards and guidelines. This office provides overall leadership and direction to activities assigned to the following four major divisions:

(A) The Customer Services Division is responsible for direct customer and technical support (hardware and software).

(B) The Management Services Division coordinates all IRM acquisition, budget, and policy and planning activities in support of Rural Development automation.

(C) The Information Technology Division provides support technical services in the areas of data administration, system integrity management, research and development, and telecommunications.

(D) The Systems Services Division is responsible for planning, directing, and controlling activities related to Rural Development's Automated Information Systems.

(iv) *Office of the Assistant Administrator for Human Resources*. Headed by the Assistant Administrator for Human Resources, this office is responsible to the Deputy Administrator for O&M for the overall development, implementation, and management, of personnel and human resources support services for Rural Development. The office provides direction to the Headquarters Personnel Services, Human Resources Training and Mission Area Personnel Services Division, and Labor Relations Staff offices. The office is also responsible for the establishment of recruitment, retention, and development policies and programs supporting workforce diversity and affirmative action.

(2) *Office of Civil Rights Staff*. Headed by a staff director, this staff has primary responsibility for providing leadership and administration of the Civil Rights Program for the Rural Development mission area. The staff conducts on-site reviews of borrowers and beneficiaries of Federal financial assistance to ensure compliance with Titles VI and VII of the Civil Rights Act of 1964, as amended, Title VIII of the Civil Rights Act of 1968, as amended, Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and prepares compliance reports. The staff conducts and evaluates Title VII compliance visits to insure that EEO programs are adequately implemented. In addition, the office develops, monitors, and evaluates Affirmative Employment programs for minorities, women and

persons with disabilities, and coordinates and conducts community outreach activities at historically black colleges and universities. It also has oversight of special emphasis programs such as the Federal Women's Program, Hispanic Emphasis Program, and Black Emphasis Program. The staff director reports directly to the Deputy Under Secretary for O&M.

(3) *Office of Communications*. Headed by a director who reports directly to the Deputy Under Secretary for O&M, this office has primary responsibility for tracking legislation and development and institution of policies to provide public communication and information services related to the Rural Development. The office maintains a constituent data base and conducts minority outreach efforts and administers a public information and media center responsible for media inquiries, news releases, program announcements, media advisories, and information retrieval. This office also serves as a liaison with Office of Congressional Relations (OCR), Office of the General Counsel (OGC), and other Departmental units involved in Congressional relations and public information. This office drafts testimony, prepares witnesses, and provides staff for hearings and markups. In addition, the office briefs Congressional members and staff on the Rural Development matters, coordinates Rural Development's legislative activities with other USDA agencies and OMB and develops and implements legislative strategy. The staff also coordinates development and production of brochures, press releases, and other public information materials.

§§ 2003.7–2003.9 [Reserved]

§ 2003.10 Rural Development State Offices.

(a) Headed by State Directors, State Offices report directly to the Under Secretary, Rural Development, and are responsible to the three Rural Development agency Administrators for carrying out agency program operations at the State level, ensuring adherence to program plans approved for the State by the Under Secretary, and rendering staff advisory and manpower support to Area and Local offices. The Rural Development State Directors, for budget and accounting purposes, are housed in the RHS agency.

(b) Program Directors within the State Office provide oversight and leadership on major program functions. Major program functions include: Single Family and Multi-Family Housing loans and grants, Community Facility, Water and Waste Disposal, Business and Cooperative, and the Empowerment Zones and Enterprise Communities (EZ/EC) programs.

(c) The USDA Rural Development State Office locations are as follows:

State	Location
Alabama	Montgomery, AL
Alaska	Palmer, AK
Arizona	Phoenix, AZ
Arkansas	Little Rock, AR
California	Woodland, CA
Colorado	Lakewood, CO
Delaware	Camden, DE
Florida	Gainesville, FL
Georgia	Athens, GA
Hawaii	Hilo, HI
Idaho	Boise, ID
Illinois	Champaign, IL
Indiana	Indianapolis, IN
Iowa	Des Moines, IA
Kansas	Topeka, KS
Kentucky	Lexington, KY
Louisiana	Alexandria, LA
Maine	Bangor, ME
Massachusetts	Amherst, MA
Michigan	East Lansing, MI
Minnesota	St. Paul, MN
Mississippi	Jackson, MS
Missouri	Columbia, MO
Montana	Bozeman, MT
Nebraska	Lincoln, NE
Nevada	Carson City, NV
New Jersey	Mt. Holly, NJ
New Mexico	Albuquerque, NM
New York	Syracuse, NY
North Carolina	Raleigh, NC
North Dakota	Bismarck, ND
Ohio	Columbus, OH
Oklahoma	Stillwater, OK
Oregon	Portland, OR
Pennsylvania	Harrisburg, PA
Puerto Rico	Hato Rey, PR
South Carolina	Columbia, SC
South Dakota	Huron, SD
Tennessee	Nashville, TN
Texas	Temple, TX
Utah	Salt Lake City, UT
Vermont	Montpelier, VT
Virginia	Richmond, VA
Washington	Olympia, WA
West Virginia	Charleston, WV
Wisconsin	Stevens Point, WI
Wyoming	Casper, WY

[62 FR 67259, Dec. 24, 1997; 63 FR 3256, Jan. 22, 1998]

§§ 2003.11–2003.13 [Reserved]

§ 2003.14 Field Offices.

Rural Development field offices report to their respective State Director and State Office Program Directors. State Directors may organizationally structure their offices based on the program workloads within their respective State. Field offices generally are patterned in a three or two tier program delivery structure. In a three tier system, Local offices report to an Area office, that reports to the State Office. In a two tier system, a ''Local'' or ''Area'' office reports to the State Office. Locations and telephone numbers of Area and Local Offices may be obtained from the appropriate Rural Development State Office.

§§ 2003.15–2003.16 [Reserved]

§ 2003.17 Availability of information.

Information concerning Rural Development programs and agencies may be obtained from the Office of Communications, Rural Development, U. S. Department of Agriculture, STOP 0705, 1400 Independence Avenue SW., Washington, DC 20250–0705.

§ 2003.18 Functional organization of RHS.

(a) *General*. The Secretary established RHS pursuant to section 233 of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6943).

(b) *Office of the Administrator*. According to 7 CFR 2.49, the Administrator has responsibility for implementing programs aimed at delivering loans and grant assistance to rural Americans and their communities in obtaining adequate and affordable housing and community facilities, in accordance with Title V of the Housing Act of 1949 (42 U.S.C. 1471 *et seq.*) and the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*).

(1) *Legislative Affairs Staff*. The duties and responsibilities of this staff have now been aligned under the Office of Communication, headed by a director who reports directly to the Under Secretary for O&M. The Office of Communication is responsible for providing and carrying out legislative, public communication, and information services for the Rural Development mission area.

(2) *Office of Program Support Staff*. The Program Support Staff is headed by a staff director who is responsible to the Administrator for monitoring managerial and technical effectiveness of RHS programs. The staff coordinates review and analysis of legislation, Executive Orders, OMB circulars, and Department regulations for their impact on Agency programs. The staff develops, implements, and reports on architectural and environmental policies, in cooperation with the Department. Staff responsibilities also include managing RHS's Hazardous Waste Management Fund, coordinating the Debarment and Suspension process for RHS, tracking the use of Program Loan Cost Expense funds, and maintaining the RHS Internet ''Home Page.''

(3) *Office of Deputy Administrator, Single Family Housing*. Headed by the Deputy Administrator, Single Family Housing, this office is responsible to the Administrator for the development and implementation of RHS's Single Family Housing programs, which extend supervised housing credit to rural people of limited resources, for adequate, modest, decent, safe, and sanitary homes. The office is responsible for administering and managing sections 502 and 504 Rural Housing direct and guaranteed loan and grant programs, Rural Housing and Self-Help Site loans, the Self-Help Technical Assistance grant program, Housing Application Packaging and Technical and Supervisory Assistance grants, and Home Improvement and Repaid loans and grants. The office directs the following three divisions: Single Family Housing Processing Division, Single Family Housing Servicing and Property Management Division, and Single Family Housing Centralized Servicing Center in St. Louis, Mo.

(i) *Office of Single Family Housing Processing Division*. Headed by a division director, this division is responsible for development and nationwide implementation of policies on processing Single Family Housing direct and guaranteed program loans. In addition, the division provides direction on the following: the Rural Housing Targeted Area Set-Aside program,

debarments, payment assistance, title clearance and loan closing, site/subdivision development, Deferred Mortgage Payment Program; construction defects, credit reports, appraisals, Manufactured Housing, coordinated assessment reviews, Home Buyer's Counseling/Education Program, and allocation of loan and grant program funds.

(ii) *Office of Single Family Housing Servicing and Property Management Division*. Headed by a division director, this division is responsible for the development and implementation of nationwide policies for servicing RHS's multi-billion dollar portfolio of Single Family Housing loans, and managing and selling Single Family Housing inventory properties. The division also conducts state program evaluations, identifies program weaknesses, makes recommendations for improvements, and identifies corrective actions.

(iii) *Office of Single Family Housing Centralized Servicing Center (CSC)—St. Louis, Missouri*. Headed by a director, CSC is responsible for centrally servicing RHS's multi-billion dollar portfolio of Single Family Housing loans. CSC provides interest credit or payment assistance renewals, performs escrow activities for real estate taxes and property hazard insurance, oversees collection of loan payments, and grants interest credit, payment assistance, and moratoria.

(4) *Office of the Deputy Administrator, Multi-Family Housing Division*. Headed by the Deputy Administrator, Multi-Family Housing, this office is responsible for the development and nationwide implementation of RHS's Multi-Family Housing programs, which extend supervised housing credit to rural residents an opportunity to have decent, safe, and sanitary rental housing. The following programs are administered and managed by this office: Section 515 Rural Rental Housing, Rural Cooperative and Congregate Housing Programs, Section 521 Rental Assistance, Farm Labor Housing loan and grant programs, Housing Preservation Grants, rural housing vouchers, and Housing Application Packaging Grants. This office directs the following two divisions:

(i) *Multi-Family Housing Processing Division*. Headed by a division director, this division is responsible for the development and nationwide implementation of policies on processing Multi-Family Housing program loans. The division manages the following program areas: elderly and family rental housing, Farm Labor Housing loans and grants, outreach contacts, congregate facilities, Housing Preservation Grants, cooperative housing, rural housing vouchers, appraisals, Congregate Housing Services Grants, Rental Assistance, Housing Application Packaging Grants, targeted area and nonprofit set asides, Multi-Family Housing suspensions and debarments, title clearance and loan closing, allocation and monitoring of loan and grant funds, adverse decisions and appeals, commercial credit reports, individual credit reports, and, site development.

(ii) *Multi-Family Housing Portfolio Management Division*. Headed by a division director, this division is responsible for the development and institution of policies on the management and servicing of the nationwide Multi-Family Housing programs. The Division implements current and long range plans for servicing Rural Rental Housing loans, Labor Housing loans and grants, and Rental Assistance or similar tenant subsidies.

(5) *Office of the Deputy Administrator, Community Programs*. Headed by the Deputy Administrator, Community Programs, this office is responsible for overseeing the administration and management of Community Facilities loans and grants to hospitals and nursing homes, police and fire stations, libraries, schools, adult and child care centers, etc. The office monitors and evaluates the administration of loan and grant programs on a nationwide basis and provides guidance and direction for community programs through two divisions, Community Programs Loan Processing Division and Servicing and Special Authorities Division.

(i) *Community Programs Loan Processing Division*. Headed by a director, this division is responsible for the overall administration, policy development, fund distribution, and processing of Community Facilities loans and grants and other loan and grant programs assigned to the Division.

(ii) *Servicing and Special Authorities Division*. Headed by a division director, this division is responsible for the overall administration, policy development, and servicing of the Community Facilities loan and grant programs. The division conducts program evaluations, identifies program weaknesses, makes recommendations for improvements, and identifies corrective actions. The division also administers and services Nonprofit National Corporation loans and grants.

[62 FR 67259, Dec. 24, 1997, as amended at 64 FR 32388, June 17, 1999]

§§ 2003.19–2003.21 [Reserved]

§ 2003.22 Functional organization of RUS.

(a) *General*. The Secretary established RUS pursuant to § 232 of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6942).

(b) *Office of the Administrator*. According to 7 CFR 2.47, the Administrator has responsibility for managing and administering the programs and support functions of RUS to provide financial and technical support for rural infrastructure to include electrification, clean drinking water, telecommunications, and water disposal systems, pursuant to the Consolidated Farm and Rural Development Act, as amended (7 U.S.C. 1921 *et seq.*), and the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*). The office develops and implements strategic plans concerning the Rural Electrification Act of 1936, as amended. The Administrator serves as Governor of the Rural Telephone Bank (RTB) with a 13-member board of directors, and exercises and performs all functions, powers, and duties of the RTB in accordance with 7 U.S.C. 944.

(1) *Borrower and Program Support Services*. Borrower and Program Support Services consist of the three following staffs which are responsible to the Administrator for planning and carrying out a variety of program and administrative services in support of all RUS programs, and providing expert advice and coordination for the Administrator:

(i) *Administrative Liaison Staff*. Headed by a staff director, this staff advises the Administrator on management issues and policies relating to human resources, EEO, labor-management partnership, administrative services, travel management, automated information systems, and administrative budgeting and funds control.

(ii) *Program Accounting Services Division*. Headed by a division director, this division develops and evaluates the accounting systems and procedures of Electric, Telecommunications, and Water and Wastewater borrowers; assures that accounting policies, systems, and procedures meet regulatory, Departmental, General Accounting Office, OMB, and Treasury Department requirements; examines borrowers' records and operations, and reviews expenditures of loans and other funds; develops audit requirements; and approves Certified Public Accountants to perform audits of borrowers.

(iii) *Program and Financial Services Staff*. Headed by a staff director, this staff evaluates the financial conditions of troubled borrowers, negotiates settlements of delinquent loans, and makes recommendations to program Assistant Administrators on ways to improve the financial health of borrowers.

(2) *Office of Assistant Administrator—Electric Program*. Headed by the Assistant Administrator—Electric Program, this office is responsible to the Administrator for directing and coordinating the Rural Electrification program of RUS nationwide. This office develops, maintains, and implements regulations and program procedures on processing and approving loans and loan-related activities for rural electric borrowers. The office directs the following three divisions:

(i) *Electric Regional Divisions*. Headed by division directors, these two divisions are responsible for administering the Rural Electrification program in specific geographic areas and serving as the single point of contact for all distribution borrowers. The divisions provide guidance to borrowers on RUS loan policies and procedures, maintain oversight of borrower rate actions, and make recommendations to the Administrator on borrower applications for RUS financing. The divisions also assure that power plant, distribution,

and transmission systems and facilities are designed and constructed in accordance with the terms of the loan and proper engineering practices and specifications.

(ii) *Power Supply Division*. Headed by a division director, this division is responsible for administering the Rural Electrification program responsibilities with regard to power supply borrowers nationwide and serves as primary point of contact between RUS and all such borrowers. The division develops and maintains a loan processing program for Rural Electrification Act purposes, and develops and administers engineering and construction policies related to planning, design, construction, operation, and maintenance for power supply borrowers.

(iii) *Electric Staff Division*. Headed by a division director, this division is responsible for engineering activities related to the design, construction, and technical operations and maintenance of power plants; distribution of power; and transmission systems and facilities, including load management and communications. The division develops criteria and techniques for evaluating the financing and performance of electric borrowers and forecasting borrowers' future power needs; and maintains financial expertise on the distribution and power supply loan program, and retail and wholesale rates.

(3) *Office of Assistant Administrator—Telecommunications Program*. Headed by the Assistant Administrator—Telecommunications Program, this office is responsible to the Administrator for directing and coordinating the National Rural Telecommunications, Distance Learning, and Telemedicine programs of RUS. The Assistant Administrator, Telecommunications Program, serves as Assistant Governor of the RTB and is responsible for the day-to-day activities of the RTB. The office develops, maintains, and implements regulations and program procedures on the processing and approval of grants, loans, and loan-related activities for all rural telecommunications borrowers and grant recipients. The office directs the following three divisions:

(i) *Telecommunications Standards Division*. Headed by a division director, this division is responsible for engineering staff activities related to the design, construction, and technical operation and maintenance of rural telecommunications systems and facilities. The office develops engineering practices, policies, and technical data related to borrowers' telecommunications systems; and evaluates the application of new communications network technology, including distance learning and telemedicine, to rural telecommunications systems.

(ii) *Advanced Telecommunications Services Staff*. Headed by a staff director, this staff primarily serves the Assistant Administrator, Telecommunications Program in the role of the Assistant Governor of the RTB. The office performs analyses and makes recommendations to the AAT on issues raised by the RTB Governor, Board of Directors, or RTB borrowers. This staff maintains official records for the RTB Board and prepares minutes of RTB Board meetings. The staff director serves as the Assistant Secretary to the RTB. The staff performs the calculations necessary to determine the cost of money rate to RTB borrowers and recommends and develops program- wide procedures for loan and grant programs. The office is responsible for the Telecommunications Program's home page on the Internet.

(iii) *Telecommunications Area Offices*. Headed by area directors, these four offices are responsible for administering the Telecommunications, Distance Learning, and Telemedicine programs for specific geographic areas, and serving as the single point of contact for all program applicants and borrowers within their respective areas. The offices provide guidance to applicants and borrowers on RUS and RTB loan policies and procedures, and make recommendations to the Administrator on applications for loans, guarantees, and grants. The offices assure that borrower systems and facilities are designed and constructed in accordance with the terms of the loan, acceptable engineering practices and specifications, and acceptable loan security standards.

(4) *Office of the Assistant Administrator—Water and Environmental Programs*. Headed by the Assistant Administrator, Water and Environmental

Programs, this office is responsible to the Administrator for directing and coordinating a nationwide Water and Waste Disposal Program for RUS as authorized under Section 306 of the Consolidated Farm and Rural Development Act, as amended (7 U.S.C. 1926). The office oversees administration of RUS policies on making and servicing loans and grants for water and waste facilities in rural America, and the development of engineering policies, and practices related to the construction and operation of community water and waste disposal systems. This office is responsible for development and coordination of environmental programs with regard to the Water and Waste Disposal Program and directs the following two divisions:

(i) *Water Programs Division*. Headed by the division director, this division is responsible for administering the Water and Waste Disposal loan and grant making and servicing and special authorities activities nationwide. This office also makes allocation of loan and grant funds to field offices and manages National Office reserves.

(ii) *Engineering and Environmental Staff*. Headed by a staff director, this staff is responsible for engineering activities at all stages of program implementation, including: review of preliminary engineering plans and specifications, procurement practices, contract awards, construction monitoring, and system operation and maintenance. The staff also develops Agency engineering practices, policies, and technical data related to the construction and operation of community water and waste disposal systems. The staff is responsible for coordinating environmental policy and providing technical support in areas such as: hazardous waste, debarment and suspension, flood insurance, drug free workplace requirements, and computer program software.

§§ 2003.23–2003.25 [Reserved]

§ 2003.26 Functional organization of RBS.

(a) *General*. The Secretary established RBS pursuant to section 234 of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6944).

(b) *Office of the Administrator*. According to 7 CFR 2.48, the Administrator is responsible for managing and administering the programs and support functions of RBS to provide assistance to disadvantaged communities through grants and loans and technical assistance to businesses and communities for rural citizens and cooperatives, pursuant to the following authorities: the Rural Electrification Act of 1936, as amended (7 U.S.C. 940c and 950aa *et seq.*), the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*), the Cooperative Marketing Act of 1926 (7 U.S.C. 451–457), the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), and the Food Security Act of 1985 (7 U.S.C. 1932). These grants, loans, and technical assistance improve community welfare by enhancing organizational and management skills, developing effective economic strategies, and expanding markets for a wide range of rural products and services.

(1) *Resources Coordination Staff*. Headed by the staff director, this staff is responsible to the Administrator for preparing legislative initiatives and modifications for program enhancement. The staff monitors legislative and regulatory proposals that potentially impact RBS functions. The staff serves as liaison on budgetary and financial management matters between RBS staff and the Office of the Controller, and assists the Administrator in presenting and supporting RBS's budget and program plans. The staff also advises the Administrator and RBS officials on management issues and policies related to: human resources, labor relations, civil rights, EEO, space, equipment, travel, Senior Executive Service and Schedule C activities, contracting, automated information systems, and accounting. The staff provides analysis and recommendations on the effectiveness of administrative and management activities, and performs liaison functions between RBS and the Office of the Deputy Under Secretary for O&M on a wide variety of administrative functions.

(2) *Office of the Deputy Administrator, Business Programs*. Headed by the Deputy Administrator, Business Programs,

this office is responsible to the Administrator for overseeing and coordinating the Business and Industry Guaranteed and Direct Loan programs, Intermediary Relending Program loans, Rural Business Enterprise grants, Rural Business Opportunity grants, Rural Economic Development loan and grant programs, and the Rural Venture Capital Demonstration Program. The office participates in policy planning, and program development and evaluation. It also directs the following three divisions:

(i) *Processing Division*. Headed by the division director, this division is responsible for developing and maintaining loan processing regulations, and directs the processing and approval of guaranteed and direct business and industry loans, and the Rural Venture Capital Demonstration Program. It provides technical assistance to field employees and borrowers on loan processing and develops approval criteria and performance standards for loans. The division recommends plans, programs, and activities related to business loan programs and provides environmental guidance and support.

(ii) *Servicing Division*. Headed by the division director, this office is responsible for developing and maintaining servicing regulations. It directs and provides technical assistance to field employees and borrowers on servicing business loans and grants. The division reviews large, complex, or potentially controversial loan and grant dockets related to loan servicing and recommends servicing plans, programs, and activities related to business loan and grant programs.

(iii) *Specialty Lenders Division*. Headed by the division director, this office is responsible for directing and developing and maintaining regulations concerning the processing and approval of Intermediary Relending loans, Rural Business Enterprise grants, Rural Business Opportunity grants, and Rural Economic Development loan and grant programs. The division provides technical assistance to field employees and borrowers on loan and grant processing and other activities. It also develops approval criteria and performance standards and recommends plans, programs, and activities related to business loan and grant programs.

(3) *Office of the Deputy Administrator, Cooperative Services Programs*. Headed by the Deputy Administrator, Cooperative Services Programs, this office is responsible to the Administrator for providing service to cooperative associations by administering a program of research and analysis of economic, social, legal, financial, and other related issues concerning cooperatives. The office administers programs to assist cooperatives in the organization and management of their associations and a program for economic research and analysis of the marketing aspects of cooperatives. The division administers and monitors activities of the National Sheep Industry Improvement Center and the Appropriate Technology Transfer to Rural Areas Program, and the Rural Cooperative Development Grant Program. The office directs the following three divisions:

(i) *Cooperative Marketing Division*. Headed by the division director, this division is responsible for participating in the formulation of National policies and procedures on cooperative marketing. The division conducts research and analysis and gives technical assistance to farmer cooperatives on cooperative marketing of certain crops, livestock, aquaculture, forestry, poultry, semen, milk, and dairy products to improve their market performance and economic position.

(ii) *Cooperative Development Division*. Headed by the division director, this division is responsible for participating in the formulation of National policies and procedures on cooperative development. The office conducts evaluations and analysis of proposed new cooperatives to develop plans for implementing feasible operations, and advises and assists rural resident groups and developing cooperatives in implementing sound business plans for new cooperatives. It provides research, analysis, and technical assistance to rural residents on cooperative development initiatives and strategies to improve economic conditions through cooperative efforts.

(iii) *Cooperative Resource Management Division.* Headed by the division director, this division is responsible for participating in the formulating of National policies and procedures on cooperative resource management. The division conducts research and analysis and gives technical assistance to cooperatives on their overall structure, strategic management and planning, financial issues, and operational characteristics to improve their use of resources, financial policies, and ability to adapt to market conditions. The division conducts research and analysis of policy, taxation, Federal laws, State statutes, and common laws that apply to cooperative incorporation, structure, and operation to assist cooperatives in meeting legal requirements.

(4) *Office of the Deputy Administrator, Community Development.* Headed by the Deputy Administrator, Community Development, this office is responsible to the Under Secretary, Rural Development, for coordinating and overseeing all functions in the Community Outreach and Empowerment Program areas. The office assists in providing leadership and coordination to National and local rural economic and community development efforts. For appropriation and accounting purposes, this office is located under RBS. The office directs the following two divisions:

(i) *Empowerment Program Division.* Headed by the division director, this division is responsible for formulating policies and developing plans, standards, procedures, and schedules for accomplishing RBS activities related to ''community empowerment programs'', including EZ/EC, AmeriCorps, and other initiatives. The office develops informational materials and provides technical advice and services to support States on community empowerment programs. It also generates information about rural conditions and strategies and techniques for promoting rural economic development for community empowerment programs.

(ii) *Community Outreach Division.* Headed by the division director, this division is responsible for designing and overseeing overall systems and developing resources to support State and community level implementation activities for RBS programs. The office designs program delivery systems and tools, removes impediments to effective community-level action, supports field offices with specialized skills, and establishes partnerships with National organizations with grass-roots membership to assure that programs and initiatives are designed and implemented in a way that empowers communities. It develops methods for working with rural business intermediaries to assist them in providing technical assistance to new, small business, and provides Internet-based services to 1890 Land-grant universities, EZ/EC, and AmeriCorps volunteers, linking RBS information support to communities with high levels of need.

(5) *Alternative Agricultural Research and Commercialization Corporation.* Headed by a director, this Corporation is responsible for providing and monitoring financial assistance for the development and commercialization of new nonfood and nonfeed products from agricultural and forestry commodities in accordance with 7 U.S.C. 5901 *et seq.* The Corporation acts as a catalyst in forming private and public partnerships and promotes new uses of agricultural materials. It expands market opportunities for U.S. farmers through development of value-added industrial products and promotes environmentally friendly products. For budget and accounting purposes, this office is assigned to RBS. The director of the Corporation is responsible to the Office of the Secretary.

§§ 2003.27–2003.50 [Reserved]

PART 2018—GENERAL

Subparts A–E [Reserved]

Subpart F—Availability of Information

Sec.
2018.251 General statement.
2018.252 Public inspection and copying.
2018.253 Indexes.
2018.254 Requests for records.
2018.255 Appeals.
2018.256–2018.300 [Reserved]

AUTHORITY: 5 U.S.C. 552.

Subparts A–E [Reserved]

Subpart F—Availability of Information

SOURCE: 61 FR 32645, June 25, 1996, unless otherwise noted.

§ 2018.251 General statement.

In keeping with the spirit of the Freedom of Information Act (FOIA), the policy of Rural Development and its component agencies, Rural Housing Service (RHS), Rural Utilities Service (RUS), and Rural Business-Cooperative Service (RBS), governing access to information is one of nearly total availability, limited only by the countervailing policies recognized by the FOIA.

§ 2018.252 Public inspection and copying.

Facilities for inspection and copying are provided by the Freedom of Information Officer (FOIO) in the National Office, by the State Director in each State Office, by the Rural Development Manager (formerly, District Director) in each District Office, and by the Community Development Manager (formerly, County Supervisor) in each County Office. A person requesting information may inspect such materials and, upon payment of applicable fees, obtain copies. Material may be reviewed during regular business hours. If any of the Rural Development materials requested are not located at the office to which the request was made, the request will be referred to the office where such materials are available.

§ 2018.253 Indexes.

Since Rural Development does not maintain any materials to which 5 U.S.C. 552(a)(2) applies, it maintains no indexes.

§ 2018.254 Requests for records.

Requests for records are to be submitted in accordance with 7 CFR 1.3 and may be made to the appropriate Community Development Manager, Rural Development Manager, State Administrative Management Program Director (formerly, State Administrative Officer), State Director, Freedom of Information/Privacy Act Specialist, or Freedom of Information Officer. The last two positions are located in the Rural Development Support Services Division, Washington, DC 20250. The phrase ''FOIA REQUEST'' should appear on the outside of the envelope in capital letters. The FOIA requests under the Farm Credit Programs (formally FmHA Farmer Programs) should be forwarded to the Farm Service Agency (FSA), Freedom of Information Officer, Room 3624, South Agriculture Building, 14th & Independence Avenue, SW., Washington, DC 20250–0506. Requests should be as specific as possible in describing the records being requested. The FOIO, Freedom of Information/Privacy Act Specialist, each State Administrative Management Program Director, each State Director, each Rural Development Manager, and each Community Development Manager are delegated authority to act respectively at the national, state, district, or county level on behalf of Rural Development to:

(a) Deny requests for records determined to be exempt under one or more provisions of 5 U.S.C. 552(b);

(b) Make discretionary releases (unless prohibited by other authority) of such records when it is determined that the public interests in disclosure outweigh the public and/or private ones in withholding; and

(c) Reduce or waive fees to be charged where determined to be appropriate.

§ 2018.255 Appeals.

If all or any part of an initial request is denied, it may be appealed in accordance with 7 CFR 1.7 to that particular Agency possessing the documents. Please select the appropriate Agency to forward your FOIA appeal from the following addresses: Administrator, Rural Housing Service, Room 5014, AG Box 0701, 14th & Independence Avenue, SW.—South Building, Washington, DC 20250–0701; Administrator, Rural Business-Cooperative Service, Room 5045, AG Box 3201, 14th & Independence Avenue, SW.—South Building, Washington, DC 20250–3201 and Administrator, Rural Utilities Service, Room 4501, AG Box 1510, 14th & Independence Avenue, SW.—South Building, Washington, DC

20250–1510. The phrase ''FOIA APPEAL'' should appear on the front of the envelope in capital letters.

§§ 2018.256–2018.300 [Reserved]

PART 2045—GENERAL

Subparts A–II [Reserved]

Subpart JJ—Rural Development—Utilization of Gratuitous Services

Sec.
2045.1751 General.
2045.1752 Policy.
2045.1753 Authority to accept gratuitous services.
2045.1754 Scope of gratuitous services performed.
2045.1755 Preparation and disposition of agreement forms.
2045.1756 Records and reports.
EXHIBIT A TO SUBPART JJ—AGREEMENT FORM

AUTHORITY: 7 U.S.C. 1989; 42 U.S.C. 1480.

SOURCE: 43 FR 3694, Jan. 27, 1978, unless otherwise noted.

Subparts A–II [Reserved]

Subpart JJ—Rural Development—Utilization of Gratuitous Services

§ 2045.1751 General.

Section 331(b) of the Consolidated Farm and Rural Development Act (Pub. L. 92–419), and section 506(a) of the Housing Act of 1949, empower the Secretary of Agriculture to accept and utilize voluntary and uncompensated services in carrying out the provisions of the above cited Acts. The Secretary has delegated those authorities to the Administrator of the Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 in 7 CFR 2.70(a) (1) and (2).

§ 2045.1752 Policy.

Voluntary and uncompensated (gratuitous) services may be accepted with the consent of the agency concerned, from the following sources under the conditions set forth in Exhibit A, ''Agreement for Utilization of Employee of (*Enter Official Title of Governing Body or Other Authorized Organization*) By the Farmers Home Administration or its successor agency under Public Law 103–354'' (Agreement Form).

(a) Any agency of State government or of any territory or political subdivision.

(b) Non-profit, educational, and charitable organizations, provided that no partisan, political, or profit motive is involved either explicitly or implicitly.

§ 2045.1753 Authority to accept gratuitous services.

(a) State Directors, Director, Personnel Division, and Director, Finance Office, are hereby authorized to accept and utilize gratuitous services offered by the governmental agencies listed in § 2045.1752(a).

(b) An offer received by an FmHA or its successor agency under Public Law 103–354 State or County Office from a source listed in § 2045.1752(b) shall be transmitted to the National Office, Attention: Director, Personnel Division, for decision. The offer will be accompanied by copies of the Articles of Incorporation and By-laws (if the organization is incorporated), a statement that the organization accepts the conditions set forth in the Agreement Form, and evidence that the organization is financially able to meet the required fiscal obligations of the agreement.

§ 2045.1754 Scope of gratuitous services performed.

(a) Gratuitous services accepted in accordance with this subpart may be utilized to perform any function performed by regular FmHA or its successor agency under Public Law 103–354 employees (excluding Committee members). Such services must not result in the displacement of employees. Most of the gratuitous services should be performed at the County Office level and conform to a standard FmHA or its successor agency under Public Law 103–354 position description. A nonstandard position description may be developed and used, depending on current agency needs in a particular office and gratuitous skills available.

(b) Orientation and other training will be provided by FmHA or its successor agency under Public Law 103–354 so that gratuitous services may be performed in accordance with current

FmHA or its successor agency under Public Law 103–354 procedure.

(c) Persons performing authorized gratuitous services will be held to the same standard as regular FmHA or its successor agency under Public Law 103–354 employees performing similar duties. The issuance of, and accountability for, identification cards and clearance of employee accountability will be as prescribed in FmHA or its successor agency under Public Law 103–354 Instruction 2024–B which is available in all FmHA or its successor agency under Public Law 103–354 Offices. Such persons, except Construction Inspectors may, when under direct supervision of County Supervisors, act as Collection Officers and be allowed to use receipt books.

[43 FR 3694, Jan. 27, 1978, as amended at 68 FR 61333, Oct. 28, 2003]

§ 2045.1755 Preparation and disposition of agreement forms.

(a) Agreements to accept and utilize gratuitous services must be identical to the attached Exhibit A (Agreement Form) with such exceptions as may be authorized by the Office of the General Counsel, Department of Agriculture.

(b) Two copies of each signed Agreement Form will be forwarded to the Personnel Division. One copy will be retained in the State or Finance Office.

§ 2045.1756 Records and reports.

The FmHA or its successor agency under Public Law 103–354 official signing the Agreement Form will maintain records to show the names, duty assignments, time worked and work locations of all persons performing gratuitous services. Copies of time reports submitted to the persons' employers should suffice. These records will be necessary to respond to occasional requests for reports on the acceptance and utilization of gratuitous services in the FmHA or its successor agency under Public Law 103–354.

EXHIBIT A TO SUBPART JJ OF PART 2045—AGREEMENT FORM

FOR UTILIZATION OF EMPLOYEES OF (OFFICIAL TITLE OF GOVERNING BODY OR OTHER AUTHORIZED ORGANIZATION, *i.e.*, PICKENS COUNTY, ALA., BOARD OF COMMISSIONERS)

BY THE FARMERS HOME ADMINISTRATION OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354

1. This Agreement, date _____ between, _____, a (political subdivision), (educational), (charitable), (or nonprofit) an organization of the State of_____(hereinafter called the Agency) and the United States of America acting through Farmers Home Administration or its successor agency under Public Law 103–354, U.S. Department of Agriculture (hereinafter called the Administration) is entered into for the purpose of permitting certain employees of the Agency (hereinafter called the Agency employees) to assist in the Administration's effort to provide agricultural, housing and other assistance for rural people of the State of_____in accordance with Section 331(b) of the Consolidated Farm and Rural Development Act and Section 506(a), Title V of the Housing Act of 1949.

2. The Administration certifies that it is empowered by the current Federal laws cited above, and related rules and regulations, to accept personnel assistance from the Agency as provided in paragraphs 4 and 5 below; and that the work assigned to Agency employees will be useful, in the public interest, could not otherwise be provided, and will not result in the displacement of employed workers.

3. The Agency certifies that it has the authority under the laws of the State of_____to enter into this Agreeement and to provide the services agreed upon in the manner provided for.

4. The Administration hereby supplies the Agency with a narrative description which is made a part of this Agreement as Attachment ''A,'' explicitly setting forth the duties, knowledge, skills, and abilities to be required of Agency employees.

5. The Administration agrees to:

(a) Provide training for and responsible supervision of qualified and acceptable Agency employees in accordance with Attachment ''A.''

(b) Provide work within the State of_____for qualified and acceptable Agency employees for periods not to exceed eight hours per day and 40 hours per week.

(c) Provide the office space, tools, equipment, and supplies to be used by Agency employees in performing work for the Administration.

(d) Report in the Agency, as required, the time worked by and work accomplishments of Agency employees.

(e) Consult with the Agency, as necessary, on situations involving delinquency, misconduct, neglect of work, and apparent conflicts of interest of Agency employees.

(f) Reimburse Agency employees for proper and reasonable travel and per diem expenses incurred in performing official duties for the Administration, in accordance with Administration travel regulations.

(g) Consider Agency employees to be Federal employees for the purposes of the Federal Employees Compensation Act (5 U.S.C. 8101) and of the Federal Tort Claims Act (28 U.S.C. 2671–2680).

6. The Agency agrees to:

(a) Not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, marital status, physical handicap, or national origin. The Agency will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, marital status, physical handicap, or national origin. Such action shall include, but not be limited to, the following Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Agency will post in conspicuous places, available to employees and appliants for employment, notices setting forth the provisions of this nondiscriminating clause.

(b) Obtain fingerprints, police records, and work qualifications checks on potential assignees, and divulge the results to the Administration or permit the Administration to obtain this information.

(c) Assign only Agency employees who are acceptable to the Administration in terms of meeting the same ability and suitability standards which are applied to Federal employment.

(d) Pay all salaries and other expenses of Agency employees and comply with Federal, State, and local minimum wage statutes. No monies will be paid by the Administration under this agreement, either to the Agency or its employees.

(e) Consider any Tort claims by third parties under applicable laws and regulations.

(f) Reassign or terminate the assignment of Agency employees upon request of the Administration.

7. The Agency and the Administration mutually understand and agree that the reasons for determining that an Agency employee is unacceptable or unsuitable for initial or continued assignment to Administration work may include but shall not be limited to the following:

(a) Practicing or appearing to practice discrimination for reasons of race, color, religion, sex, age, marital status, physical handicap, or national origin.

(b) Being or becoming involved in real or apparent conflicts of interest, such as, engaging directly or indirectly in business transactions with Administration applicants or borrowers, or using or appearing to use the Administration work assignment for private gain.

(c) Engaging in or having engaged in criminal, dishonest, or immoral conduct, or conducting himself in a manner which might embarrass or cause criticism of the Administration.

(d) Being absent from duty without authorization.

(e) Engaging in partisan political activity prohibited to Federal employees doing similar work.

(f) Lack of work.

(g) Inability of the employee to perform the duties of the assignment.

8. The term of this Agreement shall commence on the date thereof. It shall end on_____, unless extended by mutual agreement, or unless terminated earlier by at least (30) days advanced written notice by either party to the other.

9. The Agency and the Administration respectively certify, each for itself, that its officer signing this Agreement is duly authorized thereto.

(ENTER OFFICIAL TITLE OF AGENCY, *i.e.*, CITY COUNCIL, MODESTO, CALIF.)

BY

CHAIRMAN, CITY COUNCIL,

MODESTO, CALIF.

FARMERS HOME

ADMINISTRATION OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354

BY

FMHA OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354 STATE DIRECTOR FOR ( )

USDA

CHAPTER XX—LOCAL TELEVISION LOAN GUARANTEE BOARD

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PART 2200—ACCESS TO LOCAL TELEVISION SIGNALS GUARANTEED LOAN PROGRAM; GENERAL POLICIES AND PROCEDURES

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2200.9 Amendments.
2200.10 Restrictions on lobbying.
2200.11 Government-wide debarment and suspension (nonprocurement).
2200.12 Freedom of Information Act.

AUTHORITY: 47 U.S.C. 1101 *et seq.*; Pub. L. 106–553; Pub. L.107–171.

SOURCE: 67 FR 76105, Dec. 11, 2002, unless otherwise noted.

§ 2200.1 Definitions.

(a) *Act* means the Launching Our Communities' Access to Local Television Act of 2000, Title X of Public Law 106–553, 114 Stat. 2762A–128.

(b) *Administrator* means the Administrator of the Rural Utilities Service of the United States Department of Agriculture.

(c) *Board* means the Launching Our Communities' Access to Local (LOCAL) Television Loan Guarantee Board.

(d) *Person* means any individual, corporation, cooperative, partnership, joint venture, association, joint-stock company, limited liability company or partnership, trust, unincorporated organization, government entity, agency or instrumentality or any subdivision thereof.

[67 FR 76105, Dec. 11, 2002, as amended at 68 FR 74416, Dec. 23, 2003]

§ 2200.2 Purpose and scope.

This part is issued by the Board pursuant to Section 1004 of the Act. This part describes the Board's organizational structure and the means and rules by which the Board takes actions.

§ 2200.3 Composition of the Board.

The Board consists of the Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System, the Secretary of Agriculture, and the Secretary of Commerce, or their respective designees. An individual may be designated a member of the Board only if the individual is an officer of the United States pursuant to an appointment by the President, by and with the advice and consent of the Senate.

§ 2200.4 Authority of the Board.

The Board is authorized to guarantee loans in accordance with the provisions of the Act and procedures, rules, and regulations established by the Board; to make the determinations authorized by the Act; and to take such other actions as are necessary to carry out its functions in accordance with the Act.

§ 2200.5 Offices.

The principal offices of the Board are at the U.S. Department of Agriculture, Rural Utilities Service, Room 2919–S, Stop 1541; 1400 Independence Ave., SW.; Washington, DC 20256–1590.

§ 2200.6 Meetings and actions of the Board.

(a) *Chair*. At its initial meeting, the Board shall select a Chair by an affirmative vote of not less than three members of the Board.

(b) *Place and frequency*. The Board meets, on the call of the Chair, in order to consider matters requiring action by the Board. Time and place for any such meeting shall be determined by the members of the Board.

(c) *Quorum and voting*. Three voting members of the Board constitute a quorum for the transaction of business. All decisions and determinations of the Board shall be made by an affirmative vote of not less than three members of the Board. All votes on determinations of the Board required by the Act shall be recorded in the minutes. A Board member may request that any vote be recorded according to individual Board members.

(d) *Agenda of meetings*. To the extent practicable, an agenda for each meeting shall be distributed to members of the Board at least two days in advance of the date of the meeting, together with copies of materials relevant to the agenda items.

(e) *Minutes*. The Secretary shall keep minutes of each Board meeting and of action taken without a meeting, a draft of which is to be distributed to each member of the Board as soon as practicable after each meeting or action. To the extent practicable, the minutes of a Board meeting shall be corrected and approved at the next meeting of the Board.

(f) *Use of conference call communications equipment*. Any member may participate in a meeting of the Board through the use of conference call, telephone or similar communications equipment, by means of which all persons participating in the meeting can simultaneously speak to and hear each other. Any member so participating in a meeting shall be deemed present for all purposes. Actions taken by the Board at meetings conducted through the use of such equipment, including the votes of each member, shall be recorded in the usual manner in the minutes of the meetings of the Board.

(g) *Actions between meetings*. When, in the judgment of the Chair, circumstances occur making it desirable for the Board to consider action when it is not feasible to call a meeting, the relevant information and recommendations for action may be transmitted to the members by the Secretary and the voting members may communicate their votes to the Chair in writing (including an action signed in counterpart by each Board member), electronically, or orally (including telephone communication). Any action taken under this paragraph has the same effect as an action taken at a meeting. Any such action shall be recorded in the minutes.

(h) *Officers and staff of the Board*. The Board shall appoint a Secretary and may appoint such other officers and staff as it deems appropriate, including an Executive Director and a Legal Counsel. An individual may hold more than one officer or staff position.

(i) *Delegations of authority*. The Board may delegate authority, subject to such terms and conditions as the Board deems appropriate, to officers and staff to take certain actions not required by the Act to be taken by the Board. All delegations shall be made pursuant to resolutions of the Board and recorded in writing, whether in the minutes of a meeting or otherwise. Any action taken pursuant to such delegated authority has the effect of an action taken by the Board.

§ 2200.7 Officer and staff responsibilities.

(a) *Executive Director*. The Executive Director advises and assists the Board in carrying out its responsibilities under the Act, provides general direction with respect to the administration of the Board's actions, directs the activities of the staff, and performs such other duties as the Board may require.

(b) *Legal Counsel*. The Legal Counsel provides legal advice relating to the responsibilities of the Board and performs such other duties as the Board may require.

(c) *Secretary*. The Secretary sends notice of all meetings, prepares minutes of all meetings, maintains a complete record of all votes and actions taken by the Board, has custody of all records of the Board, has authority to publish documents in the FEDERAL REGISTER upon approval of the Board and performs such other duties as the Board may require.

(d) *Other*. The responsibilities of any other officer or staff shall be defined by the Board at the time of appointment of such position.

§ 2200.8 Ex parte communications.

Communication with the Board shall be conducted through the staff of the Board. Oral or written communication, not on the public record, between the Board, or any member of the Board, and any party or parties interested in any matter pending before the Board concerning the substance of that matter is prohibited.

§ 2200.9 Amendments.

The Board's rules may be adopted or amended, or new rules may be adopted, only by the affirmative vote of not less than three members of the Board. Authority to adopt or amend these rules may not be delegated.

§ 2200.10 Restrictions on lobbying.

(a) No funds received through a Loan guaranteed under this Program in this chapter may be expended by the recipient of a Federal contract, grant, loan,

loan guarantee, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan or loan Guarantee, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, loan Guarantee, or cooperative agreement.

(b) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, set forth in the application form, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or Guarantee.

(c) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a Standard Form-LLL if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or Guarantee.

(d) Each person shall file a certification, contained in the application form, and a disclosure form (Standard Form-LLL), if required, with each submission that initiates agency consideration of such person for:

(1) Award of a Federal contract, grant, or cooperative agreement exceeding $100,000; or

(2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding $150,000.

(e) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:

(1) A Federal contract, grant, or cooperative agreement exceeding $100,000; or

(2) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding $150,000, unless such person previously filed a certification, and a disclosure form, if required, under paragraph (c) of this section.

(f) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (d) or (e) of this section. An event that materially affects the accuracy of the information reported includes:

(1) A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

[68 FR 74416, Dec. 23, 2003]

§ 2200.11 Government-wide debarment and suspension (nonprocurement).

(a) Executive Order (E.O.) 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a government-wide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and non-financial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency shall have governmentwide effect. The Board shall review the List of Debarred entities prior to making final loan Guarantee decisions. Suspension or debarment may be a basis for denying a loan Guarantee.

(b) This section applies to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs. For purposes of this section such transactions will be referred to as ''covered transactions.''

(1) *Covered transaction.* For purposes of this section, a covered transaction is a primary covered transaction or a lower tier covered transaction. Covered transactions at any tier need not involve the transfer of Federal funds.

(i) *Primary covered transaction.* Except as noted in paragraph (b)(2) of this section, a primary covered transaction is any nonprocurement transaction between an agency and a person, regardless of type, including: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements and any other nonprocurement transactions between a Federal agency and a person.

(ii) *Lower tier covered transaction.* A lower tier covered transaction is:

(A) Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction;

(B) Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g) (currently $100,000) under a primary covered transaction;

(C) Any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount, under which that person will have a critical influence on or substantive control over that covered transaction. Such persons may include loan officers or chief executive officers acting as principal investigators and providers of federally required audit services.

(2) *Exceptions.* The following transactions are not covered:

(i) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(ii) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, entities consisting wholly or partially of foreign governments or foreign governmental entities;

(iii) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not accepted);

(iv) Federal employment;

(v) Transactions pursuant to national or agency-recognized emergencies or disasters;

(vi) Incidental benefits derived from ordinary governmental operations; and

(vii) Other transactions where the application of this section would be prohibited by law.

(3) *Board covered transactions.* This section applies to the Board's Loan Guarantees, subcontracts and transactions at any tier that are charges as direct or indirect costs, regardless of type.

(c) *Primary covered transactions.* Except to the extent prohibited by law, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the Executive Branch of the Federal Government for the period of their debarment, suspension, or the period they are proposed for debarment under 48 CFR part 9, subpart 9.4. Accordingly, no agency shall enter into primary covered transactions with such excluded persons during such period, except as permitted pursuant to paragraph (l) of this section.

(d) *Lower tier covered transactions.* Except to the extent prohibited by law, persons who have been proposed for debarment under 48 CFR part 9, subpart 9.4, debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transactions (*see* paragraph (b)(1)(ii) of this section for the period of their exclusion).

(e) *Exceptions*. Debarment or suspension does not affect a person's eligibility for:

(1) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities;

(3) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not accepted);

(4) Federal employment;

(5) Transactions pursuant to national or agency-recognized emergencies or disasters;

(6) Incidental benefits derived from ordinary governmental operations; and

(7) Other transactions where the application of this section would be prohibited by law.

(f) Persons who are ineligible are excluded in accordance with the applicable statutory, executive order, or regulatory authority.

(g) Persons who accept voluntary exclusions are excluded in accordance with the terms of their settlements. The Board shall, and participants may, contact the original action agency to ascertain the extent of the exclusion.

(h) The Board may grant an exception permitting a debarred, suspended, or voluntarily excluded person, or a person proposed for debarment under 48 CFR part 9, subpart 9.4, to participate in a particular covered transaction upon a written determination by the agency head or an authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549. However, in accordance with the President's stated intention in the Executive Order, exceptions shall be granted only infrequently. Exceptions shall be reported in accordance with the Executive Order.

(i) Notwithstanding the debarment, suspension, proposed debarment under 48 CFR part 9, subpart 9.4, determination of ineligibility, or voluntary exclusion of any person by an agency, agencies and participants may continue covered transactions in existence at the time the person was debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, declared ineligible, or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(j) Agencies and participants shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, ineligible or voluntary excluded, except as provided in paragraph (h) of this section.

(k) Except as permitted under paragraphs (h) or (i) of this section, a participant shall not knowingly do business under a covered transaction with a person who is:

(1) Debarred or suspended;

(2) Proposed for debarment under 48 CFR part 9, subpart 9.4; or

(3) Ineligible for or voluntarily excluded from the covered transaction.

(l) Violation of the restriction under paragraph (k) of this section may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies as appropriate.

(m) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. An agency has the burden of proof that a participant did knowingly do business with a person that filed an erroneous certification.

[68 FR 74416, Dec. 23, 2003]

§ 2200.12 Freedom of Information Act.

(a) *Definitions.* All terms used in this section, which are defined in 5 U.S.C. 551 or 5 U.S.C. 552 shall have the same meaning in this section. In addition the following definitions apply to this section:

(1) *FOIA,* as used in this section, means the ''Freedom of Information Act,'' as amended, 5 U.S.C. 552.

(2) *Commercial use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(3) *Direct costs* mean those expenditures that the Board actually incurs in searching for, reviewing, and duplicating documents in response to a request made under paragraph (c) of this section. Direct costs include, for example, the labor costs of the employee performing the work (the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits). Not included in direct costs are overhead expenses such as the costs of space and heating or lighting of the facility in which the records are kept.

(4) *Duplication* means the process of making a copy of a document in response to a request for disclosure of records or for inspection of original records that contain exempt material or that otherwise cannot be inspected directly. Among others, such copies may take the form of paper, microfilm, audiovisual materials, or machine-readable documentation (e.g., magnetic tape or disk).

(5) *Educational institution* means a preschool, a public or private elementary or secondary school, or an institution of undergraduate higher education, graduate higher education, professional education, or an institution of vocational education that operates a program of scholarly research.

(6) *Noncommercial scientific institution* refers to an institution that is not operated on a ''commercial'' basis (as that term is used in this section) and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(7) *News* means information about current events or that would be of current interest to the public. Examples of news media entities include, but are not limited to, television or radio stations broadcasting to the public at large, and publishers of newspapers and other periodicals (but only in those instances when they can qualify as disseminators of ''news'') who make their products available for purchase or subscription by the general public. ''Freelance'' journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

(8) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the general public.

(9) *Review* means the process of examining documents, located in response to a request for access, to determine whether any portion of a document is exempt information. It includes doing all that is necessary to excise the documents and otherwise to prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(10) *Search* means the process of looking for material that is responsive to a request, including page-by-page or line-by-line identification within documents. Searches may be done manually or by computer.

(b) *Records available for public inspection and copying*—(1) *Types of records made available.* The information in this section is furnished for the guidance of the public and in compliance with the requirements of the FOIA. This section sets forth the procedures the Board follows to make publicly available the materials specified in 5 U.S.C. 552(a)(2). These materials shall be made available for inspection and copying at the Board's offices pursuant to 5 U.S.C. 552(a)(2). Information routinely provided to the public as part of a regular Board activity (for example, press releases) may be provided to the public without following this section.

(2) *Reading room procedures.* Information available under this section is

available for inspection and copying, from 9 a.m. to 5 p.m. weekdays, at 1400 Independence Avenue, SW., Washington, DC.

(3) *Electronic records.* Information available under this section shall also be available on the Board's Web site found at *http://www.usda.gov/rus/localtvboard.*

(c) *Records available to the public on request*—(1) *Types of records made available.* All records of the Board that are not available under paragraph (b) of this section shall be made available upon request, pursuant to the procedures in this section and the exceptions set forth in the FOIA.

(2) *Procedures for requesting records.* A request for records shall reasonably describe the records in a way that enables the Board's staff to identify and produce the records with reasonable effort and without unduly burdening or significantly interfering with any of the Board's operations. The request shall be submitted in writing to the Secretary of the Board at LOCAL Television Loan Guarantee Board, 1400 Independence Avenue, SW., STOP 1575, Room 2919–S, Washington, DC 20250–1575, or sent by facsimile to the Secretary of the Board at (202) 720–2734. The request shall be clearly marked *FREEDOM OF INFORMATION ACT REQUEST.*

(3) *Contents of request.* The request shall contain the following information:

(i) The name and address of the requester, and the telephone number at which the requester can be reached during normal business hours;

(ii) Whether the requested information is intended for commercial use, or whether the requester represents an educational or noncommercial scientific institution, or news media;

(iii) A statement agreeing to pay the applicable fees, or a statement identifying any fee limitation desired, or a request for a waiver or reduction of fees that satisfies paragraph (f) of this section.

(d) *Processing requests*—(1) *Priority of responses.* The date of receipt for any request, including one that is addressed incorrectly or that is referred to the Board by another agency, is the date the Secretary of the Board actually receives the request. The Secretary of the Board shall normally process requests in the order they are received. However, in the Secretary of the Board's discretion, the Board may use two or more processing tracks by distinguishing between simple and more complex requests based on the number of pages involved, or some other measure of the amount of work and/or time needed to process the request, and whether the request qualifies for expedited processing as described in paragraph (d)(2) of this section. When using multitrack processing, the Secretary of the Board may provide requesters in the slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing. The Secretary of the Board shall contact the requester by telephone or by letter, whichever is most efficient in each case.

(2) *Expedited processing.* (i) A person may request expedited access to records by submitting a statement, certified to be true and correct to the best of that person's knowledge and belief, that demonstrates a compelling need for the records, as defined in 5 U.S.C. 552(a)(6)(E)(v).

(ii) The Secretary of the Board shall notify a requester of the determination whether to grant or deny a request for expedited processing within ten working days of receipt of the request. If the Secretary of the Board grants the request for expedited processing, the Board shall process the request for access to information as soon as practicable. If the Secretary of the Board denies a request for expedited processing, the requester may file an appeal pursuant to the procedures set forth in paragraph (e) of this section, and the Board shall respond to the appeal within twenty days after the appeal was received by the Board.

(3) *Time limits.* The time for response to requests shall be 20 working days, except:

(i) In the case of expedited treatment under paragraph (d)(2) of this section;

(ii) Where the running of such time is suspended for payment of fees pursuant to paragraph (f)(2)(ii) of this section;

(iii) Where the estimated charge is less than $250, and the requester does

not guarantee payment pursuant to paragraph (f)(2)(i) of this section; or

(iv) In unusual circumstances, as defined in 5 U.S.C. 552(a)(6)(B)(iii), the time limit may be extended for a period of time not to exceed 10 working days as provided by written notice to the requester, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched; or such alternative time period as mutually agreed to by the Secretary of the Board and the requester when the Secretary of the Board notifies the requester that the request cannot be processed in the specified time limit.

(4) *Response to request.* In response to a request that satisfies paragraph (c) of this section, an appropriate search shall be conducted of records in the custody and control of the Board on the date of receipt of the request, and a review made of any responsive information located. The Secretary of the Board shall notify the requester of:

(i) The Secretary of the Board's determination of the request and the reasons therefore;

(ii) The information withheld, and the basis for withholding; and

(iii) The right to appeal any denial or partial denial, pursuant to paragraph (e) of this section.

(5) *Referral to another agency.* To the extent a request covers documents that were created by, obtained from, classified by, or is in the primary interest of another agency, the Secretary of the Board may refer the request to that agency for a direct response by that agency and inform the requester promptly of the referral. The Secretary of the Board shall consult with another Federal agency before responding to a requester if the Board receives a request for a record in which:

(i) Another Federal agency subject to the FOIA has a significant interest, but not the primary interest; or

(ii) Another Federal agency not subject to the FOIA has the primary interest or a significant interest. Ordinarily, the agency that originated a record will be presumed to have the primary interest in it.

(6) *Providing responsive records.* (i) A copy of records or portions of records responsive to the request shall be sent to the requester by regular U.S. mail to the address indicated in the request, unless the requester elects to take delivery of the documents at the Board's Freedom of Information Office or makes other acceptable arrangements, or the Secretary of the Board deems it appropriate to send the documents by another means. The Secretary of the Board shall provide a copy of the record in any form or format requested if the record is readily reproducible in that form or format, but the Secretary of the Board need not provide more than one copy of any record to a requester.

(ii) The Secretary of the Board shall provide any reasonably segregable portion of a record that is responsive to the request after deleting those portions that are exempt under the FOIA or this section.

(iii) Except where disclosure is expressly prohibited by statute, regulation, or order, the Secretary of the Board may authorize the release of records that are exempt from mandatory disclosure whenever the Board or designated Board members determine that there would be no foreseeable harm in such disclosure.

(iv) The Board is not required in response to the request to create records or otherwise to prepare new records.

(7) *Prohibition against disclosure.* Except as provided in this part, no officer, employee, or agent of the Board shall disclose or permit the disclosure of any unpublished information of the Board to any person (other than Board officers, employees, or agents properly entitled to such information for the performance of official duties), unless required by law.

(e) *Appeals.* (1) Any person denied access to Board records requested under paragraph (c) of this section, denied expedited processing under paragraph (d) of this section, or denied a waiver of fees under paragraph (f) of this section may file a written appeal within 30 calendar days after the date of such denial with the Board. The written appeal shall prominently display the phrase *FREEDOM OF INFORMATION ACT APPEAL* on the first page, and shall be addressed to Chairman of the Board, LOCAL Television Loan Guarantee Board, 1400 Independence Avenue, SW.,

STOP 1575, Room 2919–S, Washington, DC 20250–1575, or sent by facsimile to (202) 720–2734. The appeal shall include a copy of the original request, the initial denial, if any, and a statement of the reasons why the requested records should be made available and why the initial denial was in error.

(2) The Chairman of the Board shall make a determination regarding any appeal within 20 working days of actual receipt of the appeal, and the determination letter shall notify the appealing party of the right to seek judicial review in event of denial.

(f) *Fee schedules and waiver of fees*—(1) *Fee schedule*. The fees applicable to a request for records pursuant to paragraph (c) of this section are set forth in the uniform fee schedule at the end of this paragraph (f).

(i) *Search*. (A) Search fees shall be charged for all requests other than requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media, subject to the limitations of paragraph (f)(1)(iv) of this section. The Secretary of the Board shall charge for time spent searching even if no responsive record is located or if the Secretary of the Board withholds the record(s) located as entirely exempt from disclosure. Search fees shall be the direct costs of conducting the search by the involved employees.

(B) For computer searches of records, requesters will be charged the direct costs of conducting the search, although certain requesters (as provided in paragraph (f)(3) of this section) will be charged no search fee and certain other requesters (as provided in paragraph (f)(3)) are entitled to the cost equivalent of two hours of manual search time without charge. These direct costs include the costs, attributable to the search, of operating a central processing unit and operator/programmer salary.

(ii) *Duplication*. Duplication fees will be charged to all requesters, subject to the limitations of paragraph (f)(1)(iv) of this section. For a paper photocopy of a record (no more than one copy of which need be supplied), the fee shall be 15 cents per page. For copies produced by computer, such as tapes or printouts, the Secretary of the Board shall charge the direct costs, including operator time, of producing the copy. For other forms of duplication, the Secretary of the Board will charge the direct costs of that duplication.

(iii) *Review*. Review fees shall be charged to requesters who make a commercial use request. Review fees shall be charged only for the initial record review—the review done when the Secretary of the Board determines whether an exemption applies to a particular record at the initial request level. No charge will be made for review at the administrative appeal level for an exemption already applied. However, records withheld under an exemption that is subsequently determined not to apply may be reviewed again to determine whether any other exemption not previously considered applies, and the costs of that review are chargeable. Review fees shall be the direct costs of conducting the review by the involved employees.

(iv) *Limitations on charging fees*. (A) No search fee will be charged for requests by educational institutions, noncommercial scientific institutions, or representatives of the news media.

(B) No search fee or review fee will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(C) Whenever a total fee calculated under this paragraph is $25 or less for any request, no fee will be charged.

(D) For requesters other than those seeking records for a commercial use, no fee will be charged unless the cost of search in excess of two hours plus the cost of duplication in excess of 100 pages totals more than $25.

(2) *Payment procedures*. All persons requesting records pursuant to paragraph (c) of this section shall pay the applicable fees before the Secretary of the Board sends copies of the requested records, unless a fee waiver has been granted pursuant to paragraph (f)(6) of this section. Requesters must pay fees by check or money order made payable to the Treasury of the United States.

(i) *Advance notification of fees*. If the estimated charges are likely to exceed $25, the Secretary of the Board shall notify the requester of the estimated amount, unless the requester has indicated a willingness to pay fees as high

as those anticipated. Upon receipt of such notice, the requester may confer with the Secretary of the Board to reformulate the request to lower the costs. The processing of the request shall be suspended until the requester provides the Secretary of the Board with a written guarantee that payment will be made upon completion of the processing.

(ii) *Advance payment.* The Secretary of the Board shall require advance payment of any fee estimated to exceed $250. The Secretary of the Board shall also require full payment in advance where a requester has previously failed to pay a fee in a timely fashion. If an advance payment of an estimated fee exceeds the actual total fee by $1 or more, the difference shall be refunded to the requester. The time period for responding to requests under paragraph (d)(4) of this section, and the processing of the request shall be suspended until the Secretary of the Board receives the required payment.

(iii) *Late charges.* The Secretary of the Board may assess interest charges when fee payment is not made within 30 days of the date on which the billing was sent. Assessment of such interest will commence on the 31st day following the day on which the billing was sent. Interest is at the rate prescribed in 31 U.S.C. 3717.

(3) *Categories of uses.* The fees assessed depend upon the fee category. In determining which category is appropriate, the Secretary of the Board shall look to the identity of the requester and the intended use set forth in the request for records. Where a requester's description of the use is insufficient to make a determination, the Secretary of the Board may seek additional clarification before categorizing the request.

(i) *Commercial use requester.* The fees for search, duplication, and review apply when records are requested for commercial use.

(ii) *Educational, non-commercial scientific institutions, or representatives of the news media requesters.* The fees for duplication apply when records are not sought for commercial use, and the requester is a representative of the news media or an educational or non-commercial scientific institution, whose purpose is scholarly or scientific research. The first 100 pages of duplication, however, will be provided free.

(iii) *All other requesters.* For all other requests, the fees for search and duplication apply. The first two hours of search time and the first 100 pages of duplication, however, will be provided free.

(4) *Nonproductive search.* Fees for search may be charged even if no responsive documents are found. Fees for search and review may be charged even if the request is denied.

(5) *Aggregated requests.* A requester may not file multiple requests at the same time, solely in order to avoid payment of fees. If the Secretary of the Board reasonably believes that a requester is separating a request into a series of requests for the purpose of evading the assessment of fees or that several requesters appear to be acting together to submit multiple requests solely in order to avoid payment of fees, the Secretary of the Board may aggregate such requests and charge accordingly. It is considered reasonable for the Secretary of the Board to presume that multiple requests by one requester on the same topic made within a 30-day period have been made to avoid fees.

(6) *Waiver or reduction of fees.* A request for a waiver or reduction of the fees, and the justification for the waiver, shall be included with the request for records to which it pertains. If a waiver is requested and the requester has not indicated in writing an agreement to pay the applicable fees if the waiver request is denied, the time for response to the request for documents, as set forth in under paragraph (d)(4) of this section, shall not begin until a determination has been made on the request for a waiver or reduction of fees.

(i) *Standards for determining waiver or reduction.* The Secretary of the Board may grant a waiver or reduction of fees where it is determined both that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operation or activities of the government, and that the disclosure of information is not primarily in the commercial interest of

the requester. In making this determination, the following factors shall be considered:

(A) Whether the subject of the records concerns the operations or activities of the government;

(B) Whether disclosure of the information is likely to contribute significantly to public understanding of government operations or activities;

(C) Whether the requester has the intention and ability to disseminate the information to the public;

(D) Whether the information is already in the public domain;

(E) Whether the requester has a commercial interest that would be furthered by the disclosure; and, if so,

(F) Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(ii) *Contents of request for waiver*. A request for a waiver or reduction of fees shall include a clear statement of how the request satisfies the criteria set forth in paragraph (f)(6)(i) of this section.

(iii) *Burden of proof*. The burden shall be on the requester to present evidence or information in support of a request for a waiver or reduction of fees.

(iv) *Determination by Secretary of the Board*. The Secretary of the Board shall make a determination on the request for a waiver or reduction of fees and shall notify the requester accordingly. A denial may be appealed to the Board in accordance with paragraph (e) of this section.

(7) Uniform fee schedule.

Service	Rate
(i) Manual search	Actual salary rate of employee involved, plus 16 percent of salary rate.
(ii) Computerized search	Actual direct cost, including operator time.
(iii) Duplication of records:	
(A) Paper copy reproduction.	$.15 per page.
(B) Other reproduction (e.g., computer disk or printout, microfilm, microfiche, or microform).	Actual direct cost, including operator time.
(iv) Review of records (includes employee preparation for release, *i.e.* excising).	Actual salary rate of conducting review, plus 16 percent of salary rate.

(g) *Request for confidential treatment of business information*—(1) *Submission of request*. Any submitter of information to the Board who desires confidential treatment of business information pursuant to 5 U.S.C. 552(b)(4) shall file a request for confidential treatment with the Board at the time the information is submitted or a reasonable time after submission.

(2) *Form of request*. Each request for confidential treatment of business information shall state in reasonable detail the facts supporting the commercial or financial nature of the business information and the legal justification under which the business information should be protected. Conclusory statements that release of the information would cause competitive harm generally will not be considered sufficient to justify confidential treatment.

(3) *Designation and separation of confidential material*. All information considered confidential by a submitter shall be clearly designated *''PROPRIETARY''* or *''BUSINESS CONFIDENTIAL''* in the submission and separated from information for which confidential treatment is not requested. Failure to segregate confidential commercial or financial information from other material may result in release of the nonsegregated material to the public without notice to the submitter.

(h) *Request for access to confidential commercial or financial information*—(1) *Request for confidential commercial or financial information*. A request by a submitter for confidential treatment of any business information shall be considered in connection with a request for access to that information.

(2) *Notice to the submitter*. (i) The Secretary of the Board shall notify a submitter who requested confidential treatment of information pursuant to 5 U.S.C. 552(b)(4), of the request for access.

(ii) Absent a request for confidential treatment, the Secretary of the Board may notify a submitter of a request for

access to submitter's business information if the Secretary of the Board reasonably believes that disclosure of the information may cause substantial competitive harm to the submitter.

(iii) The notice given to the submitter by mail, return receipt requested, shall be given as soon as practicable after receipt of the request for access, and shall describe the request and provide the submitter seven working days from the date of notice, to submit written objections to disclosure of the information. Such statement shall specify all grounds for withholding any of the information and shall demonstrate why the information which is considered to be commercial or financial information, and that the information is a trade secret, is privileged or confidential, or that its disclosure is likely to cause substantial competitive harm to the submitter. If the submitter fails to respond to the notice within the time specified, the submitter will be considered to have no objection to the release of the information. Information a submitter provides under this paragraph may itself be subject to disclosure under the FOIA.

(3) *Exceptions to notice to submitter.* Notice to the submitter need not be given if:

(i) The Secretary of the Board determines that the request for access should be denied;

(ii) The requested information lawfully has been made available to the public;

(iii) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(iv) The submitter's claim of confidentiality under 5 U.S.C. 552(b)(4) appears obviously frivolous or has already been denied by the Secretary of the Board, except that in this last instance the Secretary of the Board shall give the submitter written notice of the determination to disclose the information at least seven working days prior to disclosure.

(4) *Notice to requester.* At the same time the Secretary of the Board notifies the submitter, the Secretary of the Board also shall notify the requester that the request is subject to the provisions of this section.

(5) *Determination by Secretary of the Board.* The Secretary of the Board's determination whether or not to disclose any information for which confidential treatment has been requested pursuant to this section shall be communicated to the submitter and the requester immediately. If the Secretary of the Board determines to disclose the business information over the objection of a submitter, the Secretary of the Board shall give the submitter written notice via mail, return receipt requested, or similar means, which shall include:

(i) A statement of reason(s) why the submitter's objections to disclosure were not sustained;

(ii) A description of the business information to be disclosed; and

(iii) A statement that the component intends to disclose the information seven working days from the date the submitter receives the notice.

(6) *Notice of lawsuit.* The Secretary of the Board shall promptly notify any submitter of information covered by this section of the filing of any suit against the Board to compel disclosure of such information, and shall promptly notify a requester of any suit filed against the Board to enjoin the disclosure of requested documents.

[68 FR 74416, Dec. 23, 2003]

PART 2201—LOCAL TELEVISION LOAN GUARANTEE PROGRAM—PROGRAM REGULATIONS

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Subpart A—General

§ 2201.1 Definitions.

Act means Title X of Public Law 106–553, entitled the Launching Our Communities' Access to Local Television (LOCAL TV) Act of 2000, as amended.

Administrator means the Administrator of the Rural Utilities Service, U.S. Department of Agriculture, acting pursuant to the Act and on behalf of the Board.

Affiliate means any person or entity that controls, or is controlled by, or is under common control with, another person or entity; and may include any individual who is a director or senior management officer of an Affiliate, a shareholder controlling more than 25 percent of the voting securities of an Affiliate, or more than 25 percent of the ownership interest in an Affiliate not organized in stock form.

Agent means that Lender authorized to take such actions, exercise such powers, and perform such duties on behalf and in representation of all Lenders party to a Guarantee of a single Loan, as is required by, or necessarily incidental to, the terms and conditions of the Guarantee.

Applicant means any party that is seeking financing under the Act in order to provide access to Local Television Broadcast Signals for households in Nonserved Areas and Underserved Areas.

Asset means anything owned by the Applicant that has commercial or exchange value including, but not limited to, cash flows and rights thereto.

Banking Institution means a bank or bank holding company.

Board means the LOCAL Television Loan Guarantee Board authorized by the Act to approve Guarantees to facilitate access, on a technologically neutral basis, to Local Television Broadcast Signals for households located in Nonserved Areas and Underserved Areas.

Borrower means the entity liable for the payment of principal and interest on any Loan guaranteed under the Act, where such entity shall be a corporation, partnership, joint venture trustee or government entity, agency or instrumentality. An individual cannot be a Borrower.

Collateral means all Assets economically pledged by the Applicant, any Affiliate of the Applicant, or both that is required under the provisions of the Act or the Loan Documents to secure the repayment of the indebtedness of the Borrower under the Loan Documents.

Default means a failure by a Borrower, other than a Payment Default, on its obligations under the Loan Documents which has not been cured by the Borrower or duly waived by the Lender within any applicable cure period.

Designated Market Area (DMA) means an area designated as such by Nielsen Media Research and published in the most recent Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates.

Generally Accepted Accounting Principles (GAAP) means a common set of accounting standards and procedures that are either promulgated by an authoritative accounting rulemaking body or accepted as appropriate due to wide-spread application in the United States.

Guarantee means the written agreement, including all terms and conditions and all exhibits thereto, guaranteeing repayment of a specified percentage of the principal of a Loan pursuant to the Act.

Guaranteed Portion means the portion of the principal of a loan that is subject to the Guarantee.

High-Speed Internet means a data connection to the Internet providing an information rate exceeding 200 kilobits per second (kbps) in the consumer's connection to the network in at least one direction, either from the provider to the consumer (downstream) or from the consumer to the provider (upstream).

Lender means an entity that has committed to make a Loan to an Applicant, where such entity shall be:

(1) An entity currently engaged in commercial lending in the normal course of its business; or

(2) A nonprofit corporation, including the National Rural Utilities Cooperative Finance Corporation, engaged primarily in commercial lending, but does not include any governmental entity or any Affiliate thereof, the Federal Agricultural Mortgage Corporation, any institution supervised by the Office of Federal Housing Enterprise Oversight, the Federal Housing Finance Board, or any Affiliate of such entities.

Loan means a Loan guaranteed pursuant to the Act and includes the funds made available to the Borrower by the Lender.

Loan Agreement means the contract between the Lender and the Borrower, approved by the Board, setting forth the terms applicable to the Loan.

Loan Documents means the Loan Agreement, Guarantee and all other instruments, and all documentation between or among the Lender, the Borrower, and the Board or Administrator, evidencing the making, disbursing, securing, collecting, or otherwise administering of the Loan.

Local Television Broadcast means the signals of all Television Broadcast Stations located in a DMA. However, when more than one commercial Television Broadcast Station within the same DMA is affiliated with a particular Television Network, the signal of any one of these commercial Television Broadcast Stations will qualify as the Local Television Broadcast Signal of the network at that location, unless such stations are licensed to communities in different States, in which case both stations must be counted. Even if they are not affiliated with the same Television Network, when two or more commercial Television Broadcast Stations simultaneously broadcast the identical programming for more than 50 percent of the broadcast week, the signal of any one of these Television Broadcast Stations will qualify as the Local Television Broadcast Signal. When two or more noncommercial television stations simultaneously broadcast the same programming for more than 50 percent of prime time as defined in 47 CFR 76.5(n), and more than 50 percent outside of prime time over a 3-month period, the signal of any one of these Television Broadcast Stations will qualify as the Local Television Broadcast Signal. In areas not included in a DMA, but under the jurisdiction of the Federal Communications Commission (FCC), an appropriate set of Local Television Broadcast Signals will be determined on a case-by-case basis, subject to the approval of the Board.

Low Power Television Station means a station authorized by the FCC under subpart G of part 74 of title 47, Code of Federal Regulations, that may retransmit the programs and signals of a Television Broadcast Station and that may originate programming in any amount greater than 30 seconds per hour and/or operates a subscription service.

Net equity means the value of the total Assets of an entity, less the total liabilities of that entity, as recorded under Generally Accepted Accounting Principles for the fiscal quarter ended immediately prior to the date on which the subject Loan is approved.

Net Worth Ratio means the book value of equity over total Assets.

Nonserved Area means any area that is outside the grade B contour (as determined using standards employed by the Federal Communications Commission (FCC)) of the Local Television Broadcast Signals serving a particular Designated Market Area and does not have access to such signals by any commercial, for profit, multichannel video provider.

Offer of Guarantee means the Board's decision to approve an application for, and extend a Guarantee under, the LOCAL TV Act.

Payment Default means any failure of a Borrower to pay any amount of principal or interest on the Loan when and

as due under the Loan Agreement (including, without limitation, following any acceleration thereunder) which has not been cured within any applicable cure period.

Payment Demand means a request, by the Lender or Agent, following a Payment Default, in writing to the Board, for payment under the Guarantee in respect of the defaulted principal.

Performance Agreement means the written agreement between the Administrator and the Borrower (and Lender, if applicable), pursuant to which the Borrower provides stipulated performance schedules with respect to Local Television Broadcast Signals provided through the Project.

Program means the LOCAL Television Loan Guarantee Program (LOCAL TV Program) established under the Act.

Project means a proposal for the acquisition, improvement, enhancement, construction, deployment, launch, or rehabilitation of the means to deliver Local Television Broadcast Signals to a Nonserved Area or Underserved Area.

Regulatory Capital Ratio means tier 1 and total capital ratios as shown on a Banking Institution's balance sheet.

Security means all Collateral required by the provisions of the Act or the Loan Documents to secure repayment of any indebtedness of the Borrower under the Loan Documents.

Separate Tier of Local Television Broadcast Signals means a category or package of services provided by the applicant, to include the Local Television Broadcast Signals and all over-the-air television broadcast signals carried pursuant to the must-carry requirement of the Communications Act of 1934, as amended, offered as a distinct and separate service choice to the applicant's subscribers at a specified lower rate when compared to other program service choices.

Television Broadcast Station means an over-the-air commercial or noncommercial Television Broadcast Station licensed by the FCC under subpart E of part 73 of title 47, Code of Federal Regulations, except that such term does not include a Low Power Television Station or Television Broadcast Translator Station.

Television Broadcast Translator Station means a station in the broadcast service operated for the purpose of retransmitting the programs and signals of a Television Broadcast Station, without significantly altering any characteristic of the original signal other than its frequency and amplitude, for the purpose of providing television reception to the general public.

Television Network means an entity which offers an interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated broadcast stations in 10 or more States.

Term Sheet means an executed agreement between the Applicant and the Lender or Agent that sets forth the key business terms and conditions of the proposed Loan. Execution of this agreement represents evidence of the commitment between the Applicant and Lender or Agent.

Underserved Area means any area that is outside the grade A contour (as determined using standards employed by the Federal Communications Commission) of the Local Television Broadcast Signals serving a particular Designated Market Area and has access to such signals from not more than one commercial, for profit, multichannel video provider.

Unguaranteed Portion means the portion of the principal of a Loan that is not covered by the Guarantee.

§§ 2201.2–2201.8 [Reserved]

§ 2201.9 Limitation on the applicability of the definition of Local Television Broadcast Signals.

Notwithstanding the definition of Local Television Broadcast Signals provided in § 2201.1 of this part, if an area is being served by either a satellite carrier which rebroadcasts signals of Television Broadcast Stations located in the DMA or a cable television system, and that satellite carrier or cable television system is currently in compliance with the rules administered by the Federal Communications Commission (FCC) as described in part 76 of title 47, Code of Federal Regulations, the group of signals of Television Broadcast Stations located in the DMA being retransmitted by such satellite carrier or cable television system will be considered to meet the definition of Local Television Broadcast

Signals for the purposes of the regulation.

Subpart B—Loan Guarantees

§ 2201.10 Loan amount and Guarantee percentage.

(a) *Aggregate Value of Loans.* The aggregate value of all Loans for which Guarantees are issued under the Program, including the Unguaranteed Portions of such Loans, may not exceed $1,250,000,000.

(b) *Guarantee Percentage.* (1) A Guarantee approved by the Board may not exceed an amount equal to 80 percent of the principal amount of a Loan made to finance the acquisition, improvement, enhancement, construction, deployment, launch, or rehabilitation of the means by which Local Television Broadcast Signals are delivered to a Nonserved Area or Underserved Area;

(2) If only a portion of a Loan is meant to achieve the purposes described in paragraph (b)(1) of this section, the Board shall determine that portion of the Loan meant to achieve such purpose and may approve a Guarantee in an amount not exceeding 80 percent of that portion of the Loan.

(3) The portion of the Loan meant to achieve the purposes described in paragraph (b)(1) of this section will not be lowered simply because the means by which Local Television Broadcast Signals are delivered to a Nonserved Area or Underserved Area also enable either the provision of signals other than Local Television Broadcast Signals or the provision of signals to areas other than Nonserved or Underserved Areas. However, any amounts of a Loan which the Board determines will be used for separable costs not essential to funding the means by which Local Television Broadcast Signals are delivered to a Nonserved Area or Underserved Area, will be excluded from the portion of the Loan eligible for a Guarantee.

(c) *Minimum Loan Amount.* The Board will not approve a Guarantee for a Loan in an amount less than $1,000,000 (inclusive of both the Guaranteed and Unguaranteed Portions of the Loan).

§ 2201.11 Application requirements.

A completed application consists of the following information:

(a) *An executive summary of the Project.* The Applicant must provide the Board with a general Project overview that addresses each of the following six categories:

(1) A general overview of the system to be developed and description of the Project including the types of equipment, technologies, and facilities to be used;

(2) An explanation of how the Applicant will provide Local Television Broadcast Signals to Nonserved Areas and Underserved Areas;

(3) A short description of the Applicant including a written narrative describing its demonstrated capability and experience in providing access to Local Television Broadcast Signals for households;

(4) An explanation of the total Project cost including a breakdown of the Loan required and the source of funding for the remainder of the Project, if a portion of the Project is to be paid with non-Loan funds;

(5) The name of the Lender or Agent (including a listing of other participating Lenders, if applicable) and a description of the financing structure of the proposed Loan; and

(6) A general description of the geographic area to be served.

(b) *Background information.* General information concerning the Applicant, its Affiliates, and its Lender or Agent, including a description of any financial and contractual arrangements among the parties. Specific information required of all Applicants is as follows:

(1) *Evidence of legal authority and existence of the applicant.* The Applicant must provide evidence of its legal existence and authority to execute the Loan Documents under the proposed Loan and perform the activities proposed under the Project. Such evidence must include Articles of Incorporation and bylaws for incorporated Applicants; other types of Applicants should submit appropriate documentation for their forms of organization. If the Applicant is a special purpose entity (SPE) formed for the purpose of the Project, then the Applicant must provide a copy of the Deed of Partnership or Articles of Organization for the SPE.

(2) *Affiliates descriptions*. A listing of all Affiliates of the Applicant including a description of the nature of the Applicant's relationship to each Affiliate. Any existing or proposed contractual arrangements with each Affiliate should be described.

(3) *Legal name*. The legal name and form of organization of the proposed Lender or Agent.

(4) *Cover Form*. A signed copy of Standard Form 424.

(5) *Management Credentials*. A description of the experience and capabilities of the Applicant's management to carry out the Project.

(c) *A business plan*. A plan, satisfactory to the Board, presenting in detail the fundamentals of the business and providing sufficient financial data to indicate that the business will be economically sustainable. The business plan should include, at a minimum:

(1) *Risk Assessments*. An assessment of the risks related to construction, performance, demand, and financing structure, including a narrative statement detailing planned risks mitigation strategies;

(2) *Plans*. A comprehensive operations and maintenance plan, as well as a marketing strategy;

(3) *Economic and Financial Analysis*. A review of economic and financial factors affecting the business in general and the Project in particular. Applicants should refer to economic and financial conditions in the past three years, and also discuss expectations of such conditions in the future, including:

(i) The adequacy and stability of the business' customer base. Applicants should provide information on the number of subscribers, subscriber churn, subscriber acquisition cost or cost per gross added, subscriber penetration, geographic concentration of customers, nature of the terms of customer contracts, customer technical support, customer satisfaction and retention;

(ii) The demand for services;

(iii) The sensitivity of the business to economic cycles;

(iv) Future capital needs;

(v) The adequacy, competitiveness and affordability of service fees;

(vi) An overview of the prevailing economic and demographic trends in the target service area; and

(vii) Information on programming content and costs.

(4) *Project Market Analysis*. A breakdown of the key elements of the Project, including:

(i) All proposed services to be offered, including High-speed Internet Service, and whether a Separate Tier of Local Television Broadcast Signals will be provided;

(ii) The total number of households, by DMA, and by Nonserved and Underserved Area, which will have access to Local Television Broadcast Signals under the Project;

(iii) The total number of households, by DMA, and by Nonserved and Underserved Area, which will have access under the Project to any other services as described pursuant to paragraph (c)(4)(i) of this section, including an explanation if this number is greater than the total identified in paragraph (c)(4)(ii);

(iv) Estimates of the number of households identified in paragraphs (c)(4)(ii) and (c)(4)(iii) which will subscribe to each of the services identified in paragraph (c)(4)(i) of this section by DMA, including a breakdown of Nonserved and Underserved households;

(v) A breakdown of the Applicant's proposed pricing coupled with an evaluation of any competitor's services offerings and pricings; and

(vi) A service deployment plan and a deployment performance schedule, by DMA, for the services to access the Local Television Broadcast Signals.

(d) *Financial forecast and information*. The Applicant must demonstrate its financial ability to complete and maintain the Project and repay its obligations. The financial data must include the following:

(1) *Audited financial statements*. Income statements, balance sheets, and cash flow statements for at least the last three years or from the date of inception if less than three years. If the Applicant is an SPE, then the Applicant must provide at least the last three years of audited financial statements of the shareholders or partners of the SPE. If an Affiliate has been designated by the Applicant as a source of

credit support, then at least three years audited financial statements for the Affiliate must be submitted as well.

(2) *Plan of finance*. An identification and explanation of all sources and uses of funds throughout the proposed loan period, including, but not limited to, any payments to Affiliates or shareholders of the Applicant, estimated Project costs, and proposed terms.

(3) *A Pro-forma financial forecast* covering the life of the proposed loan, including balance sheets, income statements and cash flow statements, with an explanation of assumptions. These Projections must be prepared in accordance with Generally Accepted Accounting Principles and should discuss such issues as the effects of inflation, competition, ongoing repair and replacement needs, technological obsolescence, working capital requirements, and other factors that may affect the Applicant's ability to meet its debt service obligations.

(4) *Project budget*. A detailed cost breakdown of all facilities to be constructed as part of the Project. This breakdown should be on a per unit basis. It should also clearly show what will be financed with guaranteed loan funds and what will be financed with other funds, consistent with the plan of finance in paragraph (d)(2) of this section.

(5) *Commitments*. The Applicant must disclose all reasonably foreseeable financial obligations, contingent liabilities, or other commitments that could affect its financial health over the proposed financing term. At the Board's request, the Applicant must take all reasonable measures to insulate the Project and the Loan from external factors that could affect timely payment of principal and interest. The Board may ask for additional detailed information on commitments where it is deemed necessary.

(6) *Credit enhancement*. In cases where an Affiliate provides credit enhancement, the Applicant must provide documentation demonstrating the Affiliate is sufficiently capitalized and evidencing the strength, extent, limitations, and priority of the credit enhancement relative to the other obligations of the Affiliate.

(e) *A certified system plan, technical analysis, and design*. Prepared by qualified personnel on the Applicant's staff or by a licensed consulting engineer, consisting of the following:

(1) A detailed description of the proposed service area including maps of the service area;

(2) A TV Signals Coverage Diagram and detailed description of all existing and proposed facilities. The diagram must include proposed route miles of cable plant, if applicable, the estimated area served, types of facilities to be deployed (terrestrial microwave or satellite microwave, wireless, translator, fiber optic cable or coaxial cable, electronic equipment, etc.), the capacity of the facilities (number of fibers, size of the cables, and intended number of channels, frequencies used, bandwidth capacity, etc.), and the serving area of the proposed facilities;

(3) The intended capabilities of the Project's facilities, including bandwidth, proposed television signal topology, standards, and television signal transmission protocols. In addition, the Applicant must explain the manner in which the transmission facilities will deliver the proposed Local Television Broadcast Signals, including any equipment necessary to receive the signals which will be located at the subscribers' premises, and/or, near or on the subscribers' television sets;

(4) A listing of all regulatory approvals required to operate facilities, including licenses, permits, and franchises and the status of any required approvals not obtained at the time of the application. For any approvals not yet received, the Applicant should provide details on the nature of the needed approval, the justification for expecting such an approval, the track-record of the Applicant in obtaining such approvals, and the contingency plan in the event the approval is delayed;

(5) A description of the television signal sources (including, but not limited to local, regional and national television signal broadcasters, other television signal providers, content providers, cable television operators and providers, enhanced service providers, providers of satellite services, and the anticipated role of such providers in the proposed Project);

(6) The results of discussions, if any, with local television broadcasters serving the Project area;

(7) An identification of all Local Television Broadcast Signals that will be carried by the Project;

(8) An identification of the digital signal quality and capacity in megabits per second (Mb/s) that will be required to digitally broadcast all Local Television Broadcast Signals to be provided by the Project;

(9) An identification of the net usable bandwidth, in Mb/s, that are surplus to the provision of the Local Television Broadcast Signals to be provided by the Project and that will be used to provide High Speed Internet Service; and

(10) A description of the extent to which the Project will enable the delivery of Local Television Broadcast Signals by a means reasonably compatible with existing systems or devices predominantly in use for the reception of television signals.

(f) *Lender information*—(1) *Lender*. The Application shall include the information described in § 2201.13(b), (c) and (d) of this part concerning the Lender or Lenders.

(2) *Term Sheet*. The Application shall include a signed Term Sheet.

(3) *Lender's Analysis*. The Applicant shall submit the Lender's detailed analysis of the creditworthiness of the transaction at the time of application and any supporting due diligence documentation, including a complete underwriting analysis of the Project (assessing Applicant creditworthiness and Project feasibility) exercising the Lender's standard of care as set forth at § 2201.26(a).

(4) *Certification*. The Lender must certify that the information provided pursuant to paragraphs (f)(1), (2) and (3) of this section is true and accurate.

(5) *Additional Information*. The Board will request any other information the Board deems material to its assessment of the Lender.

(g) *Other Financial Information*—(1) *Collateral*. The Applicant shall provide a detailed description and valuation of all Collateral to be used to secure the Loan. This valuation shall be supported by an independent, third party appraisal for existing Assets, and/or adequate cost substantiation for Assets to be constructed for purposes of the Project, and in all cases shall be acceptable to the Board. Such a valuation should address, at a minimum, pledged Assets of the Applicant, any designated Affiliate of the Applicant, or both as identified in the Loan Documents, including primary Assets to be used in the delivery of the service for which the Loan sought would be guaranteed. The Applicant also must provide a depreciation schedule (as classified under and in accordance with GAAP) for the major Assets in order for the Board to determine the economically useful life of the primary Assets to be used in delivery of the signals concerned. Appraisals of real property must be prepared by State licensed or certified appraisers, and be consistent with the ''Uniform Standards of Professional Appraisal Practice,'' promulgated by the Appraisal Standards Board of the Appraisal Foundation.

(2) *Credit Opinion*. With respect to applications for a Loan of $15 million or more, the Applicant is required to obtain and submit to the Board a preliminary credit rating opinion letter on the proposed transaction at the time of application, prepared by a nationally recognized statistical rating organization (rating agency) approved by the Board. This preliminary credit rating opinion shall be based on the financing structure proposed by the Applicant for the Project absent the Federal Guarantee, without regard to recovery expectations. The Board will utilize this preliminary credit assessment to assist in evaluating the creditworthiness of the proposed transaction and determining whether it provides a reasonable assurance of repayment. In addition, applicants for loans less than $15 million that have a credit rating shall provide that credit rating to the Board. The Board will utilize this preliminary credit assessment (for loans over $15 million) or an existing credit rating (for loans less than $15 million) to assist in evaluating the creditworthiness of the proposed transaction and determining whether it provides a reasonable assurance of repayment. The Board may approve a Guarantee over $15 million only if it receives a final

credit rating opinion letter from the rating agency on the Loan that is in form and substance acceptable to the Board.

(3) *Evidence of Lack of Credit Elsewhere*. The Applicant shall provide the information required pursuant to § 2201.12(b)(2)(v) of this part.

(h) *Compliance with other Federal statutes, regulations and Executive Orders*. The Applicant must certify compliance with other applicable Federal statutes, regulations, and Executive Orders.

(i) *Environmental impact*. The Applicant must provide information describing the Project's impact on the environment as required pursuant to § 2201.16 of this part. The application may be submitted prior to final determination of a Project's environmental impacts; however, a Guarantee shall not be made and no Loan funds will be advanced prior to such determination and demonstrated compliance with all environmental statutes, regulations and executive orders.

(j) *Federal debt certification*. The Applicant must provide a certification that it is not delinquent on any obligation owed to the government (7 CFR parts 3016 and 3019). No Guarantee will be made if either the Applicant or Lender has an outstanding, delinquent Federal debt until:

(1) The delinquent account has been paid in full;

(2) A negotiated repayment schedule is established and at least one payment has been received; or

(3) Other arrangements, satisfactory to the agency responsible for collecting the debt, are made.

(k) *Supplemental information*. The Applicant should provide any additional information it considers relevant to the Project and likely to be helpful in determining the extent to which the Project would further the purposes of the Act.

(l) *Additional information required by the Board*. The Applicant must provide any additional information the Board determines is necessary to adequately evaluate the application.

(m) *Application Fee*. For an application to be considered complete, the Applicant must submit a check payable to the United States Treasury in the amount of the application fee as set forth in § 2201.21(a) of this part.

(n) *Incomplete application*. An incomplete application, including any fee submitted therewith, will be returned to the Applicant without action.

§ 2201.12 Applicant.

(a) *Eligibility*. (1) The Board will make a determination of eligibility of an Applicant to be a Borrower under the Program based upon the Applicant's ability to directly provide, as a result of financing received under the Program, Local Television Broadcast Signals to households in Nonserved Areas and/or Underserved Areas and the information provided pursuant to paragraph (b) of this section.

(2) A determination that an Applicant is eligible does not assure that the Board will approve a Guarantee sought, or otherwise preclude the Board from declining to approve a Guarantee.

(b) *Documentation for Eligibility Determination*. (1) An Applicant must provide a Term Sheet evidencing a commitment of that Lender or Agent, and the Lenders it represents, to make a Loan to the Applicant upon an Offer of Guarantee by the Board, subject to the requirements of the Act and the regulations set forth in this part.

(2) An Applicant must provide documentation demonstrating that:

(i) The Assets, facilities, or equipment covered by the Loan will be utilized economically and efficiently;

(ii) The terms, conditions, security, and schedule and amount of repayments of principal and the payment of interest with respect to the Loan protect the financial interests of the United States and are reasonable;

(iii) Appropriate and adequate Collateral secures the Loan sought to be guaranteed;

(iv) All necessary and required regulatory and other approvals, spectrum licenses, and delivery permissions for the Loan and the Project under the Loan have been applied for or obtained (a Guarantee shall not be made and no Loan funds will be advanced until all such approvals, licenses and permissions have been obtained);

(v) The Loan would not be available on reasonable terms and conditions

without a Guarantee under this Program. To satisfy this requirement, an Applicant must provide, with its application, documentation from at least one lending institution other than the Lender to which the Applicant has applied for financial assistance dated within six months of submission of the application, indicating that the Applicant was unable to obtain substantially the same Loan it is applying for on reasonable terms and conditions; and

(vi) Repayment of the Loan can reasonably be expected.

§ 2201.13 Lender.

(a) *Eligibility*. (1) The Board will make a determination of eligibility of a Lender to make a Loan to be guaranteed under the Program based upon the criteria set forth in paragraphs (b) and (c) of this section.

(2) A determination that a Lender is eligible does not assure that the Board will approve a Guarantee sought, or otherwise preclude the Board from declining to approve a Guarantee.

(b) *Qualifications*. In addition to evaluating an application pursuant to § 2201.18, in making a determination to approve a Guarantee to a Lender, the Board will assess:

(1) The Lender's Regulatory Capital Ratios, in the case of Banking Institutions, or Net Worth Ratios, in the case of other institutions;

(2) Whether the Lender possesses the ability to administer the Loan, including its experience with loans to telecommunications companies;

(3) The scope, volume and duration of the Lender's activity in administering loans, including federally guaranteed loans;

(4) The performance of the Lender's loan portfolio, including its current delinquency rate;

(5) The Lender's charge-off rate, expressed as a percentage of outstanding loans for its current fiscal year;

(6) If the Lender intends to sell participation interests in the Loan, the plan of syndication; and

(7) Any other matter the Board deems material to its assessment of the Lender.

(c) A Loan will not be guaranteed unless:

(1) If the Lender is not a nonprofit corporation and is subject to loan-to-one-borrower and Affiliate transaction restrictions under applicable law, the Loan is made in accordance with such restrictions;

(2) If the Lender is not a nonprofit corporation and is not subject to the restrictions described in paragraph (c)(1) of this section, the Loan is made to a Borrower that is not an Affiliate of the Lender and the amount of the Loan, and all outstanding loans by the Lender to the Borrower and any of its Affiliates, does not exceed 10 percent of the Net Equity of the Lender; and

(3) If the Lender is a nonprofit corporation, the Board determines that:

(i) Such nonprofit corporation has one or more issues of outstanding long-term debt that is rated within the highest 3 rating categories of a nationally recognized statistical rating organization, as evidenced by written confirmation from the nationally recognized statistical rating organization, subject to updating upon request of the Board; and

(ii) The making of the Loan would not cause a decline in the rating of such Lender's long-term debt below the highest 3 rating categories of a nationally recognized statistical rating organization, as evidenced by written confirmation from the nationally recognized statistical rating organization, subject to updating upon request of the Board.

(d) *Agent*. (1) An application for a Guarantee of a single Loan that includes participation of more than one Lender must identify one of the Lenders participating in such Loan to act as Agent for all Lenders. This Agent is responsible for administering the Loan and shall have those duties and responsibilities required of an Agent, as set forth in the Guarantee.

(2) If more than one Lender is seeking a Guarantee of a single Loan, each one of the Lenders on the application must meet the qualifications set forth in paragraphs (b) and (c) of this section. However, only the Agent must meet the qualifications set forth in paragraph (b)(2) and (3) of this section.

(3) Each Lender, irrespective of any indemnities or other agreements between the Lenders and the Agent, shall

be bound by all actions, and/or failures to act, of the Agent. The Board and the Administrator shall be entitled to rely upon such actions and/or failures to act of the Agent as binding all Lenders.

§ 2201.14 Eligible Loan purposes.

To be guaranteed under the Program, a Loan must be made for the purpose of financing the acquisition, improvement, enhancement, construction, deployment, launch, or rehabilitation of the means by which Local Television Broadcast Signals will be delivered to a Nonserved Area or Underserved Area.

§ 2201.15 Ineligible Loan purposes.

(a) The proceeds of the Loan shall not be used for operating, advertising, or promotion expenses, or for the acquisition of licenses for the use of spectrum in any competitive bidding.

(b) The Applicant shall not transfer proceeds of the Loan to any Affiliate(s).

(c) The Board will not fund a Project that is designed primarily to serve one or more of the top 40 Designated Market Areas.

(d) The Board will not fund a Project that would alter or remove National Weather Service warnings from Local Television Broadcast Signals.

(e) No Guarantee may be granted or used to provide funds to a Project that extends, upgrades, or enhances the services provided over any cable system to an area that, as of the enactment of the Act, is covered by a cable franchise agreement that expressly obligates a cable operator to serve such area.

§ 2201.16 Environmental requirements.

(a) *General*. (1) Environmental assessments of the Board's actions will be conducted in accordance with applicable statutes, regulations, and other applicable authorities. Therefore, each application for a Guarantee under the Program must be accompanied by information necessary for the Board to meet the requirements of applicable law.

(2) *Actions requiring compliance with NEPA*. (i) The types of actions classified as ''major Federal actions'' subject to NEPA procedures are discussed in 40 CFR parts 1500 through 1508.

(ii) With respect to this Program, these actions typically include:

(A) Any Project, permanent or temporary, that will involve construction and/or installations;

(B) Any Project, permanent or temporary, that will involve ground disturbing activities; and

(C) Any Project supporting renovation, other than interior remodeling.

(3) *Environmental information required from the Applicant*. (i) Environmental data or documentation concerning the use of the proceeds of any Loan guaranteed under this Program must be provided by the Applicant to the Board to assist the Board in meeting its legal responsibilities.

(ii) Such information includes:

(A) Documentation for an environmental threshold review from qualified data sources, such as a Federal, State or local agency with expertise and experience in environmental protection, or other sources, qualified to provide reliable environmental information;

(B) Any previously prepared environmental reports or data relevant to the Loan at issue;

(C) Any environmental review prepared by Federal, State, or local agencies relevant to the Loan at issue; and

(D) Any other information that can be used by the Board to ensure compliance with environmental laws.

(iii) All information supplied by the Applicant is subject to verification by the Board.

(b) The regulations of the Council on Environmental Quality implementing NEPA require the Board to provide public notice of the availability of Project specific environmental documents such as environmental impact statements, environmental assessments, findings of no significant impact, records of decision, etc., to the affected public. *See* 40 CFR 1506.6(b). Environmental information concerning specific Projects can be obtained from the Board by contacting: Secretary, LOCAL Television Loan Guarantee Board, 1400 Independence Ave., SW., Room 2919–S, Stop 1575; Washington, DC 20250–1575.

(c) *National Environmental Policy Act*—(1) *Purpose*. The purpose of this paragraph (c) is to adopt procedures for

compliance with the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, by the Board. This paragraph supplements regulations at 40 CFR Chapter V.

(2) *Definitions.* For purposes of this section, the following definitions apply:

Categorical exclusion means a category of actions which do not individually or cumulatively have a significant effect on the human environment and for which neither an environmental assessment nor an environmental impact statement is required.

Environmental assessment means a document that briefly discusses the environmental consequences of a proposed action and alternatives prepared for the purposes set forth in 40 CFR 1508.9.

EIS means an environmental impact statement prepared pursuant to section 102(2)(C) of NEPA.

FONSI means a finding of no significant impact on the quality of human environment after the completion of an environmental assessment.

NEPA means the National Environmental Policy Act, 42 U.S.C. 4321, *et seq.*

Working capital loan means money used by an ongoing business concern to fund its existing operations.

(3) *Delegations to the Secretary of the Board.* (i) All incoming correspondence from Council on Environmental Quality (CEQ) and other agencies concerning matters related to NEPA, including draft and final EIS, shall be brought to the attention of the Secretary of the Board. The Secretary of the Board will prepare or, at his or her discretion, coordinated replies to such correspondence.

(ii) With respect to actions of the Board, the Board will:

(A) Ensure preparation of all necessary environmental assessments and EISs;

(B) Maintain a list of actions for which environmental assessments are being prepared;

(C) Revise this list at regular intervals, and send the revisions to the Environmental Protection Agency;

(D) Make the list available for public inspection;

(E) Maintain a list of EISs; and

(F) Maintain a file of draft and final EISs.

(4) *Categorical exclusions.* (i) This paragraph describes various classes of Board actions that normally do not have a significant impact on the human environment and are categorically excluded. The word ''normally'' is stressed; there may be individual cases in which specific factors require contrary action.

(ii) Subject to the limitations in paragraph (c)(4)(iii) of this section, the actions described in this paragraph have been determined not to have a significant impact on the quality of the human environment. They are categorically excluded from the need to prepare an environmental assessment or an EIS under NEPA.

(A) Guarantees of working capital loans; and

(B) Guarantees of loans for the refinancing of outstanding indebtedness of the Applicant, regardless of the purpose for which the original indebtedness was incurred.

(iii) Actions listed in paragraph (c)(4)(ii) of this section that otherwise are categorically excluded from NEPA review are not necessarily excluded from review if they would be located within, or in other cases, potentially affect:

(A) A floodplain;

(B) A wetland;

(C) Important farmlands, or prime forestlands or rangelands;

(D) A listed species or critical habitat for an endangered species;

(E) A property that is listed on or may be eligible for listing on the National Register of Historic Places;

(F) An area within an approved State Coastal Zone Management Program;

(G) A coastal barrier or a portion of a barrier within the Coastal Barrier Resources System;

(H) A river or portion of a river included in, or designated for, potential addition to the Wild and Scenic Rivers System;

(I) A sole source aquifer recharge area;

(J) A State water quality standard (including designated and/or existing beneficial uses and anti-degradation requirements); or

(K) The release or disposal of regulated substances above the levels set forth in a permit or license issued by an appropriate regulatory authority.

(5) *Responsibilities and procedures for preparation of an environmental assessment.* (i) The Board will request that the Lender and Applicant prepare an environmental assessment that provides information concerning all potentially significant environmental impacts of the Applicant's proposed Project. The Board, consulting at its discretion with CEQ, will review the information provided by the Lender and Applicant. Though no specific format for an environmental assessment is prescribed, it shall be a separate document, suitable for public review and should include the following in conformance with 40 CFR 1508.9:

(A) *Description of the environment.* The existing environmental conditions relevant to the Board's analysis determining the environmental impacts of the proposed Project should be described. The no action alternative also should be discussed;

(B) *Documentation.* Citations to information used to describe the existing environment and to assess environmental impacts should be clearly referenced and documented. These sources should include, as appropriate, but not be limited to, local, tribal, regional, State, and Federal agencies, as well as, public and private organizations and institutions;

(C) *Evaluating environmental consequences of proposed actions.* A brief discussion should be included of the need for the proposal, of alternatives as required by 42 U.S.C. 4332(2)(E) and their environmental impacts. The discussion of the environmental impacts should include measures to mitigate adverse impacts and any irreversible or irretrievable commitments of resources to the proposed Project.

(ii) An environmental assessment, may:

(A) Tier upon the information contained in a previous EIS, as described in 40 CFR 1502.20;

(B) Incorporate by reference reasonably available material, as described in 40 CFR 1502.21; and/or

(C) Adopt a previously completed EIS reasonably related to the Project for which the proceeds of the Loan sought to be guaranteed under the Program will be used, as described in 40 CFR 1506.3.

(iii) If, on the basis of the environmental assessment, the Board determines that an EIS is not required, a FONSI, as described in 40 CFR 1508.13 will be prepared. The FONSI will include the environmental assessment or a summary of it and be available to the public from the Board. The Board shall maintain a record of these decisions, making them available to interested parties upon request. Requests should be directed to LOCAL Television Loan Guarantee Board, 1400 Independence Ave., SW., Room 2919–S, Stop 1575; Washington, DC 20250–1575. Prior to a final Guarantee decision, a copy of the NEPA documentation shall be sent to the Board for consideration.

(6) *Responsibilities and procedures for preparation of an environmental impact statement.* (i) If after the environmental assessment has been completed, the Board determines that an EIS is necessary, it and other related documentation will be prepared by the Board in accordance with section 102(2)(c) of NEPA, this section, and 40 CFR parts 1500 through 1508. The Board may seek additional information from the Applicant in preparing the EIS. Once the document is prepared, the Board will transmit the document to the Environmental Protection Agency.

(ii) *EIS.* (A) The following procedures, as discussed in 40 CFR parts 1500 through 1508, will be followed in preparing an EIS:

(*1*) The format and contents of the draft and final EIS shall be as discussed in 40 CFR part 1502.

(*2*) The requirements of 40 CFR 1506.9 for filing of documents with the Environmental Protection Agency shall be followed.

(*3*) The Board, consulting at its discretion with CEQ, shall examine carefully the basis on which supportive studies have been conducted to assure that such studies are objective and comprehensive in scope and in depth.

(*4*) NEPA requires that the decision making ''utilize a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental

design arts.'' 42 U.S.C. 4332(A). If such disciplines are not present on the Board staff, appropriate use should be made of personnel of Federal, State, and local agencies, universities, nonprofit organizations, or private industry.

(B) Until the Board issues a record of decision as provided in 40 CFR 1502.2 no action concerning the proposal shall be taken which would:

(*1*) Have an adverse environmental impact; or

(*2*) Limit the choice of reasonable alternatives.

(*3*) 40 CFR 1506.10 places certain limitations on the timing of Board decisions on taking ''major Federal actions.'' A Guarantee shall not be made before the times set forth in 40 CFR 1506.10.

(iii) A public record of decision stating what the decision was; identifying alternatives that were considered, including the environmentally preferable one(s); discussing any national considerations that entered into the decision; and summarizing a monitoring and enforcement program if applicable for mitigating the environmental effects of a proposal will be prepared. This record of decision will be prepared at the time the decision is made.

§ 2201.17 Submission of applications.

(a) Applications should be submitted as follows:

(1) Applications for Guarantees shall be submitted to the LOCAL Television Loan Guarantee Board, 1400 Independence Avenue, SW., Stop 1575, Room 2919–S, Washington, DC 20250–1575. Applications should be marked Attention: Secretary, LOCAL Television Loan Guarantee Board.

(2) Applications must be submitted postmarked not later than the application filing deadline established by the Board if the applications are to be considered during the period for which the application was submitted.

(3) All Applicants must submit an original and two copies of a completed application.

(b) *Application deadline*. One or more application windows will be announced. The duration of each application window for submission of applications will be approximately 120 days. Notice of an application window will be published in the FEDERAL REGISTER.

§ 2201.18 Application selection.

(a) *Application Priority*. When evaluating applications to determine which Project or combinations of Projects will best facilitate access to Local Television Broadcast Signals, the Board shall give priority in the approval of Guarantees to the following categories:

(1) First, to applications for Projects that will serve households in Nonserved Areas.

(2) Second, to applications for Projects that will serve households in Underserved Areas.

(3) Within each category, the Board shall balance applications for Projects that will serve the largest number of households with applications for Projects that will serve remote, isolated communities (including noncontiguous States) in areas that are unlikely to be served through market mechanisms. The Board shall consider the Project's estimated cost per household and shall give priority to those applications for Projects that provide the highest quality service at the lowest cost per household.

(b) *Additional Considerations*. (1) The Board shall give additional consideration to applications for Projects that, in addition to providing Local Television Broadcast Signals, also provide High-speed Internet service.

(2) The Board shall consider other factors, which shall include applications for Projects that:

(i) Offer a separate tier of Local Television Broadcast Signals at a lower cost to consumers, except where prohibited by applicable Federal, State, or local laws or regulations; and

(ii) Enable the delivery of Local Television Broadcast Signals consistent with the purpose of the Act by means reasonably compatible with existing systems or devices predominantly in use.

(c) *Other Considerations*. All other evaluation factors and priority considerations being equal, the Board will give a preference in approving Guarantees to those applications for Projects that provide greater amounts and higher quality Collateral.

(d) *Protection of United States Financial Interests.* The Board may not approve the Guarantee of a Loan unless:

(1) The Board has been given documentation, assurances, and access to information, persons, and entities necessary, as determined by the Board, to address issues relevant to review of the Loan by the Board for purposes of the Act; and

(2) The Board makes a determination in writing that:

(i) To the best of its knowledge upon due inquiry, the Assets, facilities, or equipment covered by the Loan will be utilized economically and efficiently;

(ii) The terms, conditions, security, and schedule and amount of repayments of principal and the payment of interest with respect to the Loan protect the financial interests of the United States and are reasonable;

(iii) The value of Collateral provided by an Applicant is at least equal to the unpaid balance of the Loan amount; and if the value of Collateral provided by an Applicant is less than the Loan amount, additional required Collateral is provided by the Applicant or an Affiliate designated by the Applicant and acceptable to the Board;

(iv) All necessary and required regulatory and other approvals, spectrum licenses, and delivery permissions have been received for the Loan and the Project under the Loan;

(v) The Loan would not be available on reasonable terms and conditions without a Guarantee under the Act; and

(vi) Repayment of the Loan can be reasonably expected.

(e) *Non approvals.* A Guarantee will not be approved if it is determined that:

(1) The Applicant's proposal does not indicate financial feasibility, or the Collateral is determined to not adequately secure the Loan;

(2) The Applicant's proposal indicates technical flaws, which, in the opinion of the Board, would prevent successful implementation, or operation of the Project;

(3) Any other aspect of the Applicant's proposal fails to adequately address any requirements of the Act or the regulations in this part or contains inadequacies which would, in the opinion of the Board, undermine the ability of the Project to meet the general purpose of the Act or comply with requirements in this part; or

(4) Proceeds for the Loan will be used for any of the ineligible purposes set forth in § 2201.15.

(f) *Impact on Competition.* A Loan shall not be guaranteed unless the proposed Project, as determined by the Board in consultation with the National Telecommunications and Information Administration, is not likely to have a substantial adverse impact on competition that outweighs the benefits of improving access to Local Television Broadcast Signals in a Nonserved Area or Underserved Area and is commercially viable.

§ 2201.19 Loan terms.

(a) All Loans guaranteed under the Program shall be due and payable in full no later than the earlier of 25 years from date of the closing of the Loan or the economically useful life of the primary Assets to be used in delivery of the signals concerned, as determined by the Board.

(b) Loans guaranteed under the Program must:

(1) Bear a rate of interest determined by the Board to protect the financial interests of the United States and to be reasonable. This determination will be based on the Board's comparison of the:

(i) Difference, or interest rate spread, between the interest rate on the Loan sought to be guaranteed and the current average yield on outstanding marketable obligations of the United States of comparable maturity; and

(ii) The interest rate spread between the rates on recently issued and similarly rated and structured obligations and the current yields on outstanding marketable obligations of the United States of comparable maturity.

(2) Have terms that, in the judgment of the Board, are consistent in material respects with the terms of similar obligations in the private capital market.

(c) So long as any principal and interest is due and payable on a Loan guaranteed under the Act, a Borrower shall:

(1) Maintain Assets, equipment, facilities, and operations on a continuing basis;

(2) Not make any discretionary dividend payments that impair its ability to repay obligations guaranteed under the Act;

(3) Remain sufficiently capitalized; and

(4) Submit to and cooperate fully with any audit or Collateral review required by the Board.

§ 2201.20 Collateral.

(a) *Existence of adequate Collateral.* An Applicant shall provide the Board such documentation as is necessary, in the judgment of the Board, to provide satisfactory evidence that appropriate and adequate Collateral secures a Loan guaranteed under the Program. Prior to approving a Guarantee, the Board shall require that the value of the Collateral pledged be at least equal to the unpaid balance of the Loan Amount.

(b) *Form of Collateral.* Collateral required by paragraph (a) of this section shall consist solely of Assets of the Applicant, any Affiliate of the Applicant, or both, as identified in the Loan Documents, including primary Assets to be used in the delivery of the service for which the Loan is guaranteed. Such Assets may include, but are not limited to, the following:

(1) Tangible Assets, including current Assets (such as cash, accounts receivable, and inventory), reserve funds, land, buildings, machinery, fixtures, and equipment;

(2) Assignments of all relevant contractual agreements, including contractual rights to certain cash flows, marketing arrangements, third-party guarantees, insurance policies, contractors' bonds, and other agreements or rights that may be of value;

(3) All permits, governmental approvals, franchises and licenses, necessary to carry out and operate the required equipment or service; and

(4) Other Assets, which, in the judgment of the Board, possess Collateral value suitable for securing the Loan, including a pledge of all or part of the Applicant's ownership interest in the Project or company, and any after-acquired property.

(c) *Applicant's compliance findings.* An Applicant's compliance with paragraphs (a) and (b) of this section does not assure a finding of reasonable assurance of repayment, or assure the Board's Guarantee of the Loan.

(d) *Collateral for entire loan.* The same Collateral shall secure the entire Loan, including both the Guaranteed Portion and the Unguaranteed Portion.

(e) *Review of valuation.* The value of Collateral securing a Loan is subject to review and approval by the Board, and may be adjusted downward by the Board if the Board reasonably believes such adjustment is appropriate. The Board's evaluation of the proposed Collateral for the Loan will be based on several factors, including but not limited to:

(1) The expected value of the pledged Collateral in the event of defaults with specific consideration given to the residual value of Project Assets to third-parties and the liquidity of such Assets;

(2) The cash flow characteristics of the Project;

(3) The contractual characteristics of the Project to the extent Project-related agreements underpin the Project's estimated cash flows;

(4) The competitiveness of the Project's economics and the associated certainty of cash flows in the future; and

(5) The creditworthiness of any designated Affiliates(s) that provides services to the Applicant or provides any credit support.

(f) *Ongoing Collateral Assessment.* The Board shall require that the value of the Collateral shall be at all times at least equal to the unpaid balance of the Loan Amount. To ensure that the ongoing value of the Collateral is properly maintained, the Board may require the borrower to have an ongoing third-party inspection and valuation of the Collateral that is acceptable to the Board. If the Collateral value at the measurement date is less than the unpaid balance of the Loan Amount, the Borrower or its designated Affiliates(s) will be required to pledge additional acceptable Collateral to cover any deficit.

(g) *Lien on Collateral.* (1) Upon the Board's approval of a Guarantee, the

Administrator shall have liens on Collateral securing the Loan, which shall be superior to all other liens on such Collateral. The value of the Collateral (based on a determination satisfactory to the Board) shall be at least equal to the unpaid balance of the Loan amount, giving significant consideration to the expected value of the Collateral in the event of defaults with specific consideration given to the residual value of the Project Assets to third-parties and the liquidity of such Assets.

(2) Both the Administrator and the Lender or Agent shall have a perfected security interest in the Collateral fully sufficient to protect the financial interests of the United States and the Lenders. However, the security interest perfected by the Administrator shall ensure that the Administrator has first priority in such Collateral.

§ 2201.21 Fees.

(a) *Application Fee.* The Board shall charge each Applicant for a Guarantee under the Program a non-refundable fee, payable to the United States Treasury, to cover the costs of making necessary determinations and findings with respect to an application for a Guarantee under the Program. The amount of the fee is $10,000 for Loans of $1 million up to $50 million, $15,000 for Loans of $50 million up to $100 million, $30,000 for Loans of $100 million up to $500 million, and $40,000 for Loans of $500 million or greater.

(b) *Guarantee Origination Fee.* The Board shall charge and collect from a Borrower a Guarantee Origination Fee. The amount of such fee will be sufficient to cover the administrative costs of the Board associated with the Loan. Upon extending an offer of Guarantee, the Board and the Borrower shall enter into an agreement providing for the payment of the Guarantee Origination Fee; the agreement shall include terms relating to the schedule of payments and deposit of such payments into an escrow account. The Guarantee Origination Fee must be paid in full no later than and as a condition of the closing of any Loan. A Borrower will be responsible for paying the administrative costs of the Board regardless of whether the Loan actually closes.

(c) *Lender Fees.* A Lender or Agent may assess and collect from the Borrower such fees and costs associated with the application and origination of the Loan as are reasonable and customary, taking into consideration the amount and complexity of the credit. The Board may take such fees and costs into consideration when determining whether to offer a Guarantee.

§ 2201.22 Issuance of Guarantees.

(a) The Board's decision to approve an application and extend an Offer of Guarantee under the Program is conditioned upon:

(1) The Lender or Agent and Applicant obtaining any required regulatory or judicial approvals;

(2) The Lender or Agent and Applicant being legally authorized to enter into the Loan under the terms and conditions submitted to the Board in the application;

(3) The Board's receipt of the Loan Documents and any related instruments, in form and substance satisfactory to the Board all properly executed by the Lender or Agent, Applicant, and any other required party other than the Board;

(4) No material adverse change in the Applicant's ability to repay the Loan between the date of the Board's approval and the date the Guarantee is to be issued;

(5) Entering into the Guarantee violates no Loan covenants or existing contractual obligations of the Borrower; and

(6) Such other conditions as determined by the Board.

(b) The Board may withdraw its approval of an application and rescind its Offer of Guarantee if the Board determines that the Lender or Agent or the Applicant cannot, or is unwilling to, provide adequate documentation and proof of compliance with paragraph (a) of this section within the time provided for in the Offer of Guarantee.

(c) Only after receipt of all the documentation required by this section will the Administrator sign and deliver the Guarantee.

§ 2201.23 Funding for the Program.

(a) *Costs incurred by the Government.* The Act provides funding for the costs

incurred by the Government as a result of granting Guarantees under the Program. While pursuing the goals of the Act, it is the intent of the Board to minimize the cost of the Program to the Government. The Board will estimate the risk posed by the guaranteed Loans to the funds appropriated for the costs of the Guarantees under the Program and operate the Program accordingly.

(b) *Credit Risk Premium*—(1) *Establishment and approval*. The Board may establish and approve the acceptance of credit risk premiums with respect to a Guarantee under this Act in order to offset the cost, as defined in section 502(5) of the Federal Credit Reform Act of 1990, of the Guarantee. To the extent that appropriations of budget authority are insufficient to cover the cost, as so determined, of a Guarantee, and the Board approves such a Guarantee, credit risk premiums shall be accepted from a non-Federal source on behalf of a Borrower.

(2) *Credit risk premium amount*—(i) *General*. The Board shall determine the amount of any credit risk premium to be accepted with respect to a Guarantee on the basis of:

(A) The financial and economic circumstances of the Borrower, including the amount of Collateral offered;

(B) The proposed schedule of Loan disbursements;

(C) The business plans of the Borrower;

(D) Any financial commitment from a broadcast signal provider; and

(E) The concurrence of the Director of the Office of Management and Budget as to the amount of the credit risk premium.

(ii) *Proportionality*. To the extent that appropriations of budget authority are sufficient to cover the cost, as determined under section 502(5) of the Federal Credit Reform Act of 1990, of Guarantees, the credit risk premium with respect to each Guarantee shall be reduced proportionately.

(iii) *Payment of premiums*. Credit risk premiums under this paragraph shall be paid to an escrow account established in the Treasury, which shall accrue interest. Such interest shall be retained by the escrow account, subject to paragraph (b)(2)(iv) of this section.

(iv) *Deductions from escrow account*. If a liquidation of the Collateral occurs pursuant to § 2201.33(h), any shortfall between the proceeds of the liquidation net of costs and expenses relating to the liquidation, and the guarantee amount paid shall be deducted from funds in the escrow account and credited to the Administrator for payment of such shortfall. At such time as all Loans guaranteed under this Program have been repaid or otherwise satisfied in accordance with the Act and the regulations in this part, remaining funds in the escrow account, if any, shall be refunded, on a pro rata basis, to Borrowers whose Loans guaranteed under the Program were not in Payment Default or Default, or where any Payment Default or Default was cured in accordance with the terms of the Loan Documents.

§ 2201.24 Insurance.

The Borrower of a Loan guaranteed under the Program shall obtain, at its expense, insurance sufficient to protect the financial interests of the United States, as determined by the Board.

§ 2201.25 Performance Agreement.

(a) The Borrower of a Loan guaranteed under the Program shall enter into a Performance Agreement with the Administrator with respect to the Local Television Broadcast Signals to be provided through the Project.

(b) The Administrator may assess against and collect from a Borrower a penalty not to exceed 3 times the interest accrued on the Loan during the period of noncompliance if the Borrower fails to meet its stipulated Performance Agreement entered into under paragraph (a) of this section.

§ 2201.26 Lender standard of care.

(a) The Lender or Agent shall exercise due care and diligence in analyzing and administering the Loan as would be exercised by a responsible and prudent Banking Institution when analyzing and administering a secured loan of such Banking Institution's own funds without a Guarantee. Such standards shall also apply to any and all underwriting analysis, approvals,

determinations, permissions, acceptances, requirements, or opinion made, given, imposed or reached by Lender.

(b) The Lender or Agent shall have such other obligations and duties to the Board and the Administrator as are set forth in the Act or Loan Documents.

§ 2201.27 Assignment or transfer of Loans.

(a) *Modifications.* The Loan Documents may not be modified, in whole or in part, without the prior written approval of the Board.

(b) *Requirements.* (1) Subject to the provisions of paragraphs (c) and (d) of this section and other provisions of this part, a Lender or Agent may assign or transfer the Loan including the Loan Documents to another Lender that meets the eligibility requirements of § 2201.13 of this part.

(2) Any assignment or transfer of a Loan, or any pledge or other use of a Loan as security, including but not limited to any derivatives transaction, will require the prior written approval of the Board.

(c) The provisions of paragraph (b) of this section shall not apply to transfers which occur by operation of law.

(d) The Agent must hold an interest in a Loan guaranteed under the Program equal to at least the lesser of $25 million or fifteen percent of the aggregate amount of the Loan. Of this amount, the Agent must hold an interest in the Unguaranteed Portion of the Loan equal to at least the minimum amount of the Loan required to be held by the Agent under the preceding sentence multiplied by the percentage of the entire Loan that is not guaranteed. A non-Agent Lender must hold an interest in the Unguaranteed Portion of the Loan representing no less than five percent of such Lender's total interest in the Loan; provided, that a non-Agent Lender may transfer its interest in the Unguaranteed Portion after payment of the Guaranteed Portion has been made under the Guarantee.

(e) The Guarantee shall have no force or effect if any part of the Guaranteed Portion of the Loan is transferred separate and apart from the Unguaranteed Portion of the Loan. At least five percent of any assignment or transfer interest in a Loan must be unguaranteed to ensure that no part of the Guaranteed Portion of the Loan is transferred separate and apart from the Unguaranteed Portion of the Loan.

§ 2201.28 Participation in guaranteed Loans.

(a) Subject to paragraphs (b), (c) and (d) of this section, a Lender may distribute the risk of a portion of a Loan guaranteed under the Program by sale of participations therein if:

(1) Neither the Loan note nor the Guarantee is assigned, conveyed, sold, or transferred in whole or in part as a result of the sale of such participations;

(2) The Lender remains solely responsible for the administration of the Loan as an Agent; and

(3) The Board's ability to assert any and all defenses available to it under the law and under the Loan Documents is not adversely affected.

(b) The following categories of entities may purchase participation interests in Loans guaranteed under the Program:

(1) Lenders that meet the eligibility requirements of § 2201.13 of this part;

(2) Qualified institutional buyers as defined in 17 CFR 230.144A (a), known as Rule 144A (a) of the Securities and Exchange Commission and issued under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*); or

(3) Any other entity approved by the Board on a case-by-case basis.

(c) An Agent may not grant participations in that portion of its interest in a Loan that may not be assigned or transferred under § 2201.27(d) of this part. A Lender, other than the Agent, may not grant participations in that portion of its interest in a Loan that may not be assigned or transferred under § 2201.27(d) of this part.

(d) At least five percent of any participation interest in a Loan must be unguaranteed.

§ 2201.29 Supplemental guarantees.

The Board will allow the structure of a guaranteed Loan to include one or more supplemental guarantees only from a State or local governmental or tribal entity that cover the

Unguaranteed Portion of the Loan, provided that:

(a) There shall be no supplemental guarantee with respect to the Unguaranteed Portion required to be held by the Agent or sole Lender pursuant to § 2201.27(d) of this part;

(b) The Loan Documents relating to any supplemental guarantee shall be acceptable in form and substance to the Board; and

(c) In approving the issuance of a Guarantee, the Board may impose any conditions with respect to supplemental guarantee(s) relating to the Loan that it considers appropriate.

§ 2201.30 Adjustments.

(a) The Board must approve the adjustment of any term or condition of the Loan Documents under this Program, including the rate of interest, time of payment of principal or interest, or Collateral requirements. Adjustments may be approved by the Board only if:

(1) The adjustment is consistent with the financial interests of the United States;

(2) Consent has been obtained from the parties to the Loan Agreement;

(3) The adjustment is consistent with the underwriting criteria developed for the Program;

(4) The adjustment does not adversely affect the interest of the Federal Government in the Assets or Collateral of the Borrower;

(5) The adjustment does not adversely affect the ability of the Borrower to repay the Loan; and

(6) The National Telecommunications and Information Administration of the Department of Commerce has been consulted by the Board regarding the adjustment.

(b) A Lender's decision to forego remedial action in the event of a breach of financial covenants required under the Loan Agreement will not constitute an adjustment under this section.

§ 2201.31 Indemnification.

(a) The United States may be indemnified by any Affiliate of a Borrower designated in the Loan Documents for any losses that the United States incurs as a result of:

(1) A judgment against the Borrower or any of its Affiliates;

(2) Any breach by the Borrower or any of its Affiliates of their obligations under the Loan Documents;

(3) Any violation of the provisions of the Act, or the regulations in this part, by the Borrower or any of its Affiliates;

(4) Any penalties incurred by the Borrower or any of its Affiliates for any reason, including violation of a performance schedule stipulated in a Performance Agreement; and

(5) Any other circumstances that the Board considers appropriate.

(b) The Board may require more than one Affiliate of a Borrower to make the indemnifications referred to in paragraph (a) of this section.

(c) The indemnifications referred to in paragraph (a) of this section shall be included in the Loan Documents.

§ 2201.32 Termination of obligations.

The Board shall have such rights to terminate the Guarantee as are set forth in the Act and Loan Documents.

§ 2201.33 Defaults.

(a) In determining, following any Payment Default or Default, whether to accelerate the maturity of any amounts outstanding under the Loan Documents or otherwise to declare such amounts to be immediately due and payable, or pursue other remedial actions available under the Loan Documents, the Agent or Lender, as the case may be, shall act at all times in accordance with the standard of care and diligence required under § 2201.26(a) of this part.

(b) Following any Payment Default, the Agent or Lender shall promptly notify the Board and be entitled to make a Payment Demand. Any Payment Demand shall:

(1) Identify the amount and due date of the defaulted payment of principal and the outstanding amounts of principal and interest under the Loan;

(2) Describe briefly the circumstances leading to the Payment Default, including, without limitation,

the nature of any precipitating Default, whether an acceleration has occurred, and whether a bankruptcy proceeding has been instituted or threatened; and

(3) Be accompanied by a copy of each of the Loan Documents and all notices and other correspondence with the Borrower or other Lender relating to the Payment Default and any precipitating Default.

(c) Following any Payment Demand being made, the Agent or Lender shall furnish to the Board promptly upon request from the Board and, in any event, not later than ninety (90) days from the date of such request, each of the following:

(1) A written, detailed and reasonable plan for the partial or complete foreclosure on and liquidation of the Collateral, including, without limitation, detailed estimates by the Agent or Lender of the time and reasonable costs of collection anticipated to be necessary in order to carry out such plan; and

(2) A written, detailed and reasonable work-out plan, if such a plan is feasible, for the continued operation of the Borrower calculated, in the Agent's or Lender's judgment, to assure the best prospect for repayment of principal and interest under the Loan without partial or complete foreclosure and liquidation of the Collateral, including, without limitation, detailed estimates of the time and expense required for such work-out and an assessment of the risks to the Agent or Lender and the Board associated therewith relative to such risks associated with complete foreclosure and liquidation; and, if any partial foreclosure and liquidation is a part of such proposed work-out plan, a detailed estimate of the time and reasonable costs of collection anticipated by the Agent or Lender to be required to effect such partial liquidation.

(d) By making a Payment Demand, the Agent or Lender shall be conclusively deemed to have certified, with full knowledge of the provisions of 18 U.S.C. 1001 and 31 U.S.C. 3729 including, without limitation, the provisions thereof for penalties and damages, to the Board that it has fully and timely complied with all material provisions and obligations under the Guarantee and the Loan Documents, that the amount demanded is past due and owed by the Borrower under the Loan Agreement, and that the demand is properly made and required to be satisfied by the Board under the terms of the Guarantee.

(e) Following receipt of any Payment Demand, the Board or, on its behalf, any duly authorized representative or designee, may conduct an audit and investigation of compliance with all material provisions and obligations under the Guarantee. The Agent and/or Lender shall cooperate fully and diligently with any such audit and investigation.

(f) Within a reasonable period of time from receipt by the Board of a Payment Demand, the Board shall approve payment of the amount to be paid in respect of the unpaid principal amount under the Loan to which the Payment Demand relates. The Board may withhold such payment if any audit or investigation is pending or if information remains to be furnished by the Agent or Lender. Further, payment shall not be made to the extent it is determined by the Board, whether as the result of an audit, investigation or otherwise, that the Board's payment obligation has terminated. Payment shall be made by wire transfer in immediately available funds to the bank and account designated by the Agent or Lender for such purpose.

(g) The Board may take, or direct to be taken any action in liquidating the Collateral that the Board determines to be necessary or proper, consistent with Federal law and regulations.

(h) Pursuant to the Guarantee, upon Payment Demand by the Agent or Lender, and whether the Board has approved any payment under the Guarantee or any payment has been made under the Guarantee, the Board, through the Administrator, shall have the right to liquidate, or cause to be liquidated, the Collateral. The Board, at its sole discretion, shall have the right to require that the Agent or Lender, solely or with the Administrator, conduct to completion any liquidation of any of the Collateral. Such liquidation shall be conducted by the Agent or Lender in accordance with the standards of care specified in § 2201.26(a) of this part.

§ 2201.34 OMB Control Number.

The information collection requirements in this part are approved by the Office of Management and Budget and assigned OMB control number 0572–0135.

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PART 2500—OAO FEDERAL FINANCIAL ASSISTANCE PROGRAMS—GENERAL AWARD ADMINISTRATIVE PROCEDURES

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Subpart A—General Information

§ 2500.001 Applicability of regulations.

The regulations in subparts A through E of this part apply to the programs authorized under section 14013 of the FCEA to be administered within the Office of Advocacy and Outreach (OAO). The purpose of this part is to set forth regulations for competitive and noncompetitive grants, cooperative agreements, and other assistance agreements awarded through OAO.

§ 2500.002 Definitions.

Applicant means the entity that has submitted a proposal in response to an OAO Request For Proposal (RFP).

Authorized Departmental Officer (ADO) means the Secretary or any employee of the Department with delegated authority to issue or modify award instruments on behalf of the Secretary.

Authorized Organizational Representative (AOR) means the President or Chief Executive Officer of the applicant organization or the official, designated by the President or Chief Executive Officer of the applicant organization, who has the authority to commit the resources of the organization to the project.

Award means financial assistance that provides support to accomplish a public purpose. Awards may be grants, cooperative agreements, or other assistance agreements.

Award agreement means the agreement between OAO and the awardee which sets forth the terms and conditions under which the OAO funds will be made available. Award agreement is used as a general term to describe grant agreements, cooperative agreements, and other assistance agreements.

Award closeout means the process by which the award operation is concluded

at the expiration of the award period or following a decision to terminate the award.

Award period means the timeframe of the award from the beginning date to the ending date as defined in the award agreement.

Awardee means the entity designated in the grant agreement, cooperative agreement, or other assistance agreement as the legal entity to which the award is given.

Baseline monitoring is the minimum, basic monitoring that will take place on an ongoing basis throughout the lifetime of every award.

Beginning date means the date the award agreement is executed by the awardee and OAO and from which costs can be incurred.

Community-based organization means a nongovernmental organization with a well-defined constituency that includes all or part of a particular community.

Cooperative agreement means the award of funds to an eligible awardee to assist in meeting the costs of conducting a project which is intended and designed to accomplish the purpose of the program as identified in the RFP, and where substantial involvement is expected between OAO and the awardee when carrying out the activities included in the agreement. This agreement may also be referred to more generally as an award.

Department means the U.S. Department of Agriculture.

Disallowed costs means the use of Federal financial assistance funds for unauthorized activities or items as stipulated in the applicable Federal cost principles (2 CFR part 220, 2 CFR part 225, and 2 CFR part 230).

Ending date means the date the award agreement is scheduled to be completed. It is also the latest date award funds will be provided under the award agreement, without an approved time extension.

Participant means an individual or entity that participates in awardee-led activities funded under the award agreement. Furthermore, a participant is any individual or entity who has applied for, otherwise participated in, or received a payment, or other benefit as a result of participating in an activity funded by an OAO award.

Partnering means a joint effort among two or more eligible entities with the capacity to conduct projects intended and designed to accomplish the purpose of the program.

Program leader means the program supervisor within OAO.

Project means activities supported under an OAO award.

Project Director (PD) means the individual designated by the awardee in the proposal and award documentation, and approved by the ADO who is responsible for the direction and management of the award.

Project Officer (PO) means an individual within OAO who is responsible for the programmatic oversight of the award on behalf of the Department.

Request for Proposals (RFP) means an official USDA funding opportunity. At OAO discretion, funding opportunities may be referred to as request for proposals, request for applications, notice of funding availability, or funding opportunity.

Review panel means an evaluation process involving qualified individuals within the relevant field to give advice on the merit of proposals submitted to OAO.

Secretary means the Secretary of Agriculture and any other officer or employee of the Department of Agriculture to whom authority may be delegated.

Terminate funding means the cancellation of Federal assistance, in whole or in part, at any time before the ending date.

§ 2500.003 Other applicable statutes and regulations.

Several Federal statutes and regulations apply to proposals for Federal assistance considered for review and to grants and cooperative agreements awarded by OAO. These include, but are not limited to:

(a) 7 CFR Part 1, Subpart A—USDA implementation of the Freedom of Information Act;

(b) 7 CFR Part 3—USDA implementation of OMB Circular No. A–129, regarding debt management;

(c) Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352), as amended, which prohibits discrimination on the basis of race, color, or national origin, and 7

CFR part 15, subpart A (USDA implementation);

(d) 7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives and incorporating provisions of the Federal Grant and Cooperative Agreement Act of 1977, Public Law 95–224, 31 U.S.C. § 6301–6308, as well as general policy requirements applicable to awardees of Departmental financial assistance.

(e) 7 CFR Part 3016—USDA implementation of Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

(f) 7 CFR Part 3017—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement).

(g) 7 CFR Part 3018—USDA implementation of Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on awardees of Federal contracts, grants, cooperative agreements, and loans.

(h) 7 CFR Part 3019—USDA implementation of OMB Circular No. A–110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations (now relocated at 2 CFR part 215).

(i) 7 CFR Part 3021—USDA implementation of Governmentwide Requirements for Drug-Free Workplace (Financial Assistance).

(j) 7 CFR Part 3052—USDA implementation of OMB Circular No. A–133, Audits of States, Local Governments, and Non-Profit Organizations.

(k) 7 U.S.C. 3318—conferring upon the Secretary general authority to enter into contracts, grants, and cooperative agreements to further the research, extension, or teaching programs in the food and agricultural sciences of the Department of Agriculture.

(l) 29 U.S.C. 794 (Section 504, Rehabilitation Act of 1973) and 7 CFR part 15b (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

(m) 35 U.S.C. 200 *et seq.*—Bayh-Dole Act, promoting the utilization of inventions arising from federally supported research or development; encouraging maximum participation of small business firms in federally supported research and development efforts; and promoting collaboration between commercial concerns and nonprofit organizations, including universities, while ensuring that the Government obtains sufficient rights in federally supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of inventions (implementing regulations are contained in 37 CFR part 401)

(n) Title IX of the Education Amendment of 1972 (20 U.S.C. 1681–1683 and 1685–1686), as amended, which prohibits discrimination on the basis of sex;

(o) Age Discrimination Act of 1975 (42 U.S.C. 6101–6107), as amended, which prohibits discrimination on the basis of age;

(p) Drug Abuse Office and Treatment Act of 1972 (Pub. L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse;

(q) Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (Pub. L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;

(r) Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290dd–3 and 290ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records;

(s) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), as amended, relating to nondiscrimination in the sale, rental or financing of housing;

(t) Any other nondiscrimination provisions in the specific statute(s) under which proposals for Federal assistance are made, and the requirements of any other nondiscrimination statute(s) which may apply to the proposal.

Subpart B—Pre-Award: Solicitation and Proposals

§ 2500.011 Competition.

(a) *Standards for competition.* Except as provided in paragraph (b) of this section, OAO will enter into discretionary grants or cooperative agreement only after competition, unless restricted by statute.

(b) *Exception.* The OAO ADO may make a determination in writing that

competition is not deemed appropriate for a particular transaction. Such determination shall be limited to transactions where it can be adequately justified that a noncompetitive award is in the best interest of the Federal Government and necessary to the goals of the program. Non-competitive determinations will comply with regulations established in 7 CFR 3015.158(d).

§ 2500.012 Requests for proposals.

(a) *General*. For each competitive grant or cooperative agreement, OAO will prepare a program solicitation (also called a request for proposals (RFP)). The RFP may include all or a portion of the following items:

(1) Contact information.

(2) Catalog of Federal Domestic Assistance (CFDA) number.

(3) Legislative authority and background information.

(4) Purpose, priorities, and fund availability.

(5) Program-specific eligibility requirements.

(6) Program-specific restrictions on the use of funds, if applicable.

(7) Matching requirements, if applicable.

(8) Acceptable types of proposals.

(9) Types of projects to be given priority consideration, including maximum anticipated awards and maximum project lengths, if applicable.

(10) Program areas, if applicable.

(11) Funding restrictions, if applicable.

(12) Directions for obtaining additional requests for proposals and proposal forms.

(13) Information about how to obtain proposal forms and the instructions for completing such forms.

(14) Instructions and requirements for submitting proposals, including submission deadline(s).

(15) Explanation of the proposal evaluation process.

(16) Specific evaluation criteria used in the review process.

(17) Type of Federal assistance awards (*i.e.*, grants or cooperative agreements).

(b) *RFP variations*. Where program-specific requirements differ from the requirements established in this part, program solicitations will also address any such variation(s). Variations may occur in the following:

(1) Award management guidelines.

(2) Restrictions on the delegation of fiscal responsibility.

(3) Required approval for changes to project plans.

(4) Expected program outputs and reporting requirements, if applicable.

(5) Applicable Federal statutes and regulations.

(6) Confidential aspects of proposals and awards, if applicable.

(7) Regulatory information.

(8) Definitions.

(9) Minimum and maximum budget requests and whether proposals outside of these limits will be returned without further review.

(c) *Program announcements*. Occasionally, OAO will issue a program announcement (PA) to alert potential applicants and the public about new and ongoing funding opportunities. These PAs may provide tentative due dates and are released without associated proposal packages. No proposals are solicited under a PA. PAs will be announced in the FEDERAL REGISTER or on the OAO Web site.

§ 2500.013 Types of proposals.

The type of proposal acceptable may vary by funding opportunity. The RFP will stipulate what will be required for submission to OAO in response to the funding opportunity.

§ 2500.014 Eligibility requirements.

Program-specific eligibility requirements appear in the subpart applicable to each program and in the corresponding RFPs.

§ 2500.015 Content of a proposal.

The RFP provides instructions on how to access a funding opportunity. The funding opportunity contains the proposal package, which includes the forms necessary for completion of a proposal in response to the RFP. The RFP will be posted on *http://www.Grants.gov*. OAO may also publish the RFP in the FEDERAL REGISTER.

§ 2500.016 Submission of a proposal.

The RFP will provide deadlines for the submission of proposals. OAO may issue separate RFPs and/or establish

separate deadlines for different types of proposals, different award instruments, or different topics or phases of the assistance programs. If proposals are not received by applicable deadlines, they will not be considered for funding. Exceptions will be considered only when extenuating circumstances exist, as determined by OAO, and justification and supporting documentation are provided by the applicant. Conformance with preparation and submission instructions is required and will be strictly enforced unless a deviation has been approved. OAO may establish additional requirements. OAO may return without review proposals that are not consistent with the RFP instructions.

§ 2500.017 Confidentiality of proposals and awards.

(a) *General*. Names of entities submitting proposals, as well as proposal contents and evaluations, except to those involved in the review process, will be kept confidential to the extent permissible by law.

(b) *Identifying confidential and proprietary information in a proposal*. If a proposal contains proprietary information that constitutes a trade secret, proprietary commercial or financial information, confidential personal information, or data affecting the national security, it will be treated in confidence to the extent permitted by law, provided that the information is clearly marked by the applicant with the term ''confidential and proprietary information.'' In addition, the following statement must be included at the bottom of the project narrative or any other attachment included in the proposal that contains such information: ''The following pages (specify) contain proprietary information which (name of proposing organization) requests not to be released to persons outside the Government, except for purposes of evaluation.''

(c) *Disposition of proposals*. By law, OAO is required to make the final decisions as to whether the information is required to be kept in confidence. Information contained in unsuccessful proposals will remain the property of the applicant. However, the Department will retain for three years one file copy of each proposal received; extra copies will be destroyed. Public release of information from any proposal submitted will be subject to existing legal requirements. Any proposal that is funded will be considered an integral part of the award and normally will be made available to the public upon request, except for information designated proprietary by OAO.

(d) *Submission of proprietary information*. The inclusion of proprietary information is discouraged unless it is necessary for the proper evaluation of the proposal. If proprietary information is to be included, it should be limited, set apart from other text on a separate page, and keyed to the text by numbers. It should be confined to a few critical technical items that, if disclosed, could jeopardize the obtaining of foreign or domestic patents. Trade secrets, salaries, or other information that could jeopardize commercial competitiveness should be similarly keyed and presented on a separate page. Proposals or reports that attempt to restrict dissemination of large amounts of information may be found unacceptable by OAO and constitute grounds for return of the proposal without further consideration. Without assuming any liability for inadvertent disclosure, OAO will limit dissemination of such information to its employees and, where necessary for the evaluation of the proposal, to outside reviewers on a confidential basis.

§ 2500.018 Electronic submission.

Applicants and awardees are encouraged, but not required, to submit proposals and reports in electronic form as prescribed in the RFP issued by OAO and in the applicable award agreement.

Subpart C—Pre-Award: Proposal Review and Evaluation

§ 2500.021 Guiding principles.

The guiding principle for Federal assistance proposal review and evaluation is to ensure that each proposal is treated in a consistent and fair manner. After the evaluation process by the review panel, OAO will provide an opportunity for applicant feedback in as timely a manner as possible.

§ 2500.022 Preliminary proposal review.

Prior to technical examination, a preliminary review will be made of all proposals for responsiveness to the administrative requirements set forth in the RFP. Proposals that do not meet the administrative requirements may be eliminated from program competition. However, OAO retains the right to conduct discussions with applicants to resolve technical and/or budget issues, as deemed necessary by OAO.

§ 2500.023 Selection of reviewers.

(a) *Requirement.* OAO is responsible for performing a review of proposals submitted to OAO competitive award programs. The RFP will identify the criteria that OAO will use for the selection of the proposal review panel.

(b) *Confidentiality.* The identities of reviewers will remain confidential to the maximum extent possible. Therefore, the names of reviewers will not be released to applicants. Names of applicants, as well as proposal content and evaluation comments will be kept confidential to the extent permitted by law, except to those involved in the review process. Reviewers will comply with the above-mentioned confidentiality guidelines.

(c) *Conflicts of interest.* During the evaluation process, extreme care will be taken to prevent any actual or perceived conflicts of interest that may impact review or evaluation. Reviewers are expected to be in compliance with the Conflict-of-Interest process made a part of the RFP.

§ 2500.024 Evaluation criteria.

(a) *General.* To ensure any project receiving funds from OAO is consistent with the broad goals of the funding program, the content of each proposal submitted to OAO will be evaluated based on a pre-determined set of review criteria as indicated in the RFP.

(b) *Guidance for reviewers.* In order that all potential applicants for a program have similar opportunities to compete for funds, all reviewers will receive an orientation from the Program Leader of the review criteria. Reviewers are instructed to use those same evaluation criteria, and only those criteria, to judge the merit of the proposals they review.

§ 2500.025 Procedures to minimize or eliminate duplication of effort.

OAO may implement appropriate business processes to minimize or eliminate the awarding of Federal assistance to projects that unnecessarily duplicate activities already being sponsored under other awards, including awards made by other Federal agencies.

§ 2500.026 Applicant feedback.

Unsuccessful applicants may submit a request for applicant feedback in writing to OAO within 10 days after receiving written notice of not being selected for further processing. Applicant feedback requests are to be mailed to the Program Leader at the address below, unless otherwise stated in the ''Notice of Non-Selection'' or in the RFP. At OAO's discretion, either written or oral feedback will be provided to unsuccessful applicants.

U.S. Department of Agriculture, Departmental Management, Office of Advocacy and Outreach, *Attn:* Program Leader (Applicant Feedback), Whitten Building, Rm. 520–A, stop 9821, 1400 Independence Avenue, SW., Washington, DC 20250–9821.

Subpart D—Award

§ 2500.031 Administration.

(a) *General.* Within the limit of funds available for such purpose, the OAO ADO shall make Federal assistance awards to those responsible, eligible applicants whose proposals are judged most meritorious under the procedures set forth in the RFP. The date specified by the OAO ADO as the effective date of the award shall be no later than September 30th of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. It should be noted that the project need not be initiated on the award effective date, but as soon thereafter as practical so that project goals may be attained within the funded project period. All funds awarded by OAO shall be expended solely for the

purpose for which the funds are awarded in accordance with the approved statement of work and budget, the regulations, the terms and conditions of the OAO award agreement, the applicable Federal cost principles, and the Department's assistance regulations (e.g., 7 CFR parts 3015, 3016, and 3019).

(b) *Award agreement.* The award agreement and accompanying terms and conditions will provide pertinent instructions and information including, at a minimum, the following:

(1) Legal name and address of performing organization or institution to which OAO has awarded a grant or cooperative agreement.

(2) Title of project.

(3) Name(s) of Project Director(s).

(4) Identifying award number assigned by OAO.

(5) Project period.

(6) Total amount of OAO financial assistance approved.

(7) Legal authority under which the grant or cooperative agreement is awarded.

(8) Appropriate CFDA number.

(9) Approved budget plan (that may be referenced).

(10) Terms and Conditions

Subpart E—Post-Award and Closeout

§ 2500.041 Payment.

(a) *General.* All payments will be made in advance unless a deviation is accepted or as specified in paragraph (b) of this section. All payments to the awardee shall be made via the approved electronic funds transfer (EFT) method. Awardees are expected to request funds via the federally-approved electronic payment system for reimbursement in a timely manner. Exact payment method will be described in the terms and conditions of the award agreement.

(b) *Reimbursement method.* OAO shall use the reimbursement method if it determines that advance payment is not feasible or that the awardee does not maintain or demonstrate the willingness to maintain written procedures that minimize the elapse of time between the transfer of funds and disbursement by the awardee, and financial management systems that meet the standards for fund control and accountability.

§ 2500.042 Cost sharing and matching.

(a) *General.* Awardees may be required to match the Federal funds received under an OAO award. The required percentage of matching, type of matching (e.g., cash and/or in-kind contributions), sources of match (e.g., non-Federal), and whether OAO has any authority to waive the match will be specified in the subpart applicable to the specific Federal assistance program, as well as in the RFP.

(b) *Indirect costs as in-kind matching contributions.* Indirect costs may be claimed under the Federal portion of the award budget. However, unless explicitly authorized in the RFP, indirect costs may not be claimed on both the Federal and nonfederal portion of the award budget.

§ 2500.043 Program income.

(a) *General.* OAO shall apply the standards set forth in this subpart in requiring awardee organizations to account for program income related to projects financed in whole or in part with Federal funds.

(b) *Addition method.* Unless otherwise provided in the authorizing statute, in accordance with the terms and conditions of the award, program income earned during the project period shall be retained by the awardee and shall be added to funds committed to the project by OAO and the awardee and used to further eligible project or program objectives. Any specific program deviations will be identified in the individual subparts.

(c) *Award terms and conditions.* Unless the program regulations identified in the individual subpart provide otherwise, awardees shall follow the terms and conditions of the OAO award. Such terms and conditions will be made a part of the OAO award agreement.

§ 2500.044 Indirect costs.

Indirect cost rates for grants and cooperative agreements shall be determined in accordance with the applicable assistance regulations and cost principles, unless superseded by another authority.

§ 2500.045 Technical reporting.

All projects supported with Federal funds under this part must be documented according to the terms and conditions of the OAO award agreement.

§ 2500.046 Financial reporting.

(a) *SF–425, Federal Financial Report.* As stated in the award terms and conditions of the OAO award agreement, a final SF–425, Federal Financial Report, is due 90 days after the expiration of the award and should be submitted to OAO electronically. The awardee shall report program outlays and program income on the same accounting basis (*i.e.*, cash or accrual) that it uses in its normal accounting system. When submitting a final SF–425, Federal Financial Report, the total matching contribution, if required, should be shown in the report. The final SF–425 must not show any unliquidated obligations. If the awardee still has valid obligations that remain unpaid when the report is due, it shall request an extension of time for submitting the report pursuant to paragraph (c) of this section; submit a provisional report (showing the unliquidated obligations) by the due date; and submit a final report when all obligations have been liquidated, but no later than the approved extension date. SF–425, Federal Financial Reports, must be submitted by all awardees, including Federal agencies and national laboratories.

(b) *Awards with required matching.* For awards requiring a matching contribution, an annual SF–425, Federal Financial Report, is required and this requirement will be indicated in the terms and conditions of the OAO award agreement, in which case it must be submitted no later than 45 days following the end of the budget or reporting period.

(c) *After the due date.* Requests are considered late when they are submitted after the 90-day period following the award expiration date. Requests to submit a late final SF–425, Federal Financial Report, will only be considered, up to 30 days after the due date, in extenuating circumstances. This request should include a provisional report pursuant to paragraph (a) of this section, as well as an anticipated submission date, a justification for the late submission, and a justification for the extenuating circumstances. If an awardee needs to request additional funds, procedures in paragraph (d) of this section apply.

(d) *Overdue SF–425, Federal Financial Reports.* Awardees with overdue SF–425, Federal Financial Reports, or other required financial reports (as identified in the award terms and conditions), will have their applicable balances in the approved federal electronic funds transfer system restricted or placed on ''manual review,'' which restricts the awardee's ability to draw funds, thus requiring prior approval from OAO. If any remaining available balances are needed by the awardee (beyond the 90-day period following the award expiration date) and the awardee has not requested an extension to submit a final SF–425, Financial Status Report, the awardee will be required to contact OAO to request permission to draw any additional funds and will be required to provide justification and documentation to support the draw. Awardees also will need to comply with procedures in paragraph (c) of this section. OAO will approve these draw requests only in extenuating circumstances.

(e) *Additional reporting requirements.* OAO may require forecasts of Federal cash requirements in the ''Remarks'' section of the report; and when practical and deemed necessary, OAO may require awardees to report in the ''Remarks'' section the amount of cash advances received in excess of three days (*i.e.*, short narrative with explanations of actions taken to reduce the excess balances). When OAO needs additional information or more frequent reports, a special provision will be added to the award terms and conditions and identified in the OAO award agreement. Should OAO determine that an awardee's accounting system is inadequate, additional pertinent information to further monitor awards may be requested from the awardee until such time as the system is brought up to standard, as determined by OAO. This additional reporting requirement will be required via a special provision to the award terms and conditions of the OAO award agreement.

§ 2500.047 Project meetings.

In addition to reviewing and monitoring the status of progress and final technical reports and financial reports, OAO Project Officers may use regular and periodic conference calls to monitor the awardee's performance as well as conferences, workshops, meetings, and symposia to not only monitor the awards, but to facilitate communication and the sharing of project results. These opportunities also serve to eliminate or minimize OAO funding of unneeded duplicative project activities. Required attendance at these conference calls, conferences, workshops, meetings, and symposia will be identified in the RFP or award document.

§ 2500.048 Review of disallowed costs.

(a) *Notice.* If the OAO Project Officer (PO) determines that there is a basis for disallowing a cost, OAO shall provide the awardee written notice of its intent to disallow the cost. The written notice shall state the amount of the cost and the factual and legal basis for disallowing it.

(b) *Awardee response.* Within 60 days of receiving written notice of the PO's intent to disallow the cost, the awardee may respond with written evidence and arguments to show the cost is allowable, or that, for equitable, practical, or other reasons, shall not recover all or part of the amount, or that the recovery should be made in installments. An extension of time will be granted only in extenuating circumstances.

(c) *Decision.* Within 60 days of receiving the awardee's written response to the notice of intent to disallow the cost, the PO shall issue a management decision stating whether or not the cost has been disallowed, the reasons for the decision, and the method of appeal that has been provided under this section. If the awardee does not respond to the written notice under paragraph (a) of this section within the time frame specified in paragraph (b) of this section, the PO shall issue a management decision on the basis of the information available to it. The management decision shall constitute the final action with respect to whether the cost is allowed or disallowed. In the case of a questioned cost identified in the context of an audit subject to 7 CFR part 3052, the management decision will constitute the management decision under 7 CFR 3052.405(a).

(d) *Demand for payment.* If the management decision under paragraph (c) of this section constitutes a finding that the cost is disallowed and, therefore, that a debt is owed to the Government, the PO shall provide the required demand and notice pursuant to 7 CFR 3.11.

(e) *Review process.* Within 60 days of receiving the demand and notice referred to in paragraph (d) of this section, the awardee may submit a written request to the OAO Director for a review of the final management decision that the debt exists and the amount of the debt. Within 60 days of receiving the written request for a review, the OAO Director will issue a final decision regarding the debt. A review by the OAO Director or designee constitutes an administrative review for debts under 7 CFR part 3, subpart F.

§ 2500.049 Prior approvals.

(a) *Subcontracts.* No more than 50 percent of the award may be subcontracted to other parties without prior written approval of the ADO. Any subcontract awarded to a Federal agency under an award must have prior written approval of the ADO. To request approval, a justification for the proposed subcontractual arrangements, a performance statement, and a detailed budget for the subcontract must be submitted to the ADO.

(b) *No-cost extensions of time*—(1) *General.* Awardees may initiate a one-time no-cost extension of the expiration date of the award of up to 12 months unless one or more of the following conditions apply: the terms and conditions of the award prohibit the extension; the extension requires additional Federal funds; and the extension involves any change in the approved objectives or scope of the project. For the first no-cost extension, the awardee must notify OAO in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award.

(2) *Additional requests for no-cost extensions of time before expiration date.* When more than one no-cost extension

of time or an extension of more than 12 months is required, the extension(s) must be approved in writing by the PO. The awardee must submit a written request, which must be received no later than 10 days prior to the expiration date of the award, to the PO. The request must contain, at a minimum, the following information: The length of the additional time required to complete the project objectives and a justification for the extension; a summary of the progress to date; an estimate of the funds expected to remain unobligated on the scheduled expiration date; a projected timetable to complete the portion(s) of the project for which the extension is being requested; and signature of the AOR and the PD.

(3) *Requests for no-cost extensions of time after expiration date.* OAO may consider and approve requests for no-cost extensions of time up to 120 days following the expiration of the award. These will be approved only for extenuating circumstances, as determined by OAO. The awardee's AOR must submit the requirements identified under paragraph (b)(2) of this section as well as an ''extenuating circumstance'' justification and a description of the actions taken by the awardee to minimize these requests in the future.

(4) *Other requirements.* No-cost extensions of time may not be exercised merely for the purpose of using unobligated balances.

§ 2500.050 Suspension, termination, and withholding of support.

(a) *General.* If an awardee has failed to materially comply with the terms and conditions of the award, OAO may take certain enforcement actions, including, but not limited to, suspending the award pending corrective action and terminating the award for cause.

(b) *Suspension.* OAO generally will suspend (rather than immediately terminate) an award to allow the awardee an opportunity to take appropriate corrective action before OAO makes a termination decision. OAO may decide to terminate the award if the awardee does not take appropriate corrective action during the period of suspension. OAO may terminate, without first suspending, the award if the deficiency is so serious as to warrant immediate termination. Termination for cause may be appealed under the terms and conditions identified in the OAO award agreement.

(c) *Termination.* An award also may be terminated, partially or wholly, by the awardee or by OAO with the consent of the awardee. If the awardee decides to terminate a portion of the award, OAO may determine that the remaining portion of the award will not accomplish the purposes for which the award was originally made. In any such case, OAO will advise the awardee of the possibility of termination of the entire award and allow the awardee to withdraw its termination request. If the awardee does not withdraw its request for partial termination, OAO may initiate procedures to terminate the entire award for cause.

§ 2500.051 Debt collection.

The collection of debts owed to OAO by awardees, including those resulting from cost disallowances, recovery of funds, unobligated balances, or other circumstances, are subject to the Department's debt collection procedures as set forth in 7 CFR part 3, and, with respect to cost disallowances, § 2500.048.

§ 2500.052 Award appeals procedures.

(a) *General.* OAO permits awardees to appeal certain adverse post-award administrative decisions made by OAO. Such adverse decisions include: Termination, in whole or in part, and determination that an award is void. An award may be terminated for failure of the awardee to carry out its approved project in accordance with the applicable law and the terms and conditions of award; or for failure of the awardee otherwise to comply with any law, regulation, assurance, term, or condition applicable to the award. Additionally, an award may be determined to be void if, for example, it was not authorized by statute or regulation or because it was fraudulently obtained. Appeals of determinations regarding the allowability of costs are subject to the procedures in § 2500.048.

(b) *Appeal Procedures.* The formal notification of an adverse determination will contain a statement of the awardee's appeal rights. To appeal an adverse

determination, the awardee must submit a request for review to the OAO official specified in the notification, detailing the nature of the disagreement with the adverse determination and providing supporting documents in accordance with the procedures contained in the notification. The awardee's request to OAO for review must be received within 60 days after receipt of the written notification of the adverse determination; however, an extension may be granted if the awardee can show good cause why an extension is warranted. OAO will carefully consider the merits of all requests for appeals and further reviews. However, at the conclusion of the OAO appeal review process, the OAO decision rendered on the appeal is considered final. The awardee will be notified in writing by OAO of final appeal review determinations.

§ 2500.053 Expiring appropriations.

(a) *OAO awards supported with office appropriations.* Most OAO awards are supported with annual appropriations. On September 30th of the 5th fiscal year after the period of availability for obligation ends, the funds for these appropriations accounts expire per 31 U.S.C. 1552 and the account is closed, unless otherwise specified by law. Funds that have not been drawn through the approved electronic funds transfer system, by the awardee or disbursed through any other system or method by August 31st of that fiscal year are subject to be returned to the U.S. Department of the Treasury after that date. The August 31st requirement also applies to awards with a 90-day period concluding on a date after August 31st of that fifth year. Appropriations cannot be restored after expiration of the accounts. More specific instructions are provided in the OAO award terms and conditions.

(b) *OAO awards supported with funds from other Federal agencies (reimbursable funds).* OAO may require that all draws and reimbursements for awards supported with reimbursable funds (from other Federal agencies) be completed prior to June 30th of the 5th fiscal year after the period of availability for obligation ends to allow for the proper billing, collection, and close-out of the associated interagency agreement before the appropriations expire. The June 30th requirement also applies to awards with a 90-day period concluding on a date after June 30th of that fifth year. Appropriations cannot be restored after expiration of the accounts. More specific instructions are provided in the terms and conditions of the OAO award agreement.

§ 2500.055 Audit.

Awardees must comply with the audit requirements of 7 CFR part 3052. The audit requirements apply to the years in which Federal financial assistance funds are received and years in which work is accomplished using these funds.

§ 2500.056 Civil rights.

Awardees must comply with the civil rights requirements of 7 CFR part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended. In accordance, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the recipient receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement.

Subpart F—Outreach and Assistance For Socially Disadvantaged Farmers and Ranchers Program

§ 2500.101 Applicability of regulations.

The regulations in this subpart apply to the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers (OASDFR) Program authorized under section 2501 of the Food, Agriculture, Conservation and Trade Act of 1990 (7 U.S.C. 2279), as amended. Unless otherwise specified in this subpart, the requirements of 7 CFR part 2500 subparts A through E will apply in addition to the requirements discussed in this subpart.

§ 2500.102 Purpose.

(a) The purpose of the OASDFR Program is to make competitive awards to provide outreach and technical assistance to encourage and assist socially disadvantaged farmers and ranchers in:

(1) Owning and operating farms, ranches and non-industrial forest lands; and

(2) In participating equitably in the full range of agricultural programs offered by the Department.

(b) The OASDFR Program awards shall be used exclusively to:

(1) Enhance coordination of the outreach, technical assistance, and education efforts authorized under agriculture programs;

(2) Assist in reaching current and prospective socially disadvantaged farmers, ranchers or forest landowners in a linguistically appropriate manner; and

(3) Improve the participation of those farmers and ranchers in agricultural programs.

§ 2500.103 Definitions.

The definitions provided in subpart A apply to this subpart. In addition, the definitions that apply specifically to the OASDFR Program under this subpart include:

Agriculture programs means those programs administered within the Department, by agencies including but not limited to: Forest Service (FS), Natural Resources Conservation Service (NRCS), Farm Service Agency (FSA), Risk Management Agency (RMA), Rural Development (RD), Rural Business Cooperative Service (RBCS), National Institute of Food and Agriculture (NIFA), and Agricultural Marketing Service (AMS), and other such programs as determined by the Department on a case-by-case basis either at the OAO Director's initiative or in response to a written request with supporting explanation for inclusion of a program. (For further details on specific programs included under this subpart see 7 U.S.C. 2279(e)(3) or the RFP).

Alaska Native means a citizen of the United States who is a person of one-fourth or more Alaska Indian, Eskimo, or Aleut blood, or combination thereof. (For further specification, see 43 U.S.C 1602(b) or the RFP).

Alaska Native cooperative colleges means an eligible post-secondary educational institution that has an enrollment of undergraduate full-time equivalent students that is at least 20 percent Alaska Native students at the time of submission of a proposal.

Assistance means providing educational and technical assistance to socially disadvantaged farmers, ranchers, and forest landowners in (1) owning and operating farms, ranches, and non-industrial forest lands; and (2) in participating equitably in the full range of agricultural programs offered by the Department through workshops, site visits and other means of contact in a linguistically appropriate manner.

Farmer, rancher, or forest landowner means the person who primarily cultivates, operates, or manages a farm, ranch, or forest for profit, either as owner or tenant. A farm includes livestock, dairy, poultry, fish, fruit, and truck farms. It also includes plantations, ranches, ranges, and orchards.

Hispanic-serving institution means an eligible institution of higher education that has an enrollment of undergraduate full-time equivalent students that is at least 25 percent Hispanic students at the end of the award year immediately preceding the date of submission of a proposal (see 20 U.S.C. 1101a(5)).

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) (43 U.S.C. 1601 *et seq.*), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. (For further specification, see 25 U.S.C. 450b).

Indian tribal community college means a post-secondary education institution which is formally controlled, or has been officially sanctioned, or chartered, by the governing body of an Indian tribe or tribes. (See 25 U.S.C. 1801(a)(4)).

Institution of higher education means an educational institution in any State that is a public or other nonprofit institution that is legally authorized and

accredited by a nationally recognized accrediting agency or association to provide a program of education beyond secondary education for which the institution awards a bachelor's degree. (For further specification, see 20 U.S.C. 1001(a)).

Outreach means the use of formal and informal educational materials and activities in a linguistically appropriate manner that serve to encourage and assist socially disadvantaged farmers and ranchers in:

(1) Owning and operating farms and ranches; and in

(2) Participating equitably in the full range of agricultural programs offered by the Department.

Socially disadvantaged farmer, rancher or forest landowner means a farmer, rancher, or forest landowner who is a member of a socially disadvantaged group. (See 7 U.S.C. 2279(e)(2)).

Socially disadvantaged group means a group whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities. (See 7 U.S.C. 2279(e)(1)).

State means any of the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, and federally recognized Indian tribes.

Supplemental funding means funding to an existing awardee in addition to the amount of the original award contained in the grant or cooperative agreement. Such additional funding is intended to continue or expand work that is within the scope of the original agreement and statement of work.

Tribal organization means the recognized governing body of any Indian tribe. A tribal organization is any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community. In any case where an award is made to an organization to perform services benefiting more than one Indian tribe, the approval of each participating Indian tribe shall be a prerequisite to the making of such an award. (See 25 U.S.C. 1603(25).

§ 2500.104 Eligibility requirements.

Proposals may be submitted by any of the following:

(a) Any community-based organization, network, or coalition of community-based organizations that:

(1) Has demonstrated experience in providing agricultural education or other agriculturally related services to socially disadvantaged farmers, ranchers, and forest landowners;

(2) Has provided to the Secretary documentary evidence of work with, and on behalf of socially disadvantaged farmers, ranchers, or forest landowners during the three-year period preceding the submission of a proposal for assistance under this program; and

(3) Does not engage in activities prohibited under Section 501(c)(3) of the Internal Revenue Code of 1986.

(b) An 1890 institution or 1994 institution (as defined in 7 U.S.C. 7601), including West Virginia State University.

(c) An Indian tribal community college or an Alaska Native cooperative college.

(d) A Hispanic-serving institution (as defined in 7 U.S.C. 3103).

(e) Any other institution of higher education (as defined in 20 U.S.C. 1001) that has demonstrated experience in providing agriculture education or other agriculturally related services to socially disadvantaged farmers, ranchers, and forest landowners in a region.

(f) An Indian tribe (as defined in 25 U.S.C. 450b) or a national tribal organization that has demonstrated experience in providing agriculture education or other agriculturally-related services to socially disadvantaged farmers, ranchers, and forest landowners in a region.

(g) Other organizations or institutions that received funding under this program before January 1, 1996, but only with respect to projects that the Secretary considers are similar to projects previously carried out by the entity under this program.

§ 2500.105 Project types and priorities.

For each RFP, OAO may develop and include the appropriate project types

and focus areas based on the critical needs of the socially disadvantaged farmer and rancher community. For standard OASDFR projects, competitive grants or cooperative agreements will be awarded to support programs and services, as appropriate, to encourage and assist socially disadvantaged farmers and ranchers in the following focus areas:

(a) Owning and operating farms and ranches;

(b) Participating equitably in the full range of agricultural programs offered by the Department; and

(c) Other areas as specified by the Secretary in the RFP.

§ 2500.106 Funding restrictions.

Funds made available under this subpart shall not be used for the construction of a new building or facility or the acquisition, expansion, remodeling, or alteration of an existing facility (including site grading and improvement, and architect fees).

§ 2500.107 Matching.

Matching funds are not required as a condition of receiving awards under this subpart.

§ 2500.108 Term of award.

The award term will be defined in the OAO award agreement, and can be later amended upon approval of OAO.

§ 2500.109 Program requirements.

Grants and cooperative agreements under this subpart shall address the priorities in the Department that involve providing outreach and technical assistance to socially disadvantaged farmers, ranchers, and forest landowners to own and operate farms and participate equitably in agricultural programs; and other priorities as determined by the Secretary.

PART 2502—AGRICULTURAL CAREER AND EMPLOYMENT (ACE) GRANTS PROGRAM

Subpart A—General Information

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2502.1 Applicability of regulations.
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Subpart B—Program Eligibility, Services and Delivery

2502.4 Program eligibility.
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Subpart C—Grant Applications and Administration

2502.8 Pre-award, award, and post-award procedures and administration of grants.

AUTHORITY: 7 U.S.C. 2008q–1

SOURCE: 76 FR 69117, Nov. 8, 2011, unless otherwise noted.

Subpart A—General Information

§ 2502.1 Applicability of regulations.

(a) This part contains program-specific definitions for the ACE Grants Program.

(b) Subpart B establishes the criteria to be used in determining eligibility for an ACE grant award and the requirements for the delivery of program benefits and services, including who is considered eligible to receive such benefits and services and what the responsibilities are of ACE grantees.

(c) Subpart C establishes that, unless otherwise provided herein, the procedures for applying for ACE grants, the processes to be followed by OAO in evaluating grant proposals and awarding program funds, and the procedures for post-award administration of ACE grants are those set forth in a rule proposed ON DATE to codify provisions at 7 CFR part 2500, subparts A, B, C, D, and E.

§ 2502.2 Definitions.

As used in this part (unless otherwise indicated):

Agency means the Office of Advocacy and Outreach (OAO), an agency of the United States Department of Agriculture (USDA) or a successor agency.

Agricultural Employer means any person or entity which employs, as defined in the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802, individuals engaged in agricultural employment and may include farmers, ranchers, dairy operators, agricultural cooperatives, and farm labor contractors.

Agricultural Employment means any service or activity as defined in the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802, including any activity defined as ''agriculture'' in Section 3(f) or the Fair Labor Standards Act of 1938, 29 U.S.C. 203(f), any activity defined as ''agricultural labor'' in 26 U.S.C. 3121(g) (the Internal Revenue Code); as well as the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state. Authorized Departmental Officer (ADO) means the individual, acting within the scope of delegated authority, who is responsible for executing and administering awards on behalf of the U.S. Department of Agriculture.

Community-based organization means a non-governmental organization with a well-defined constituency that includes all or part of a particular community.

Consortium means a group formed by entities with similar goals and objectives for the purpose of pooling resources to undertake a project that would otherwise be reasonably beyond the capabilities of any one member.

Eligible entity, as described in section 379C(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2008q(a)), means a non-profit organization, or a consortium of nonprofit organizations, agribusinesses, State and local governments, agricultural labor organizations, farmer or rancher cooperatives, and community-based organizations with the capacity to train farm workers.

Farmworker means an individual hired to perform agricultural employment, including migrant, seasonal, and hired family farm workers. The term farmworker includes individuals who are not currently employed as a farmworker but who are actively seeking work as such. The term does not include agricultural employers or individuals who are self-employed.

Grantee means the organization designated in the grant award document as the responsible legal entity to which a grant is awarded.

Legally present in the United States shall have the same meaning as the term ''lawfully present'' in the United States as defined at 8 CFR 103.12(a) (addressing eligibility for Title II Social Security benefits under Pub. L. 104–193).

Notice of Funding Availability (NOFA) means a notice published in the FEDERAL REGISTER announcing the availability of money for the grants program which lists the application deadlines, eligibility requirements and locations where interested parties can get help in applying.

Office of Advocacy and Outreach (OAO) means the Office of Advocacy and Outreach, an office within the USDA's Departmental Management.

Request for Proposal (RFP) refers to a grant competition and is used interchangeably with the phrase grant application notice and solicitation for grant applications (SFA).

Retaining an agricultural job means continuing agricultural employment, including upgraded employment.

Returning from an agricultural job means returning to a home area from a position in agricultural employment.

Secretary means the Secretary of Agriculture and any other officer or employee of the United States Department of Agriculture to whom the authority involved is delegated.

Securing an agricultural job means obtaining agricultural employment.

State means any of the States of the United States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, and Guam.

United States worker (U.S. worker) shall have the same meaning as the term U.S. worker defined by the Department of Labor at 20 CFR 655.4.

Upgrading an agricultural job means advancement to a position in agricultural employment which offers more hours of work and/or better terms and conditions of employment and/or an increase in wages.

§ 2502.3 Deviations.

Any request by the applicant or grantee for a waiver or deviation from any provision of this part shall be submitted to the ADO identified in the agency specific requirements. OAO shall review the request and notify the applicant/grantee whether the request to deviate has been approved within 30 calendar days from the date of receipt

of the deviation request. If the deviation request is still under consideration at the end of 30 calendar days, OAO shall inform the applicant/grantee in writing of the date when the applicant/grantee may expect the decision.

Subpart B—Program Eligibility, Services and Delivery

§ 2502.4. Program eligibility.

(a) Entities eligible to apply for and receive a grant under this part include:

(1) A non-profit organization;

(2) A consortium of nonprofit organizations; or

(3) A consortium which includes a non-profit organization(s) and one or more of the following: agribusinesses, State and local governments, agricultural labor organizations, farmer or rancher cooperatives, and community-based organizations with the capacity to train farm workers.

(b) Additional information about eligible entities may be included in the RFP. In addition, the RFP will specify the criteria by which an entity's capacity to train farm workers will be evaluated, but at a minimum, the entity shall be required to demonstrate that it has:

(1) An understanding of the issues facing hired farmworkers and conditions under which they work;

(2) Familiarity with the agricultural industry in the geographic area to be served, including agricultural labor needs and existing services for farmworkers; and

(3) The capacity to effectively administer a program of services and benefits authorized by the ACE program.

(c) An applicant will be required to submit information to OAO, as specified in the RFP and/or FOA as part of the grant application.

§ 2502.5 Program benefits and services.

(a) The ACE grants program will be centrally administered by the USDA in a manner consistent with these regulations, as well as the pertinent requirements of 7 CFR part 3015, 7 CFR part 3016, 7 CFR part 3018, 7 CFR part 3019 and 7 CFR 3052.

(b) The Office of Advocacy and Outreach (OAO) has been designated as the organizational unit responsible for administering the ACE program, including, among other things, determining the number and amount of grants to be awarded, the purposes for the grants to be awarded, as well as the criteria for the evaluation and award of grants.

(c) Services and benefits provided under the ACE grants program are limited to those which will assist eligible farmworkers in securing, retaining, upgrading or returning from agricultural jobs.

(d) Such services will include the following:

(1) Agricultural labor skills development

(2) Provision of agricultural labor market information:

(3) Transportation:

(4) Short-term housing while in transit to an agricultural worksite;

(5) Workplace literacy and assistance with English as a second language;

(6) Health and safety instruction, including ways of safeguarding the food supply of the United States;

(7) Such other services as the Secretary deems appropriate.

(e) Grant funds shall not be used to deliver or replace any services or benefits which an agricultural employer, association, contractor, or any other entity is legally obliged to provide.

§ 2502.6 Recipients of program benefits or services.

(a) Those eligible to receive program services or benefits under the ACE program are farmworkers who meet the definition of ''United States Workers'' as set forth in § 2502.2 of this part.

(b) Grantees shall be responsible for verifying the employment of farmworkers who are actively employed and are seeking to participate in program services or benefits. Unemployed farmworkers seeking to participate shall be required to certify to grantees that they are eligible for program services and benefits as provided herein. Additional eligibility requirements may be included in the RFP.

§ 2502.7 Responsibilities of grantees.

Each grantee is responsible for providing services and/or benefits authorized by this program in accord with a service delivery strategy described in

its approved grant plan. The services must reflect the needs of the relevant farmworker population in the area to be served and be consistent with the goals of assisting farmworkers in securing, retaining, upgrading, or returning from agricultural jobs. The necessary components of a service delivery strategy and grant plan will be fully set forth in an RFP but the plan shall include, at a minimum, the following:

(a) The employment and education needs of the farmworker population to be served;

(b) The manner in which the proposed services to be delivered will assist agricultural employers and farmworkers in securing, retaining, upgrading or returning from agricultural jobs;

(c) The manner in which the proposed services will be coordinated with other available services;

(d) The number of participants the grantee expects to serve for each service provided, the results expected and the anticipated expenditures for each category of service.

Subpart C—Grant Applications and Administration

§ 2502.8 Pre-award, award, and post-award procedures and administration of grants.

(a) Unless otherwise provided in this rule, the requirements governing pre-award solicitation and submission of proposals and/or applications, the review and evaluation of such, the award of grant funds, and post-award and close-out procedures are those set forth at 7 CFR part 2500, subparts A, B, C, D, and E.

(b) For purposes of the ACE Grants Program, the provisions of Subpart E, at 7 CFR 2500.49, ''Prior Approvals,'' shall not apply. In lieu of that provision, the following requirements shall apply: Awardees may not subcontract more than 20 percent of the award to other parties without prior written approval of the ADO. To request approval, a justification for the proposed subcontract, a performance statement, and a detailed budget for the subcontract must be submitted in writing to the ADO.

CHAPTER XXVI—OFFICE OF INSPECTOR GENERAL, DEPARTMENT OF AGRICULTURE

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PART 2610—ORGANIZATION, FUNCTIONS, AND DELEGATIONS OF AUTHORITY

Sec.
2610.1 General statement.
2610.2 Headquarters organization.
2610.3 Regional organization.
2610.4 Requests for service.
2610.5 Delegations of authority.

AUTHORITY: 5 U.S.C. 301 and 552, Pub. L. 95–452, 5 U.S.C. App., and Pub. L. 97–98, 7 U.S.C. 2270.

SOURCE: 60 FR 52840, Oct. 11, 1995, unless otherwise noted.

§ 2610.1 General statement.

(a) The Inspector General Act of 1978 as amended, Pub. L. 95–452, 5 U.S.C. App., establishes an Office of Inspector General (OIG) in the U.S. Department of Agriculture (USDA) and transfers to it the functions, powers, and duties of offices referred to in the Department as the ''Office of Investigation'' and the ''Office of Audit,'' previously assigned to the OIG created by the Secretary's Memoranda 1915 and 1727, dated March 23, 1977, and October 5, 1977, respectively. Under this Act, OIG is established as an independent and objective unit, headed by the Inspector General (IG), who is appointed by the President and reports to and is under the general supervision of the Secretary.

(b) The mission of OIG is to provide policy direction; to conduct, supervise, and coordinate audits and investigations of USDA programs and operations to determine efficiency and effectiveness; to prevent and detect fraud and abuse in such programs and operations; and to keep the Secretary and the Congress informed of problems and deficiencies relative to the programs and operations.

(c) The Secretary has made the following delegations of authority to the IG (7 CFR 2.33):

(1) Advise the Secretary and General Officers in the planning, development, and execution of Department policies and programs.

(2) Provide for the personal security of the Secretary and Deputy Secretary.

(3) Serve as liaison official for the Department for all audits of USDA performed by the General Accounting Office.

(4) In addition to the above delegations of authority, the IG, under the general supervision of the secretary, has specific duties, responsibilities, and authorities pursuant to the Act, including:

(i) Conduct and supervise audits and investigations relating to programs and operations of the Department.

(ii) Provide leadership, coordination, and policy recommendations to promote economy, efficiency, and effectiveness, and to prevent and detect fraud and abuse in the administration of the Department's program and operations.

(iii) Keep the Secretary and the congress fully and currently informed about problems and deficiencies and the necessity for and progress of corrective actions in the administration of the Department's programs and operations.

(iv) Make such investigations and reports relating to the administration of programs and operations of the Department as are in the judgment of the IG, necessary or desirable.

(v) Review existing and proposed legislation and regulations and make recommendations to the Secretary and the Congress on the impact such laws or regulations will have on the economy and efficiency of program administration or in the prevention and detection of fraud and abuse in the programs and operations of the Department.

(vi) Have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to the Department which relate to programs and operations for which the IG has responsibility.

(vii) Report expeditiously to the Attorney General any matter where there are reasonable grounds to believe there has been a violation of Federal criminal law.

(viii) Issue subpoenas to other than Federal agencies for the production of information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of functions assigned by the Act.

(ix) Receive and investigate complaints or information from any Department employee concerning possible

violations of laws, rules or regulations, or mismanagement, gross waste of funds, abuse of authority, or substantial and specific dangers to the public health and safety.

(x) Select, appoint, and employ necessary officers and employees in OIG in accordance with laws and regulations governing the civil service, including an Assistant Inspector General for Auditing and an Assistant Inspector General for Investigations.

(xi) Obtain services as authorized by Section 3109 of Title 5, United States Code.

(xii) Enter into contracts and other arrangements for audits, inspections, studies, analyses, and other services with public agencies and private persons, and make such payments as may be necessary to carry out the provisions of the Act to the extent and in such amounts as may be provided in an appropriation act.

(d) The IG, under the Agriculture and Food Act of 1981, Pub. L. 97–98, 7 U.S.C. 2270, and pursuant to rules issued by the Secretary in 7 CFR part 1a, has the authority to:

(1) Designate employees of the Office of Inspector General who investigate alleged or suspected felony criminal violations of statutes administered by the Secretary of Agriculture or any agency of USDA, when engaged in the performance of official duties to:

(i) Execute and serve a warrant for an arrest, for the search of premises, or the seizure of evidence when issued under authority of the United States upon probable cause to believe that such a violation has been committed;

(ii) Make an arrest without a warrant for any such violation if such violation is committed or if the employee has probable cause to believe that such violation is being committed in his/her presence; and

(iii) Carry a firearm.

(2) Issue directives and take the actions prescribed by the Secretary's rules.

§ 2610.2 Headquarters organization.

(a) The OIG has a headquarters office in Washington, DC, and regional offices throughout the United States. The headquarters office consists of the immediate office of the IG and three operational units.

(b) *Operational units.* (1) The Assistant Inspector General for Policy Development and Resources Management (AIG/PD&RM) formulates OIG policies and procedures; develops, administers and directs comprehensive programs for the management, budget, financial, personnel, systems improvement, and information activities and operations of OIG; and is responsible for OIG automated date processing (ADP) and OIG information management systems. The staff maintains OIG's directives system; Departmental Regulations and Federal Register issuances; administers the Freedom of Information and Privacy Acts, which includes requests received from the Congress, other Federal agencies, intergovernmental organizations, the news media, and the public; and provides for the administration of an OIG EEO program, including affirmative action. The immediate office of the AIG/PD&RM and two divisions carry out these functions.

(2) The Assistant Inspector General for Audit (AIG/A) carries out the OIG's domestic and foreign audit operations through a headquarters office, a Financial Management and ADP Audit Operations staff located in Kansas City, Missouri, and six regional offices shown in § 2610.3(a). The staff provides a continual audit review of ADP security throughout USDA. Auditing officials conduct operational liaison on audit matters; schedule and conduct audits; release audit reports to management; follow agency action to assure that audit reports have been properly acted upon through review of Department management follow up system; monitor the quality of OIG audit reports; and coordinate activities with the Assistant inspector General (AIG) for Investigations. The staff also provides an integrated approach to fraud prevention and detection and management improvement in USDA programs and operations; reviews Department legislation and regulations through the involvement and cooperation of the Department's principal officers and program managers; coordinates analyses and reports on the conduct of fraud

vulnerability assessments; and recommends policies and provides technical assistance for investigative and audit operations. The Auditing headquarters office consists of the immediate office of the AIG/A and four staff divisions.

(3) The Assistant Inspector General for Investigations (AIG/I) carries out the OIG's domestic and foreign investigative operations through a headquarters office and the seven regional offices shown in § 2610.3(b). Investigations officials conduct operational and intelligence liaison on investigative matters with the FBI, Secret Service, Internal Revenue Service (IRS), Interpol, and other Federal and State law enforcement organizations; determine the need for investigative action; conduct investigations; prepare factual reports of investigative findings; refer reports for appropriate administrative or legal action; followup on agency actions to assure that OIG investigative reports have been properly acted upon; monitor the quality of investigative reports; and coordinate activities with the AIG/A. The staff also conducts special investigations of major programs, operations, and high level officials; provides for the protection of the Secretary and Deputy Secretary; receives and processes employee complaints concerning possible violations of laws, rules, regulations or mismanagement. The Investigations headquarters office consists of the immediate office of the AIG/I and three staff divisions.

§ 2610.3 Regional organization.

(a) Each Regional Inspector General for Audit (RIG/A) is responsible to the IG and to the AIG/A for supervising the performance of all OIG auditing activities relating to the Department's domestic and foreign programs and operations within an assigned geographic area. The addresses and telephone numbers of the six Audit Regional Offices and the territories served are as follows:

AUDIT REGION, ADDRESS, TELEPHONE NUMBER, AND TERRITORY

Northeast Region, ATTN: Suite 5D06, 4700 River Road, Unit 151, Riverdale, Maryland 20737–1237, (301) 734–8763; Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Virgin Islands, Vermont, Virginia, and West Virginia.

Southeast Region, 401 W. Peachtree Street NW., Room 2328, Atlanta, Georgia 30365–3520, (404) 730–3210; Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

Midwest Region, 111 N. Canal Street, Suite 1130, Chicago, Illinois 60606–7295, (312) 353–1352; Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

Southwest Region, 101 South Main, Room 324, Temple, Texas 76501, (817) 774–1430; Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

Great Plains Region, 9435 Holmes, Room 233, Kansas City, Missouri 64131, Mailing address: PO Box 293, Kansas City, Missouri 64141, (816) 926–7667; Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Wyoming, and Utah.

Western Region, 600 Harrison Street, Suite 225, San Francisco, California 94107, (415) 744–2851; Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Territory of Guam, Trust Territories of the Pacific, and Washington.

(b) Each RIG/I is responsible to the IG and to the AIG/I for supervising the performance of all OIG investigative activities relating to the Department's domestic and foreign programs and operations within an assigned geographic area. The addresses and telephone numbers of the seven Investigations Regional Offices and the territories served are as follows:

INVESTIGATIONS REGION, ADDRESS, TELEPHONE NUMBER, AND TERRITORY

North Atlantic Region, 26 Federal Plaza, Room 1409, New York, New York 10278, (212) 264–8400; Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Puerto Rico, Rhode Island, Vermont, and Virgin Islands.

Northeast Region, ATTN: Suite 5D06, 4700 River Road, Unit 151, Riverdale, Maryland 20737–1237, (301) 734–8850; Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia.

Southeast Region, 401 W. Peachtree Street NW., Room 2329, Atlanta, Georgia 30365–3520, (404) 730–2170; Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

Midwest Region, 111 N. Canal Street, Suite 1130, Chicago, Illinois 60606–7295, (312) 353–1358; Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

Southwest Region, 101 South Main, Room 311, Temple, Texas 76501, (817) 774–1351;

Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

Great Plains Region, 9435 Holmes, Room 210, Kansas City, Missouri 64131, Mailing address: PO Box 293, Kansas City, Missouri 64141, (816) 926–7606: Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Wyoming, and Utah.

Western Region, 600 Harrison Street, Room 225, San Francisco, California 94107, (415) 744–2887; Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Territory of Guam, Trust Territories of the Pacific, and Washington.

§ 2610.4 Requests for service.

(a) Heads of USDA agencies will direct requests for audit or investigative service to the AIG/A, AIG/I, RIG/A, RIG/I, or to other OIG audit or investigation officials responsible for providing service of the type desired in the geographical area where service is desired.

(b) Agency officials or other employees may, at any time, direct to the personal attention of the IG any audit or investigation matter that warrants such attention.

(c) Other persons may address their communications regarding audit or investigative matters to: The Inspector General, U.S. Department of Agriculture, Ag Box 2301, Washington, DC 20250. Additionally, persons may call or write the hotline office at 202–690–1622, 1–800–424–9121, TDD 202–690–1202, or Office of Inspector General, PO Box 23399, Washington, DC 20026. Bribes involving USDA programs may be reported using the 24 hour bribery hotline number at 202 720–7257.

§ 2610.5 Delegations of authority.

(a) AIG's listed in § 2610.2; and RIG's listed in § 2610.3, are authorized to take whatever actions are necessary to carry out their assigned functions. This authority may be redelegated.

(b) The IG reserves the right to establish audit and investigation policies, program, procedures, and standards; to allocate appropriated funds; to determine audit and investigative jurisdiction; and to exercise any of the powers or functions or perform any of the duties referenced in the above delegation.

PART 2620—AVAILABILITY OF INFORMATION TO THE PUBLIC

Sec.
2620.1 General statement.
2620.2 Public inspection and copying.
2620.3 Requests.
2620.4 Denials.
2620.5 Appeals.

AUTHORITY: 5 U.S.C. 301 and 552; 5 U.S.C. App.

SOURCE: 60 FR 52842, Oct. 11, 1995, unless otherwise noted.

§ 2620.1 General statement.

This part is issued in accordance with, and subject to, the regulations of the Secretary of Agriculture § 1.1 through § 1.23 (and appendix A of subpart A of part 1) of this title, implementing the Freedom of Information Act, 5 U.S.C. 552, and governs the availability of records of the Office of Inspector General (OIG) to the public upon request.

§ 2620.2 Public inspection and copying.

5 U.S.C. 522(a)(2) requires that certain materials be made available for public inspection and copying, and that a current index of these materials be published quarterly or otherwise made available. OIG does not maintain any materials within the scope of these requirements.

§ 2620.3 Requests.

(a) Requests for OIG records shall be in writing in accordance with § 1.6(a) of this title and addressed to the Assistant Inspector General for Policy Development and Resources Management (AIG/PD&RM), Office of Inspector General, U.S. Department of Agriculture, Ag Box 2310, Washington, DC 20250. The above official is hereby delegated authority to make determinations regarding such requests in accordance with § 1.3(a)(3) of this title.

(b) Requests should be reasonably specific in identifying the record requested and should include the name, address, and telephone number of the requester.

(c) Available records may be inspected and copied in the office of the AIG/PD&RM, from 8 a.m. to 4:30 p.m. local time on regular working days or may be obtained by mail. Copies will

be provided upon payment of applicable fees, unless waived or reduced, in accordance with the Department's fee schedule as set forth in appendix A of subpart A of part 1 of this title.

§ 2620.4 Denials.

If the AIG/PD&RM determines that a requested record is exempt from mandatory disclosure and that discretionary release would be improper, the AIG/PD&RM shall give written notice of denial in accordance with § 1.8(a) of this title.

§ 2620.5 Appeals.

The denial of a requested record may be appealed in accordance with § 1.6(e) of this title. Appeals shall be addressed to the Inspector General, U.S. Department of Agriculture, Ag Box 2301, Washington, DC 20250. The Inspector General will give prompt notice of the determination concerning an appeal in accordance with § 1.8(d) of this title.

CHAPTER XXVII—OFFICE OF INFORMATION RESOURCES MANAGEMENT, DEPARTMENT OF AGRICULTURE

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PART 2700—ORGANIZATION AND FUNCTIONS

Sec.
2700.1 General statement.
2700.2 Organization.
2700.3 Functions.

AUTHORITY: 5 U.S.C. 301, 552; 7 CFR 2.81.

SOURCE: 47 FR 39128, Sept. 7, 1982, unless otherwise noted.

§ 2700.1 General statement.

This part is issued in accordance with 5 U.S.C. 552(a) to provide guidance for the general public as to the organization and functions of the Office of Information Resources Management.

§ 2700.2 Organization.

The Office of Information Resources Management (OIRM) was established on January 12, 1982. Delegations of authority to the Director, OIRM appear at 7 CFR 2.81. The organization is comprised of five headquarters divisions, an administrative staff and three computer centers to serve the Department. The organization is headed by the Director or, in the Director's absence, by the Deputy Director or, in the absence of both, by the Director's desginee.

§ 2700.3 Functions.

(a) *Director*. Provides executive direction for OIRM. Develops and recommends Departmental information resources management principles, policies, and objectives; develops and disseminates Departmental information resources management standards, guidelines, rules, and regulations necessary to implement approved principles, policies, and programs; designs, develops, implements, and revises systems, processes, work methods, and techniques to improve the management of information resources and the operational effectiveness of the Department; provides telecommunications and automated data processing services to the Department's agencies and staff offices.

(b) *Deputy Director*. Assists the Director and, in the absence of the Director, serves as the Acting Director.

(c) *Administrative Management Staff*. Provides support for agency management regarding budget, accounting, personnel, and other administrative matters.

(d) *Planning Division*. Defines, develops, guides, and administers the Department's long-range planning process for information resources.

(e) *Information Management Division*. Develops policy, standards and guidelines for collection, protection, access, use and management of information.

(f) *Review and Evaluation Division*. Reviews and evaluates information resources programs and activities of Department agencies and staff offices for conformance with plans, policies, and standards.

(g) *Agency Technical Services Division*. Advises and consults with and assists Department agencies and staff offices on activities related to the development and implementation of automated information systems.

(h) *Operations and Telecommunications Division*. Coordinates the development and implementation of programs for ADP and telecommunications resource planning within Departmental computer centers and the National Finance Center, and for the acquisition and use of Department-wide telecommunications facilities and services.

(i) *Departmental Computer Centers*. The following centers provide ADP facilities and services to agencies and staff offices of the Department.

(1) Washington Computer Center, 14th and Independence Ave., SW., Rm. S–107–South, Washington, DC 20250.

(2) Fort Collins Computer Center, 3825 E. Mulberry Street (P.O. Box 1206), Fort Collins, CO 80524.

(3) Kansas City Computer Center, 8930 Ward Parkway (P.O. Box 205), Kansas City, MO 64141.

PART 2710—AVAILABILITY OF INFORMATION TO THE PUBLIC

Sec.
2710.1 General statement.
2710.2 Public inspection and copying.
2710.3 Indexes.
2710.4 Initial request for records.
2710.5 Appeals.
APPENDIX A TO PART 2710—LIST OF ADDRESSES

AUTHORITY: 5 U.S.C. 301, 552; 7 CFR 1.1–1.16.

SOURCE: 47 FR 39129, Sept. 7, 1982, unless otherwise noted.

§ 2710.1 General statement.

This part is issued in accordance with 7 CFR 1.4 of the U.S. Department of Agriculture regulations governing the availability of records (7 CFR 1.1–1.16 and Appendix A) under the Freedom of Information Act (5 U.S.C. 552). The Department's regulations, as supplemented by the regulations in this part, provide guidance for any person wishing to request records from the Office of Information Resources Management (OIRM).

§ 2710.2 Public inspection and copying.

(a) *Background*. 5 U.S.C. 552(a)(2) required that each agency make certain kinds of records available for public inspection and copying.

(b) *Procedure*. Persons wishing to gain access to OIRM records should contact the Information Access & Disclosure Officer by writing to the address shown in 2710.4(b)(2).

§ 2710.3 Indexes.

(a) *Background*. 5 U.S.C. 552(a)(2) also required that each agency maintain and make available for public inspection and copying current indexes providing identifying information for the public with regard to any records which are made available for public inspection and copying.

(b) *Procedure*. Persons wishing to get an index may contact the division or center that maintains the records. Publication of these indexes as a separate document is unnecessary and impractical.

§ 2710.4 Initial request for records.

(a) *Background*. The Information Access and Disclosure Officer is authorized to:

(1) Grant or deny requests for OIRM records.

(2) Make discretionary releases of OIRM records when it is determined that the public interests in disclosure outweigh the public and/or private ones in withholding.

(3) Reduce or waive fees to be charged where determined to be appropriate.

(b) *Procedure*. Persons wishing to request records from the Office of Information Resources Management may do so as follows:

(1) *How*. Submit each initial request for OIRM records as prescribed in 7 CFR 1.3(a).

(2) *Where*. Submit each initial request to the Information Access and Disclosure Officer, Office of Information Resources Management, USDA, 14th and Independence Ave., SW., Room 407–W, Washington, DC 20250.

§ 2710.5 Appeals.

Procedure. Any person whose initial request is denied in whole or in part may appeal that denial, in accordance with 7 CFR 1.3(e) and 1.7, to the Director, Office of Information Resources Management, by sending the appeal to the Information Access and Disclosure Officer, Office of Information Resources Management, USDA, 14th and Independence Ave., SW., Room 407–W, Washington, DC 20250. The Director, Office of Information Resources Management, will make the determination on the appeal.

APPENDIX A TO PART 2710—LIST OF ADDRESSES

Section 1. General

This list provides the titles and mailing addresses of officials who have custody of OIRM records. This list also identifies the normal working hours, Monday through Friday, excluding holidays, during which public inspection and copying of certain kinds of records, and indexes to those records, is permitted.

Section 2. List of Addresses

Director, Office of Information Resources Management, 14th and Independence Ave., SW., Rm. 113–W, Washington, DC 20250; Hours: 8:30 a.m.–5:00 p.m.

Chief, Planning Division, OIRM, 14th and Independence Ave., SW., Rm. 446–W, Washington, DC 20250; Hours: 8:30 a.m.–5:00 p.m.

Chief, Review and Evaluation Division, OIRM, 14th and Independence Ave., SW., Rm. 442–W, Washington, DC 20250; Hours: 8:30 a.m.–5:00 p.m.

Chief, Agency Technical Services Division, OIRM, 14th and Independence Ave., SW., Rm. 416–W, Washington, DC 20250; Hours: 8:30 a.m.–5:00 p.m.

Chief, Operations and Telecommunications Division, OIRM, 14th and Independence Ave., SW., Rm. 419–W, Washington, DC 20250; Hours: 8:30 a.m.–5:00 p.m.

Chief, Information Management Division, OIRM, 14th and Independence Ave., SW., Rm. 404–W, Washington, DC 20250; Hours: 8:30 a.m.–5:00 p.m.

Chief, St. Louis Computer Center, OIRM, 1520 Market Street, Rm. 3441, St. Louis, MO 63101; Hours: 8:00 a.m.–4:40 p.m.

Director, Kansas City Computer Center, OIRM, 8930 Ward Parkway, (P.O. Box 205), Kansas City, MO 64141; Hours: 8:00 a.m.–4:45 p.m.

Director, Fort Collins Computer Center, OIRM, 3825 E. Mulberry Street, (P.O. Box 1206), Fort Collins, CO 80521; Hours: 8:00 a.m.–4:30 p.m.

Director, Washington Computer Center, OIRM, 14th and Independence Ave., SW., Rm. S–107–S, Washington, DC 20250; Hours: 8:30 a.m.–5:00 p.m.

Information Access and Disclosure Officer, OIRM, 14th and Independence Ave., SW., Rm. 407–W, Washington, DC 20250; Hours: 8:30 a.m.–5:00 p.m.

CHAPTER XXVIII—OFFICE OF OPERATIONS, DEPARTMENT OF AGRICULTURE

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PART 2810—ORGANIZATION AND FUNCTIONS—OFFICE OF OPERATIONS

Sec.
2810.1 General statement.
2810.2 Organization.
2810.3 Functions.

AUTHORITY: 5 U.S.C. 301 and 552; 7 CFR 2.76.

SOURCE: 54 FR 52013, Dec. 20, 1989, unless otherwise noted.

§ 2810.1 General statement.

This part is issued in accordance with 5 U.S.C. 552(a) to provide guidance for the general public as to Office of Operations (OO) organization and functions.

§ 2810.2 Organization.

The Office of Operations (OO) was established January 12, 1982. Delegations of authority to the Director, OO, appear at 7 CFR 2.76. The organization is comprised of six divisions and one staff located at Department headquarters. Description of the functions of these organizational units are in the following section. The organization is headed by a Director.

§ 2810.3 Functions.

(a) *Director*. Provides executive direction for OO. Develops and promulgates overall policies and provides general direction, leadership, oversight, and coordination of USDA management of procurement, real and personal property activities, mail and copier management. Provides executive services to the Office of the Secretary and operates activities providing consolidated USDA administrative functions and services.

(b) *Deputy Director*. Assists the Director, and in the absence of the Director, serves as Acting Director.

(c) *Administrative Unit*. Provides support for agency management regarding budget, accounting, personnel, and other administrative matters.

(d) *Executive Services Division*. Provides executive services to the Office of the Secretary in travel arrangements, supplies, furnishings, communications, equipment, and records. Operates the central USDA DC imprest fund.

(e) *Facilities Management Division*. Operates and maintains the USDA DC headquarters building complex, including headquarters parking. Oversees management and operation of USDA buildings nationwide, and provides DC area labor services.

(f) *Mail and Reproduction Management Division*. Oversees USDA mail, copier, and duplicating programs. Operates DC area central activities in these areas.

(g) *Personal Property Management Division*. Oversees USDA supply, motor vehicle, and personal property programs. Operates centralized warehouse and property rehabilitation facilities.

(h) *Procurement Division*. Oversees USDA procurement programs. Operates centralized purchasing operations for ADP and Washington area activities.

(i) *Real Property Management Division*. Oversees USDA real property management programs.

PART 2811—AVAILABILITY OF INFORMATION TO THE PUBLIC

Sec.
2811.1 General statement.
2811.2 Public inspection and copying.
2811.3 Indexes.
2811.4 Initial requests for records.
2811.5 Appeals.
2811.6 Fee schedule.
APPENDIX A TO PART 2811—LIST OF ADDRESSES

AUTHORITY: 5 U.S.C. 301 and 552 (as amended); 7 CFR 1.3.

SOURCE: 54 FR 52014, Dec. 20, 1989, unless otherwise noted.

§ 2811.1 General statement.

This part is issued in accordance with 7 CFR 1.3 of the Department of Agriculture regulations governing the availability of records (7 CFR 1.1–1.23 and Appendix A) under the Freedom of Information Act (FOIA), 5 U.S.C. 552. The Department's regulations, as supplemented by the regulations in this part, provide guidance for any person wishing to request records from Office of Operations.

§ 2811.2 Public inspection and copying.

(a) *Background*. 5 U.S.C. 552(a)(2) requires that each agency maintain and make available for public inspection and copying certain kinds of records.

(b) *Procedure*. To gain access to OO records that are available for public inspection, contact the division that maintains them. See Appendix A, List of Addresses, for the location and hours of operation.

§ 2811.3 Indexes.

(a) *Background*. 15 U.S.C. 552(a)(2) also requires that each agency maintain and make available for public inspection and copying current indexes provided identifying information for the public with regard to any records which are made available for public inspection and copying. OO does not maintain any materials within the scope of these requirements.

§ 2811.4 Initial requests for records.

(a) *Background*. The head of each OO division, each OO contracting officer, each OO leasing officer, and the OO FOIA officer is authorized to:

(1) Grant or deny requests for OO records.

(2) Make discretionary release of OO records when it is determined that the public interest in disclosure outweighs the public and/or private ones in withholding.

(3) Reduce or waive fees to be charged where determined to be appropriate.

(4) Refer a request to the OO FOIA Officer for determination.

(b) *Procedures*. Persons wishing to request records from the Office of Operations may do so as follows:

(1) How. Submit each initial request for OO records as prescribed in 7 CFR 1.6.

(2) Where. Submit each initial request to the head of the unit that maintains the records. See Appendix A, List of Addresses. Contact the FOIA Officer for guidance as needed. Or, submit the request to the FOIA Officer for forwarding to the proper officials: FOIA Officer, Office of Operations, USDA, Room 134–W Administration Building, 14th & Independence Avenue SW., Washington, DC 20250.

§ 2811.5 Appeals.

Procedure. Any person whose initial request is denied in whole or in part may appeal that denial, in accordance with 7 CFR 1.6(e) and 1.8, to the Director, Office of Operations, USDA, Room 113–W Administration Building, 14th & Independence Avenue SW., Washington, DC 20250.

§ 2811.6 Fee schedule.

Department regulations provide for a schedule of reasonable standard charges for document search and duplication. See 7 CFR 1.2(b). Fees to be charged are set forth in 7 CFR part 1, subpart A, appendix A.

APPENDIX A TO PART 2811—LIST OF ADDRESSES

Section 1. GENERAL

This list provides the titles and mailing address of officials who have custody of OO records. The normal working hours of these offices are 8:30 a.m. to 5:00 p.m., Monday through Friday, exclusing holidays, during which public inspection and copying of certain kinds of records is permitted.

Section 2. List of Addresses

All of the following addresses are located at 14th Street and Independence Avenue, Washington, DC. Address mail as follows:

Director, Office of Operations, USDA, Room 113–W Administration Building, Washington, DC 20250.

FOIA Officer, Office of Operations, USDA, Room 134–W Administration Building, Washington, DC 20250.

Chief, Administrative Unit, Office of Operations, USDA, Room 134–W, Washington, DC 20250.

Chief, Executive Services Division, Office of Operations, USDA, Room 10–A, Administration Building, Washington, DC 20250.

Chief, Facilities Management Division, Office of Operations, USDA, Room S–313 South Building, Washington, DC 20250.

Chief, Mail and Reproduction Management Division, Office of Operations, USDA, Room 1540 South Building, Washington, DC 20250.

Chief, Personal Property Management Division, Office of Operations, USDA Room 1524 South Building, Washington, DC 20250.

Chief, Procurement Division, Office of Operations, USDA, Room 1550 South Building, Washington, DC 20250.

Chief, Real Property Management Division, Office of Operations, USDA, Room 1566, South Building, Washington, DC 20250.

PART 2812—DEPARTMENT OF AGRICULTURE GUIDELINES FOR THE DONATION OF EXCESS RESEARCH EQUIPMENT UNDER 15 U.S.C. 3710(i)

Sec.
2812.1 Purpose.
2812.2 Eligibility.
2812.3 Definitions.
2812.4 Procedures.
2812.5 Restrictions.
2812.6 Title.
2812.7 Costs.
2812.8 Accountability and recordkeeping.
2812.9 Disposal.
2812.10 Liabilities and losses.

AUTHORITY: 5 U.S.C. 301; E.O. 12999, 61 FR 17227, 3 CFR, 1997 Comp., p. 180.

SOURCE: 60 FR 34456, July 3, 1995, unless otherwise noted.

§ 2812.1 Purpose.

This part sets forth the procedures to be utilized by USDA agencies and laboratories in the donation of excess research equipment to educational institutions and non-profit organizations for the conduct of technical and scientific education and research activities as authorized by 15 U.S.C. 3710(i). Title to excess research equipment donated pursuant to 15 U.S.C. 3710(i), shall pass to the donee.

§ 2812.2 Eligibility.

Eligible organizations are educational institutions or non-profit organizations involved in the conduct of technical and scientific educational and research activities.

§ 2812.3 Definitions.

(a) *Cannibalization*. The dismantling of equipment for parts to repair or enhance other equipment. The residual is reported for disposal. Cannibalization is only authorized if the property value is greater when cannibalized than retention in the original condition.

(b) *Community-based educational organization* means nonprofit organizations that are engaged in collaborative projects with pre-kindergarten through twelfth grade educational institutions or that have education as their primary focus. Such organizations shall qualify as nonprofit educational institutions for purposes of section 203(j) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(j)).

(c) *Educational institution* means a public or private, non-profit educational institution, encompassing pre-kindergarten through twelfth grade and two- and four-year institutions of higher education, as well as public school districts.

(d) *Educationally useful Federal equipment* means computers and related peripheral tools (e.g., printers, modems, routers, and servers), including telecommunications and research equipment, that are appropriate for use in pre-kindergarten, elementary, middle, or secondary school education. It shall also include computer software, where the transfer of licenses is permitted.

(e) *Excess personal property*. Items of personal property no longer required by the controlling Federal agency.

(f) *Federal empowerment zone or enterprise community (EZ/EC)* means a rural area designated by the Secretary of Agriculture under 7 CFR part 25.

(g) *Non-profit organization* means any corporation, trust association, cooperative, or other organization which:

(1) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

(2) Is not organized primarily for profit; and

(3) Uses its net proceeds to maintain, improve, or expand its operations. For the purposes of this part, ''non-profit organizations'' may include utilities affiliated with institutions of higher education, or with state and local governments and federally recognized Indian tribes.

(h) *Research equipment*. Federal property determined to be essential to conduct scientific or technical educational research.

(i) *Technical and scientific education and research activities*. Non-profit tax exempt public educational institutions or government sponsored research organizations which serve to conduct technical and scientific education and research.

[60 FR 34456, July 3, 1995, as amended at 65 FR 69857, Nov. 21, 2000]

§ 2812.4 Procedures.

(a) [Reserved]

(b) Each agency head will designate in writing an authorized official to approve donations of excess property/equipment under this part.

(c) After USDA screening has been accomplished, excess personal property targeted for donation under this part will be made available on a first-come, first-served basis. If there are competing requests, donations will be made to eligible recipients in the following priority order:

(1) Educationally useful Federal equipment for pre-kindergarten through twelfth grade educational institutions and community-based educational organizations in rural EZ/EC communities;

(2) Educationally useful Federal equipment for pre-kindergarten through twelfth grade educational institutions and community-based educational organizations not in rural EZ/EC areas;

(3) All other eligible organizations.

(d) Upon reporting property for excess screening, if the pertinent USDA agency has an eligible organization in mind for donation under this part, it shall enter ''P.L. 102–245'' in the note field. The property will remain in the excess system approximately 30 days, and if no USDA agency or cooperator requests it during the excess cycle, the Departmental Excess Personal Property Coordinator will send the agency a copy of the excess report stamped, ''DONATION AUTHORITY TO THE HOLDING AGENCY IN ACCORDANCE WITH P.L. 102–245.'' The holding USDA agency may then donate the excess property to the eligible organization.

(e) Donations under this Part will be accomplished by preparing a Standard Form (SF) 122, ''Transfer Order-Excess Personal Property''.

(f) The SF–122 should be signed by both an authorized official of the agency and the Agency Property Management Officer. The following information should also be provided.

(1) Name and address of Donee Institution (Ship to)

(2) Agency name and address (holding Agency)

(3) Location of property

(4) Shipping instructions (Donee contact person)

(5) Complete description of property, including acquisition amount, serial no., condition code, quantity, and agency order no.

(6) This statement needs to be added following property descriptions. ''The property requested hereon is certified to be used for the conduct of technical and scientific education and research activities. This donation is pursuant to the provisions of Pub. L. 102–245.''

(g) Once the excess personal property/equipment is physically received, the donee is required to immediately return a copy of the SF–122 to the donating agency indicating receipt of requested items. Cancellations should be reported to DEPPC so the property can be reported to the General Services Administration (GSA).

NOTE: The USDA agency shall send an informational copy of the transaction to GSA.

[60 FR 34456, July 3, 1995, as amended at 65 FR 69857, Nov. 21, 2000]

§ 2812.5 Restrictions.

(a) The authorized official (see § 2812.4(b)) will approve the donation of excess personal property/equipment in the following groups to educational institutions or nonprofit organizations for the conduct of technical and scientific educational and research activities.

ELIGIBLE GROUPS

FSC group	Name
19	Ships, Small Craft, Pontoons, and Floating Docks.
23	Vehicles, Trailers and Cycles.
24	Tractors.
37	Agricultural Machinery and Equipment.
43	Pumps, Compressors.
48	Valves.
58	Communication, Detection, and Coherent Radiation Equipment.
59	Electrical and Electronic Equipment Components.
65	Medical, Dental, and Veterinary Equipment and Supplies.
66	Instruments and Laboratory Equipment.
67	Photographic Equipment.
68	Chemicals and Chemical Products.
70	General Purpose Automatic Data Processing Equipment, Software Supplies, and Support Equipment.
74	Office Machines and Visible Record Equipment.

NOTE: Requests for items in FSC Groups or Classes other than the above should be referred to the agency head for consideration and approval.

(b) Excess personal property/equipment may be donated for cannibalization purposes, provided the donee submits a supporting statement which clearly indicates that cannibalizing the requested property for secondary use has greater potential benefit than utilization of the item in its existing form.

§ 2812.6 Title.

Title to excess personal property/equipment donated under this Part will automatically pass to the donee once the sponsoring agency receives the SF–122 indicating that the donee has received the property.

§ 2812.7 Costs.

Donated excess personal property/equipment is free of charge. However, the donee must pay all costs associated with packaging and transportation, unless the sponsoring agency has made other arrangements. The donee should specify the method of shipment.

§ 2812.8 Accountability and recordkeeping.

USDA requires that property requested by a donee be placed into use by the donee within a year of receipt and used for at least 1 year thereafter. Donees must maintain accountable records for such property during this time period.

§ 2812.9 Disposal.

When the property is no longer needed by the donee, it may be used in support of other Federal projects or sold and the proceeds used for technical and scientific education and research activities.

§ 2812.10 Liabilities and losses.

USDA assumes no liability with respect to accidents, bodily injury, illness, or any other damages or loss related to excess personal property/equipment donated under this part. The donee is advised to insure or otherwise protect itself and others as appropriate.

CHAPTER XXIX—OFFICE OF ENERGY POLICY AND NEW USES, DEPARTMENT OF AGRICULTURE

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2900	Essential agricultural uses and volumetric requirements—Natural Gas Policy Act	103
2901	Administrative procedures for adjustments of natural gas curtailment priority	104
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PART 2900—ESSENTIAL AGRICULTURAL USES AND VOLUMETRIC REQUIREMENTS—NATURAL GAS POLICY ACT

Sec.
2900.1 General.
2900.2 Definitions.
2900.3 Essential agricultural uses.
2900.4 Natural gas requirements.
2900.6 Effective date.

AUTHORITY: Pub. L. 95–621, Nov. 9, 1978.

SOURCE: 44 FR 28786, May 17, 1979, unless otherwise noted.

§ 2900.1 General.

Section 401(c) of the Natural Gas Policy Act of 1978 (NGPA) requires the Secretary of Agriculture to determine the essential uses of natural gas, and to certify to the Secretary of Energy and the Federal Energy Regulatory Commission (FERC) the natural gas requirements, expressed either as volumes or percentages of use, of persons, or classes thereof, for essential agricultural uses in order to meet requirements of full food and fiber production. This rule covers establishments performing functions classed as essential agricultural uses whose natural gas supplies are distributed through the interstate pipeline systems even though such establishments may receive such gas directly from an intrastate pipeline or local distribution company. The rule provides to the Secretary of Energy (for purposes of Section 401(a) of the NGPA) and to the Federal Energy Regulatory Commission the following certifications:

(a) Essential agricultural *uses* of natural gas, expressed as classes of establishments that use gas for essential agricultural purposes; and

(b) Essential agricultural current *requirements* of natural gas, expressed as percentages of use.

§ 2900.2 Definitions.

(a) *Full food and fiber production* means the entire output of food and fiber produced for the domestic market, and for export, for building of reserves, and crops for soil building or conservation. This term also includes the processing of food and fiber into stable and storable products, and the maintenance of food quality after processing.

(b) *Establishment* means an economic unit, generally at a single physical location where business is conducted or where service or industrial operations are performed (for example, a factory, mill, store, mine, farm, sales office, or warehouse). (Note: This is the same definition used in the Standard Industrial Classification Manual, 1972 edition).

(c) *Essential Agricultural Use Establishment* means any Establishment, or the portion of an Establishment, which performs (or has the capability to perform) activities specified in § 2900.3.

(d) *Current Natural Gas Requirements* means the amount of natural gas required by an Essential Agricultural Use Establishment to perform the activities devoted to full food and fiber production.

(Pub. L. 95–621, Nov. 8, 1979, 92 Stat. 3350, 15 U.S.C. 3301 *et seq.*)

[44 FR 28786, May 17, 1979, as amended at 46 FR 47216, Sept. 25, 1981]

§ 2900.3 Essential agricultural uses.

For purposes of Section 401(c) of the NGPA the following classes or portions of classes are certified as essential agricultural uses in order to meet the requirements of full food and fiber production:

Essential Agricultural Uses

Industry SIC No. and Industry Description

FOOD AND NATURAL FIBER PRODUCTION

01 Agricultural Production—Crops
02 Agricultural Production—Livestock Excluding 0272—Horses and Other Equines, and Nonfood Portions of 0279—Animal Specialties, Not Elsewhere Classified.
0723 Crop Preparation Services for Market, Except Cotton Ginning (see fiber processing).
4971 Irrigation Systems.

FERTILIZER AND AGRICULTURAL CHEMICALS

(PROCESS AND FEEDSTOCK USE ONLY)

1474 Potash, Soda, and Borate Materials.
1475 Phosphate Rock.
1477 Sulfur.
2819 Industrial Inorganic Chemicals, n.e.c. (Agricultural related only).
2865 Cyclic Crudes and Cyclic Intermediates, Dyes and Organic Pigments (Agricutural related only).

2869 Industrial Organic Chemicals, n.e.c. (Agricutural related only).
287 Agricultural Chemicals.
2899 Chemicals and Chemical Preparations, n.e.c. (Salt—Feed grade only).
3274 Lime (Agricultural lime only).

FOOD AND NATURAL FIBER PROCESSING-FOOD

20 Food and Kindred Products Except 2047 Dog, Cat and Other Pet Food, and 2048 Prepared Feeds and Feed Ingredients for Animals and Fowls, Not Elsewhere Classified.
2869 Industrial Organic Chemicals (Monosodium Glutamate, Food-grade Citric Acid and Food-grade Enzymes only).
2899 Chemicals and Chemical Preparations, n.e.c. (Salt for food use only).

ANIMAL FEEDS, AND FOOD

(Process and Feedstock Use Only)

2047 Dog, Cat and Other Pet Food.
2048 Prepared Feeds and Feed Ingredients for Animals and Fowls, Not Elsewhere Classified.

NATURAL FIBER

0724 Cotton Ginning.
2141 Tobacco Stemming and Redrying.
2299 Textile Goods, n.e.c. (wool tops, combing and converting).
3111 Leather Tanning and Finishing.

FOOD QUALITY MAINTENANCE—FOOD PACKAGING

2641 Paper Coating and Glazing (food related only).
2643 Bags, Except Textile (food related only).
2645 Die Cut Paper and Paperboard (food related only).
2646 Pressed and Molded Pulp Goods (food related only).
2649 Converted Paper Products (food related only).
2651 Folding Paperboard Boxes (food related only).
2653 Corrugated and Solid Fiber Boxes (food related only).
2654 Sanitary Food Containers.
2655 Fiber Cans, Tubes, Drums, and Similar Products (food related only).
3079 Miscellaneous Plastic Products (food related only).
3221 Glass Containers (food related only).
3411 Metal Cans (food related only).
3412 Metal Shipping Barrels, Drums, Kegs, and Pails (food related only).
3466 Metal Crowns and Closures (Food Related Only).
3497 Metal Foil and Leaf (food related only).
Petroleum wax, synthetic petroleum wax and polyethylene wax (food grade only) as food containers.

MARKETING AND DISTRIBUTION

4221 Farm Product Warehousing and Storage.
4222 Refrigerated Warehousing.
514 Groceries and Related Products.
5153 Farm Product Raw Materials—Grain.
54 Food Stores.

ENERGY PRODUCTION

(1) Agricultural production on set-aside acreage or acreage diverted from the production of a commodity (as provided under the Agricultural Act of 1949) to be devoted to the production of any commodity for conversion into alcohol or hydrocarbons for use as motor fuel or other fuels;
(2) Sugar refining for production of alcohol; and
(3) Distillation of fuel-grade alcohol from food grains and other biomass by facilities in existence on June 30, 1980 which do not have the installed capability to burn coal lawfully, for a period ending June 29, 1985.

(Pub. L. 95–621, Nov. 8, 1978, 92 Stat. 3350; 15 U.S.C. 3301 *et seq.*)

[44 FR 28786, May 17, 1979, as amended at 45 FR 5298, Jan. 23, 1980; 45 FR 45887, 45888, July 8, 1980; 45 FR 50550, July 30, 1980; 47 FR 25320, June 11, 1982; 48 FR 43670, Sept. 26, 1983; 49 FR 37733, Sept. 26, 1984]

§ 2900.4 Natural gas requirements.

For purposes of Section 401(c), NGPA, the natural gas requirements for each Essential Agricultural Use Establishment, whether such Essential Agricultural Use Establishment is in existence on the effective date of this rule or comes into existence thereafter, are certified to be 100 percent of Current Natural Gas Requirements.

§ 2900.6 Effective date.

This rule shall become effective on May 14, 1979.

PART 2901—ADMINISTRATIVE PROCEDURES FOR ADJUSTMENTS OF NATURAL GAS CURTAILMENT PRIORITY

Sec.
2901.1 Purpose and scope.
2901.2 Definitions.
2901.3 Oral presentation.
2901.4 Interpretations.
2901.5 Modifications and rescissions.
2901.6 Exceptions and exemptions.
2901.7 Review of denials.
2901.8 Judicial review.
2901.9 Effective date.

AUTHORITY: Secs. 502, 507. Pub. L. 95–621, 92 Stat. 3397, 3405, Nov. 9, 1978.

SOURCE: 44 FR 55803, Sept. 28, 1979, unless otherwise noted.

§ 2901.1 Purpose and scope.

The purpose of this part 2901 is to provide procedures for the making of certain adjustments to the Secretary of Agriculture's Essential Agricultural Uses and Requirements regulations in accordance with section 502(c) of the Natural Gas Policy Act of 1978, in order to prevent special hardship, inequity, or an unfair distribution of burdens. The procedures in this part 2901 apply to any person seeking an interpretation of, modification of, rescission of, exception of, or exemption from the Essential Agricultural Uses and Requirements regulations in part 2900 of this chapter.

§ 2901.2 Definitions.

(a) *Person* means any individual, firm, sole proprietorship, partnership, association, company, joint venture or corporation.

(b) *Director* means the Director of the Office of Energy, U.S. Department of Agriculture.

(c) *Secretary* means the Secretary of the U.S. Department of Agriculture.

(d) *Adjustment* means an interpretation, modification, rescission of, exception to or exemption from the Essential Agricultural Uses and Requirements regulations, part 2900 of this chapter.

(e) *NGPA* means the Natural Gas Policy Act of 1978, Pub. L. 95–621.

(f) *Petitioner* means any person seeking an adjustment under this part 2901.

§ 2901.3 Oral presentation.

Any person seeking an adjustment under this part 2901 shall be given an opportunity to make an oral presentation of data, views and arguments in support of the request for an adjustment, provided that a request to make an oral presentation is submitted in writing with the request for the adjustment. An official of the Department of Agriculture shall preside at such oral presentation.

§ 2901.4 Interpretations.

(a) *Request for an interpretation.* (1) Any person seeking an interpretation of the Essential Agricultural Uses and Requirements regulations in part 2900 shall file a formal written request with the Director. The request should contain a full and complete statement of all relevant facts pertaining to the circumstances, act or transaction that is the subject of the request and to the action sought, and should state the special hardship, inequity, or unfair distribution of burdens that will be prevented by the interpretation sought and why the interpretation is consistent with the purposes of NGPA. The Director shall publish a notice in the FEDERAL REGISTER advising the public that a request for an interpretation has been received and that written comments will be accepted with respect thereto, if received within 20 days of the notice. The FEDERAL REGISTER notice will provide that copies of the request for interpretation from which confidential information has been deleted in accordance with paragraph (a)(2) of this section may be obtained from the petitioner.

(2) If the petitioner wishes to claim confidential treatment for any information contained in the request or other documents submitted under this part 2901, such person shall file together with the document a second copy of the document from which has been deleted the information for which such person wishes to claim confidential treatment. The petitioner shall indicate in the original document that it is confidential or contains confidential information and may file a statement specifying the justification for non-disclosure of the information for which non-disclosure is sought. The Director shall consider such requests, and subject to the Freedom of Information Act, 5 U.S.C. 552 and other applicable laws and regulations, shall treat such information as confidential.

(b) *Investigations.* The Director may initiate an investigation of any statement in a request and utilize in his evaluation any relevant facts obtained in such investigation. The Director may accept submissions from third persons relevant to any request for interpretation provided that the petitioner

is afforded an opportunity to respond to all such submissions. In evaluating a request for interpretation, the Director may consider any other source of information.

(c) *Applicability*. Any interpretation issued hereunder shall be issued on the basis of the information provided on the request, as supplemented by other information brought to the attention of the Director during the consideration of the request. The interpretation shall, therefore, depend for its authority on the accuracy of the factual statement and may be relied upon only to the extent that the facts of the actual situation correspond to those upon which the interpretation was based.

(d) *Issuance of an interpretation*. Upon consideration of the request for interpretation and other relevant information received or obtained by the Director, the Director may issue a written interpretation. A copy of the written interpretation shall be provided to FERC and the Secretary of Energy. Notice of the issuance of the written interpretation shall be published in the FEDERAL REGISTER. The granting of a request for issuance of an interpretation shall be considered final agency action for purposes of judicial review under § 2901.8.

(e) *Denial of an interpretation*. An interpretation shall be considered denied for purpose of review of such denial under § 2901.7 only if:

(1) The Director notifies the petitioner in writing that the request is denied and that an interpretation will not be issued; or

(2) The Director does not respond to a request for an interpretation, by (i) issuing an interpretation, or (ii) giving notice of when an interpretation will be issued within 45 days of the date of receipt of the request, or within such extended time as the Director may prescribe by written notice within the 45-day period.

(f) For purposes of this part 2901 the word *interpretation* shall not be deemed to include a simple clarification of an actual or purported ambiguity in part 2900. The Director reserves the right to determine whether a request involves simple clarification and shall advise the requester of his decision.

§ 2901.5 Modifications and rescissions.

(a) *Request for modification or rescission*. (1) Any person seeking a modification or a rescission of the Essential Agricultural Uses and Requirements regulations of part 2900 shall file a formal written request with the Director. The request shall contain a full and complete statement of all relevant facts pertaining to the circumstance, act or transaction that is the subject of the request and to the action sought. The request should state the special hardship, inequity or unfair distribution of burdens that will be prevented by making the modification or rescission.

(2) If the petitioner wishes to claim confidential treatment for any information contained in the request or other documents submitted under this part 2901, such person shall file together with the document a second copy of the document from which has been deleted the information for which such person wishes to claim confidential treatment. The petitioner shall indicate in the original document that it is confidential or contains confidential information and may file a statement specifying the justification for non-disclosure of the information for which non-disclosure is sought. The Director shall consider such requests, and subject to the Freedom of Information Act, 5 U.S.C. 552 and other applicable laws and regulations, shall treat such information as confidential.

(3) The request shall be filed as a petition for rulemaking and treated in accordance with the procedures, as applicable, of 7 CFR part 1, subpart B.

(b) *Institution of rulemaking*. Upon consideration of the request for modification or rescission and other relevant information received or obtained by the Director, the Director may institute rulemaking proceedings in accordance with the Administrative Procedures Act 5 U.S.C. 551 *et seq.* and applicable regulations.

(c) *Denial of a modification or rescission*. If the Director (1) denies the request for modification or rescission in writing by notifying the petitioner that he does not intend to institute rulemaking proceedings as proposed and stating the reasons therefor, or (2) does not respond to a request for a

modification or rescission in accordance with paragraph (b) of this section or (3) notifies the petitioner in writing that the matter is under continuing consideration and that no decision can be made at that time because of the inadequacy of available information, changing circumstances or other reasons as set forth therein, within 45 days of the date of the receipt thereof, or within such extended time as the Director may prescribe by written notice within that 45-day period, the request shall be considered denied for the purpose of review of such denial under § 2901.7.

§ 2901.6 Exceptions and exemptions.

(a) *Request for exception or exemption.* (1) Any person seeking an exception or exemption from the Essential Agricultural Uses and Requirements regulations in part 2900 shall file a formal written request with the Director. The request shall contain a full and complete statement of all relevant facts pertaining to the circumstance, act, or transaction that is the subject of the request and to the action sought. The request should state the special hardship, inequity or unfair distribution of burdens that will be prevented by making the exception or exemption. The Director shall publish a notice in the FEDERAL REGISTER advising the public that a request for an exception or exemption has been received and that written comments will be accepted with respect thereto if received within 20 days of the notice. The FEDERAL REGISTER notice will provide that copies of the request from which confidential information has been deleted in accordance with paragraph (a)(2) of this section may be obtained from the petitioner. The Petitioner shall be afforded an opportunity to respond to such submissions.

(2) If the petitioner wishes to claim confidential treatment for any information contained in the request or other documents submitted under this part 2901, such person shall file together with the document a second copy of the document from which has been deleted the information for which such person wishes to claim confidential treatment. The petitioner shall indicate in the original document that it is confidential or contains confidential information and may file a statement specifying the justification for non-disclosure of the information for which non-disclosure is sought. The Director shall consider such requests, and subject to the Freedom of Information Act, 5 U.S.C. 552 and other applicable laws and regulations, shall treat such information as confidential.

(b) *Decision and order.* Upon consideration of the request for an exception or exemption and other relevant information received or obtained during the proceedings, the Director shall issue an order granting or denying the request. The Director shall publish a notice in the FEDERAL REGISTER of the issuance of a decision and order on the request. The granting of a request for an exception or exemption shall be considered final agency action for purposes of judicial review under § 2901.8.

(c) *Denial of an exception or exemption.* A request for an exception or exemption shall be considered denied for purposes of review of such denial under § 2901.7 only if:

(1) The Director has notified the petitioner in writing that the request is denied under paragraph (b) of this section; or

(2) The Director does not respond to a request for an exception or exemption by (i) granting the request for an exception or exemption under paragraph (b) of this section or (ii) giving notice of when a decision will be made within 45 days of the receipt of the request, or with such extended time as the Director may prescribe by written notice within the 45-day period.

§ 2901.7 Review of denials.

(a) *Request for review.* (1) Any person aggrieved or adversely affected by a denial of a request for any interpretation under § 2901.4 may request a review of the denial by the Secretary, within 30 days from the date of the denial.

(2) Any person aggrieved or adversely affected by a denial of a request for a modification or rescission under § 2901.5, may request a review of the denial by the Secretary within 30 days from the date of the denial.

(3) Any person aggrieved or adversely affected by a denial of a request for an exception or an exemption under

§ 2901.6, may request a review of the denial by the Secretary within 30 days from the date of the denial.

(b) *Procedures.* Any request for review under § 2901.7(a) shall be in writing and shall set forth the specific ground upon which the request is based. There is no final agency action for purposes of judicial review under § 2901.8 until that request has been acted upon. If the request for review has not been acted upon within 30 days after it is received, the request shall be deemed to have been denied. That denial shall then constitute final agency action for the purpose of judicial review under § 2901.8.

§ 2901.8 Judicial review.

Any person aggrieved or adversely affected by a final agency action taken on a request for an adjustment under this section may obtain judicial review in accordance with section 506 of the Natural Gas Policy Act of 1978.

§ 2901.9 Effective date.

This rule shall become effective on October 29, 1979.

PART 2902 [RESERVED]

PART 2903—BIODIESEL FUEL EDUCATION PROGRAM

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AUTHORITY: 7 U.S.C. 8104; 5 U.S.C. 301.

SOURCE: 68 FR 56139, Sept. 30, 2003, unless otherwise noted.

Subpart A—General Information

§ 2903.1 Applicability of regulations.

(a) The regulations of this part only apply to Biodiesel Fuel Education Program grants awarded under the provisions of section 9004 of the Farm Security and Rural Investment Act of 2002 (FSRIA) (7 U.S.C. 8104) which authorizes the Secretary to award competitive grants to eligible entities to educate governmental and private entities that operate vehicle fleets, other interested entities (as determined by the Secretary), and the public about the benefits of biodiesel fuel use. Eligibility is limited to nonprofit organizations and institutions of higher education (as defined in sec. 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)) that have demonstrated both knowledge of biodiesel fuel production, use, or distribution and the ability to conduct educational and technical support programs. The Secretary delegated this authority to the Chief Economist, who in turn delegated this authority to the Director of OEPNU.

(b) The regulations of this part do not apply to grants awarded by the Department of Agriculture under any other authority.

§ 2903.2 Purpose of the program.

The Biodiesel Fuel Education Program seeks to familiarize public and

private vehicle fleet operators, other interested entities, and the public, with the benefits of biodiesel, a relatively new fuel option in the United States. It will also address concerns previously identified by fleet operators and other potential users of this alternative fuel, including the need to balance the positive environmental, social and human health impacts of biodiesel utilization with the increased per gallon cost to the user. It is the Program's goal to stimulate biodiesel demand and encourage the further development of a biodiesel industry in the United States.

§ 2903.3 Eligibility.

(a) Eligibility is limited to nonprofit organizations and institutions of higher education that have demonstrated both knowledge of biodiesel fuel production, use, or distribution and the ability to conduct educational and technical support programs.

(b) Award recipients may subcontract to organizations not eligible to apply provided such organizations are necessary for the conduct of the project.

§ 2903.4 Indirect costs.

(a) For the Biodiesel Fuel Education Program, applicants should use the current indirect cost rate negotiated with the cognizant Federal negotiating agency. Indirect costs may not exceed the negotiated rate. If no indirect cost rate has been negotiated, a reasonable dollar amount for indirect costs may be requested, which will be subject to approval by USDA. In the latter case, if a proposal is recommended for funding, an indirect cost rate proposal must be submitted prior to award to support the amount of indirect costs requested.

(b) A proposer may elect not to charge indirect costs and, instead, charge only direct costs to grant funds. Grantees electing this alternative will not be allowed to charge, as direct costs, indirect costs that otherwise would be in the grantee's indirect cost pool under the applicable Office of Management and Budget cost principles. Grantees who request no indirect costs will not be permitted to revise their budgets at a later date to charge indirect costs to grant funds.

§ 2903.5 Matching requirements.

There are no matching funds requirements for the Biodiesel Fuel Education Program and matching resources will not be factored into the review process as evaluation criteria.

Subpart B—Program Description

§ 2903.6 Project types.

OEPNU intends to award continuation grants to successful Biodiesel Fuel Education Program applicants. A continuation grant is a grant instrument by which the Department agrees to support a specified level of effort for a predetermined project period with a statement of intention to provide additional support at a future date, provided that performance has been satisfactory, appropriations are available for this purpose, and continued government support would be in the best interest of the Federal government and the public. If these three elements are met, OEPNU plans to provide additional support to the funded project(s).

§ 2903.7 Project objectives.

(a) Successful projects will develop practical indicators or milestones to measure their progress towards achieving the following objectives:

(1) Enhance current efforts to collect and disseminate biodiesel information;

(2) Coordinate with other biodiesel educational or promotional programs, and with Federal, State and local programs aimed at encouraging biodiesel use, including the EPAct program;

(3) Create a nationwide networking system that delivers biodiesel information to targeted audiences, including users, distributors and other infrastructure-related personnel;

(4) Identify and document the benefits of biodiesel (e.g., lifecycle costing); and

(5) Gather data pertaining to information gaps and develop strategies to address the gaps.

(b) [Reserved]

Subpart C—Preparation of an Application

§ 2903.8 Program application materials.

OEPNU will publish periodic program announcements to notify potential applicants of the availability of funds for competitive continuation grants. The program announcement will provide information about obtaining program application materials.

§ 2903.9 Content of an application.

(a) Applications should be prepared following the guidelines and the instructions in the program announcement. At a minimum, applications shall include: a proposal cover page, project summary, project description, information about key personnel, documentation of collaborative arrangements, information about potential conflicts-of-interest, budget forms and a budget narrative, information about current and pending support, and assurance statements.

(b) Proper preparation of applications will assist reviewers in evaluating the merits of each application in a systematic, consistent fashion. Specific instructions regarding additional application content requirements and the ordering of application contents will be included in the program announcement. These will include instructions about paper size, margins, font type and size, line spacing, page numbering, the inclusion of illustrations, and electronic submission.

§ 2903.10 Submission of an application.

The program announcement will provide the deadline date for submitting an application, the number of copies of each application that must be submitted, and the address to which proposals must be submitted.

§ 2903.11 Acknowledgment of applications.

The receipt of all applications will be acknowledged. Applicants who do not receive an acknowledgment within 60 days of the submission deadline should contact the program contact indicated on the program announcement. Once the application has been assigned a proposal number, that number should be cited on all future correspondence.

Subpart D—Application Review and Evaluation

§ 2903.12 Application review.

(a) Reviewers will include government and non-government individuals. All reviewers will be selected based upon training and experience in relevant scientific, extension, or education fields, taking into account the following factors:

(1) The level of relevant formal scientific, technical education, or extension experience of the individual, as well as the extent to which an individual is engaged in relevant research, education, or extension activities; and

(2) The need to include as reviewers experts from various areas of specialization within relevant scientific, education, or extension fields.

(b) In addition, when selecting non-government reviewers, the following factors will be considered:

(1) The need to include as reviewers other experts (e.g., producers, range or forest managers/operators, and consumers) who can assess relevance of the applications to targeted audiences and to program needs;

(2) The need to include as reviewers experts from a variety of organizational types (e.g., colleges, universities, industry, state and Federal agencies, private profit and non-profit organizations) and geographic locations;

(3) The need to maintain a balanced composition of reviewers with regard to minority and female representation and an equitable age distribution; and

(4) The need to include reviewers who can judge the effective usefulness to producers and the general public of each application.

(c) Authorized departmental officers will compile application reviews and recommend awards to OEPNU. OEPNU will make final award decisions.

§ 2903.13 Evaluation criteria.

(a) The following evaluation criteria will be used in reviewing applications submitted for the Biodiesel Fuel Education Program:

(1) Relevance of proposed project to current and future issues related to the production, use, distribution, fuel quality, and fuel properties of biodiesel, including:

(i) Demonstrated knowledge about markets, state initiatives, impacts on local economies, regulatory issues, standards, and technical issues;

(ii) Demonstrated knowledge about issues associated with developing a biodiesel infrastructure; and

(iii) Quality and extent of stakeholder involvement in planning and accomplishment of program objectives.

(2) Reasonableness of project proposal, including:

(i) Sufficiency of scope and strategies to provide a consistent message in keeping with existing standards and regulations;

(ii) Adequacy of Project Description, suitability and feasibility of methodology to develop and implement program;

(iii) Clarity of objectives, milestones, and indicators of progress;

(iv) Adequacy of plans for reporting, assessing and monitoring results over project's duration; and

(v) Demonstration of feasibility, and probability of success.

(3) Technical quality of proposed project, including:

(i) Suitability and qualifications of key project personnel;

(ii) Institutional experience and competence in providing alternative fuel education, including:

(A) Demonstrated knowledge about programs involved in alternative fuel research and education;

(B) Demonstrated knowledge about other fuels, fuel additives, engine performance, fuel quality and fuel emissions;

(C) Demonstrated knowledge about Federal, State and local programs aimed at encouraging alternative fuel use;

(D) Demonstrated ability in providing educational programs and developing technical programs; and

(E) Demonstrated ability to analyze technical information relevant to the biodiesel industry.

(iii) Adequacy of available or obtainable resources; and

(iv) Quality of plans to administer and maintain the project, including collaborative efforts, evaluation and monitoring efforts.

(b) [Reserved]

§ 2903.14 Conflicts of interest and confidentiality.

(a) During the peer evaluation process, extreme care will be taken to prevent any actual or perceived conflicts of interest that may impact review or evaluation. Determinations of conflicts of interest will be based on the academic and administrative autonomy of an institution. The program announcement will specify the methodology for determining such autonomy.

(b) Names of submitting institutions and individuals, as well as application content and peer evaluations, will be kept confidential, except to those involved in the review process, to the extent permitted by law. In addition, the identities of peer reviewers will remain confidential throughout the entire review process. Therefore, the names of the reviewers will not be released to applicants. At the end of the fiscal year, names of reviewers will be made available in such a way that the reviewers cannot be identified with the review of any particular application.

Subpart E—Award Administration

§ 2903.15 General.

Within the limit of funds available for such purpose, the Authorized Departmental Officer (ADO) shall make grants to those responsible, eligible applicants whose applications are judged most meritorious under the procedures set forth in this part. The date specified by the ADO as the effective date of the grant shall be no later than September 30 of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. It should be noted that the project need not be initiated on the grant effective date, but as soon thereafter as practical so that project goals may be attained within the funded project period. All funds granted by OEPNU under this program shall be expended solely for the purpose for which the funds are granted in accordance

with the approved application and budget, the regulations of this part, the terms and conditions of the award, the applicable Federal cost principles, and the applicable Department assistance regulations (including part 3019 of this title).

§ 2903.16 Organizational management information.

Specific management information relating to an applicant shall be submitted on a one-time basis as part of the responsibility determination prior to the award of a grant identified under this program, if such information has not been provided previously. Copies of forms recommended for use in fulfilling these requirements will be provided as part of the preaward process.

§ 2903.17 Award document and notice of award.

(a) The award document will provide pertinent instructions and information including, at a minimum, the following:

(1) Legal name and address of performing organization or institution to whom OEPNU has issued an award under this program;

(2) Title of project;

(3) Name(s) and institution(s) of PDs chosen to direct and control approved activities;

(4) Identifying award number assigned by the Department;

(5) Project period;

(6) Total amount of Departmental financial assistance approved by OEPNU during the project period;

(7) Legal authority(ies) under which the award is issued;

(8) Appropriate Catalog of Federal Domestic Assistance (CFDA) number;

(9) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the award; and

(10) Other information or provisions deemed necessary by OEPNU and the Authorized Departmental Officer to carry out the awarding activities or to accomplish the purpose of a particular award.

(b) [Reserved]

Subpart F—Supplementary Information

§ 2903.18 Access to review information.

Copies of reviews, not including the identity of reviewers, and a summary of the comments will be sent to the applicant PD after the review process has been completed.

§ 2903.19 Use of funds; changes.

(a) *Delegation of fiscal responsibility*. Unless the terms and conditions of the award state otherwise, the awardee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of award funds.

(b) *Changes in project plans*. (1) The permissible changes by the awardee, PD(s), or other key project personnel in the approved project shall be limited to changes in methodology, techniques, or other similar aspects of the project to expedite achievement of the project's approved goals. If the awardee or the PD(s) is uncertain as to whether a change complies with this provision, the question must be referred to the Authorized Departmental Officer (ADO) for a final determination. The ADO is the signatory of the award document, not the program contact.

(2) Changes in approved goals or objectives shall be requested by the awardee and approved in writing by the ADO prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

(3) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the awardee and approved in writing by the ADO prior to effecting such changes.

(4) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the awardee and approved in writing by the ADO prior to effecting such transfers, unless prescribed otherwise in the terms and conditions of the award.

(5) *Changes in project period*. The project period may be extended by

OEPNU without additional financial support, for such additional period(s) as the ADO determines may be necessary to complete or fulfill the purposes of an approved project, but in no case shall the total project period exceed five years. Any extension of time shall be conditioned upon prior request by the awardee and approval in writing by the ADO, unless prescribed otherwise in the terms and conditions of award.

(6) *Changes in approved budget.* Changes in an approved budget must be requested by the awardee and approved in writing by the ADO prior to instituting such changes if the revision will involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal cost principles, Departmental regulations, or award.

§ 2903.20 Reporting requirements.

The award document will give instructions regarding the submission of progress reports, including the frequency and required contents of the reports.

§ 2903.21 Applicable Federal statutes and regulations.

Several Federal statutes and regulations apply to grant applications considered for review and to project grants awarded under this program. These include, but are not limited to:

7 CFR Part 1, subpart A—USDA implementation of the Freedom of Information Act.

7 CFR Part 3—USDA implementation of OMB Circular No. A–129 regarding debt collection.

7 CFR Part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR Part 3017—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

7 CFR Part 3018—USDA implementation of Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans.

7 CFR Part 3019—USDA implementation of OMB Circular A–110, Uniform Administrative Requirements for Grants and Other Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR Part 3052—USDA implementation of OMB Circular No. A–133, Audits of States, Local Governments, and Non-profit Organizations. 29 U.S.C. 794 (sec. 504, Rehabilitation Act of 1973) and 7 CFR part 15b (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs. 35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

§ 2903.22 Confidential aspects of applications and awards.

When an application results in an award, it becomes a part of the record of USDA transactions, available to the public upon specific request. Information that the Secretary determines to be of a confidential, privileged, or proprietary nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as confidential, privileged, or proprietary should be clearly marked within the application. The original copy of an application that does not result in an award will be retained by the Agency for a period of one year. Other copies will be destroyed. Such an application will be released only with the consent of the applicant or to the extent required by law. An application may be withdrawn at any time prior to the final action thereon.

§ 2903.23 Definitions.

For the purpose of this program, the following definitions are applicable:

Authorized departmental officer or *ADO* means the Secretary or any employee of the Department who has the authority to issue or modify grant instruments on behalf of the Secretary.

Authorized organizational representative or *AOR* means the president or chief executive officer of the applicant organization or the official, designated by the president or chief executive officer of the applicant organization, who has the authority to commit the resources of the organization.

Biodiesel means a monoalkyl ester that meets the requirements of an appropriate American Society for Testing and Materials Standard.

Budget period means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

Department or *USDA* means the United States Department of Agriculture.

Education activity means an act or process that imparts knowledge or skills through formal or informal training and outreach.

Grant means the award by the Secretary of funds to an eligible recipient for the purpose of conducting the identified project.

Grantee means the organization designated in the award document as the responsible legal entity to which a grant is awarded.

Institution of higher education, as defined in sec. 101 of the Higher Education Act of 1965 (20 U.S.C. 1001), means an educational institution in any State that:

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which the institution awards a bachelor's degree or provides not less than a two-year program that is acceptable for full credit toward such a degree;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary of Education for the granting of preaccreditation status, and the Secretary of Education has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

OEPNU means the Office of Energy Policy and New Uses.

Peer review is an evaluation of a proposed project performed by experts with the scientific knowledge and technical skills to conduct the proposed work whereby the technical quality and relevance to the program are assessed.

Prior approval means written approval evidencing prior consent by an authorized departmental officer (as defined in this section).

Program means the Biodiesel Fuel Education Program.

Project means the particular activity within the scope of the program supported by a grant award.

Project director or *PD* means the single individual designated by the grantee in the grant application and approved by the Secretary who is responsible for the direction and management of the project, also known as a principal investigator for research activities.

Project period means the period, as stated in the award document and modifications thereto, if any, during which Federal sponsorship begins and ends.

Secretary means the Secretary of Agriculture and any other officer or employee of the Department to whom the authority involved may be delegated.

PART 2904 [RESERVED]

CHAPTER XXX—OFFICE OF THE CHIEF FINANCIAL OFFICER, DEPARTMENT OF AGRICULTURE

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PART 3010 [RESERVED]

PART 3011—AVAILABILITY OF INFORMATION TO THE PUBLIC

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AUTHORITY: 5 U.S.C. 301 and 522; 7 CFR 1.3.

SOURCE: 54 FR 51869, Dec. 19, 1989, unless otherwise noted.

§ 3011.1 General statement.

This part is issued in accordance with 7 CFR 1.3 of the Department of Agriculture regulations governing the availability of records (7 CFR 1.1–1.23 and Appendix A) under the Freedom of Information Act (5 U.S.C. 552, as amended). These regulations supplement the Department's regulations by providing guidance for any person wishing to request records from the Office of Finance and Management (OFM).

§ 3011.2 Public inspection and copying.

(a) *Background*. 5 U.S.C. 552(a)(2) requires each agency to maintain and make available for public inspection and copying certain kinds of records.

(b) *Procedure*. To gain access to OFM records that are available for public inspection, contact the Freedom of Information Act Officer by writing to the address shown in § 3011.4(b) of this title.

§ 3011.3 Indexes.

5 U.S.C. 552(a)(2) also requires that each agency maintain and make available for public inspection and copying current indexes providing identifying information for the public with regard to any records which are made available for public inspection and copying. OFM does not maintain any materials within the scope of these requirements.

§ 3011.4 Initial requests for records.

(a) *Background*. The Freedom of Information Act Officer is authorized to:

(1) Grant or deny requests for OFM records,

(2) Make discretionary release of OFM records when the benefit to the public in releasing the document outweighs any harm likely to result from disclosure,

(3) Reduce or waive fees to be charged where determined to be appropriate.

(b) *Procedures*. This part provides the titles and mailing address of officials who are authorized to release records to the public. The normal working hours of these offices are 8:30 a.m. to 5:00 p.m., local time, Monday through Friday, excluding holidays, during which public inspection and copying of certain kinds of records is permitted. Persons wishing to request records from the Office of Finance and Management may do so by submitting each initial written request for OFM records to the appropriate OFM official shown below:

(1) For records held at the Washington, DC Headquarters units, submit initial requests to the Freedom of Information Act Officer, Office of Finance and Management, USDA, 14th and Independence Ave., SW., Room 117–W, Administration Building, Washington, DC 20250–9000.

(2) For records held at the National Finance Center in New Orleans, Louisiana, submit initial requests to the Freedom of Information Act Officer, National Finance Center, OFM, USDA, 13800 Old Gentilly Road, Building 350, (P.O. Box 60,000, New Orleans, LA 70160), New Orleans, Louisiana 70129.

If the requester is unable to determine the official to whom the request should be addressed, it should be submitted to the Headquarters Freedom of Information Act Officer who will refer such requests to the appropriate officials.

§ 3011.5 Appeals.

Any person whose initial request is denied in whole or in part may appeal that denial, in accordance with 7 CFR 1.6(e) and 1.8, to the Director, Office of Finance and Management, USDA, Room 117–W, Administration Building, 14th and Independence Ave., Washington, DC 20250–9000.

§ 3011.6 Fee schedule.

Departmental regulations provide for a schedule of reasonable standard

charges for document search and duplication. See 7 CFR 1.2(b). Fees to be charged are set forth in 7 CFR part 1, subpart A, Appendix A.

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APPENDIX A TO PART 3015—DEFINITIONS
APPENDIX B TO PART 3015—OMB CIRCULAR A–128, ''AUDITS OF STATE AND LOCAL GOVERNMENTS''

AUTHORITY: 5 U.S.C. 301; 31 U.S.C. 901–903; 7 CFR 2.28, unless otherwise noted.

SOURCE: 46 FR 55639, Nov. 10, 1981, unless otherwise noted.

Subpart A—General

§ 3015.1 Purpose and scope of this part.

(a)(1) This part specifies the set of principles for determining allowable costs under USDA grants and cooperative agreements to State and local governments, universities, non-profit and for-profit organizations as set forth in OMB Circulars A–87, A–21, A–122, and 48 CFR 31.2, respectively. This part also contains the general provisions that apply to all grants and cooperative agreements made by USDA.

(2) Additionally, this part establishes intergovernmental review provisions required by Executive Order 12372 for any programs listed in the FEDERAL REGISTER as covered, and policy on competition in awarding discretionary grants and cooperative agreements.

(3) Rules for grants and cooperative agreements to State and local governments are found in part 3016 of this chapter.

(4) Rules for grants and cooperative agreements to institutions of higher education, hospitals, and other non-profit organizations are found in part 3019 of this chapter.

(b) These rules supersede and take precedence over any individual USDA agency regulations and directives dealing with the administration of grants and cooperative agreements to the extent such regulations and directives are inconsistent with this part, unless such inconsistency is based on a statutory provision or an exception has been obtained from OMB. (See § 3015.3.) Definitions for the terms used in this part are set forth in Appendix A. Definitions for the implementation of standard audit requirements for State and local governments and Indian Tribal governments are contained in Subpart I—Audits.

(c) The purpose of this part is to simplify, standardize, and improve the administration of USDA grants and cooperative agreements.

(d) Responsibility for developing and interpreting the material for this part and in keeping it up-to-date is delegated to the Office of the Chief Financial Officer.

[46 FR 55639, Nov. 10, 1981, as amended at 62 FR 45949, Aug. 29, 1997; 65 FR 49479, Aug. 14, 2000]

§ 3015.2 Applicability.

(a) *Grants and cooperative agreements.* This part applies to USDA grants and cooperative agreements. For each substantive provision in this part, either the words of the provision itself or other words in the same subpart tell whether the provision applies to subgrants. Exemptions to this part may be applicable to certain kinds of recipients. (See paragraph (d) of this section.)

(b) *Terminology applicable to this part.* This part's substantive rules are the same for grants and cooperative agreements. Many of the rules are also the same for subgrants. Therefore, certain simplified terminology is used in the text. Specifically in all portions of this part:

(1) Each provision that applies to *grants* also applies to *cooperative agreements*, even though the latter term does not appear in the provisions.

(2) Each provision that applies to *recipients of grants* applies to *recipients of cooperative agreements*, even though the latter term does not appear in the provision.

(3) The term *recipient* refers equally to recipients of grants and recipients of cooperative agreements.

(4) The term *awarding agency* refers equally to a USDA agency that awards a grant and to one that awards a cooperative agreement.

(5) The term *subgrant* refers equally to certain awards under grants and to the same kinds of awards under cooperative agreements.

(c) *Public institutions of higher education and hospitals.* Grants, cooperative agreements and subgrants awarded to institutions of higher education and hospitals operated by a government are subject only to the provisions of this part that apply to non-governmental organizations.

(d) *Recipients to which this part does not automatically apply.* This part does not automatically apply to the kinds of recipients listed below unless other conditions set forth in the grant, cooperative agreement, subgrant, or specific subpart in this part make all or specified portions apply:

(1) Foreign governments or organizations,

(2) International organizations, such as the United Nations,

(3) Agencies or instrumentalities of the Federal government,

(4) Individuals,

(5) State and local governments, and

(6) Institutions of higher education, hospitals and other non-profit organizations.

(e) *Collaborative arrangements.* (1) Where permitted by the terms of the

award, a recipient may enter into collaborative arrangements with other organizations to jointly carry out activities with grant or cooperative agreement funds. In this kind of situation, the arrangement between the recipient and each collaborating organization is subject to the rules in this part that apply to subgrants awarded by the recipients. (See the example shown in § 3015.195.)

(2) This paragraph (e) does not apply to arrangements where the organizations receive an award jointly. In this case, they are not a recipient and subrecipient but, as the award notice states, joint recipients.

[46 FR 55639, Nov. 10, 1981, as amended at 53 FR 8044, Mar. 11, 1988; 65 FR 49480, Aug. 14, 2000]

§ 3015.3 Conflicting policies and deviations.

(a) *Statutory provisions.* Federal statutes that apply to some USDA grant programs may contain provisions that conflict with this part. Those statutory provisions take precedence over this part.

(b) *Nonstatutory provisions.* USDA awarding agencies occasionally develop grant provisions that are inconsistent with this part. USDA attempts to keep these provisions to a minimum by internal procedures that require these provisions to be justified to appropriate officials of USDA and OMB. If the conflicting provisions are of long-term and general applicability, O&F may require that the awarding agency (1) publish the conflicting provision as a notice in the FEDERAL REGISTER and (2) give the public an opportunity to comment before making the regulations final.

(c) *Nonstatutory provisions-subgrants.* If a provision of a subgrant conflicts with this part, the recipient is considered as violating the provisions of the grant, unless the subgrant provision is authorized in writing, by the awarding agency.

(d) *OMB exceptions.* In some cases, OMB grants exceptions from the requirements of the Circulars, when permissible under existing laws. In those instances where a program receives an exception to a particular provision of a Circular, the exception takes precedence over this part.

§ 3015.4 Special restrictive terms.

(a) Occasionally an awarding agency, or a recipient awarding a subgrant, may find that a particular recipient:

(1) Is financially unstable,

(2) Has a history of poor performance, or

(3) Has a management system that does not meet the standards in this part.

In these cases the awarding agency may impose special conditions that are more restrictive than otherwise permitted by this part. If so, the awarding agency must tell the recipient in writing why it is imposing the special conditions and what corrective action is needed.

(b) At the time an awarding agency imposes a special grant condition under paragraph (a) of this section, the awarding agency, through O&F, shall notify OMB and other interested parties.

(c) At the time a recipient imposes a special restrictive subgrant condition under paragraph (a) of this section, it must notify the awarding agency, giving full particulars. The awarding agency, through O&F, shall then notify OMB and other interested parties.

(d) A special restrictive grant or subgrant condition under paragraph (a) of this section is considered consistent with this part.

Subpart B—Cash Depositories

§ 3015.10 Physical segregation and eligibility.

Except as provided in § 3015.11, awarding agencies shall not impose grant or subgrant conditions which:

(a) Require the recipient to use a separate bank account for the deposit of grant or subgrant funds, or

(b) Establish any eligibility requirements for banks or other financial institutions in which recipients deposit grant or subgrant funds.

§ 3015.11 Separate bank accounts.

A separate bank account shall be required when applicable letter of credit agreements provide that funds will not

be drawn until the recipient's checks are presented to the bank for payment.

§ 3015.12 Moneys advanced to recipients.

Any moneys advanced to recipients which are subject to the control or regulation of the United States or any of its officers, agents, or employees (public moneys as defined in Treasury Circular 176, as amended), must be deposited in a bank with Federal Deposit Insurance Corporation (FDIC) insurance coverage and the balance exceeding the FDIC coverage must be collaterally secured.

§ 3015.13 Minority and women-owned banks.

Consistent with the national goal of expanding opportunities for minority business enterprises, recipients, and subrecipients are encouraged to use minority and women-owned banks. Upon request, awarding agencies will furnish a listing of minority and women-owned banks to recipients.

Subpart C—Bonding and Insurance

§ 3015.15 General.

In administering grants, subgrants, and cooperative agreements, recipients shall observe their regular requirements and practices with respect to bonding and insurance. No additional bonding and insurance requirements, including fidelity bonds, shall be imposed by the provisions of the grant, subgrant, or cooperative agreement except as provided in §§ 3015.16 through 3015.18.

§ 3015.16 Construction and facility improvement.

(a) *Scope*. This section covers requirements for bid guarantees, performance bonds, and payment bonds when the recipients will contract or subcontract for construction or facility improvement (including alterations and renovations of real property) under a grant or subgrant.

(b) *Bids and contracts or subcontracts of $100,000 or less*. Unless otherwise required by law, the recipients shall follow its own requirements and practices relating to bid guarantees, performance bonds, and payment bonds.

(c) *Bids and contracts or subcontracts exceeding $100,000*. Unless otherwise required by law, the recipient may follow its own regular policy and requirements if the USDA awarding agency has decided that the Federal government's interest will be adequately protected. If this decision has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to 5 percent of the bid price;

(2) A performance bond on the part of the contractor for 100 percent of the contract price; and

(3) A payment bond on the part of the contractor for 100 percent of the contract price.

§ 3015.17 Fidelity bonds.

(a) If the recipient is not a unit of government, the awarding agency may require the recipient to carry adequate fidelity bond coverage where the absence of coverage for the grant-supported activity is considered as created an unacceptable risk.

(b) If the subrecipient is not a unit of government, the awarding agency or the recipient may require that the subrecipient carry adequate fidelity bond coverage where the absence of coverage for the subgrant-supported activity is considered as creating an unacceptable risk.

§ 3015.18 Source of bonds.

Any bonds required under § 3015.16(c)(1) through (3) or § 3015.17 shall be obtained from companies holding certificates of authority as acceptable sureties (31 CFR part 223). A list of these companies is published annually by the Department of the Treasury in its Circular 570.

Subpart D—Record Retention and Access Requirements

§ 3015.20 Applicability.

(a) This subpart applies to all financial records, supporting documents, statistical records and other records of recipients, which are:

(1) Required to be maintained by the provisions of a USDA grant or cooperative agreement, or

(2) Otherwise reasonably considered as pertinent to a USDA grant or cooperative agreement.

(b) This subpart does not apply to the records of contractors and subcontractors under grants, subgrants and cooperative agreements. For a requirement to place a provision concerning these records in certain kinds of contracts, see Subpart S of this part.

§ 3015.21 Retention period.

(a) Except as provided in paragraphs (b) and (c) of this section, records shall be kept for 3 years from the starting date specified in § 3015.22.

(b) If any litigation, claim, negotiation, audit or other action involving the records has been started before the end of the 3-year period, the records shall be kept until all issues are resolved, or until the end of the regular 3-year period, whichever is later.

(c) In order to avoid dual recordkeeping, awarding agencies may make special arrangements for recipients to keep any records which are continuously needed for joint use. The awarding agency shall request a recipient to transfer records to its custody when the awarding agency decides that the records possess long-term retention value. When the records are transferred to or maintained by the awarding agency the 3-year retention requirement shall not apply to the recipient.

(d) Records for nonexpendable property acquired in whole or in part, with Federal funds shall be retained for three years after its final disposition.

§ 3015.22 Starting date of retention period.

(a) *General.* The retention period starts from the date of the submission of the final expenditure report or, where USDA grant support is continued or renewed at annual or other intervals, the 3-year retention period for the records of each funding period starts on the day the recipient submits to USDA its annual or final expenditure report for that period. If an expenditure report has been waived, the 3-year retention period starts on the day the report would have been due. Exceptions to this paragraph are contained in paragraphs (b) through (d) of this section.

(b) *Equipment records.* The 3-year retention period for the equipment records required by Subpart R starts from the date of the equipment's disposition, replacement, or transfer at the direction of the awarding agency.

(c) *Records for income transactions after grant or subgrant support.* (1) In cases where USDA requires that program income (as defined in Appendix A) be applied to costs incurred after expiration or termination of grant or subgrant support, the 3-year retention period for these cost records starts from the end of the recipient's fiscal year in which the costs are incurred.

(2) Where USDA requires the disposition of copyright royalties or other program income earned after expiration or termination of grant or subgrant support, the 3-year retention period for those income records starts from the end of the recipient's fiscal year in which the income was earned. (See Subpart F, § 3015.44.)

(d) *Indirect cost rate proposals, cost allocation plans, etc.*—(1) *Applicability.* This paragraph applies to the following types of documents and their supporting records:

(i) Indirect cost rate computations or proposals;

(ii) Cost allocation plans; and

(iii) Any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(2) *If submitted for negotiation.* If the Federal government requires submission of the proposal; plan, or other computation for negotiation of the rate chargeable for particular costs, then the 3-year retention period for the plan, proposal or other computation and the supporting records starts from the date of such submission.

(3) *If not submitted for negotiation.* If the Federal government does not require submission of the proposal, plan, or other computation for negotiation of the rate chargeable for particular costs, then the 3-year retention period for the proposal, plan, or other computation and the supporting records starts from the end of the fiscal year covered by such proposal, plan, or other computation.

§ 3015.23 Microfilm.

Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

§ 3015.24 Access to records.

(a) *Records of recipients.* USDA and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any books, documents, papers, or other records of the recipient which are pertinent in a specific USDA award in order to make audit, examination, excerpts, and transcripts.

(b) *Records of subrecipients.* USDA and the Comptroller General of the United States, and the recipient, or any of their authorized representatives, shall have the right of access to any books, documents, papers, or other records of the subrecipient which are pertinent to a specific USDA grant or cooperative agreement, in order to make audit, examination, excerpts, and transcripts.

(c) *Expiration of right of access.* The rights of access in this section shall not be limited to the required retention period but shall last as long as the records are kept.

§ 3015.25 Restrictions to public access.

Unless required by law, no awarding agency shall impose grant or subgrant conditions which limit public access to records covered by this subpart, except when the awarding agency determines that such records must be kept confidential and would have been excepted from disclosure pursuant to USDA's ''Freedom of Information'' regulations if the records had belonged to USDA (7 CFR 1.1–1.16).

Subpart E—Waiver of ''Single'' State Agency Requirements

§ 3015.30 Waiver of "single" State agency requirements.

Section 204 of the Intergovernmental Cooperation Act of 1968 authorizes Federal agencies to waive ''single'' State agency requirements on request of the Governor or other duly constituted State authorities.

(a) *Approval authority.* The awarding agency has approval authority for waiver requests, and shall handle them as quickly as feasible. Approval should be given whenever possible.

(b) *Refusal procedures.* When it is necessary to refuse a request for waiver of the ''single'' State agency requirements under section 204, the awarding agency shall, through O&F, advise OMB that the request cannot be granted. Such advice should indicate the reasons for the denial of the request. Notification, through O&F, to OMB shall occur prior to informing the State of the refusal.

Subpart F—Grant Related Income

§ 3015.40 Scope.

This subpart contains policies and requirements related to program income and interest and other investment income earned on advances of grant funds. Appendix A defines the term ''program income.'' There are five categories of program income covered in this subpart. Each is treated in a separate section. The categories are:

(a) General program income;

(b) Proceeds from sale of real property and from sale of equipment and supplies acquired for use;

(c) Royalties and other income earned from a copyrighted work;

(d) Royalties or equivalent income earned from patents or inventions; and

(e) Income after the period of grant or subgrant support not otherwise treated.

§ 3015.41 General program income.

(a) *Applicability.* This section applies to ''general program income'' as defined in Appendix A.

(b) *Use.* (1) General program income shall be retained by the recipient and used in accordance with one or a combination of the alternatives in paragraphs (c), (d), and (e) of this section, as follows: The alternative in paragraph (c) may always be used by recipients and must be used if neither of the other two alternatives is permitted by the provisions of the grant award. The alternatives in paragraph (d) or (e) of this section may be used only if expressly permitted by the provisions of

the grant award. In specifying alternatives that may be used, the provisions of the grant award may distinguish between income earned by the recipient and income earned by subrecipients and between the sources, kinds, or amounts of income.

(2) The provisions of a subgrant award may restrict the use of general program income earned by the subrecipient to only one or some of the alternatives permitted by the provisions of the grant, but the alternative in paragraph (c) of this section shall always be permitted.

(c) *Deduction alternative.* (1) Under this alternative, the income is used for allowable costs of the project or program. If there is a cost-sharing or matching requirement, costs supported by the income may not count toward satisfying that requirement. Therefore, the maximum percentage of Federal cost-sharing is applied to the net amount determined by deducting the income from total allowable costs and third party in-kind contributions. The income shall be used for current costs unless the awarding agency authorizes the income to be used in a later period.

(2) To illustrate this alternative, assume a project in which the recipient incurs $100,000 of allowable costs and receives no third party in-kind contributions. If the recipient earns $10,000 in general program income and this alternative applies, that $10,000 must be deducted from the $100,000 before applying the maximum percentage of Federal cost-sharing. If that percentage is 90 percent, the most that could be paid to the recipient would therefore be $81,000 (90 percent times $90,000).

(d) *Cost-sharing or matching alternative.* (1) Under this alternative, the income is used for allowable costs of the project or program but, in this case, the costs supported by the income may count toward satisfying a cost-sharing or matching requirement. Therefore, the maximum percentage of Federal cost-sharing is applied to total allowable costs and third party in-kind contributions. The income shall be used for current costs unless the awarding agency authorizes its use in a later period.

(2) To illustrate this alternative, assume the same situation as in paragraph (c)(2) of this section. Under this alternative, the 90 percent maximum percentage of Federal cost-sharing would be applied to the full $100,000, and $90,000 could therefore be paid to the recipient.

(e) *Additional costs alternative.* Under this alternative, the income is used for costs which are in addition to the allowable costs of the project or program but which nevertheless further the objectives of the Federal statute under which the grant was made. Provided that the costs supported by the income further the broad objectives of that statute, they need not be of a kind that would be permissible as charges to Federal funds. Examples of purposes for which the income may be used are:

(1) Expanding the project or program.

(2) Continuing the project or program after grant or subgrant support ends.

(3) Supporting other projects or programs that further the broad objectives of the statute.

(4) Obtaining equipment or other assets needed for the project or program or for other activities that further the statute's objectives.

§ 3015.42 Proceeds from sale of real property and from sale of equipment and supplies acquired for use.

The following kinds of program income shall be governed by Subpart R of this part:

(a) Proceeds from the sale of real property purchased or constructed under a grant or subgrant.

(b) Proceeds from the sale of equipment and supplies created or purchased under a grant or subgrant and intended primarily for use in the grant or subgrant-supported project or program rather than for sale or rental.

§ 3015.43 Royalties and other income earned from a copyrighted work.

(a) This section applies to royalties, license fees, and other income earned by a recipient from a copyrighted work developed under the grant or subgrant. Income of that kind is covered by this section whether a third party or the recipient acts as the publisher, seller, exhibitor, or performer of the copyrighted work. In some cases the recipient incurs costs to earn the income but does not charge these costs to USDA

grant funds, to required cost-sharing or matching funds, or to other program income. Costs of that kind may be deducted from the gross income in order to determine how much must be treated as program income.

(b) The provisions of the grant award govern the disposition of income subject to this section. If the provisions of the grant award do not treat this kind of income, there are no USDA requirements governing its disposition. A recipient is not prohibited from imposing requirements of its own on the disposition of this kind of income which is earned by its subrecipients provided those requirements are in addition to, and not inconsistent with, any requirements imposed by the provisions of the grant award.

§ 3015.44 Royalties or equivalent income earned from patents or from inventions.

Disposition of royalties or equivalent income earned on patents or inventions arising out of activities assisted by a grant or subgrant shall be governed by the provisions of the grant or subgrant agreement. If the agreement does not provide for the disposition of the royalties or equivalent income, the disposition shall be in accordance with the recipient's own policies.

§ 3015.45 Other program income.

(a) This section applies to program income not treated elsewhere in this part which subsequently results from an activity supported by a grant or subgrant but which does not accrue until after the period of grant or subgrant support. An example is proceeds from the sale or rental of a residual inventory of merchandise created or purchased by a grant-supported workshop during the period of support.

(b) The provisions of the grant award govern the disposition of income subject to this section. If the provisions do not treat this kind of income, there are no USDA requirements governing its disposition. A recipient may impose requirements of its own on the disposition of this kind of income which is earned by its subrecipients provided those requirements are in addition to and not inconsistent with any requirements imposed by the provisions of the grant award.

§ 3015.46 Interest earned on advances of grant funds.

(a) Except when exempted by Federal statute (see paragraph (b) of this section for the principal exemption), recipients shall remit to the Federal government any interest or other investment income earned on advances of USDA grant funds. This includes any interest or investment income earned by subrecipients and cost-type contractors on advances to them that result from advances of USDA grant funds to the recipient. Unless the recipient receives other instructions from the responsible USDA awarding agency, the recipient shall remit the amount due by check or money order payable to the awarding agency. This requirement may not be administratively waived.

(b) In accordance with the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4213), States, as defined in the Act, shall not be accountable to the Federal government for interest or investment income earned by the State itself, or by its subrecipents, where this income is attributable to grants-in-aid, as defined in the Act.[1]

(c) Recipients are cautioned that they are subject to the provisions of Subpart L for minimizing the time between the transfer of advances and their disbursement. Those provisions apply even if there is no accountability to the Federal government for interest or other investment income earned on the advances.

Subpart G—Cost-Sharing or Matching

§ 3015.50 Scope.

This subpart contains rules reflecting Federal requirements for cost-sharing

[1] "State" is defined in the Act to include any agency or instrumentality of a State, and the definition does not exclude a hospital or institution of higher education which is such an agency or instrumentality. "Grant-in-aid" is defined in the Act to exclude payments under research and development contracts or grants which are awarded directly and on similar terms to all qualifying organizations, whether public or private. (42 U.S.C. 4201)

or matching. These rules apply whether cost-sharing or matching is required by Federal statute, awarding agency regulations, or by other provisions established by the specific grant agreement.

§ 3015.51 Acceptable contributions and costs.

A cost-sharing or a matching requirement may be satisfied after qualifications and exceptions are met in § 3015.52 and by satisfying either or both of the following:

(a) Allowable costs incurred by the recipient or by any subrecipient under the grant or subgrant. This includes allowable costs supported by non-Federal grants or by cash donations from non-Federal third parties. Allowable costs shall be determined in accordance with the cost principles set forth in Subpart T.

(b) The value of third party in-kind contributions applicable to the same period when a cost-sharing or matching requirement applies.

§ 3015.52 Qualifications and exceptions.

(a) *Costs supported by other Federal grants.* (1) A cost-sharing or a matching requirement shall not be met by costs supported by another Federal grant, except as provided by Federal statute. This exception however, does not apply to costs supported by general program income earned from a contract awarded under another Federal grant.

(2) For the purpose of this part, funds provided under General or Countercyclical Revenue Sharing Programs (31 U.S.C. 1221 *et seq.* and 42 U.S.C. 6721 *et seq.*) are not considered Federal grants. Therefore, allowable costs supported by these funds may be used to satisfy a cost-sharing or a matching requirement.

(b) *Costs or contributions applied towards other Federal cost-sharing requirements.* Recipient costs or the value of third party in-kind contributions shall not count towards satisfying a cost-sharing or matching requirement of a USDA grant if they are or will be counted towards satisfying a cost-sharing or matching requirement of another Federal grant, a Federal procurement contract, or any other award of Federal funds.

(c) *Costs financed by general program income.* Costs financed by general program income as defined in Appendix A shall not count towards satisfying a cost-sharing or matching requirement of a USDA grant supporting the activity unless the provisions of the grant award expressly permit the income to be used for cost-sharing or matching purposes. (This is the alternative for use of general program income described in § 3015.41).

(d) *Services or property financed by income earned by contractors.* Contractors under a grant or subgrant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost-sharing or matching requirement unless other provisions of the grant award expressly permit this kind of income to be used to meet the requirement.

(e) *Records.* In order to count cost and third party in-kind contributions towards satisfying a cost-sharing or a matching requirement, there must be verification and accurate documentation from the records of recipients or cost-type contractors. These records shall show how the value placed on third party in-kind contributions was decided. Special standards and procedures for calculating these contributions are discussed in paragraph (f) of this section. Volunteer services, to the extent possible, shall be supported by the same pay procedures and rates employed by the organization when paying for similar work performed by its personnel.

(f) *Special standards for third party in-kind contributions*—(1) *Contributions to recipients or cost-type contractors.* A third party in-kind contribution to a recipient or cost-type contractor may count towards satisfying a cost-sharing or matching requirement only where, if the recipient or cost-type contractor were to pay for it, the payment would be an allowable cost.

(2) *Contributions to fixed-price contractors.* A third party in-kind contribution to a fixed-price contractor may count

towards satisfying a cost-sharing or matching requirement only if it results in:

(i) An increase in the services or property provided under the contract (without additional cost to the recipient or subrecipient), or

(ii) A cost savings to the recipient or subrecipient.

§ 3015.53 Valuation of donated services.

(a) *Volunteer services.* Unpaid services provided to a recipient by an individual shall be valued at rates consistent with the rates normally paid for similar work in the recipient organization. If there is no similar work in the recipient organization, the rate of pay for volunteer services should be consistent with those regular rates paid for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(b) *Employees of other organizations.* When an employer, other than a recipient or cost-type contractor, furnishes the services of an employee without cost to perform the employee's normal line of work, the services shall be valued at the employee's regular rate of pay, exclusive of the employer's fringe benefits and overhead cost. If the services are in a different line of work, paragraph (a) of this section shall apply.

§ 3015.54 Valuation of donated supplies and loaned equipment or space.

(a) If a third party donates supplies, the contributions shall not exceed the cost of the supplies to the donor or the market value of the supplies, at the time of the donation, whichever is less.

(b) If a third party donates the use of equipment or space in a building but retains the title, the contribution shall be valued at the fair rental rate of the equipment or space.

§ 3015.55 Valuation of donated equipment, buildings, and land.

When a third party donates equipment, buildings or land, and the title is given to the recipient, the treatment of this donated property shall depend upon the purpose of the grant or subgrant as follows:

(a) *Awards for capital expenditures.* If the purpose of the grant or subgrant is to assist the recipient in acquiring property, such as equipment, buildings, and land, then the market value of that property at the time of donation may be counted as cost-sharing or matching.

(b) *Other awards.* If the nature of the grant or subgrant is not for the purpose of acquiring property, the following rules shall apply:

(1) If approval is obtained from the awarding agency, the market value at the time of donation of the equipment or buildings and the fair rental rate of the donated land may be counted as cost-sharing or matching. In the case of a subgrant, the provisions of the USDA grant should require that the approval be obtained from the awarding agency as well as the recipient. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost.

(2) If approval is not obtained under paragraph (b)(1) of this section, no amount shall be counted for donated land. Instead, only depreciation or use allowances may be counted for donated equipment and buildings and treated as costs incurred by the recipient. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in Subpart T of this part. They will thus be handled in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

§ 3015.56 Appraisal of real property.

In some cases, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the awarding agency must require that the market value or fair rental rate be set by an independent appraiser (or by a representative of the U.S. General Services Administration, if available) and that the value or rate be certified by a responsible official of the party to

which the property or its use is donated. This requirement must also be imposed by the recipient on subgrants.

Subpart H—Standards for Financial Management Systems

§ 3015.60 Scope.

This subpart contains standards for financial management systems of recipients. No additional financial management standards or requirements shall be imposed by awarding agencies. Awarding agencies will, however, provide recipients with suggestions and assistance on establishing or improving financial management systems when such assistance is needed or requested.

§ 3015.61 Financial management standards.

The following standards shall be met by recipients and subrecipients in managing their financial management system.

(a) *Financial reporting*. Complete, accurate, and current disclosure of the financial results of each USDA sponsored project or program shall be made in accordance with the financial reporting requirements set forth in the grant or subgrant. When a USDA awarding agency requires reporting on an accrual basis, the recipient shall not be required to establish an accrual accounting system, but shall develop such accrual data for its reports on the basis of an analysis of the documentation on hand.

(b) *Accounting records*. The source and application of funds shall be readily identified by the continuous maintenance of updated records. Records, as such, shall contain information pertaining to grant or subgrant awards, authorizations, obligations, unobligated balances, assets, outlays, and income. When the recipient is a governmental entity, the records shall also contain liabilities.

(c) *Internal control*. Effective control over and accountability for all USDA grant or subgrant funds, real and personal property assets shall be maintained. Recipients shall adequately safeguard all such property and shall ensure that it is used solely for authorized purposes. In cases where projects are not 100 percent Federally funded, recipients must have effective internal controls to assure that expenditures financed with Federal funds are properly chargeable to the grant supported project.

(d) *Budgetary control*. The actual and budgeted amounts for each grant or subgrant shall be compared. If appropriate, or required by the awarding agency, financial information shall be related to performance and unit cost data. When unit cost data is required, estimates based on available documentation may be accepted whenever possible.

(e) *Advance payments*. There shall be specific procedures established to minimize the time elapsing between the advance of Federal grant or subgrant funds and their subsequent disbursement by the recipient. When advances are made by a letter of credit method, the recipients shall make drawdowns as close as possible to the time of making the disbursements. This same procedure shall be followed by recipients who advance cash to subrecipients to ensure that timely fiscal transactions and reporting requirements are conducted.

(f) *Allowable costs*. Established procedures shall be used for determining the reasonableness, allowability, and allocability of costs in accordance with the cost principles prescribed by Subpart T of this part and the provisions of the grant award.

(g) *Source documentation*. Accounting records shall be supported by source documentation. These documentations include, but are not limited to, cancelled checks, paid bills, payrolls, contract and subgrant award documents.

(h) *Audit resolution*. A systematic method shall be employed by each recipient to assure timely and appropriate resolution of audit findings and recommendations.

Subpart I [Reserved]

Subpart J—Financial Reporting Requirements

§ 3015.80 Scope and applicability.

(a) This subpart prescribes requirements and forms for recipients to report financial information to USDA

and to request grant payments when a letter of credit is not used.

(b) This subpart need not be applied by recipients in dealing with their subrecipients. Recipients are encouraged not to impose on subrecipients more burdensome requirements than USDA imposes on them.

§ 3015.81 General.

(a) Except as provided in paragraphs (d) and (e) of this section, recipients shall use only the forms specified in §§ 3015.82 through 3015.85, and such other forms as may be authorized by OMB for:

(1) Submitting grant financial reports to awarding agencies, or

(2) Requesting grant payments when letters of credit or automatic prescheduled Treasury check advances are not used.

(b) Recipients shall follow all applicable standard instructions issued by OMB for use in connection with the forms specified in §§ 3015.82 through 3015.85. Awarding agencies may not issue substantive supplementary instructions that are inconsistent with this subpart or impose additional requirements on recipients without the approval of O&F and OMB. However, awarding agencies may shade out or instruct the recipient to disregard any line item that the awarding agency finds unnecessary for its decision-making purposes.

(c) Recipients shall not be required to submit more than one original and two copies of the forms required under this subpart.

(d) Awarding agencies may provide computer outputs to recipients to expedite or contribute to the accuracy of reporting. Awarding agencies may accept the required information from recipients in machine readable form or computer printouts instead of prescribed formats.

(e) When an awarding agency determines that a recipient's accounting system does not meet the standards for financial management systems contained in Subpart H of this part, it may require more frequent financial reports or more detail (or both) upon written notice to the recipient (without regard to § 3015.4) until such time as the standards are met.

(f) Awarding agencies may waive any report required by this subpart, if not needed.

(g) Awarding agencies may extend the due date for any financial report upon receiving a justified request from the recipient. The recipient should not wait until the due date if an extension is to be requested, but should submit the request as soon as the need becomes known. Failure by a recipient to submit a report by its due date may result in severe enforcement actions by USDA. These may include withholding of further grant payments, suspension or termination of the grant, etc. Therefore recipients are urged to submit reports on time.

§ 3015.82 Financial status report.

(a) *Form.* Recipients shall use Standard Form 269, Financial Status Report, to report the status of funds for all nonconstruction projects or programs.

(b) *Accounting basis.* Unless specified in the provisions of the grant or subgrant each recipient shall report program outlays and program income on the same accounting basis, *i.e.*, cash or accrual, which it uses in its accounting system.

(c) *Frequency.* The awarding agency may prescribe the frequency of the report for each project or program. However, the report shall not be required more frequently than quarterly except as provided in §§ 3015.4, 3015.81(e), or by statute. If the awarding agency does not specify the frequency of the report, it shall be submitted annually. Upon expiration or termination of the grant or cooperative agreement, if a period of time remains not covered by a periodic report (*i.e.*, a quarterly, semi-annual or annual report), a final report shall be required.

(d) *Due date.* When reports are required on a quarterly or semiannual basis, they shall be due 30 days after the reporting period. When required on an annual basis, they shall be due 90 days after the end of the grant or agreement period. In addition, final reports as defined in § 3015.82(c) shall be due 90 days after the expiration or termination of grant or agreement support, except in those instances where an extension has been granted.

(e) *Final reports.* (1) Final reports (*i.e.*, the last report submitted) must not show any unpaid obligations.

(2) If the recipient will still have unpaid obligations when the final report is due, the recipient shall submit a provisional final report (showing the unpaid obligations) by the due date, and a true final report when all obligations have been paid. When submitting a provisional final report, the recipient shall tell the awarding agency when it expects to submit a true final report.

(3) As provided in § 3015.81(f), awarding agencies may waive provisional final reports.

§ 3015.83 Federal cash transactions report.

(a) *Form.* (1) For grants or cooperative agreements paid by letters of credit (or Treasury check advances) through any USDA payment office, the recipient shall submit to USDA a Standard Form 272, Federal Cash Transactions Report, and, when necessary, its continuation sheet, SF–272a. Recipients under the Regional Disbursing Office (RDO) system shall not be required to submit a SF–272. For these recipients, awarding agencies shall use information contained in the Request for Payment to monitor recipient cash balances and to get disbursement information.

(2) The SF–272 will be used by USDA to monitor cash advanced to recipients and to obtain disbursement or outlay information from recipients for each grant or cooperative agreement. The format of the report may be adapted, as appropriate, when reporting is to be accomplished with the assistance of automatic data processing equipment, provided that the identical information is submitted.

(b) *Forecasts of Federal cash requirements.* Awarding agencies may require that forecasts of Federal cash requirements be provided in the ''Remarks'' section of the report.

(c) *Cash in hands of subrecipients or contractors.* When considered necessary and feasible by the responsible USDA awarding agency, recipients may be required to:

(1) Show in the ''Remarks'' section of the report the amount of cash advances exceeding three days needs in the hands of their subrecipients or contractors, and

(2) Provide short narrative explanations or actions taken by the recipient to reduce such excess balances.

(d) *Frequency and due date.* Recipients shall submit the report no later than 15 working days following the end of each quarter. However, the USDA payment office may require recipients receiving advances of one million dollars or more per year to submit a report within 15 working days following the end of each month. Awarding agencies may waive the requirement for submission of the SF–272 when monthly advances do not exceed $10,000 per recipient, provided that such advances are monitored through other forms contained in this subpart, or if, in the awarding agency's opinion, the recipient's accounting controls are adequate to minimize excessive Federal advances.

§ 3015.84 Request for advance or reimbursement.

(a) *Advance payments.* Recipients of nonconstruction grants or cooperative agreements shall request Treasury check advance payments on Standard Form 270, Request for Advance or Reimbursement. This form is not used for letter of credit drawdowns or predetermined automatic advance payments.

(b) *Reimbursements.* Recipients of nonconstruction grants or cooperative agreements shall request reimbursement on Standard Form 270, Request for Advance or Reimbursement (for reimbursement request under construction grants or cooperative agreements, see § 3015.85).

(c) The frequency for submitting payment requests on SF–270 is treated in § 3015.104.

§ 3015.85 Outlay report and request for reimbursement for construction programs.

(a) *Construction grants paid by reimbursement method.* (1) Requests for reimbursement under construction grants shall be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Awarding agencies may, however, prescribe the Request for Advance or Reimbursement form specified in § 3015.84 instead of this form.

(2) The frequency for submitting reimbursement requests is treated in § 3015.104.

(b) *Construction grants paid by letter of credit or Treasury check advance.* (1) When a construction grant or a cooperative agreement is paid by letter of credit or Treasury check advances, the recipient shall report its outlays to the awarding agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The awarding agency will provide any necessary special instructions. However, frequency and due date shall be governed by § 3015.82 (c) and (d).

(2) When a construction grant or cooperative agreement is paid by Treasury check advances based on periodic requests from the recipient, the advances shall be requested on the form specified in § 3015.84.

(3) The awarding agency may substitute the Financial Status Report specified in § 3015.82 for the Outlay Report and Request for Reimbursement.

(c) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by § 3015.82(b).

Subpart K—Monitoring and Reporting Program Performance

§ 3015.90 Scope.

This subpart establishes procedures for monitoring and reporting program performance of recipients. These procedures place responsibility on recipients to manage the day-to-day operations of their grant and subgrant supported activities.

§ 3015.91 Monitoring by recipients.

Recipients shall monitor the performance of grant and subgrant-supported activities to assure that performance goals are being achieved. Recipient monitoring shall cover each program, function, or activity.

§ 3015.92 Performance reports.

(a) *Nonconstruction.* The awarding agency shall, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the recipient to submit a performance report only upon expiration or termination of grant support. Unless waived by the awarding agency this report will be due on the same date as the final Financial Status Report (as provided in § 3015.82 (d) and (e)).

(1) Recipients shall submit annual peformance reports unless the awarding agency requires quarterly or semi-annual reports or unless covered under paragraph (a) of this section. Annual reports shall be due 90 days after the grant year; quarterly or semi-annual reports shall be due 30 days after the reporting period. The final performance report shall be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a recipient, the awarding agency may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by the awarding agency.

(2) Performance reports shall contain, for each grant, brief information on the following:

(i) A comparison of actual accomplishments to the goals established for the period. Where the output of the project can be readily expressed in numbers, a computation of the cost per unit of output may be required if that information will be useful.

(ii) The reasons for slippage if established goals were not met.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(3) Recipients shall not be required to submit more than the original and two copies of performance reports.

(4) Recipients shall adhere to the standards in paragraph (a) of this section in prescribing performance reporting requirements for subrecipients.

(b) *Construction.* For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by awarding agencies to monitor progress under construction grants and subgrants. The awarding agency shall require additional formal performance reports only when considered necessary, and never more frequently than quarterly.

§ 3015.93 Significant developments.

Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the recipient shall inform the awarding agency as soon as the following types of conditions become known:

(a) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure shall include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(b) Favorable developments which enable meeting time schedules and goals sooner or at less cost than anticipated or producing more beneficial results than originally planned.

§ 3015.94 Site visits.

The awarding agency shall make site visits as frequently as practicable to:

(a) Review program accomplishments and manage control systems.

(b) Provide such technical assistance as may be required.

§ 3015.95 Waivers, extensions and enforcement actions.

(a) *Reports from recipients*. USDA may waive any performance report required by this subpart if not needed.

(b) *Reports from subrecipients*. The recipient may waive any performance report from a subrecipient when not needed. The recipient may extend the due date for any performance report from a subrecipient if the recipient will still be able to meet its performance reporting obligations to the USDA awarding agency.

Subpart L—Payment Requirements

§ 3015.100 Scope.

This subpart prescribes the basic standards and methods under which a USDA awarding agency will make grant payments to recipients, and recipients will make subgrant payments to their subrecipients.

§ 3015.101 General.

Methods and procedures for making payments to recipients shall minimize the time elapsing between the transfer of funds and the recipient's disbursements.

§ 3015.102 Payment methods.

(a) *Non-construction*. (1) Letters of credit will be used to pay USDA recipients when all the following conditions exist:

(i) There is or will be a continuing relationship between the recipient and the USDA awarding agency for at least a 12 month period and the total amount of advances to be received within that period from the awarding agency is $120,000 or more per year.

(ii) The recipient has established or demonstrated to the USDA awarding agency the willingness and ability to establish procedures that will minimize the time elapsing between the transfer of funds from the Treasury and their disbursement by the recipient.

(iii) The recipient's financial management system meets the standards for fund control and accountability prescribed in Subpart H of this part.

(2) Advances by Treasury check will be used, in accordance with Treasury Circular No. 1075, when the recipient does not meet the requirements in paragraph (a)(1)(i) of this section but does meet the requirements in paragraphs (a)(1) (ii) and (iii) of this section.

(3) Reimbursement by Treasury check shall be the preferred method when the recipient does not meet the requirements specified in either paragraph (a)(1)(ii) or paragraph (a)(1)(iii) of this section. This method may also be used when USDA financial assistance makes up only a minor portion of the program and where the major portion of the program is accomplished through private financing or Federal loans.

(b) *Construction*. (1) Reimbursement by Treasury check shall be the preferred method when the recipient does not meet the requirements specified in § 3015.102(a)(1) (ii) or (iii), and may be used for any USDA construction grant unless USDA has entered into an agreement with the recipient to use a letter of credit for all USDA grants, including construction grants.

(2) When the reimbursement by Treasury check method is not used, § 3015.102(a) (1) and (2) shall apply to the construction grants. Implementing procedures under § 3015.102(a) (1) and (2) will be the same for construction grants as for nonconstruction grants awarded to the same recipient, insofar as possible.

(3) USDA awarding agencies will not use the percentage-of-completion method to pay its construction grants. The recipient may use that method to pay its construction contractor, but if it does, USDA payments to the recipient will nevertheless be based on the recipient's actual rate of disbursements.

§ 3015.103 Withholding payments.

(a) Unless otherwise required by Federal statute, payments for proper charges incurred by recipients will not be withheld at any time during the grant period unless (1) the recipient has failed to comply with the program objectives, grant award conditions, or Federal reporting requirements, or (2) the recipient is indebted to the United States and collection of the indebtedness will not impair accomplishment of the objectives of any grant program sponsored by the United States, or (3) the grant is suspended pursuant to Subpart N of this part.

(b) Payments withheld for failure of a recipient to comply with reporting requirements, but without suspension of the grant, will be released to the recipient upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with Subpart N of this part. When a debt is to be collected, USDA awarding agencies may withhold payments or require appropriate accounting adjustments to recorded cash balances for which the recipient is accountable to the Federal government, in order to liquidate the indebtedness.

§ 3015.104 Requesting advances or reimbursements.

(a) *Advances.* If advance payments are by Treasury check and are not prescheduled, the recipient shall submit its payment requests at least monthly. Less frequent requests are not permitted for they result in advances covering excessive periods of time. Recipient requests for advances shall not be made in excess of the Federal share of reasonable estimates of outlays for the month covered. These estimates shall be made on a cash basis, even if the recipient uses an accrual accounting system.

(b) *Reimbursements.* If payments are made through reimbursement or by Treasury check:

(1) Requests for reimbursements may be submitted monthly or more frequently if authorized to do so by the awarding agency. Ordinarily, payment will be made within 30 days after receipt of a proper request for reimbursement.

(2) The recipient shall not request reimbursement for the Federal share of amounts withheld from contractors to ensure satisfactory completion of work until after it makes those payments.

(c) *Forms.* The forms for requesting advances or reimbursements are identified in Subpart J of this part.

§ 3015.105 Payments to subrecipients.

Recipients shall observe the requirements of this subpart in making (or withholding) payments to subrecipients, with the following exceptions:

(a) Advance payment by Treasury check may be used instead of letter of credit;

(b) The forms specified in Subpart J of this part for requesting advances and reimbursements are not required to be used by subrecipients; and

(c) The reimbursement by check method may be used to pay any construction subgrant.

Subpart M—Programmatic Changes and Budget Revisions

§ 3015.110 Scope and applicability.

(a) *Scope.* This subpart deals with prior approval requirements for post-award programmatic changes and budget revisions by recipients.

(b) *Exemption of mandatory or formula grants.* Sections 3015.113 through 3015.115 do not apply to programmatic changes or budget revisions made by recipients under State plans or other grants which the awarding agency is

required by law to award if the applicant meets all applicable requirements for entitlement.

(c) *Exemption of certain subgrants.* Sections 3015.113 through 3015.115 do not apply to subgrants from States to their local governments under a mandatory or formula grant, if the local government is not required to apply for the subgrant on a project basis. Generally, such exempt subgrants will occur under a State plan which provides for local administration of a State-wide program under State supervision.

§ 3015.111 Cost principles.

(a) The cost principles prescribed by subpart T of this part require prior approval of certain types of costs. Except when waived, those prior approval requirements apply to all grants and subgrants, whether or not §§ 3015.113 through 3015.115 apply.

(b) Procedures for prior approvals required by the cost principles are in § 3015.196. Procedures for prior approvals required by this subpart are in § 3015.112.

§ 3015.112 Approval procedures.

(a) *For grants or cooperative agreements.* When requesting a prior approval required by this subpart, recipients shall address their requests to the responsible official of the awarding agency. Approvals shall not be valid unless they are in writing and signed by either the responsible officer, the head of the awarding agency, or the head of the awarding agency's regional office.

(b) *For subgrants.* Recipients shall be responsible for reviewing requests from their subrecipients for the approvals required by this subpart and for giving or denying the approval. A recipient shall not approve any action which is inconsistent with the purpose or terms of the Federal grant or cooperative agreement. If an action by a subrecipient will result in a change in the overall grant project or budget requiring approval from the awarding agency, the recipient shall obtain that approval before giving its approval to the subrecipient. Approvals shall not be valid unless they are in writing and signed by an authorized official of the recipient organization.

(c) *Timing.* Within 30 days from the date of receipt of a request for approval, the approval authority shall review the request and notify the recipient of its decision. If the request for approval is still under consideration at the end of 30 days, the approval authority shall inform the recipient in writing as to when to expect the decision.

§ 3015.113 Programmatic changes.

(a) *Scope.* This section contains requirements for prior approval of departures, other than budget revisions, from approved project plans. In addition to the requirements in this section, awarding agencies may require prior approval for other kinds of programmatic changes to an approved cooperative agreement, grant, or subgrant project.

(b) *Changes to project scope or objectives.* The recipient shall obtain prior approval for any change to the scope or objectives of the approved project. (For construction projects, any material change in approved space utilization or functional layout shall be considered a change in scope).

(c) *Changes in key people.* This section applies to grants, subgrants, and cooperative agreements for research. This section does not apply to other types of grants, subgrants, or cooperative agreements unless other terms of the award make it apply. The recipient shall obtain prior approval:

(1) To continue the project during any continuous period of more than three months without the active direction of an approved project director or principal investigator;

(2) For its selection of a replacement for the project director of principal investigator;

(3) For its selection of a replacement for any other persons named and expressly designated as key project people in the grant, subgrant, or cooperative agreement award document; or

(4) To permit the project director or principal investigator (or anyone covered by paragraph (c)(3) of this section) to devote substantially less effort to the project than was anticipated when the award was made.

(d) *Transferring work and providing financial assistance to others.* Recipients shall obtain prior approval for transferring to another party the actual performance of the substantive programmatic work, and for providing any form of financial assistance to another party.

(e) *Audiovisual activities.* (1) Except to the extent explicitly included in the project plan approved at the time of award, using grant support for any of the following requires prior approval:

(i) Producing an audiovisual.

(ii) Buying ownership of any of the rights in the work embodied in the audiovisual. (This does not apply to merely buying a license in any of the rights. For the remainder of this section, buying ownership of the rights is referred to simply as buying or purchasing an audiovisual).

(iii) Presenting or distributing to the general public an audiovisual that was produced or bought with grant support.

(2) Prior approval is not required for:

(i) Any audiovisual activity under a subgrant.

(ii) Any audiovisual whose direct production or purchase cost to the recipient is $5,000 or less.

(iii) The production or purchase of an audiovisual as a research instrument or for documenting experimentation or findings, if the audiovisual is not intended for presentation or distribution to the general public.

(3) Following are examples of presentation or distribution of an audiovisual to the general public.

(i) Broadcast on commercial, cable, or educational television, or radio.

(ii) Showing in commercial motion picture theaters.

(iii) Showing in public places such as airports, waiting rooms, bus or railroad depots, and vacation resorts.

(iv) Showing to civic associations, schools (except when used as a teaching tool in a classroom setting), clubs, fraternal organizations, or similar lay groups.

§ 3015.114 Budgets—general.

(a) *Research and non-research project budgets.* For research and non-research projects which involve cost-sharing or matching, approved budgets shall ordinarily consist of a single set of figures covering total project cost (the sum of the awarding agency's share and the recipient's share). However, the awarding agency may specify that the recipient's share not be included in the approved budget. In no case, however, shall the approved budget be in the form of a separate set of figures for each share.

(b) *Subdivision by programmatic segments.* Some grants, subgrants, and cooperative agreements contain two or more programmatic segments (such as discrete programs, projects, functions, or types of activities). In these cases, the awarding agency may require that the approved budget be subdivided to show the anticipated cost of each programmatic segment.

§ 3015.115 Budget revisions.

(a) *Nonconstruction projects.* (1) Except as provided in paragraph (a)(2) of this section, the recipient of a grant, subgrant, or cooperative agreement having an approved budget shall obtain prior approval for any budget revision which will:

(i) Involve transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or

(ii) Involve transfer of amounts previously budgeted for training allowances (direct payments to trainees), or

(iii) Result in a need for the award of additional funds, e.g., an increase in the base upon which indirect costs are calculated which will increase allocable indirect costs and result in a claim for a supplementary award.

(2) Any or all of the prior approval requirements in paragraph (a) of this section may be waived by the awarding agency.

(3) Except as provided in § 3015.116 other budget changes under nonconstruction grants do not require approval.

(b) *Construction projects.* Unless provided otherwise by the terms of the grant, subgrant, or cooperative agreement, revisions to construction project budgets do not require approval.

§ 3015.116 Construction and nonconstruction work under the same grant, subgrant, or cooperative agreement.

When a grant, subgrant, or cooperative agreement provides support for both construction and nonconstruction work, the awarding agency may require prior approval for any fund or budget transfers between the two types of work.

Subpart N—Grant and Subgrant Closeout, Suspension and Termination

§ 3015.120 Closeout.

(a) Each grant or subgrant shall be closed out as soon as possible after expiration or notice of termination.

(b) The following shall apply when closing out USDA grants:

(1) Upon request from the recipient, any allowable reimbursable cost not covered by previous payments shall be promptly paid by USDA.

(2) Any unobligated balance of cash advanced to the recipient shall be immediately refunded to the awarding agency or managed in accordance with USDA instructions.

(3) Within a maximum period of 90 days following the date of expiration or termination of a grant, all financial performance and related reports required by the terms of the agreement shall be submitted to the awarding agency by the recipient. USDA reserves the option of extending the due date for any report and may waive any report that it considers to be unnecessary.

(4) The provisions formally expressed and agreed to within the grant arrangement shall dictate the settlement of any upward or downward adjustments of the Federal share of costs.

(c)(1) A grant closeout shall not affect the retention period for, or Federal rights of access to, grant records. (See Subpart D of this part).

(2) The closeout of a grant does not affect the recipient's responsibilities regarding property under Subpart R of this part or with respect to any program income the recipient is still accountable for under Subpart F of this part.

(3) Final audits (See Attachment L, Circular A–102 and Attachment K of Circular A–110) are not a required part of the grant or subgrant closeout procedures. Normally, a final audit should not be needed unless there are problems with a grant or subgrant that require audit attention. If a USDA agency considers a final audit to be necessary, it shall contact the OIG Region within which the recipient or subrecipient is located and inform OIG of the situation. OIG shall be responsible for assuring that necessary final audits are performed and for any necessary coodination with other Federal cognizant audit agencies, recipients or State and local auditors. Audits performed in accordance with Subpart I may serve as final audits providing such audits meet the needs of the requesting agency.

(4) If a grant is closed out without audit, the awarding agency reserves the right to disallow and recover an appropriate amount after fully considering any recommended disallowances resulting from an audit which may be conducted later.

§ 3015.121 Amounts payable to the Federal government.

The following outstanding sums for each grant shall be considered as a debt or debts owed by the recipient to the Federal government. They shall, if not paid upon demand, be subject to recovery by the awarding agency from the recipient or its successor or assignees by set off or other action provided by law:

(a) Any grant funds paid to the recipient by the Federal government which exceed the amount the recipient is finally determined to be entitled to under the provisions of the grant award;

(b) Any interest or other investment income earned on advances of grant funds which is due the Federal government;

(c) Any royalties or other special classes of program income which, under the provisions of the grant award, are required to be returned to the Federal government;

(d) Any amount the Federal government is entitled to under Subpart R of this part; and

(e) Under the provisions of the grant award, any other amounts finally determined to be due to the Federal government.

§ 3015.122 Violation of terms.

(a) Whenever it is determined that the recipient has materially failed to comply with the provisons of the grant award, the awarding agency may suspend or terminate, in accordance with §§ 3015.123 and 3015.124, any grant in whole, or in part, at any time before the date of completion, or take such other remedies as may be legally available and appropriate.

(b) A grant may be suspended or terminated in the current period for failure to submit a report still due from a prior period. This action is applicable when a project or program is supported over two or more funding periods.

§ 3015.123 Suspension.

(a) When a recipient has materially failed to comply with the provisions prescribed in the grant agreement, the awarding agency may, after reasonable notice to the recipient, suspend the grant in whole or in part. A suspension notice shall be issued by the awarding agency stating the reasons for the suspension, any corrective action required of the recipient, and the effective date. Suspension may go into effect immediately if the awarding agency deems it necessary to protect its interest and if a delayed effective date would be unreasonable considering the awarding agency's responsibilities to protect the Federal government's interest. Suspension shall remain in effect until the recipient has taken corrective action satisfactory to the awarding agency, or given evidence that such corrective action will be taken, or until the awarding agency terminates the grant.

(b) Unless specifically authorized by the awarding agency in the notice of suspension or subsequently expressed in an amendment to it, new obligations incurred by the recipient during the suspension period shall not be allowed. Necessary and otherwise allowable costs which the recipient could not reasonably avoid during the suspension period will be allowed, if they result from obligations properly incurred by the recipient before the effective date of the suspension and not in anticipation of suspension or termination. If the awarding agency approves, third party in-kind contributions applicable to the suspension period may be allowed in satisfaction of cost-sharing or matching requirements.

(c) During the suspension period, appropriate adjustments to payments under the suspended grant will be made by not giving credit to the recipient for disbursements made in payment of unauthorized obligations incurred during the suspension period or by withholding subsequent payments.

§ 3015.124 Termination.

(a) *Termination for cause.* The awarding agency may terminate any grant or other agreement in whole, or in part, at any time before the date of expiration, whenever it is determined that the recipient has materially failed to comply with the conditions of the agreement. The awarding agency shall promptly notify the recipient in writing of the determination and reasons for the termination, together with the effective date.

(b) *Termination by mutual agreement.* Except as provided in paragraph (a) of this section, grants may be terminated in whole, or in part, only as follows:

(1) When the awarding agency and recipient agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(2) By written notification by the recipient to the awarding agency setting forth the reasons for termination, the effective date, and in the case of partial termination, the portion to be terminated. In the case of a partial termination, if the awarding agency decides that the remaining portion of the grant will not accomplish the purposes for which the grant was made, the awarding agency may terminate the award in its entirety under either paragraph (a) or paragraph (b)(1) of this section.

(c) *Termination settlements.* Upon termination of a grant, the recipient shall not incur any new obligations for the terminated portion of the agreement after the effective date, and shall cancel as many outstanding obligations as

possible. The awarding agency, however, shall allow full credit to the recipient for the Federal share of the non-cancellable obligations properly incurred by the recipient prior to termination.

§ 3015.125 Applicability to subgrants.

Recipient subgrants shall be subjected to the same standards regarding closeout, suspension, and termination of subgrants as prescribed in this subpart for awarding agencies.

Subparts O–P [Reserved]

Subpart Q—Application for Federal Assistance

§ 3015.150 Scope and applicability.

(a) This subpart prescribes forms and instructions to be used by governmental organizations (except hospitals, non-profit organizations, and institutions of higher education operated by a government) in applying to USDA for discretionary grants. This subpart is not applicable, however, to mandatory or formula grants or programs which do not require applicants to apply to USDA for funds on a project basis.

(b) This subpart permits awarding agencies to prescribe the form of applications by nongovernmental organizations (including hospitals, non-profit organizations and institutions of higher education operated by a government), but prescribes the use of a standard facesheet for certain of these applications.

(c) This subpart applies only to applications for grants or cooperative agreements and is not required to be applied by recipients in dealing with applicants for subgrants. However, recipients are encouraged not to adopt more detailed or burdensome application requirements for subgrants.

(d) This subpart also prescribes standards for competition to be used by USDA agencies in awarding discretionary cooperative agreements and grants. (This subpart is not applicable to cooperative agreements awarded pursuant to the provisions of sections 1472(b) and 1473C of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended.)

[46 FR 55639, Nov. 10, 1981, as amended at 51 FR 17172, May 9, 1986]

§ 3015.151 Authorized forms.

(a) Sections 3015.152 through 3015.156 specify the forms that governmental organizations shall use to apply to USDA for a discretionary grant.

(b) Governments need not submit more than the original and two copies of application forms. When less will suffice, the awarding agency shall notify potential applicants.

(c) When a government agency amends a previously submitted application or applies for additional funding (such as a continuation or supplemental award) only the facesheet and any other affected pages are required to be submitted. Previously submitted pages whose information is still current may be resubmitted, but are not required to be resubmitted.

§ 3015.152 Preapplication for Federal assistance.

(a) When a government submits a preapplication, it shall use the Preapplication for Federal Assistance form prescribed by Circular A–102. The purposes of these preapplications shall be to:

(1) Establish communication between the potential applicant and the awarding agency;

(2) Determine the potential applicant's eligibility;

(3) Identify projects which have little or no chance for Federal funding before applicants incur significant costs for preparing an application.

(b) Preapplication is always required if the potential applicant is a government and the proposed project (1) is for construction, land acquisition, or land development, and (2) would require more than $100,000 of Federal funding. If these conditions are not present, potential applicants need not submit preapplications unless required to do so by the awarding agency. Any government may submit a preapplication even when not required.

§ 3015.153 Notice of preapplication review action.

Awarding agencies shall inform governmental applicants of the results of their review of preapplications by using the Notice of Preapplication Review Action form prescribed by Circular A–102. If the review cannot be completed within 45 days, the awarding agency shall inform the applicant, in writing, when it will complete the review.

§ 3015.154 Application for Federal assistance (nonconstruction programs).

Governments shall use the Application for Federal Assistance (Nonconstruction Programs) form prescribed by OMB Circular A–102 in applying for discretionary grants unless a form specified in § 3015.155 or § 3015.156 is to be used.

§ 3015.155 Application for Federal assistance (construction programs).

Governments shall use the Application for Federal Assistance (for Construction Programs) form prescribed by Circular A–102 in applying for any grant whose purpose is solely or primarily construction, land acquisition, or land development.

§ 3015.156 Application for Federal assistance (short form).

Governments shall use the Application for Federal Assistance (Short Form) form prescribed by Circular A–102 in applying for any single-purpose, one-time grant of less than $10,000 not requiring Circular A–95 clearinghouse review, an environmental impact statement, or the relocation of persons, businesses, or farms. Awarding agencies may, at their discretion, authorize or require this form for applications for larger amounts.

§ 3015.157 Authorized form for nongovernmental organizations.

Nongovernmental organizations shall use application forms prescribed by the awarding agency. The facesheet of these applications shall be Standard Form 424.

§ 3015.158 Competition in the awarding of discretionary grants and cooperative agreements.

(a) *Standards for competition.* Except as provided in paragraph (d) of this section, awarding agencies shall enter into discretionary grants and cooperative agreements only after competition. An awarding agency's competitive award process shall adhere to the following standards:

(1) Potential applicants must be invited to submit proposals through publications such as the FEDERAL REGISTER, professional trade journals, agency or program handbooks, the Catalog of Federal Domestic Assistance, or any other appropriate means of solicitation. In so doing, awarding agencies should consider the broadest dissemination of project solicitations in order to reach the highest number of potential applicants.

(2) Proposals are to be evaluated objectively by independent reviewers in accordance with written criteria set forth by the awarding agency. Reviewers should make written comments, as appropriate, on each application. Independent reviewers may be from the private sector, another agency, or within the awarding agency, as long as they do not include anyone who has approval authority for the applications being reviewed or anyone who might appear to have a conflict of interest in the role of reviewer of applications. A conflict of interest might arise when the reviewer or the reviewer's immediate family members have been associated with the applicant or applicant organization within the past two years as an owner, partner, officer, director, employee, or consultant; has any financial interest in the applicant or applicant organization; or is negotiating for, or has any arrangement, concerning prospective employment.

(3) An unsolicited application, which is not unique and innovative, shall be competed under the project solicitation it comes closest to fitting. Awarding agency officials will determine the solicitation under which the application is to be evaluated. When the awarding agency official decides that the unsolicited application does not fall under a recent, current, or planned solicitation, a noncompetitive award

may be made, if appropriate to do so under the criteria of this section. Otherwise, the application should be returned to the applicant.

(b) *Project solicitations*. A project solicitation by the awarding agency shall include or reference the following, as appropriate:

(1) A description of the eligible activities which the awarding agency proposes to support and the program priorities;

(2) Eligible applicants;

(3) The dates and amounts of funds expected to be available for awards;

(4) Evaluation criteria and weights, if appropriate, assigned to each;

(5) Methods for evaluating and ranking applications;

(6) Name and address where proposals should be mailed and submission deadline(s);

(7) Any required forms and how to obtain them;

(8) Applicable cost principles and administrative requirements;

(9) Type of funding instrument intended to be used (grant or cooperative agreement); and

(10) The *Catalog of Federal Domestic Assistance* number and title.

(c) *Approval of applications*. The final decision to award is at the discretion of the awarding/approving official in each agency. The awarding/approving official shall consider the ranking, comments, and recommendations from the independent review group, and any other pertinent information before deciding which applications to approve and their order of approval. Any appeals by applicants regarding the award decision shall be handled by the awarding agency using existing agency appeal procedures or good administrative practice and sound business judgment.

(d) *Exceptions*. The awarding/approving official may make a determination in writing that competition is not deemed appropriate for a particular transaction. Such determination shall be limited to transactions where it can be adequately justified that a noncompetitive award is in the best interest of the Government and necessary to the accomplishment of the goals of the program. Reasons for considering noncompetitive awards may include, but are not necessarily limited to, the following:

(1) Nonmonetary awards of property or services;

(2) Awards of less than $75,000;

(3) Awards to fund continuing work already started under a previous award;

(4) Awards which cannot be delayed due to an emergency or a substantial danger to health or safety;

(5) Awards when it is impracticable to secure competition; or

(6) Awards to fund unique and innovative unsolicited applications.

[51 FR 17172, May 9, 1986]

Subpart R—Property

§ 3015.160 Scope and applicability.

(a) Except as explained in paragraphs (c), (d), and (e) of this section, this subpart applies to real property, equipment (including ADP) and supplies whose acquisition is supported by a grant.

(b) Also contained in this subpart are standards covering inventions, patents, and copyrights arising out of activities supported by a grant.

(c) This subpart does not apply to:

(1) Property for which only depreciation or use allowances are charged;

(2) Property donated entirely as a third party in-kind contribution; or

(3) Equipment or supplies acquired primarily for sale or rental, rather than for use.

(d) This subpart applies to equipment or supplies acquired by a contractor under a grant or subgrant only if, by terms of the contract, title vests in the recipient or subrecipient.

(e) For research grants that are subject to an institutional cost-sharing agreement, real property, equipment, and supplies shall be subject to this subpart only if at least some part of the acquisition cost is supported as a direct cost by Federal grant funds.

§ 3015.161 Additional requirements.

Provided they observe the requirements of this subpart, recipients may follow their own property management policies and procedures. Unless specifically required by Federal statutes or Executive Orders, awarding agencies

may not impose on recipients property requirements (including property reporting requirements) not authorized by this subpart.

§ 3015.162 Title to real property, equipment and supplies.

Subject to the obligations and conditions specified in this subpart, title to real property, equipment, and supplies acquired under a grant or subgrant shall vest, upon acquisition, in the recipient or subrecipient, respectively. In certain cases, money due the Federal government upon disposition of real property may be authorized to be used for allowable costs rather than paid to USDA. (See § 3015.173.)

§ 3015.163 Real property.

Except as stated otherwise by Federal statutes, real property applicable to this subpart shall be subject to the following requirements, in addition to any other requirements imposed by the provisions of the grant award:

(a) *Use*. The property shall be used for the originally authorized purpose as long as needed for that purpose. When no longer so needed, the awarding agency may approve the use of the property for other purposes. These uses shall be limited to:

(1) Projects or programs supported by other Federal grants or assistance agreements.

(2) Activities not supported by other Federal grants or assistance agreements but having purposes consistent with those of the legislation under which the original grant was made.

(b) *Transfer of title*. In accordance with paragraph (a) of this section, approval may be requested from the awarding agency to transfer title to an eligible third party for continued use for authorized purposes. If approval is permissible under Federal statutes, and is given, the terms of the transfer shall provide that the transferee shall assume all the rights and obligations of the transferor set forth in this subpart or in other terms of the grant or subgrant.

(c) *Disposition*. When the real property is no longer to be used as provided in paragraphs (a) and (b) of this section, the disposition instructions of the awarding agency shall be followed. Those instructions will provide for one of the following alternatives:

(1) The property shall be sold and the Federal government shall have a right to an amount computed by multiplying the Federal share of the property times the proceeds from sale (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). Proper sales procedures shall be followed which provide for competition to the extent practicable and result in the highest possible return.

(2) The recipient shall have the option either of selling the property in accordance with paragraph (c)(1) of this section or of retaining title. If title is retained, the Federal government shall have a right to an amount computed by multiplying the market value of the property by the Federal share of the property.

(3) The recipient shall transfer the title to either the Federal government or an eligible non-Federal party named by the awarding agency. The recipient shall be entitled to be paid an amount computed by multiplying the market value of the property by the non-Federal share of the property. In cases where the property belonged to a subrecipient, see § 3015.172 for the subrecipient's share.

§ 3015.164 Statutory exemptions for equipment and supplies.

(a) In certain circumstances some Federal statutes permit title to equipment or supplies acquired with grant funds to vest in the recipient without further obligation to the Federal government or on such terms and conditions set forth in the grant award, as deemed appropriate. The Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224, is an example of such a statute. It provides this authority for equipment and supplies purchased with the funds of grants (and Federal contracts and cooperative agreements) for the conduct of basic or applied scientific research at non-profit institutions of higher education or at non-profit organizations whose primary purpose is the conduct of scientific research.

(b) If equipment is subject to a statute of the kind described in paragraph (a) of this section, it shall be exempt

from the requirements in the remaining sections of this subpart. However, when an equipment item has a unit acquisition cost of $1,000 or more, it shall be subject to § 3015.165 concerning rights to require transfer, and, while subject to such a right, to the rules on replacement in § 3015.167.

(c) If supplies are subject to a statute of the kind described in paragraph (a) of this section, they shall be exempt from all provisions of the remainder of this subpart which would otherwise apply.

§ 3015.165 Rights to require transfer of equipment.

(a) *USDA right*. The awarding agency shall have the right to require the transfer of equipment (including title) for items of equipment having a unit cost of $1,000 or more to the Federal government or to an eligible non-Federal party named by the awarding agency. Normally, USDA agencies will only exercise this right if the project or program for which the equipment was acquired is transferred from one recipient to another. The following conditions shall govern this right:

(1) The property shall be appropriately identified in the grant award.

(2) In order for the awarding agency to exercise the right, disposition instructions must be issued no later than 120 days after the end of USDA grant support for the project or program for which the equipment was acquired. Furthermore:

(i) If the equipment is eligible for the exemptions in § 3015.164 and ceases to be needed for the project or program for which it was acquired while the project or program is still being performed by the recipient, the disposition instructions must have been received by the recipient while the equipment was still needed for that project or program.

(ii) If the equipment is not eligible for those exemptions, disposition instructions must have been received by the recipient before other permissible disposition of the equipment took place in accordance with § 3015.168.

(3) If the right is exercised, the recipient shall be entitled to be paid any reasonable, resulting shipping or storage costs incurred, plus an amount computed by multiplying the market value of the equipment by the non-Federal share of the equipment.

(b) *Right of parties awarding subgrants*. A recipient may reserve for itself, when awarding a subgrant, rights similar to those found in paragraph (a) of this section which covers items of equipment having a unit acquisition cost of $1,000 or more which are acquired under that subgrant. Without the approval of the awarding agency, the right may be exercised only if the project or program for which the equipment was acquired is transferred to another subrecipient and only for the purpose of transferring the equipment to the new subrecipient for continued use in the project or program.

(c) *Equipment lists*. If at any time an awarding agency is considering exercising its right to require transfer of equipment, it may require the recipient to furnish it with a list of all items of equipment that are subject to the right. As such, the awarding agency will decide which items, if any, should be transferred.

§ 3015.166 Use of equipment.

(a) *Basic rule*. Whenever the equipment is not transferred under the provisions set forth in § 3015.165, it shall be used by the recipient in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When the equipment is no longer needed for the original project or program the recipient shall use the equipment, if needed, in other projects or programs currently or previously funded by the Federal government, in the following order of priority:

(1) Projects or programs currently or previously funded by the same USDA awarding agency.

(2) Projects or programs currently or previously funded by any USDA awarding agency.

(3) Projects or programs currently or previously funded by other Federal agencies.

(b) *Shared use*. When equipment is used less than full time in the original project or program, the recipient shall make it available for use in other

projects or programs currently or previously funded by the Federal government. Provided, such other use will not interfere with the work on the original project or program. First preference for such use, however, shall be given to other projects or programs funded by the same USDA awarding agency.

(c) *Use by other recipients.* When the recipient can no longer use the equipment as required by paragraph (a) of this section, it may voluntarily make the equipment available for use on projects or programs currently or previously funded by the Federal government which the recipient is supporting through subgrants or through non-Federal grants. A subrecipient may also voluntarily make the equipment available for use in projects or programs currently or previously funded by the Federal government which are being conducted or supported by the recipient.

(d) *Other uses.* Unless the awarding agency provides otherwise, while equipment is being used as described in the preceding paragraphs of this section, it may also be used part-time for other purposes. The use as described in the previous paragraphs, however, shall be given priority over other uses.

§ 3015.167 Replacement of equipment.

(a) If needed, equipment may be exchanged for replacement equipment. Replacement of equipment may be done either through trade-in or through sale and application of the proceeds to the acquisition cost of replacement equipment. In either case, the transaction must be one which a prudent person would make in like circumstances.

(b) If an additional outlay to acquire the replacement equipment is charged as a direct cost to either Federal funds or required cost-sharing or matching under a Federal award, the replacement equipment shall be subject to whatever property requirements or exemptions are applicable to that award. If the award is a grant from USDA, the full acquisition cost of the replacement equipment shall determine which provisions of this subpart apply.

(c) For any replacement not covered by paragraph (b) of this section, the provisions of this subpart applicable to the equipment replaced shall carry over to the replacement equipment. None of the provisions of this subpart shall carry over if (1) the Federal share of the equipment replaced was 10 percent or less or (2) the product of that share times the amount received for trade-in or sale is $100 or less.

§ 3015.168 Disposal of equipment.

When original or replacement equipment is no longer to be used in projects or programs currently or previously sponsored by the Federal government, disposal of the equipment shall be made as follows:

(a) Equipment with a unit acquisition cost of less than $1,000 may be sold, retained or otherwise disposed of with no further obligation to the Federal government.

(b) All other equipment may be retained or sold. The Federal government shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the Federal share of the equipment (see § 3015.172). If part of the Federal share of the equipment came from an award under which the exemptions in § 3015.164 were applicable, the amount due shall be reduced pro rata. In any case, if the equipment is sold, $100 or 10 percent of the total sales proceeds, whichever is greater, may be deducted and retained from the amount otherwise due for selling and handling expenses. If the recipient's project or program for which or under which the equipment was acquired is still receiving grant support from the same Federal program and if the awarding agency approves, the net amount due may be used for allowable costs of that project or program. Otherwise, the net amount must be returned to the awarding agency by check or money order.

§ 3015.169 Equipment management requirements.

Recipient procedures for managing equipment shall, as a minimum, meet the following requirements (including replacement equipment) until such actions as transfer, replacement or disposal takes place:

(a) Property records shall be maintained accurately. (Subpart D of this

part contains retention and access requirements for these records.) The records shall include for each item of equipment the following:

(1) A description of the equipment including manufacturer's serial numbers.

(2) An identification number, such as the manufacturer's serial number.

(3) Identification of the grant under which the recipient acquired the equipment.

(4) The information needed to calculate the Federal share of the equipment (see § 3015.172).

(5) Acquisition date and unit acquisition cost.

(6) Location, use and condition of the equipment and the date the information was reported.

(7) All pertinent information on the ultimate transfer, replacement, or disposal of the equipment.

(b) Every two years, at a minimum, a physical inventory shall be conducted and the results reconciled with the property records to verify the existence, current utilization, and continued need for the equipment. Any discrepancies between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the differences.

(c) In order to insure adequate safeguards to prevent loss, damage or theft of equipment, a control system shall be used. Any loss, damage or theft of equipment shall be investigated and fully documented. The awarding agency may require a report of the circumstances involving the loss, damage, or theft of equipment.

(d) In order to keep the equipment in good condition, adequate maintenance procedures shall be implemented.

(e) Where equipment is to be sold and the Federal government is to have a right to part or all of the proceeds, selling procedures shall be established which will provide for competition to the extent practicable and result in the highest possible return.

§ 3015.170 Damage, loss, or theft of equipment.

(a) *Applicability*. This section applies to equipment with a unit acquisition cost of $1,000 or more that, before disposal (see § 3015.168), is damaged beyond repair, lost, or stolen.

(b) *Recipient at fault*—(1) *Applicability*. This paragraph applies if:

(i) At the time of the damage, loss, or theft, the recipient does not have a control system in effect as required by § 3015.169, and

(ii) The damage, loss, or theft is not due to an act of God.

(2) *Equipment replaced*. If the equipment is replaced, the replacement is governed by § 3015.167. When that happens, the market value of the original equipment at the time it was damaged, lost, or stolen is used instead of the amount received for trade-in or sale.

(3) *Equipment not replaced*. If the equipment is not replaced, the Federal government has a right to an amount calculated by multiplying the Federal share in the equipment by its market value at the time of damage, loss, or theft. The amount is reduced pro rata if part of the Federal share of the equipment comes from an award under which the exemption in § 3015.164 applied.

(4) *Other remedies*. The provisions in this paragraph (b) are in addition to other remedies available to the awarding agency if a recipient acquires equipment with grant support but fails to establish the control system required by § 3015.169.

(c) *Recipient not at fault*—(1) *Applicability*. This paragraph applies if:

(i) At the time of the damage, loss, or theft, the recipient does have a control system in effect as required by § 3015.169(c) or

(ii) The damage, loss, or theft is due to an act of God.

(2) *Recipient not compensated*. If the recipient is not compensated for the damage, loss, or theft, through insurance or some other means, there is no obligation to USDA for the equipment.

(3) *Recipient compensated*. If the recipient is compensated for the damage, loss, or theft and replaces the equipment, § 3015.167 applies to the replacement equipment. If the recipient is compensated but does not replace the equipment, § 3015.168 applies as though the recipient had sold the equipment. (All of § 3015.168 applies including the rule permitting the amount due the Federal government to be reduced by 10

percent of the proceeds or $100, whichever is greater.) The amount received for trade-in or sale is considered the lesser of (i) the amount of compensation or (ii) the market value of the equipment at the time it was damaged, lost, or stolen.

(d) *Waivers*. The awarding agency may waive in whole or in part any provision of this section.

§ 3015.171 Unused supplies.

(a) If unused supplies exceeding $1,000 in total aggregate market value are left over upon termination or expiration of the grant or subgrant for which they were acquired and the supplies are not needed for any project or program currently or previously funded by the Federal government, the grant shall be credited by an amount computed by multiplying the Federal share of the supplies times the current market value or, if the supplies are sold, the proceeds from sale. If the supplies are sold, 10 percent of the proceeds may be deducted and retained from the credit, for selling and handling expenses.

(b) For possible exemptions from this section, see § 3015.164.

§ 3015.172 Federal share of real property, equipment, and supplies.

This subpart contains principles necessary to determine the Federal (or non-Federal) share of real property, equipment or supplies.

(a) *General*. (1) Except as explained in the following paragraphs of this section, the Federal share of the property shall be the same percentage as the Federal share of the acquiring party's total cost under the grant during the grant or subgrant year (or other funding period) to which the acquisition cost of the property was charged. For this purpose, ''costs under the grant'' means allowable costs which are either supported by the grant or counted toward satisfying a cost-sharing or matching requirement of the grant.

(2) If the property is acquired by a subrecipient, the Federal share of the subrecipient's costs under the grant and hence of the property shall be calculated by multiplying the Federal share of the recipient's costs by the latter's share of the subrecipient's costs. (For example, if the Federal share of the recipient's costs is 50 percent and the subgrant bears only 50 percent of a subrecipient's costs, then the Federal share of that subrecipient's costs (and of the property acquired by that subrecipient) is 25 percent.)

(3) The provisions of some grant awards set different maximum percentages of Federal financial participation for different categories of costs. In these cases, for the purposes of this section, the costs in each category are considered as costs under a separate grant. If two categories have the same maximum percentage of Federal participation and costs in one category are permitted to count toward satisfying a cost-sharing or matching requirement of the other, they are a single category for the purposes of this rule. Also, all categories with a 100 percent rate are considered a single category for the purposes of this rule.

(b) *Property acquired only partly under a grant*. (1) Sometimes only a part of the acquisition cost of an item of property is supported as a direct cost by the grant or counted as a direct cost towards a cost-sharing or matching requirement. Occasionally, the amount paid for the property is only a part of its value. The remainder is donated as an in-kind contribution by the party that provided the property.

(2) To determine the Federal share of such property, first calculate the Federal share of the acquiring party's total costs under the grant as explained in paragraph (a) of this section. Next multiply that share by the percentage of the property's acquisition cost (or its market value, if the item was partly donated) which was supported as a direct cost by the grant or counted as a direct cost towards a cost-sharing or matching requirement.

(c) *Replacement equipment*. To calculate the Federal share of replacement equipment the following procedures shall be followed:

(1) *Step 1:* Determine the Federal share (percentage) of the equipment replaced.

(2) *Step 2:* Determine the percentage of the replacement equipment's costs that was covered by the amount received for trade-in or the sale proceeds from the equipment replaced.

(3) *Step 3:* Multiply the step 1 percentage by the step 2 percentage.

(4) *Step 4:* If an additional outlay for the replacement equipment was charged as a direct cost either to USDA grant funds or to required cost-sharing or matching funds, calculate the Federal share attributable to that additional outlay as explained in paragraph (b)(2) of this section. Add that additional percentage to the step 3 percentage.

§ 3015.173 Using or returning the Federal share.

(a) This section applies when, under § 3015.163, 3015.168 or 3015.170, the Federal government has a right to an amount of money upon disposal or loss, theft, or damage of property.

(b) If the recipient's project or program for which the property was acquired is still receiving grant support from the same Federal program, the awarding agency may authorize use of the net money due for allowable costs of that project or program.

(c) Otherwise, the net amount must be returned to the awarding agency by check or money order.

§ 3015.174 Subrecipient's share.

Where this subpart requires a sharing of the market value or sale proceeds of property acquired under a subgrant, the non-Federal share shall be proportionally divided between the recipient and the subrecipient. The subrecipient shall be entitled to the amount it would have received or retained if the award to it had been made directly by the Federal government. The remainder of the non-Federal share shall belong to the recipient.

§ 3015.175 Intangible personal property.

(a) *Inventions and Patents.* (1) If the recipient is a small business or nonprofit organization (including universities and other institutions of higher education), the allocation of rights in inventions produced under a grant or cooperative agreement shall be determined in accordance with the provisions of sections 200 through 206 of Pub. L. 96–517 (35 U.S.C. 200–206) and OMB Circular A–124.

(2) For all other recipients, the allocation of rights in inventions shall be determined in accordance with the ''Government Patent Policy'' (President's Memorandum for Heads of Executive Departments and Agencies, February 18, 1983) and OMB Circular A–124.

(b) *Copyrights*—(1) *Applicability.* This section applies to the copyright in any original work of authorship prepared with grant support. Additionally, if ownership of a copyright or of any of the exclusive rights comprising a copyright are purchased with grant support, this section applies to the purchased copyright or rights.

(2) *Basic rules.* (i) USDA reserves a royalty-free, nonexclusive, and irrevocable license to exercise, and to authorize others to exercise, the rights for Federal Government purposes. Subject to this license, the owner is free to exercise, preserve, or transfer all its rights. The recipient shall ensure that no agreement is entered into for transferring the rights which would conflict with the nonexclusive license of USDA.

(ii) One way that USDA may exercise its nonexclusive license is to authorize exercise of the rights in another project or activity that receives or has received grant support from the Federal Government.

(iii) A recipient awarding a subgrant is allowed to impose subgrant terms reserving a nonexclusive license for itself, similar to the one reserved by this section for USDA, with respect to any copyright or rights subject to this section that arise under the subgrant.

[48 FR 35875, Aug. 8, 1983]

Subpart S—Procurement

§ 3015.180 Scope and applicability.

(a) This subpart contains information for complying with Attachment 0, ''Procurement Standards'', of OMB Circulars A–102 and A–110. Circular A–102 covers grant and cooperative agreement programs with State and local governments and Indian Tribal governments. Circular A–110 covers grant and cooperative agreement programs with institutions of higher education, hospitals, and other nonprofit organizations. Copies of both Circulars may be obtained from O&F.

(b) This subpart applies to recipient procurements (by purchase, rental, or barter) of supplies, equipment, and services (including construction).

(c) This subpart applies only to procurements that are supported in whole or in part by a grant or cooperative agreement.

(d) This subpart does not apply to procurements of land, existing land improvements or structures, or any other existing real property.

(e) The Attachment 0 of Circulars A–102 and A–110 apply to procurements under subgrants as well as grants.

§ 3015.181 Standards of conduct.

(a) Recipients shall maintain a written code or standards of conduct governing the performance of their officers, employees or agents engaged in awarding and administering contracts supported by Federal funds:

(1) No employee, officer or agent shall participate in the selection, award, or administration of contracts using Federal funds where to his knowledge, such employee, officer or agent or his immediate family, partners or organizations has a financial interest in, is negotiating with, or has any arrangements concerning prospective employment with the proposed contractor.

(2) The recipient's officers, employees or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or proposed contractors.

(3) Provisions shall be made for disciplinary actions against the recipient's officers, employees, or agents or by contractors or their agents violating the standards of conduct.

(b) Awarding agencies may review the written standards of conduct to determine if they meet the minimum standards of Attachment 0 of OMB Circulars A–110 and A–102. Recipients will be notified of deficiencies and make corrective action.

§ 3015.182 Open and free competition.

All procurement transactions, regardless of whether by sealed bids or by negotiation and without regard to dollar value shall be conducted in a manner that provides maximum open and free competition.

§ 3015.183 Access to contractor records.

The Attachment 0 requires recipients to include in specified kinds of contracts a provision for access to the contractor's records by the recipient and the Federal government. The following applies to the provision:

(a) The provision must require the contractor to place the same provision in any subcontract which would have to have the provision were it awarded by the recipient.

(b) The provision must require retention of records for three years after final payment is made under the contract or subcontract and all pending matters are closed. The provision must also require that, if any audit, litigation, or other action involving the records is started before the end of the three year period, the records must be retained until all issues arising out of the action are resolved or until the end of the three year period, whichever is later.

(c) In contracts and subcontracts under a subgrant, the provision must require that access to the records be provided to the recipient as well as the subrecipient and the Federal government.

§ 3015.184 Equal employment opportunity.

(a) The Attachment 0 requires recipients to include in contracts in excess of $10,000 a provision requiring compliance with Executive Order 11246, concerning equal employment opportunity as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Chapter 60).

(b) If construction is to be assisted by a grant or subgrant, the Executive Order and the Department of Labor supplementing regulations apply, unless an exemption is granted by or under those regulations. Recipients shall observe all applicable requirements of the Order and regulations and include in their nonexempt construction contracts the specific clauses prescribed by 41 CFR 60–1.4(b) and, if applicable, 41 CFR 60–4.3.

Subpart T—Cost Principles

§ 3015.190 Scope.

This subpart makes the allowable costs incurred by the recipient the maximum amount of money a recipient is entitled to receive from USDA. In addition, this subpart identifies the principles to be used in determining allowable costs. These cost principles shall apply to transactions and activities conducted under grants, subgrants, cooperative agreements, cost-type contracts and cost-type subcontracts under grants.

(a) *Allowable costs.* Grant funds may be used only for allowable costs of the activities for which the grant was awarded. This means that the total amount of money that the recipient is entitled to receive from USDA may not exceed the allowable costs incurred by the recipient for those activities.

(b) The following rules apply in computing maximum allowable costs:

(1) *Third party in-kind contributions.* Because they are not allowable costs of the party that receives them, the value of third party in-kind contributions received may not be included in determining maximum allowable costs. However, as provided in Subpart G of this part, third party in-kind contributions may count towards satisfying a cost-sharing or matching requirement of the Federal grant.

(2) *Costs supported by another grant.* Allowable costs incurred by the recipient and supported by another Federal grant (or by a non-Federal grant) awarded to the recipient may not be included in determining maximum allowable costs. The basic intent of this rule is to prevent double compensation. It does not, however, prevent proration of costs that are allowable under two or more awards.

(3) *Costs used to match another Federal grant.* A cost that the recipient uses to meet a cost-sharing or matching requirement of one Federal grant may not count towards determining maximum allowable costs under another Federal grant, unless specifically authorized by a Federal statute.

(4) *Costs supported by general program income.* A grant may not pay for a cost which is supported by general program income earned by the recipient or by a subrecipient under the grant. Therefore, these costs may not be included in determining maximum allowable costs.

(5) *Use of money due Federal government.* In accordance with § 3015.173, an awarding agency, under certain circumstances, may authorize a recipient to use certain money due the Federal government for allowable costs of the project or programs, instead of returning the money to the Federal Government. Costs supported by the money may not be included as part of the maximum allowable costs charged to USDA.

(6) *Subgrant and contract costs.* The recipient's allowable costs include allowable outlays, if any, to its subrecipients and contractors. If the recipient pays a subrecipient more than the allowable costs incurred by the subrecipient, the excess is not an allowable cost of the recipient and may not be included as part of the maximum allowable costs charged to USDA. However, for cost-type contracts a reasonable fee or profit paid by the recipient to the contractor, in addition to the contractor's allowable costs, may be included in this maximum unless prohibited by the provisions of the grant award.

§ 3015.191 Governments.

(a) OMB Circular No. A–87, and any subsequent amendments to this Circular published in the FEDERAL REGISTER by OMB, shall be used in determining the allowable costs of activities conducted by governments.

(b) Additional amendments to the Circular, unless otherwise prescribed by OMB, shall go into effect at the start of a government's first fiscal year following the amendment's publication in the FEDERAL REGISTER.

§ 3015.192 Institutions of higher education.

(a) OMB Circular No. A–21, including any amendments to the Circular published in the FEDERAL REGISTER by OMB, shall be used in determining the allowable costs of activities conducted by institutions of higher education (other than for-profit institutions).

(b) Additional amendments to the Circular, unless otherwise prescribed by OMB, shall go into effect at the

start of an institution's first fiscal year following the amendment's publication in the FEDERAL REGISTER.

§ 3015.193 Other non-profit organizations.

(a) OMB Circular No. A–122, including any subsequent amendments to the Circulars published in the FEDERAL REGISTER by OMB, shall be used in determining the allowable costs of activities conducted by nonprofit organizations under grants, cooperative agreements, cost reimbursement contracts, and other contracts in which costs are used in pricing, administration, or settlement. It does not apply to colleges or universities which are covered by Circular A–21; State, local and federally recognized Indian Tribal governments which are covered by Circular A–87, or hospitals.

(b) Future amendments to the Circular, unless otherwise prescribed by OMB, shall go into effect at the time the initial award is made to the recipient.

§ 3015.194 For-profit organizations.

The principles to be used when determining the allowable costs of activities conducted by for-profit organizations are contained in the Federal Acquisition Regulation at 48 CFR Subpart 31.2. Exception: Independent research and development costs including any indirect costs allocable to them are unallowable. Independent research and development are defined in the Federal Acquisition Regulation at 48 CFR 31.205–18.

[60 FR 44124, Aug. 24, 1995]

§ 3015.195 Subgrants and cost-type contracts.

USDA cost principles applicable to a cost-type contractor or a subrecipient will not necessarily be the same as those applicable to the recipient. For example, where a State government awards a subrecipient or cost-type contract to an institution of higher education, OMB Circular A–21 would apply to the costs incurred by the institution of higher education even though OMB Circular A–87 would apply to the costs incurred by the State.

§ 3015.196 Costs allowable with approval.

Each set of cost principles specifically identifies certain costs that, in order to be allowable, must be approved by the awarding agency. Other costs do not require approval. The following procedures govern approval of these costs:

(a) When costs are allocated in accordance with a government-wide cost allocation plan or when treated as indirect costs, acceptance of the costs as part of the indirect cost rate or cost allocation plan shall constitute approval.

(b)(1) All direct costs must be approved in advance by the awarding agency.

(2) When costs are specified in the budget, approval of the budget shall constitute approval of the cost.

(3) Specific prior approval in writing from the awarding agency is required if the costs are not specified in the budget, or if there is no approved budget. For this purpose the prior approval procedures of Subpart M shall be followed, except that, for formula or mandatory grants, the awarding agency's written approval may be signed by any authorized official of the awarding agency.

(c) The awarding agency may waive or conditionally waive the requirement for its approval of the costs. A waiver, as such, shall be applicable only to the requirement for approval. If it is determined, by audit or otherwise, that the costs do not meet other requirements or tests for allowability specified by the applicable cost principles, such as reasonableness and necessity, the costs may be disallowed.

(d) In the case of subgrants and cost-type contracts, no approval shall be given which is inconsistent with the purpose or the provisions of the Federal grant.

Subpart U—Miscellaneous

§ 3015.200 Acknowledgement of support on publications and audiovisuals.

(a) *Definitions.* Appendix A defines ''audiovisual,'' ''production of an audiovisual,'' and ''publication.''

(b) *Publications*. Recipients shall have an acknowledgement of awarding agency support placed on any publications written or published with grant support and, if feasible, on any publication reporting the results of, or describing, a grant-supported activity.

(c) *Audiovisuals*. Recipients shall have an acknowledgement of awarding agency support placed on any audiovisual which is produced with grant support and which has a direct production cost to the recipient of over $5,000. Unless the other provisions of the grant award make it apply, this requirement does not apply to:

(1) Audiovisuals produced under mandatory or formula grants or under subgrants.

(2) Audiovisuals produced as research instruments or for documenting experimentation or findings and not intended for presentation or distribution to the general public.

(d) *Waivers*. Awarding agencies may waive any requirement of this section.

§ 3015.201 Use of consultants.

(a) *Definition*. Appendix A defines ''consultant.''

(b) *Applicability*. This section applies only to the use of consultants whose fees are supported by a grant, subgrant, or cost-type contract.

(c) *Basic policy*—(1) *Prior approval*. Awarding agencies shall not require prior approval for the use of consultants.

(2) *Exceptions*. (i) In unusual cases, using a consultant may constitute a transfer of substantive programmatic work, which requires prior approval under discretionary grants.

(ii) Consulting fees paid by an organization to its own employees require prior approval.

(d) *Use of an organization's own employees*—(1) *Faculty members of education institutions*. Charges representing extra compensation (above base salary) paid by an educational institution to a salaried member of its faculty for consulting work are allowable only in unusual cases, and only if both of the following conditions exist:

(i) The consultation is across departmental lines or involves a separate or remote operation; and

(ii) The work performed by the consultant is in addition to his or her regular departmental load.

(2) *All other cases*. In all other cases, consulting fees paid in addition to salary by recipients or cost-type contractors to people who are also their employees may be supported by a grant, subgrant, or cost-type contract only in unusual cases, and only if all of the following three conditions exist:

(i) The policies of the recipient or contractor permit such consulting fee payments to its own employees regardless of whether Federal grant funds are involved;

(ii) The work involved is clearly outside the scope of the person's salaried employment; and

(iii) It would be inappropriate or not feasible to compensate for the additional work by paying additional salary to the employee.

(3) *Requirement for approval*. Consulting fees paid under this section must have a specific prior approval in writing from the Head of the recipient or contractor or from his or her designated representative. If the recipient or contractor is a government, the approval may be given by the Head (or a designated representative of the Head) of the government agency which is primarily responsible for administering or carrying out the project or program. If the designated representative is personally involved in the project or program under consideration, the approval may be given only by the Head. If the Head is personally involved in the project or program under consideration, prior approval from the awarding agency is required. Such prior approval must include a determination that the applicable requirements in paragraph (d) (1) or (2) of this section are present.

(e) *Documentation standards*. (1) Charges for consulting payments must be supported in the records of the recipient or cost-type contractor by an invoice from the consultant and a copy of the written report (if a report is appropriate) or other documented evidence of the work performed from the consultant.

(2) If any of the following information is not shown on the invoice and/or

report from the consultant, the information must be shown in a memorandum or other document prepared by the recipient or contractor for its files, or noted in handwriting on the consultant's invoice by the recipient or contractor. The memorandum, other document, or handwritten notation must be signed by an official of the recipient or contractor and show:

(i) The name of the consultant;

(ii) The nature of the services provided (such as statistical analysis of data, participation on project advisory committee, or specified medical services to eligible beneficiaries);

(iii) The relevance of the services to the project or program, if not apparent from the nature of the services; and

(iv) Whichever of the following is applicable:

(A) (If the fee was based on a rate per day or hours worked) the rate and the dates and/or hours worked;

(B) (If the fee was based on a rate per unit of service provided, such as the number of patients examined by a physician) the rate, the number of units of service provided, and the beginning and ending dates of the overall period of service; or

(C) (If the fee was determined on some other basis) the basis for determining the fee and the beginning and ending dates of the period in which services were provided.

§ 3015.202 Limits on total payments to the recipient.

(a) This section summarizes the four most widely applicable limits on the total amount of money the recipient is entitled to receive from USDA as a result of a grant. It is permissible for the terms of a grant to provide one or more additional limits.

(b) For each grant, the lowest of the applicable limits is the one that governs the final settlement upon expiration or termination of the grant.

(c) The following two limits apply to every grant:

(1) The amount of Federal funds authorized.

(2) The Federal share of the allowable costs incurred by the recipient.

(d) Grants that require a specified percentage of cost-sharing or matching are subject to the limit described in Subpart G.

(e) For each budget period of an incrementally funded discretionary grant, the Federal share of that period's approved budget is a limit.

§ 3015.203 [Reserved]

§ 3015.204 Federal Register publications.

(a) *Program regulations.* Most grant programs have program-specific regulations, which are published in the FEDERAL REGISTER and codified in the Code of Federal Regulations. In some cases the program-specific regulations are promulgated in the form of agency directives or manuals which may be obtained from the awarding agency.

(b) *Program announcements.* For each program, the awarding agency may publish in the FEDERAL REGISTER one or more program announcements. Program announcements invite applications for one or more stated program objectives. They include at least the following information:

(1) An estimate of how much money will be available for competing awards, and the expected size of the awards, broken down by subprogram or priority area when appropriate;

(2) Who is eligible;

(3) How to obtain application kits;

(4) Where to submit applications; and

(5) The deadline for submitting applications.

(c) *Cooperative agreements.* If any or all of the awards are likely to be cooperative agreements rather than grants, the program announcement so states. In that case, if feasible, the program announcement also describes the anticipated substantial Federal involvement in performance. (This paragraph does not prevent the award of cooperative agreements under a program announcement that mentioned only grants. Nor does it prevent the award of grants under a program announcement that mentioned only cooperative agreements.)

(d) *Evaluation criteria.* The awarding agency publishes its criteria for evaluating grant applications either in the program regulations or the program announcement. If the criteria are not all equal in importance, their relative

weights are also published. The criteria cover at least the following factors (except where the nature of the eligible projects makes one or more of these factors irrelevant):

(1) How well qualified the project's personnel will be;

(2) The adequacy of the applicant's facilities and resources;

(3) The adequacy of the project plan or methodology;

(4) The cost-effectiveness of the project; and

(5) How closely the project objectives fit the objectives for which applications were invited.

(e) *Funding priorities.* If the awarding agency will give priority to one or more particular kinds of projects, the priority (and how it will be applied in deciding which applications to fund) is described in the program announcement.

(f) *Competing continuations vs. ''new'' projects.* If the awarding agency will give a preference to competing continuation applications over applications for projects not already receiving support under the program, or vice versa, the preference is described in the program announcement.

(g) *Programs with few potential applicants.* In some programs the number of potential applicants is relatively small. (For example, in some programs only the States are eligible.) In these situations the awarding agency may send a copy of the program announcement directly to every potential applicant instead of publishing it in the FEDERAL REGISTER.

(h) *Register—Other information which is available.* In addition to the items specified above, each awarding Agency makes available to the public the following information and materials for each program:

(1) A copy of, or reference to, the authorizing statutes for the program;

(2) All guidelines of general applicability for administration of the program;

(3) A description of the procedures the awarding agency will use for evaluating applications; and

(4) Any other information that the awarding agency believes will be helpful.

(i) *Consulting with applicants.* Each awarding agency publishes as much information as practicable to reduce the need for consultation by applicants. If the awarding agency does provide consultation, its staff members try to give consistent interpretations and fair treatment to all requestors.

§ 3015.205 General provisions for grants and cooperative agreements with institutions of higher education, other nonprofit organizations, and hospitals.

(a) *Scope.* This section sets forth general provisions which apply, in whole or in part, to grants and cooperative agreements awarded by USDA to institutions of higher education, other nonprofit organizations, and hospitals. (General provisions applicable to grants and cooperative agreements with State and local governments are set forth in the Office of Management and Budget (OMB) Circular A–102, Attachment M and are made a condition of each grant or cooperative agreement awarded to such recipients). Any statutory provisions that apply to the particular agreement at hand, that are not included herein, shall be made a part of the award document. All administrative requirements contained in subparts A through U of 7 CFR part 3015 shall apply, as appropriate.

(b) *Assurances and compliance.* It shall be a condition of every USDA grant or cooperative agreement awarded to institutions of higher education, other nonprofit organizations and hospitals that the recipient assure and certify compliance with the following general requirements to the extent applicable:

(1) It will comply with the following provisions regarding the rights and welfare of human subjects:

(i) The recipient organization is responsible for safeguarding the rights and welfare of any human subjects involved in research, development, and related activities supported by this agreement. The recipient organization may conduct research involving human subjects only as described in the proposal and as approved by the recipient organization's cognizant Institutional Review Board. Prior to conducting such research, the recipient organization shall obtain and document a legally sufficient informed consent from

each human subject involved. No such informed consent shall include any exculpatory language through which the subject is made to waiver, or to appear to waiver, any of his or her legal rights, including any release of the recipient organization or its agents from liability for negligence.

(ii) The recipient organization agrees to comply with U.S. Department of Health and Human Services' regulations regarding human subjects, appearing in 45 CFR part 46 (as amended).

(iii) It will comply with USDA policy which is to assure that the risks do not outweigh either potential benefits to the subjects or the expected value of the knowledge sought.

(iv) Selection of subjects or groups of subjects shall be made without regard to sex, race, color, religion, or national origin unless these characteristics are factors to be studied.

(2) It will comply with the Animal Welfare Act, as amended, 7 U.S.C. 2131, *et seq.*, and the regulations promulgated thereunder by the Secretary of Agriculture (9 CFR, Subchapter A) pertaining to the care, handling, and treatment of warm-blooded animals held or used for research, teaching, or other activities supported by Federal funds. Recipient organizations may request registration of facilities and a current listing of licensed dealers from the Regional Office of the Animal and Plant Health Inspection Service (APHIS), USDA, for the Region in which their facility is located. The location of the appropriate APHIS Regional Office, as well as information concerning this requirement, may be obtained by contacting the Senior Staff Officer, Animal Care Staff, USDA/APHIS, Federal Center Building, Hyattsville, Maryland 20782.

(3) It will assume primary responsibility for implementing proper conduct or recombinant DNA research and it will comply with the national Institute of Health Guidelines for Recombinant DNA Research, as revised.

(4) It will comply with Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. 1517, which requires:

(i) Any air transportation to, from, between, or within a country, other than the U.S., of persons or property, the expense of which will be assisted by USDA funding, to be performed on a U.S.-flag carrier if service provided by such carrier is ''available.''

(ii) For the purposes of this requirement:

(A) Passenger or freight service by a certificated air carrier is considered ''available'' even though:

(*1*) Comparable or a different kind of service by a noncertificated air carrier costs less; or

(*2*) Service by a noncertificated air carrier can be paid for in excess foreign currency; or

(*3*) Service by a noncertificated air carrier is preferred by the recipient organization contractor or traveler needing air transportation.

(B) Passenger service by a certificated air carrier is considered to be ''unavailable'':

(*1*) When the traveler, while enroute, has to wait six hours or more for an available U.S. carrier; or

(*2*) When any flight by a U.S. carrier interrupted by a stop anticipated to be six hours or more for refueling, reloading repairs, etc., and no other flight by a U.S. carrier is available during the six-hour period; or

(*3*) When the flight by a U.S. carrier takes 12 or more hours longer than a foreign carrier.

(5) It possesses legal authority to enter into the agreement; that a resolution, motion or similar action has been duly adopted or passed as an official act of its governing body, authorizing the acceptance of the agreement including all understandings and assurances contained therein and directing and authorizing the person identified as the official representative of the recipient organization to act in connection with the agreement and to provide such additional information as may be required.

(6) It will comply with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity

for which the recipient receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement.

(7) It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

(8) It will give USDA, the awarding agency or the Comptroller General, through any authorized representative, access to and the right to examine all records, books, papers or documents related to the award.

(9) It will comply with all requirements imposed by the awarding agency concerning special requirements of law, program requirements, and other administrative requirements.

(10) It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of violating facilities and that it will notify the awarding agency of the receipt of any communication from the Director of the EPA, Office of Federal Activities, indicating that a facility to be utilized in the project is under consideration for listing by the EPA.

(11) It will comply with the flood insurance purchase requirements of the National Flood Insurance Act of 1968, as amended, and the Flood Disaster Protection Act of 1973, 42 U.S.C. 4001–4127. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards.

(12) It will assist the awarding agency in its compliance with Section 106 of the National Historic Preservation Act of 1966, 16 U.S.C. 470, Executive Order 11593, and the Archaeological and Historic Preservation Act of 1974, 16 U.S.C. 496a–1, *et. seq.*, by (i) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR 800.8) by the activity, and notifying the awarding agency of the existence of any such properties, and by (ii) complying with all requirements established by the awarding agency to avoid or mitigate adverse effects upon such properties.

(13) It will comply with Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, *et. seq.*, which prohibits discrimination on the basis of sex in Federally assisted education programs.

(14) It will comply with Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794. Section 504 provides that no otherwise qualified handicapped individual shall solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(15) It will comply with the Age Discrimination Act of 1975, 42 U.S.C. 6101–6107, which prohibits unreasonable discrimination based on age, in programs or activities receiving Federal financial assistance.

(16) It is in compliance with the Clean Air Act of 1970, 42 U.S.C. 7401 *et seq.*, which requires federally assisted activities to be in conformance with State (Clean Air) Implementation Plan.

(17) It will establish safeguards to ensure that USDA funds are properly spent. In particular, except nonprofit organizations which are subject to the lobbying provisions of paragraph B.21. of OMB Circular A–122, it will assure that funds are not used for partisan or political activity purposes.

(c) USDA awarding agencies shall obtain the required assurances and certifications by including the following clause in each grant or cooperative agreement awarded to institutions of higher education, other nonprofit organizations and hospitals:

As a condition of this grant or cooperative agreement, the recipient assures and certifies that it is in compliance with and will comply in the course of the agreement with all applicable laws, regulations, Executive

Orders and other generally applicable requirements, including those set out in 7 CFR 3015.205(b), which hereby are incorporated in this agreement by reference, and such other statutory provisions as are specifically set forth herein.

[48 FR 27222, June 14, 1983, as amended at 49 FR 38534, Oct. 1, 1984]

Subpart V—Intergovernmental Review of Department of Agriculture Programs and Activities

AUTHORITY: E. O. 12372, July 14, 1982 (47 FR 30959), as amended Apr. 8, 1983 (48 FR 15887): Sec. 401 of the Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec. 204 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended (42 U.S.C. 3334).

SOURCE: 48 FR 29112, June 24, 1983, unless otherwise noted.

§ 3015.300 Purpose.

(a) The regulations in this part implement Executive Order 12372, ''Intergovernmental Review of Federal Programs'', issued July 14, 1982, and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968 and section 204 of the Demonstration Cities and Metropolitan Development Act of 1966.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on State processes and on State, arewide, regional and local coordination for review of proposed Federal financial assistance and direct Federal development.

(c) The regulations are intended to aid the internal management of the Department, and are not intended to create any right or benefit enforceable at law by a party against the Department or its officers.

§ 3015.301 Definitions.

Department means the U.S. Department of Agriculture.

Order means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983, and titled *Intergovernmental Review of Federal Programs*.

Secretary means the Secretary of the U.S. Department of Agriculture or an official or employee of the Department acting for the Secretary under a delegation of authority.

State means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Island, or the Trust Territory of the Pacific Islands.

§ 3015.302 Applicability.

The Secretary publishes in the FEDERAL REGISTER a list of the Department's programs and activities that are subject to these regulations and identifies which of these are subject to the requirements of section 204 of the Demonstration Cities and Metropolitan Development Act.

§ 3015.303 Secretary's general responsibilities.

(a) The Secretary provides opportunities for consultation by elected officials of those State and local governments that would provide the non-Federal funds for, or that would be directly affected by, proposed Federal financial assistance from, or direct Federal development by, the Department.

(b) If a State adopts a process under the Order to review and coordinate proposed Federal financial assistance and direct Federal development, the Secretary, to the extent permitted by law:

(1) Uses the State process to determine official views of State and local elected officials;

(2) Communicates with State and local elected officials as early in a program planning cycle as is reasonably feasible to explain specific plans and actions;

(3) Makes efforts to accommodate State and local elected officials' concerns with proposed Federal financial assistance and direct Federal development that are communicated through the State process;

(4) Allows the States to simplify and consolidate existing Federally required State plan submissions;

(5) Where State planning and budgeting systems are sufficient and where

permitted by law, encourages the substitution of State plans for Federally required State plans;

(6) Seeks the coordination of views of affected State and local elected officials in one State with those of another State when proposed Federal financial assistance or direct Federal development has an impact on interstate metropolitan urban centers or other interstate areas; and

(7) Supports State and local governments by discouraging the reauthorization or creation of any planning organization which is Federally-funded, which has a limited purpose, and which is not adequately representative of, or accountable to, State or local elected officials.

§ 3015.304 Federal interagency coordination.

The Secretary, to the extent practicable, consults with and seeks advice from all other substantially affected Federal departments and agencies in an effort to assure full coordination between such agencies and the Department regarding programs and activities covered under these regulations.

§ 3015.305 State selection of programs and activities.

(a) A State may select any program or activity published in the FEDERAL REGISTER in accordance with § 3015.302 of this subpart for intergovernmental review under these regulations. Each State, before selecting programs and activities, shall consult with local elected officials.

(b) Each State that adopts a process shall notify the secretary of the Department's programs and activities selected for that process.

(c) A State may notify the Secretary of changes in its selections at any time. For each change, the State shall submit to the Secretary an assurance that the State has consulted with elected local officials regarding the change. The Department may establish deadlines by which States are required to inform the Secretary of changes in their program selections.

(d) The Secretary uses a State's process as soon as feasible, depending on individual programs and activities, after the Secretary is notified of its selections.

§ 3015.306 Communication with State and local elected officials.

(a) The Secretary provides notice to directly affected State, areawide, regional, and local entities in a State of proposed Federal financial asssistance or direct Federal development if:

(1) The State has not adopted a process under the Order; or

(2) The assistance or development involves a program or an activity that is not covered under the State process.

(b) This notice may be made by publication in the FEDERAL REGISTER or other appropriate means, which the Department in its discretion deems appropriate.

(c) In order to facilitate communication with State and local officials the Secretary has established an office within the Department to receive all communications pertinent to this Order. All communications should be sent to the Office of Finance and Management, Room 143–W, Administration Building, Washington, DC 20250, Attention: E.O. 12372.

§ 3015.307 State comments on proposed Federal financial assistance and direct Federal development.

(a) Except in unusual circumstances, the Secretary gives State processes or directly affected State, areawide, regional, and local officials and entities:

(1) At least 30 days from the date established by the Secretary to comment on proposed Federal financial assistance in the form of noncompeting continuation awards; and

(2) At least 60 days from the date established by the Secretary to comment on proposed direct Federal development or Federal financial assistance other than noncompeting continuation awards.

(b) This section also applies to comments in cases in which the review, coordination and communication with the Department have been delegated.

(c) Applicants for programs and activities subject to section 204 of the Demonstration Cities and Metropolitan Development Act shall allow areawide agencies a 60-day opportunity for review and comment.

§ 3015.308 Processing comments.

(a) The Secretary follows the procedures in § 3015.309 if:

(1) A State office or official is designated to act as a single point of contact between a State process and all Federal agencies; and

(2) That office or official transmits a State process recommendation for a program selected under § 3015.305.

(b)(1) The single point of contact is not obligated to transmit comments form State, areawide, regional or local officials and entities where there is no State process recommendation.

(2) If a State process recommendation is transmitted by a single point of contact, all comments from State, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a State has not established a process, or is unable to submit a State process recommendation, State, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department.

(d) If a program or activity is not selected by a State process, State, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department. In addition, if a State process recommendation for a non-selected program or activity is transmitted to the Department by the single point of contact, the Secretary follows the procedures of § 3015.309 of this subpart.

(e) The Secretary considers comments which do not constitute a State process recommendation submitted under these regulations and for which the Secretary is not required to apply the procedures of § 3015.309 of this subpart, when such comments are provided by a single point of contact by the applicant, or directly to the Department by a commenting party.

§ 3015.309 Accommodation of intergovernmental concerns.

(a) If a State process provides a State process recommendation to the Department through its single point of contact, the Secretary either—

(1) Accepts the recommendations;

(2) Reaches a mutually agreeable solution with the State process; or

(3) Provides the single point of contact with a written explanation of the decision, as the Secretary in his or her discretion deems appropriate. The Secretary may also supplement the written explanation by also providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Secretary informs the single point of contact that:

(1) The Department will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Secretary has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification five days after the date of mailing of such notification.

§ 3015.310 Interstate situations.

(a) The Secretary is responsible for:

(1) Identifying proposed Federal financial assistance and direct Federal development that have an impact on interstate areas;

(2) Notifying appropriate officials in States which have adopted a process and which selected the Department's program or activity;

(3) Making efforts to identify and notify the affected State, areawide, regional, and local officials and entities in those States that have not adopted a process under the Order or do not select the Department's program or activity; and

(4) Responding, pursuant to § 3015.309 of this subpart, if the Secretary receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with the Department have been delegated.

(b) The Secretary uses the procedures in § 3015.309 if a State process provides a State process recommendation to the Department through a single point of contact.

§ 3015.311 Simplification, consolidation, or substitution of State plans.

(a) As used in this section:

(1) *Simplify* means that a State may develop its own format, choose its own submission date, and select the planning period for a State plan.

(2) *Consolidate* means that a State may meet statutory and regulatory requirements by combining two or more plans into one document and that the State can select the format, submission date, the planning period for the consolidated plan.

(3) *Substitute* means that a State may use a plan or other document that it has developed for its own purposes to meet Federal requirements.

(b) If not inconsistent with law, a State may decide to try to simplify, consolidate, or substitute Federally required State plans without prior approval by the Secretary.

(c) The Secretary reviews each State plan a State has simplified, consolidated or substituted and accepts the plan only if its contents meet Federal requirements.

§ 3015.312 Waivers.

In an emergency, the Secretary may waive any provision of these regulations.

APPENDIX A TO PART 3015—DEFINITIONS

Section I *''Grant'' and ''Cooperative Agreement''*

(a) ''Grant'' unless qualified by ''non-Federal'' means an award by the Federal government of money, property instead of money, services, or anything of value, to the State or other recipient, with the following characteristics:

(1) The principal purpose of the award is to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal government; and

(2) At the time the award is made, no substantial involvement is anticipated between the executive agency, acting for the Federal government, and the State or local government or other recipient during performance of the contemplated activity.

(b) ''Cooperative agreement'' has the same meaning as ''grant,'' except that, at the time a cooperative agreement is awarded, substantial involvement is anticipated between the executive agency, acting for the Federal government, and the State or local government or other recipient during performance of the contemplated activity.

(c) ''Grants'' and ''cooperative agreements'' do not include technical assistance, which provides services instead of money; revenue sharing; loans; loan guarantees; capital contributions to loan funds; interest subsidies; insurance; or direct appropriations. (See the definition of ''Non-Federal grant'' in Section II of this appendix.)

Section II *Other Definitions.*

''Acquisition'' of property includes purchase, construction, or fabrication of property. It does not include rental of property or alterations and renovations of real property.

''Acquisition cost'' of an item of purchased equipment means the net invoice price of the equipment. It includes the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the equipment useable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty, or protective in-transit insurance shall be included in or excluded from the unit acquisition cost in accordance with the regular accounting practices of the organization purchasing the equipment.

If an item of equipment is acquired by trading in another item and paying an additional amount, ''acquisition cost'' means the amount received for trade-in plus the additional outlay. (See the definition of ''amount received for trade-in.'')

For purposes of the rules on equipment and supplies, ''acquisition cost'' of a copy of a work of authorship (such as a book, print of a motion picture, or tape of a television program) refers to the cost of fabricating or purchasing the individual copy, considered as a material object. It does not include the cost of developing, or acquiring rights to, the work embodied in the copy.

''Advance by Treasury check'' is a payment made by a Treasury check to a recipient of a grant or cooperative agreement, before payments are made by the recipient of the grant or cooperative agreement. Advances by Treasury check are based on either a periodic request from the recipient or a predetermined payment schedule.

''Amount received for trade-in'' of an item of equipment traded in for replacement equipment means the amount that would have been paid for the replacement equipment without a trade-in, minus the amount paid with the trade-in. The term refers to the actual difference, not necessarily the trade-in value, shown on an invoice. For example, suppose that a recipient can buy a new machine for $5,000 in cash. The recipient actually buys this machine by trading in a used machine and paying $3,000 in cash. In this case, the amount received for trade-in

would be $2,000 ($5,000 minus $3,000) regardless of the trade-in allowance shown on the invoice.

''Approved budget'' means a budget (including any revised budget) which has been approved in writing by the awarding agency. (See the definition of ''budget.'')

''Audiovisual'' means a product containing visual imagery or sound or both. Examples of audiovisuals are motion pictures, live or prerecorded radio or television programs, slide shows, filmstrips, audio recordings, and multimedia presentations.

''Awarding agency'' means (1) for grants and cooperative agreements, the USDA agency making the award, and (2) for subgrants, the recipient.

''Bid guarantee'' means a firm commitment such as a bid bond, certified check, or other negotiable instrument, accompanying a bid as assurance that the bidder will, if its bid is accepted, execute the required contractual documents within the time specified.

''Budget'' means the recipient's financial expenditure plan approved by the awarding agency to carry out the purposes of the Federally-supported project. The budget is comprised of both the Federal share and any non-Federal share of such plan and any subsequent authorized rebudgeting of funds.

For those programs that do not involve Federal approval of the non-Federal share of costs, such as research grants, the term ''budget'' means the financial expenditure plan approved by the awarding agency including any subsequent authorized rebudgeting of funds, for the use of Federal funds only. Any expenditures charged to an approved budget consisting of Federal and non-Federal shares are deemed to be supported by the grant in the same proportion as the percentage of Federal/non-Federal participation in the overall budget.

''Budget period'' means the period specified in the grant or cooperative agreement during which Federal funds awarded are authorized to be expended, obligated, or firmly committed by the recipient for the purposes specified in the agreement.

''Closeout'' of a grant or cooperative agreement means the process by which an awarding agency determines that all applicable administrative actions and all required work of the grant or cooperative agreement have been completed by the recipient and the awarding agency.

''Consultant'' means a person who gives advice or services for a fee, but not as an employee. The term includes guest speakers when not acting as employees of the party that engages them. Note that in unusual cases it is possible for a person to be both an employee and a consultant at the same time. (See §3015.201.)

''Contract'' means a procurement contract awarded under a grant, cooperative agreement, or subgrant; and ''subcontract'' means a procurement subcontract under such a contract. Procurement contracts and subcontracts are ones which place the parties in a buyer-seller relationship, regardless of the label used by the parties to describe the relationship (e.g., purchase-of-service agreement). The terms ''contract'' and ''subcontract'' do not include any agreements between organizational components of the same legal entity, even if one of the components provides property or services to or for the other. (See definitions of ''subgrant,'' ''cost-type contract,'' and ''fixed price contract.'')

''Cost-sharing'' and ''matching'' each mean the value of third party in-kind contributions plus that portion of the allowable costs of recipients not supported by the Federal Government. (The terms ''cost-sharing'' and ''matching,'' in this part, are synonymous.)

''Cost-type contract'' means a contract or subcontract in which the contractor or subcontractor is paid on the basis of the costs it incurs. The term includes cost-plus-fixed-fee contracts and subcontracts. (However, the term does not include any subcontracts under a ''fixed-price contract.'')

''Discretionary'' grants and cooperative agreements are ones which a Federal statute authorizes but does not require USDA to award.

''Equipment'' means an article of tangible personal property that has a useful life of more than two years and acquisition cost of $500 or more. Any recipient may use its own definition of equipment if its definition would at least include all items of equipment as defined here.

''Expenditure report'' means (1) for non-construction awards, the ''Financial Status Report'' (or other equivalent report); (2) for construction awards, the ''Outlay Report and Request for Reimbursement for Construction Programs'' (or other equivalent report).

''Federal funds authorized'' means the total amount of Federal funds obligated by the Federal Government for use by the recipient. This amount is a limit on the total amount of money that the recipient is entitled to receive from the Federal Government as a result of the award. In addition to this limit, there are other limits. Refer to §3015.202 for a summary of these.

''Federally recognized Indian Tribal government'' means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him or her through the Bureau of Indian Affairs.

''Fidelity bond'' means a bond indemnifying the recipient against losses resulting

from the fraud or lack of integrity, honesty or fidelity of one or more employees, officers or other persons holding a position of trust.

''Fixed-price contract'' means any contract except a cost-type contract. The term includes firm-fixed price contracts. It also includes contracts under which the contractor is paid at a fixed rate per unit of service or unit of labor time. (See the definitions of ''contract'' and ''cost-type contract.'')

''General program income'' means all program income except the special categories treated in §§3015.43 through 3015.46. The term ''general program income'' is limited to amounts that accrue to a recipient of grant or cooperative agreement during the period of Federally assisted support, or to a subrecipient during the period of sub-award support.

''Local government'' means a local unit of government including specifically, a county, municipality, city, town, township, local public authority, school district, special district, intra-state district, council of governments (whether or not incorporated as a nonprofit corporation under State law), sponsor or sponsoring local organization of a watershed project (as defined in 7 CFR 620.2, 40 FR 12472, March 19, 1974), any other regional or interstate government entity, or any agency or instrumentality of a local government.

''Mandatory'' or ''formula'' grants and cooperative agreements are ones which a Federal statute requires USDA to award if the applicant meets specified conditions.

''Non-Federal grant'' means an award of financial assistance in the form of money which includes no Federal funds, and for which the recipient must account to the donor on an actual cost basis. The term does not include any award that would be excluded from the definitions of ''grant'' and ''cooperative agreement'' if it were made by the Federal government.

''Obligations'' means the amounts of orders placed, contracts and subgrants awarded, services received, and similar transactions during a given period, which will require payment during the same or future period.

''O&F'' means the Office of Operations and Finance, which is an organizational component in USDA reporting to the Assistant Secretary for Administration.

''OMB'' means the Office of Management and Budget in the Executive Office of the President.

''Outlays'' means charges made to the grant project or program. Outlays may be reported on a cash or accrual basis.

''Payment bond'' means a bond executed in connection with a contract, to assure payment as required by law of all persons supplying labor and materials in the execution of the work provided in the contract.

''Percentage-of-completion method'' refers to a system under which payments are made for construction work according to the percentage of completion of the work, instead of the recipient's rate of disbursements.

''Performance bond'' means a bond executed in connection with a contract to secure fulfillment of all the contractor's obligations under the contract.

''Personal property'' means property of any kind except real property. It may be tangible—having physical existence, or intangible—having no physical existence, such as patents, inventions, and copyrights.

''Production of an audiovisual'' means any of the steps that lead to a finished audiovisual, including design, layout, script-writing, filming, editing, fabrication, sound recording, or taping. The term does not include the placing of captions for the hearing impaired on films or videotapes not originally produced for use with the hearing impaired.

''Program income'' means gross income earned by a recipient from activities supported by a grant or cooperative agreement. (See definition of ''supported by a grant or cooperative agreement.'') It includes but is not limited to income in the form of fees for services performed during the life of the grant, cooperative agreement, or subgrant, proceeds from sale of tangible personal or real property, usage or rental fees, and patent or copyright royalties. If income meets this definition, it shall be considered program income regardless of the method used to calculate the amount paid to the recipient whether, for example, by a cost-reimbursement method or fixed price arrangement. Nor will the income's classification as program income be affected by the fact that the recipient earns it from a procurement contract awarded to the recipient (1) by the Federal government or (2) by another recipient acting under another Federal grant, cooperative agreement, or subgrant.

The following are not considered program income:

(1) ''Revenues'' raised by a government recipient under its governing powers, such as taxes, special assessments, levies, and fines. (However, the receipt and expenditure of these revenues shall be recorded as a part of the transactions of the Federally-assisted project or program when the revenues are specifically earmarked for the project in accordance with the terms of the grant, cooperative agreement, or subgrant.)

(2) Tuition and related fees received by an institution of higher education for a regularly offered course taught by an employee performing under a grant, cooperative agreement, or subgrant.

(3) Income earned by contractors or subcontractors.

(4) Internal reimbursements or transfers of funds between organizational components of the same legal entity (e.g., between agencies of the same government).

(5) Third party in-kind contributions.

(6) Gifts or financial assistance from another source, such as (i) a non-Federal grant, (ii) another Federal grant, and (iii) charitable contributions (whether or not for a restricted purpose), and

(7) Interest or other investment income earned from investing advances of Federal cash. (This kind of income is treated in §3015.46.)

''Project period'' means the total time for which the recipient's project or program is approved for support including any extensions. Project periods may consist of one or more budget periods.

''Publication'' means a published book, periodical, pamphlet, brochure, flier, or similar item. It does not include any audiovisuals.

''Real property'' means land, land improvements, structures, and things attached to them so as to become a part of them. Movable machinery and other kinds of equipment are not real property. If a question comes up about whether certain property should be classified as real property, the law of the State or foreign country in which the property is located governs.

''Recipient'' means a State or local government, Federally recognized Indian Tribe, university, non-profit, for profit, or other organization that is a recipient of grants or cooperative agreements from a USDA agency.

''Replacement equipment'' means property acquired to take the place of other equipment. To qualify as replacement equipment, it must serve the same function as the equipment replaced and must be of the same nature or character, although not necessarily the same model, grade, or quality.

''State'' means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory, possession, or trust territory of the United States, or any agency or instrumentality of a State. The term does not include local governments.

''Subgrant'' means an award of money, or property instead of money, which:

(1) Is made under a grant or cooperative agreement by the recipient of the grant or cooperative agreement; and

(2) Is made principally to accomplish a purpose of support of stimulation rather than to establish a buyer-seller relationship between the two parties.

Any award which meets that definition is a subgrant even if the parties to the award use some other label such as ''grant,'' ''agreement,'' ''cooperative agreement,'' ''contract,'' ''allotment,'' or ''delegation agreement.'' Also, if the award meets that definition, it is a subgrant whether or not the awarding agency is expected to be substantially involved in its performance. However, the term ''subgrant'' does not include any type of assistance which is excluded from the definitions of ''grant'' and ''cooperative agreement'' by Section I(c) of this Appendix.

''Supplies'' means all tangible personal property other than equipment.

''Supported by a grant or cooperative agreement,'' as applied to a cost or an activity, means that the cost or the cost of the activity is entirely or partly (1) treated as a direct cost under a grant, cooperative agreement, subgrant, or cost-type contract, and (2) either supported by Federal funds or counted towards a Federal cost-sharing or matching requirement.

''Suspension'' of an award means temporary withdrawal of the recipient's authority to obligate the funds awarded pending corrective action by the recipient or a decision to terminate the award.

''Termination'' of an award means permanent withdrawal of the recipient's authority to obligate previously awarded funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the recipient.

''Termination'' does not include:

(a) Withdrawal of the unobligated balance upon expiration of award;

(b) Refusal by the awarding agency to extend an award or to award additional funds (such as refusal to make a competing or noncompeting continuation, renewal, extension, or supplemental award);

(c) Annulment, *i.e.*, voiding of an award upon determination that the award was obtained fraudulently or was otherwise illegal or invalid from inception;

(d) Withdrawal of surplus Federal funds from a discretionary grant or any analogous withdrawal of funds by a recipient from a subrecipient; or

(e) Withdrawal from a mandatory or formula grant of surplus Federal funds authorized which the recipient will not obligate during the fiscal year, or any analogous withdrawal of funds by a recipient from a subrecipient.

''Terms'' of a grant, cooperative agreement, subgrant, or contract means all rights and duties created by the award, whether stated in statute, this part or other regulations, the award document itself, or any other document.

''Third party'' means, with respect to a grant or cooperative agreement, any entity except (1) the Federal government, (2) the recipient of the cooperative agreement, and (3) subrecipients under that grant or cooperative agreement. Note that contractors of recipients are third parties under this definition, although subrecipients are not.

''Third party in-kind contributions'' means property or services benefiting the federally assisted project or program which are contributed by third parties without charge. Note that the term does not include any costs incurred by the recipient or subrecipient.

''Unliquidated obligations,'' means, for financial reports prepared on a cash basis, the

amount of obligations incurred by the recipient that has not been paid. For reports prepared on an accrued expenditure basis, they are the amount of obligations incurred by the recipient for which an outlay has not been recorded.

''Unobligated balance'' is the portion of Federal funds authorized which has not been obligated by the recipient. It is calculated by subtracting the Federal share of the recipient's cumulative obligations from the cumulative Federal funds authorized.

APPENDIX B TO PART 3015—OMB CIRCULAR A–128, ''AUDITS OF STATE AND LOCAL GOVERNMENTS''

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Management and Budget

Circular No. A–128

April 12, 1984

To the Heads of Executive Departments and Establishments.

Subject: Audits of State and Local Governments.

1. *Purpose*. This Circular is issued pursuant to the Single Audit Act of 1984, Pub. L. 98–502. It establishes audit requirements for State and local governments that receive Federal aid, and defines Federal responsibilities for implementing and monitoring those requirements.

2. *Supersession*. The Circular supersedes Attachment P, ''Audit Requirements,'' of Circular A–102, ''Uniform requirements for grants to State and local governments.''

3. *Background*. The Single Audit Act builds upon earlier efforts to improve audits of Federal aid programs. The Act requires State or local governments that receive $100,000 or more a year in Federal funds to have an audit made for that year. Section 7505 of the Act requires the Director of the Office of Management and Budget to prescribe policies, procedures and guidelines to implement the Act. It specifies that the Director shall designate ''cognizant'' Federal agencies, determine criteria for making appropriate charges to Federal programs for the cost of audits, and provide procedures to assure that small firms or firms owned and controlled by disadvantaged individuals have the opportunity to participate in contracts for single audits.

4. *Policy*. The Single Audit Act requires the following:

a. State or local governments that receive $100,000 or more a year in Federal financial assistance shall have an audit made in accordance with this Circular.

b. State or local governments that receive between $25,000 and $100,000 a year shall have an audit made in accordance with this Circular, or in accordance with Federal laws and regulations governing the programs they participate in.

c. State or local governments that receive less than $25,000 a year shall be exempt from compliance with the Act and other Federal audit requirements. These State and local governments shall be governed by audit requirements prescribed by State or local law or regulation.

d. Nothing in this paragraph exempts State or local governments from maintaining records of Federal financial assistance or from providing access to such records to Federal agencies, as provided for in Federal law or in Circular A–102, ''Uniform requirements for grants to State or local governments.''

5. *Definitions*. For the purposes of this Circular the following definitions from the Single Audit Act apply:

a. *Cognizant agency* means the Federal agency assigned by the Office of Management and Budget to carry out the responsibilities described in paragraph 11 of this Circular.

b. *Federal financial assistance* means assistance provided by a Federal agency in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, or direct appropriations, but does not include direct Federal cash assistance to individuals. It includes awards received directly from Federal agencies, or indirectly through other units of State and local governments.

c. *Federal agency* has the same meaning as the term 'agency' in section 551(1) of Title 5, United States Code.

d. *Generally accepted accounting principles* has the meaning specified in the generally accepted government auditing standards.

e. *Generally accepted government auditing standards* means the *Standards For Audit of Government Organizations, Programs, Activities, and Functions,* developed by the Comptroller General, dated February 27, 1981.

f. *Independent auditor* means:

(1) A State or local government auditor who meets the independence standards specified in generally accepted government auditing standards; or

(2) A public accountant who meets such independence standards.

g. *Internal controls* means the plan of organization and methods and procedures adopted by management to ensure that:

(1) Resource use is consistent with laws, regulations, and policies;

(2) Resources are safeguarded against waste, loss, and misuse; and

(3) Reliable data are obtained, maintained, and fairly disclosed in reports.

h. *Indian tribe* means any Indian tribe, band, nations, or other organized group or community, including any Alaskan Native village or regional or village corporations (as defined in, or established under, the Alaskan

Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

i. *Local government* means any unit of local government within a State, including a county, a borough, municipalitity, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

j. *Major Federal Assistance Program*, as defined by Pub. L 98–502, is described in the Attachment to this Circular.

k. *Public accountants* means those individuals who meet the qualification standards included in generally accepted government auditing standards for personnel performing government audits.

l. *State* means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, and any multi-State, regional, or interstate entity that has governmental functions and any Indian tribe.

m. *Subrecipient* means any person or government department, agency, or establishment that receives Federal financial assistance to carry out a program through a State or local government, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a direct recipient of Federal financial assistance.

6. *Scope of audit*. The Single Audit Act provides that:

a. The audit shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

b. The audit shall cover the entire operations of a State or local government or, at the option of that government, it may cover departments, agencies or establishments that received, expended, or otherwise administered Federal financial assistance during the year. However, if a State or local government receives $25,000 or more in General Revenue Sharing Funds in a fiscal year, it shall have an audit of its entire operations. A series of audits of individual departments, agencies, and establishments for the same fiscal year may be considered a single audit.

c. Public hospitals and public colleges and universities may be excluded from State and local audits and the requirements of this Circular. However, if such entities are excluded, audits of these entities shall be made in accordance with statutory requirements and the provisions of Circular A–110, *Uniform requirements for grants to universities, hospitals, and other nonprofit organizations*.

d. The auditor shall determine whether:

(1) The financial statements of the government, department, agency or establishment present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles;

(2) The organization has internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulations; and

(3) The organization has complied with laws and regulations that may have material effect on its financial statements and on each major Federal assistance program.

7. *Frequency of audit*. Audits shall be made annually unless the State or local government has, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. For those governments, the cognizant agency shall permit biennial audits, covering both years, if the government so requests. It shall also honor requests for biennial audits by governments that have an administrative policy calling for audits less frequent than annual, but only for fiscal years beginning before January 1, 1987.

8. *Internal control and compliance reviews*. The Single Audit Act requires that the independent auditor determine and report on whether the organization has internal control systems to provide reasonable assurance that it is managing Federal assistance programs in compliance with applicable laws and regulations.

a. *Internal control review*. In order to provide this assurance the auditor must make a study and evaluation of internal control systems used in administering Federal assistance programs. The study and evaluation must be made whether or not the auditor intends to place reliance on such systems. As part of this review, the auditor shall:

(1) Test whether these internal control systems are functioning in accordance with prescribed procedures.

(2) Examine the recipient's system for monitoring subrecipients and obtaining and acting on subrecipient audit reports.

b. *Compliance review*. The law also requires the auditor to determine whether the organization has complied with laws and regulations that may have a material effect on each major Federal assistance program.

(1) In order to determine which major programs are to be tested for compliance, State and local governments shall identify in their accounts all Federal funds received and expended and the programs under which they were received. This shall include funds received directly from Federal agencies and through other State and local governments.

(2) The review must include the selection and testing of a representative number of charges from each major Federal assistance program. The selection and testing of transactions shall be based on the auditor's professional judgment considering such factors as the amount of expenditures for the program and the individual awards; the newness of the program or changes in its conditions; prior experience with the program, particularly as revealed in audits and other evaluations (e.g., inspections, program reviews); the extent to which the program is carried out through subrecipients; the extent to which the program contracts for goods or services; the level to which the program is already subject to program reviews of other forms of independent oversight; the adequacy of the controls for ensuring compliance; the expectation of adherence or lack of adherence to the applicable laws and regulations; and the potential impact of adverse findings.

(a) In making the test of transactions, the auditor shall determine whether:

—The amounts reported as expenditures were for allowable services, and

—The records show that those who received services or benefits were eligible to receive them.

(b) In addition to transaction testing, the auditor shall determine whether:

—Matching requirements, levels of effort and earmarking limitations were met,

—Federal financial reports and claims for advances and reimbursements contain information that is supported by the books and records from which the basic financial statements have been prepared, and

—Amounts claimed or used for matching were determined in accordance with OMB Circular A–87, ''Cost principles for State and local governments,'' and Attachment F of Circular A–102, ''Uniform requirements for grants to State and local governments.''

(c) The principal compliance requirements of the largest Federal aid programs may be ascertained by referring to the *Compliance Supplement for Single Audits of State and Local Governments,* issued by OMB and available from the Government Printing Office. For those programs not covered in the Compliance Supplement, the auditor may ascertain compliance requirements by researching the statutes, regulations, and agreements governing individual programs.

(3) Transactions related to other Federal assistance programs that are selected in connection with examinations of financial statements and evaluations of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions.

9. *Subrecipients.* State or local governments that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subrecipient shall:

a. Determine whether State or local subrecipients have met the audit requirements of this Circular and whether subrecipients covered by Circular A–110, ''Uniform requirements for grants to universities, hospitals, and other nonprofit organizations,'' have met that requirement;

b. Determine whether the subrecipient spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subrecipient made in accordance with this Circular, Circular A–110, or through other means (e.g., program reviews) if the subrecipient has not yet had such an audit;

c. Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instances of noncompliance with Federal laws and regulations;

d. Consider whether subrecipient audits necessitate adjustment of the recipient's own records; and

e. Require each subrecipient to permit independent auditors to have access to the records and financial statements as necessary to comply with this Circular.

10. *Relation to other audit requirements.* The Single Audit Act provides that an audit made in accordance with this Circular shall be in lieu of any financial or financial compliance audit required under individual Federal assistance programs. To the extent that a single audit provides Federal agencies with information and assurances they need to carry out their overall responsibilities, they shall rely upon and use such information. However, a Federal agency shall make any additional audits which are necessary to carry out its responsibilities under Federal law and regulation. Any additional Federal audit effort shall be planned and carried out in such a way as to avoid duplication.

a. The provisions of this Circular do not limit the authority of Federal agencies to make, or contract for audits and evaluations of Federal financial assistance programs, nor do they limit the authority of any Federal agency Inspector General or other Federal audit official.

b. The provisions of this Circular do not authorize any State or local government or subrecipient thereof to constrain Federal agencies, in any manner, from carrying out additional audits.

c. A Federal agency that makes or contracts for audits in addition to the audits made by recipients pursuant to this Circular shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits. Such additional audits include economy and efficiency audits, program results audits, and program evaluations.

11. *Cognizant agency responsibilities.* The Single Audit Act provides for cognizant Federal agencies to oversee the implementation of this Circular.

a. The Office of Management and Budget will assign cognizant agencies for States and their subdivisions and larger local governments and their subdivisions. Other Federal agencies may participate with an assigned cognizant agency, in order to fulfill the cognizance responsibilities. Smaller governments not assigned a cognizant agency will be under the general oversight of the Federal agency that provides them the most funds whether directly or indirectly.

b. A cognizant agency shall have the following responsibilities:

(1) Ensure that audits are made and reports are received in a timely manner and in accordance with the requirements of this Circular.

(2) Provide technical advice and liaison to State and local governments and independent auditors.

(3) Obtain or make quality control reviews of selected audits made by non-Federal audit organizations, and provide the results, when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any reported illegal acts or irregularities. They should also inform State or local law enforcement and prosecuting authorities, if not advised by the recipient, of any violation of law within their jurisdiction.

(5) Advise the recipient of audits that have been found not to have met the requirements set forth in this Circular. In such instances, the recipient will be expected to work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency shall notify the recipient and Federal awarding agencies of the facts and make recommendations for followup action. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action.

(6) Coordinate, to the extent practicable, audits made by or for Federal agencies that are in addition to the audits made pursuant to this Circular; so that the additional audits build upon such audits.

(7) Oversee the resolution of audit findings that affect the programs of more than one agency.

12. *Illegal acts or irregularities.* If the auditor becomes aware of illegal acts or other irregularities, prompt notice shall be given to recipient management officials above the level of involvement. (See also paragraph 13(a)(3) below for the auditor's reporting responsibilities.) The recipient, in turn, shall promptly notify the cognizant agency of the illegal acts or irregularities and of proposed and actual actions, if any. Illegal acts and irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriations of funds or other assets.

13. *Audit Reports.* Audit reports must be prepared at the completion of the audit. Reports serve many needs of State and local governments as well as meeting the requirements of the Single Audit Act.

a. The audit report shall state that the audit was made in accordance with the provisions of this Circular. The report shall be made up of at least:

(1) The auditor's report on financial statements and on a schedule of Federal assistance; the financial statements; and a schedule of Federal assistance, showing the total expenditures for each Federal assistance program as identified in the *Catalog of Federal Domestic Assistance.* Federal programs or grants that have not been assigned a catalog number shall be identified under the caption ''other Federal assistance.''

(2) The auditor's report on the study and evaluation of internal control systems must identify the organization's significant internal accounting controls, and those controls designed to provide reasonable assurance that Federal programs are being managed in compliance with laws and regulations. It must also identify the controls that were evaluated, the controls that were not evaluated, and the material weaknesses identified as a result of the evaluation.

(3) The auditor's report on compliance containing:

—A statement of positive assurance with respect to those items tested for compliance, including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements;

—Negative assurance on those items not tested;

—A summary of all instances of noncompliance; and

—An identification of total amounts questioned, if any, for each Federal assistance award, as a result of noncompliance.

b. The three parts of the audit report may be bound into a single report, or presented at the same time as separate documents.

c. All fraud abuse, or illegal acts or indications of such acts, including all questioned costs found as the result of these acts that auditors become aware of, should normally be covered in a separate written report submitted in accordance with paragraph 13f.

d. In addition to the audit report, the recipient shall provide comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, a statement

describing the reason it is not should accompany the audit report.

e. The reports shall be made available by the State or local government for public inspection within 30 days after the completion of the audit.

f. In accordance with generally accepted government audit standards, reports shall be submitted by the auditor to the organization audited and to those requiring or arranging for the audit. In addition, the recipient shall submit copies of the reports to each Federal department or agency that provided Federal assistance funds to the recipient. Subrecipients shall submit copies to recipients that provided them Federal assistance funds. The reports shall be sent within 30 days after the completion of the audit, but no later than one year after the end of the audit period unless a longer period is agreed to with the cognizant agency.

g. Recipients of more than $100,000 in Federal funds shall submit one copy of the audit report within 30 days after issuance to a central clearinghouse to be designated by the Office of Management and Budget. The clearinghouse will keep completed audits on file and follow up with State and local governments that have not submitted required audit reports.

h. Recipients shall keep audit reports on file for three years from their issuance.

14. *Audit Resolution*. As provided in paragraph 11, the cognizant agency shall be responsible for monitoring the resolution of audit findings that affect the programs of more than one Federal agency. Resolution of findings that relate to the programs of a single Federal agency will be the responsibility of the recipient and that agency. Alternate arrangements may be made on case-by-case basis by a case-by-case basis by agreement among the agenices concerned.

Resolution shall be made within six months after receipt of the report by the Federal departments and agencies. Corrective action should proceed as rapidly as possible.

15. *Audit workpapers and reports*. Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency to extend the retention period. Audit workpapers shall be made available upon request to the cognizant agency or its designee or the General Accounting Office, at the completion of the audit.

16. *Audit Costs*. The cost of audits made in accordance with the provisions of this Circular are allowable charges to Federal assistance programs.

a. The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provision of Circular A–87, ''Cost principles for State and local governments.''

b. Generally, the percentage of costs charged to Federal assistance programs for a single audit shall not exceed the percentage that Federal funds expended represent of total funds expended by the recipient during the fiscal year. The percentage may be exceeded, however, if appropriate documentation demonstrates higher actual cost.

17. *Sanctions*. The Single Audit Act provides that no cost may be charged to Federal assistance programs for audits required by the Act that are not made in accordance with this Circular. In cases of continued inability or unwillingness to have a proper audit, Federal agencies must consider other appropropriate sanctions including:

—Withholding a percentage of assistance payments until the audit is completed satisfactorily,

—Withholding or disallowing overhead costs, and

—Suspending the Federal assistance agreement until the audit is made.

18. *Auditor Selection*. In arranging for audit services State and local governments shall follow the procurement standards prescribed by Attachment O of Circular A–102, ''Uniform requirements for grants to State and local governments.'' The standards provide that while recipients are encouraged to enter into intergovernmental agreements for audit and other services, analysis should be made to determine whether it would be more economical to purchase the services from private firms. In instances where use of such intergovernmental agreements are required by State statutes (e.g., audit services) these statutes will take precedence.

19. *Small and Minority Audit Firms*. Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of this Circular. Recipients of Federal assistance shall take the following steps to further this goal:

a. Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable.

b. Make information on forthcoming opportunities available and arrange timeframes for the audit so as to encourage and facilitate participation by small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

c. Consider in the contract process whether firms competing for large audits intend to subcontract with small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

d. Encourage contracting with small audit firms or audit firms owned and controlled by

socially and economically disadvantaged individuals which have traditionally audited government programs and, in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.

e. Encourage contracting with consortiums of small audit firms as described in paragraph (a) above when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals.

f. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration in the solicitation and utilization of small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals.

20. *Reporting*. Each Federal agency will report to the Director of OMB on or before March 1, 1987, and annually thereafter on the effectiveness of State and local governments in carrying out the provisions of this Circular. The report must identify each State or local government or Indian tribe that, in the opinion of the agency, is failing to comply with the Circular.

21. *Regulations*. Each Federal agency shall include the provisions of this Circular in its regulations implementing the Single Audit Act.

22. *Effective date*. This Circular is effective upon publication and shall apply to fiscal years of State and local governments that begin after December 31, 1984. Earlier implementation is encouraged. However, until it is implemented, the audit provisions of Attachment P to Circular A–102 shall continue to be observed.

23. *Inquiries*. All questions or inquiries should be addressed to Financial Management Division, Office of Management and Budget, telephone number 202/395–3993.

24. *Sunset review date*. This Circular shall have an independent policy review to ascertain its effectiveness three years from the date of issuance.

David A. Stockman,
Director.

Definition of Major Program as Provided in Pub. L. 98–502

''Major Federal Assistance Program,'' for State and local governments having Federal assistance expenditures between $100,000 and $100,000,000, means any program for which Federal expenditures during the applicable year exceed the larger of $300,000, or 3 percent of such total expenditures.

Where total expenditures of Federal assistance exceed $100,000,000, the following criteria apply:

Total expenditures of Federal financial assistance for all programs		Major federal assistance program means any program that exceeds
More than	But less than	
$100 million	$1 billion	$3 million
1 billion	2 billion	4 million
2 billion	3 billion	7 million
3 billion	4 billion	10 million
4 billion	5 billion	13 million
5 billion	6 billion	16 million
6 billion	7 billion	19 million
Over 7 billion		20 million

[50 FR 28763, July 16, 1985]

PART 3016—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

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AUTHORITY: 5 U.S.C. 301; 31 U.S.C. 901–903; 7 CFR 2.28.

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EDITORIAL NOTE: For additional information, see related documents published at 49 FR 24958, June 18, 1984, 52 FR 20178, May 29, 1987, and 53 FR 8028, March 11, 1988.

Subpart A—General

§ 3016.1 Purpose and scope of this part.

This part establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments.

§ 3016.2 Scope of subpart.

This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

§ 3016.3 Definitions.

As used in this part:

Accrued expenditures mean the charges incurred by the grantee during a given period requiring the provision of funds for: (1) Goods and other tangible property received; (2) services performed by employees, contractors, subgrantees, subcontractors, and other payees; and (3) other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

Accrued income means the sum of: (1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and (2) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

Acquisition cost of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

Administrative requirements mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from *programmatic* requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

Awarding agency means (1) with respect to a grant, the Federal agency, and (2) with respect to a subgrant, the party that awarded the subgrant.

Cash contributions means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.

Contract means (except as used in the definitions for *grant* and *subgrant* in this section and except where qualified by *Federal*) a procurement contract under a grant or subgrant, and means a procurement subcontract under a contract.

Cost sharing or matching means the value of the third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.

Cost-type contract means a contract or subcontract under a grant in which the contractor or subcontractor is paid on

the basis of the costs it incurs, with or without a fee.

Equipment means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

Expenditure report means: (1) For nonconstruction grants, the SF–269 *Financial Status Report* (or other equivalent report); (2) for construction grants, the SF–271 *Outlay Report and Request for Reimbursement* (or other equivalent report).

Federally recognized Indian tribal government means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

Government means a State or local government or a federally recognized Indian tribal government.

Grant means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

Grantee means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

Local government means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

Obligations means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

OMB means the United States Office of Management and Budget.

Outlays (expenditures) mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of inkind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

Percentage of completion method refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's cost incurred.

Prior approval means documentation evidencing consent prior to incurring specific cost.

Real property means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

Share, when referring to the awarding agency's portion of real property, equipment or supplies, means the same percentage as the awarding agency's

portion of the acquiring party's total costs under the grant to which the acquisition costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted—not the value of third-party in-kind contributions.

State means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

Subgrant means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of *grant* in this part.

Subgrantee means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

Supplies means all tangible personal property other than *equipment* as defined in this part.

Suspension means depending on the context, either (1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant, or (2) an action taken by a suspending official in accordance with agency regulations implementing E.O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

Termination means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. *Termination* does not include: (1) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period; (2) Withdrawal of the unobligated balance as of the expiration of a grant; (3) Refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or (4) voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

Terms of a grant or subgrant mean all requirements of the grant or subgrant, whether in statute, regulations, or the award document.

Third party in-kind contributions mean property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement.

Unliquidated obligations for reports prepared on a cash basis mean the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

Unobligated balance means the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

§ 3016.4 Applicability.

(a) *General.* Subparts A–D of this part apply to all grants and subgrants to governments, except where inconsistent with Federal statutes or with regulations authorized in accordance with the exception provision of § 3016.6, or:

(1) Grants and subgrants to State and local institutions of higher education or State and local hospitals.

(2) The block grants authorized by the Omnibus Budget Reconciliation Act of 1981 (Community Services; Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development

Block Grants for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under Title V, Subtitle D, Chapter 2, Section 583—the Secretary's discretionary grant program) and Titles I-III of the Job Training Partnership Act of 1982 and under the Public Health Services Act (Section 1921), Alcohol and Drug Abuse Treatment and Rehabilitation Block Grant and Part C of Title V, Mental Health Service for the Homeless Block Grant).

(3) Entitlement grants to carry out the following programs of the Social Security Act:

(i) Aid to Needy Families with Dependent Children (Title IV-A of the Act, not including the Work Incentive Program (WIN) authorized by section 402(a)19(G); HHS grants for WIN are subject to this part);

(ii) Child Support Enforcement and Establishment of Paternity (Title IV-D of the Act);

(iii) Foster Care and Adoption Assistance (Title IV-E of the Act);

(iv) Aid to the Aged, Blind, and Disabled (Titles I, X, XIV, and XVI-AABD of the Act); and

(v) Medical Assistance (Medicaid) (Title XIX of the Act) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B).

(4) A grant for an experimental, pilot, or demonstration project that is also supported by a grant listed in paragraph (a)(3) of this section;

(5) Grant funds awarded under subsection 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits;

(6) Grants to local education agencies under 20 U.S.C. 236 through 241–1(a), and 242 through 244 (portions of the Impact Aid program), except for 20 U.S.C. 238(d)(2)(c) and 240(f) (Entitlement Increase for Handicapped Children); and

(7) Payments under the Veterans Administration's State Home Per Diem Program (38 U.S.C. 641(a)).

(b) *Entitlement programs.* In USDA, the entitlement programs enumerated in this paragraph are subject to subparts A through D and the modifications in subpart E of this part.

(1) Entitlement grants under the following programs authorized by The National School Lunch Act:

(i) National School Lunch Program, General Assistance (section 4 of the Act),

(ii) Commodity Assistance (section 6 of the Act),

(iii) National School Lunch Program, Special Meal Assistance (section 11 of the Act),

(iv) Summer Food Service Program for Children (section 13 of the Act), and

(v) Child and Adult Care Food Program (section 17 of the Act);

(2) Entitlement grants under the following programs authorized by The Child Nutrition Act of 1966:

(i) Special Milk Program for Children (section 3 of the Act),

(ii) School Breakfast Program (section 4 of the Act), and

(iii) Entitlement grants for State Administrative Expense Funds (section 7 of the Act); and

(3) Entitlement grants under the following programs authorized by the Food Stamp Act of 1977:

(i) Food Distribution Program on Indian Reservations (section 4(b) of the Act), and

(ii) State Administrative Expense Funds (section 16 of the Act).

[53 FR 8044, 8087, Mar. 11, 1988, as amended at 65 FR 49480, Aug. 14, 2000]

§ 3016.5 Effect on other issuances.

All other grants administration provisions of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in § 3016.6.

§ 3016.6 Additions and exceptions.

(a) For classes of grants and grantees subject to this part, Federal agencies may not impose additional administrative requirements except in codified regulations published in the FEDERAL REGISTER.

(b) Exceptions for classes of grants or grantees may be authorized only by OMB.

(c) Exceptions on a case-by-case basis and for subgrantees may be authorized by the affected Federal agencies.

Subpart B—Pre-Award Requirements

§ 3016.10 Forms for applying for grants.

(a) *Scope.* (1) This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section is not applicable, however, to formula grant programs which do not require applicants to apply for funds on a project basis.

(2) This section applies only to applications to Federal agencies for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged to avoid more detailed or burdensome application requirements for subgrants.

(b) *Authorized forms and instructions for governmental organizations.* (1) In applying for grants, applicants shall only use standard application forms or those prescribed by the granting agency with the approval of OMB under the Paperwork Reduction Act of 1980.

(2) Applicants are not required to submit more than the original and two copies of preapplications or applications.

(3) Applicants must follow all applicable instructions that bear OMB clearance numbers. Federal agencies may specify and describe the programs, functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OMB to the extent required under the Paperwork Reduction Act of 1980. For any standard form, except the SF–424 facesheet, Federal agencies may shade out or instruct the applicant to disregard any line item that is not needed.

(4) When a grantee applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the affected pages need be submitted. Previously submitted pages with information that is still current need not be resubmitted.

§ 3016.11 State plans.

(a) *Scope.* The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the Executive Order.

(b) *Requirements.* A State need meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.

(c) *Assurances.* In each plan the State will include an assurance that the State shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the State may:

(1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions,

(2) Repeat the assurance language in the statutes or regulations, or

(3) Develop its own language to the extent permitted by law.

(d) *Amendments.* A State will amend a plan whenever necessary to reflect:

(1) New or revised Federal statutes or regulations or

(2) A material change in any State law, organization, policy, or State agency operation. The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

§ 3016.12 Special grant or subgrant conditions for "high-risk" grantees.

(a) A grantee or subgrantee may be considered ''high risk'' if an awarding agency determines that a grantee or subgrantee:

(1) Has a history of unsatisfactory performance, or

(2) Is not financially stable, or

(3) Has a management system which does not meet the management standards set forth in this part, or

(4) Has not conformed to terms and conditions of previous awards, or

(5) Is otherwise not responsible; and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.

(b) Special conditions or restrictions may include:

(1) Payment on a reimbursement basis;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;

(3) Requiring additional, more detailed financial reports;

(4) Additional project monitoring;

(5) Requiring the grantee or subgrantee to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(c) If an awarding agency decides to impose such conditions, the awarding official will notify the grantee or subgrantee as early as possible, in writing, of:

(1) The nature of the special conditions/restrictions;

(2) The reason(s) for imposing them;

(3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions; and

(4) The method of requesting reconsideration of the conditions/restrictions imposed.

Subpart C—Post-Award Requirements

FINANCIAL ADMINISTRATION

§ 3016.20 Standards for financial management systems.

(a) A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to—

(1) Permit preparation of reports required by this part and the statutes authorizing the grant, and

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

(1) *Financial reporting.* Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) *Accounting records.* Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) *Internal control.* Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) *Budget control.* Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) *Allowable cost.* Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.

(6) *Source documentation.* Accounting records must be supported by such source documentation as cancelled

checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) *Cash management.* Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

(c) An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

§ 3016.21 Payment.

(a) *Scope.* This section prescribes the basic standard and the methods under which a Federal agency will make payments to grantees, and grantees will make payments to subgrantees and contractors.

(b) *Basic standard.* Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR part 205.

(c) *Advances.* Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

(d) *Reimbursement.* Reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, Federal agencies shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, the awarding agency's payments to the grantee or subgrantee will be based on the grantee's or subgrantee's actual rate of disbursement.

(e) *Working capital advances.* If a grantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the Federal agency has determined that reimbursement is not feasible because the grantee lacks sufficient working capital, the awarding agency may provide cash or a working capital advance basis. Under this procedure the awarding agency shall advance cash to the grantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimburse the grantee for its actual cash disbursements. The working capital advance method of payment shall not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.

(f) *Effect of program income, refunds, and audit recoveries on payment.* (1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.

(2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(g) *Withholding payments.* (1) Unless otherwise required by Federal statute, awarding agencies shall not withhold payments for proper charges incurred by grantees or subgrantees unless—

(i) The grantee or subgrantee has failed to comply with grant award conditions or

(ii) The grantee or subgrantee is indebted to the United States.

(2) Cash withheld for failure to comply with grant award condition, but without suspension of the grant, shall be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with § 3016.43(c).

(3) A Federal agency shall not make payment to grantees for amounts that are withheld by grantees or subgrantees from payment to contractors to assure satisfactory completion of work. Payments shall be made by the Federal agency when the grantees or subgrantees actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(h) *Cash depositories.* (1) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230.

(2) A grantee or subgrantee shall maintain a separate bank account only when required by Federal-State agreement.

(i) *Interest earned on advances.* Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 *et seq.*) and the Indian Self-Determination Act (23 U.S.C. 450), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the Federal agency. The grantee or subgrantee may keep interest amounts up to $100 per year for administrative expenses.

§ 3016.22 Allowable costs.

(a) *Limitation on use of funds.* Grant funds may be used only for:

(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

(b) *Applicable cost principles.* For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

For the costs of a—	Use the principles in—
State, local or Indian tribal government.	OMB Circular A–87.
Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A–122 as not subject to that circular.	OMB Circular A–122.
Educational institutions.	OMB Circular A–21.
For-profit organization other than a hospital and an organization named in OMB Circular A–122 as not subject to that circular.	48 CFR part 31. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

§ 3016.23 Period of availability of funds.

(a) *General.* Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.

(b) *Liquidation of obligations.* A grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF–269). The Federal agency may extend this deadline at the request of the grantee.

§ 3016.24 Matching or cost sharing.

(a) *Basic rule: Costs and contributions acceptable.* With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the grantee, subgrantee or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by others cash donations from non-Federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies.

(b) *Qualifications and exceptions*—(1) *Costs borne by other Federal grant agreements.* Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.

(2) *General revenue sharing.* For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(3) *Cost or contributions counted towards other Federal costs-sharing requirements.* Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

(4) *Costs financed by program income.* Costs financed by program income, as defined in § 3016.25, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in § 3016.25(g).)

(5) *Services or property financed by income earned by contractors.* Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(6) *Records.* Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantee or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) *Special standards for third party in-kind contributions.* (i) Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in-kind contributions are goods and services that, if the grantee, subgrantee, or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Costs sharing or matching credit for such contributions shall be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or

(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(c) *Valuation of donated services*—(1) *Volunteer services.* Unpaid services provided to a grantee or subgrantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) *Employees of other organizations.* When an employer other than a grantee, subgrantee, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (c)(1) of this section applies.

(d) *Valuation of third party donated supplies and loaned equipment or space.* (1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

(e) *Valuation of third party donated equipment, buildings, and land.* If a third party donates equipment, buildings, or land, and title passes to a grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant, as follows:

(1) *Awards for capital expenditures.* If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching,

(2) *Other awards.* If assisting in the acquisition of property is not the purpose of the grant or subgrant, paragraphs (e)(2) (i) and (ii) of this section apply:

(i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from the Federal agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in § 3016.22, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) *Valuation of grantee or subgrantee donated real property for construction/acquisition.* If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost sharing or matching.

(g) *Appraisal of real property.* In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the

grantee. This requirement will also be imposed by the grantee on subgrantees.

§ 3016.25 Program income.

(a) *General*. Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) *Definition of program income*. Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. ''During the grant period'' is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

(c) *Cost of generating program income*. If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

(d) *Governmental revenues*. Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.

(e) *Royalties*. Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income. (See § 3016.34.)

(f) *Property*. Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of §§ 3016.31 and 3016.32.

(g) *Use of program income*. Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When Federal agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.

(1) *Deduction*. Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.

(2) *Addition*. When authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement.

(3) *Cost sharing or matching*. When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.

(h) *Income after the award period*. There are no Federal requirements governing the disposition of program income earned after the end of the award period (*i.e.*, until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.

§ 3016.26 Non-Federal audit.

(a) *Basic rule*. Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, ''Audits of States, Local

Governments, and Non-Profit Organizations.'' The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial audits.

(1) In USDA, revised OMB Circular A–133 is implemented in 7 CFR part 3052, ''Audits of States, Local Governments, and Non-Profit Organizations.''

(2) [Reserved]

(b) *Subgrantees.* State or local governments, as those terms are defined for purposes of the Single Audit Act Amendments of 1996, that provide Federal awards to a subgrantee, which expends $300,000 or more (or other amount as specified by OMB) in Federal awards in a fiscal year, shall:

(1) Determine whether State or local subgrantees have met the audit requirements of the Act and whether subgrantees covered by OMB Circular A–110, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,'' have met the audit requirements of the Act. Commercial contractors (private for-profit and private and governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed. State and local governments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds;

(2) Determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act, Circular A–110, or through other means (e.g., program reviews) if the subgrantee has not had such an audit;

(3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with Federal laws and regulations;

(4) Consider whether subgrantee audits necessitate adjustment of the grantee's own records; and

(5) Require each subgrantee to permit independent auditors to have access to the records and financial statements.

(c) *Auditor selection.* In arranging for audit services, § 3016.36 shall be followed.

[53 FR 8044, 8087, Mar. 11, 1988, as amended at 62 FR 45939, Aug. 29, 1997]

CHANGES, PROPERTY, AND SUBAWARDS

§ 3016.30 Changes.

(a) *General.* Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) *Relation to cost principles.* The applicable cost principles (see § 3016.22) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

(c) *Budget changes*—(1) *Nonconstruction projects.* Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a nonconstruction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever the awarding agency's share exceeds $100,000.

(iii) Transfer of funds allotted for training allowances (*i.e.*, from direct payments to trainees to other expense categories).

(2) *Construction projects.* Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) *Combined construction and nonconstruction projects.* When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee must obtain prior written approval from the awarding agency before making any fund or budget transfer from nonconstruction to construction or vice versa.

(d) *Programmatic changes.* Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

(2) Need to extend the period of availability of funds.

(3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.

(4) Under nonconstruction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of § 3016.36 but does not apply to the procurement of equipment, supplies, and general support services.

(e) *Additional prior approval requirements.* The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.

(f) *Requesting prior approval.* (1) A request for prior approval of any budget revision will be in the same budget formal the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.

(2) A request for a prior approval under the applicable Federal cost principles (see § 3016.22) may be made by letter.

(3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision, requested by the subgrantee would result in a change to the grantee's approved project which requires Federal prior approval, the grantee will obtain the Federal agency's approval before approving the subgrantee's request.

§ 3016.31 Real property.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *Use.* Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for that purposes, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.

(c) *Disposition.* When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives:

(1) *Retention of title.* Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) *Sale of property.* Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses.

If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) *Transfer of title.* Transfer title to the awarding agency or to a third-party designated/approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

§ 3016.32 Equipment.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *States.* A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section.

(c) *Use.* (1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in § 3016.25(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) *Disposition.* When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than

$5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of $5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

(f) *Federal equipment.* In the event a grantee or subgrantee is provided federally-owned equipment:

(1) Title will remain vested in the Federal Government.

(2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.

(g) *Right to transfer title.* The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third part named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow § 3016.32(e).

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

§ 3016.33 Supplies.

(a) *Title.* Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.

(b) *Disposition.* If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

§ 3016.34 Copyrights.

The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

(a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

(b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

§ 3016.35 Subawards to debarred and suspended parties.

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, ''Debarment and Suspension.''

§ 3016.36 Procurement.

(a) *States.* When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) *Procurement standards.* (1) Grantees and subgrantees will use their own procurement procedures which reflect

applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only—

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative

issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) *Competition*. (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of § 3016.36. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a ''brand name'' product instead of allowing ''an equal'' product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which 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, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. 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 as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified

sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) *Methods of procurement to be followed*. (1) Procurement by *small purchase procedures*. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) Procurement by *sealed bids* (formal advertising). 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 the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in § 3016.36(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively and for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by *competitive proposals*. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by *noncompetitive proposals* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, *i.e.*, verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) *Contracting with small and minority firms, women's business enterprise and labor surplus area firms.* (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

(f) *Contract cost and price.* (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs

incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see § 3016.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) *Awarding agency review.* (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a ''brand name'' product; or

(iv) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis.

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) *Bonding requirements.* For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The ''bid guarantee'' shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) *A performance bond on the part of the contractor for 100 percent of the contract price.* A ''performance bond'' is one executed in connection with a contract to secure fulfillment of all the

contractor's obligations under such contract.

(3) *A payment bond on the part of the contractor for 100 percent of the contract price.* A ''payment bond'' is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) *Contract provisions.* A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of $10,000)

(3) Compliance with Executive Order 11246 of September 24, 1965, entitled ''Equal Employment Opportunity,'' as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees)

(4) Compliance with the Copeland ''Anti-Kickback'' Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and subgrants for construction or repair)

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a–7) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts in excess of $2000 awarded by grantees and subgrantees when required by Federal grant program legislation)

(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of $2000, and in excess of $2500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of $100,000)

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–163, 89 Stat. 871).

[53 FR 8044, 8087, Mar. 11, 1988, as amended at 60 FR 19639, 19641, Apr. 19, 1995]

§ 3016.37 Subgrants.

(a) *States.* States shall follow state law and procedures when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local

and Indian tribal governments. States shall:

(1) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations;

(2) Ensure that subgrantees are aware of requirements imposed upon them by Federal statute and regulation;

(3) Ensure that a provision for compliance with § 3016.42 is placed in every cost reimbursement subgrant; and

(4) Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies.

(b) *All other grantees.* All other grantees shall follow the provisions of this part which are applicable to awarding agencies when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. Grantees shall:

(1) Ensure that every subgrant includes a provision for compliance with this part;

(2) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations; and

(3) Ensure that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.

(c) *Exceptions.* By their own terms, certain provisions of this part do not apply to the award and administration of subgrants:

(1) Section 3016.10;

(2) Section 3016.11;

(3) The letter-of-credit procedures specified in Treasury Regulations at 31 CFR part 205, cited in § 3016.21; and

(4) Section 3016.50.

REPORTS, RECORDS, RETENTION, AND ENFORCEMENT

§ 3016.40 Monitoring and reporting program performance.

(a) *Monitoring by grantees.* Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

(b) *Nonconstruction performance reports.* The Federal agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by the Federal agency this report will be due on the same date as the final Financial Status Report.

(1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semi-annual reports. However, performance reports will not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semi-annual reports shall be due 30 days after the reporting period. The final performance report will be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a grantee, the Federal agency may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by the Federal agency.

(2) Performance reports will contain, for each grant, brief information on the following:

(i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.

(ii) The reasons for slippage if established objectives were not met.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(3) Grantees will not be required to submit more than the original and two copies of performance reports.

(4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.

(c) *Construction performance reports.* For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by Federal agencies to monitor progress under construction grants and subgrants. The Federal agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly.

(d) *Significant developments.* Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform the Federal agency as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(e) Federal agencies may make site visits as warranted by program needs.

(f) *Waivers, extensions.* (1) Federal agencies may waive any performance report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the Federal agency.

§3016.41 Financial reporting.

(a) *General.* (1) Except as provided in paragraphs (a) (2) and (5) of this section, grantees will use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:

(i) Submitting financial reports to Federal agencies, or

(ii) Requesting advances or reimbursements when letters of credit are not used.

(2) Grantees need not apply the forms prescribed in this section in dealing with their subgrantees. However, grantees shall not impose more burdensome requirements on subgrantees.

(3) Grantees shall follow all applicable standard and supplemental Federal agency instructions approved by OMB to the extent required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. Federal agencies may issue substantive supplementary instructions only with the approval of OMB. Federal agencies may shade out or instruct the grantee to disregard any line item that the Federal agency finds unnecessary for its decisionmaking purposes.

(4) Grantees will not be required to submit more than the original and two copies of forms required under this part.

(5) Federal agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. Federal agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.

(6) Federal agencies may waive any report required by this section if not needed.

(7) Federal agencies may extend the due date of any financial report upon receiving a justified request from a grantee.

(b) *Financial Status Report*—(1) *Form.* Grantees will use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all nonconstruction grants and for construction grants when required in accordance with paragraph §3016.41(e)(2)(iii) of this section.

(2) *Accounting basis.* Each grantee will report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on the accural basis, the grantee shall not be

required to convert its accounting system but shall develop such accrual information through and analysis of the documentation on hand.

(3) *Frequency*. The Federal agency may prescribe the frequency of the report for each project or program. However, the report will not be required more frequently than quarterly. If the Federal agency does not specify the frequency of the report, it will be submitted annually. A final report will be required upon expiration or termination of grant support.

(4) *Due date*. When reports are required on a quarterly or semiannual basis, they will be due 30 days after the reporting period. When required on an annual basis, they will be due 90 days after the grant year. Final reports will be due 90 days after the expiration or termination of grant support.

(c) *Federal Cash Transactions Report*—(1) *Form*. (i) For grants paid by letter or credit, Treasury check advances or electronic transfer of funds, the grantee will submit the Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a, unless the terms of the award exempt the grantee from this requirement.

(ii) These reports will be used by the Federal agency to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

(2) *Forecasts of Federal cash requirements*. Forecasts of Federal cash requirements may be required in the ''Remarks'' section of the report.

(3) *Cash in hands of subgrantees*. When considered necessary and feasible by the Federal agency, grantees may be required to report the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(4) *Frequency and due date*. Grantees must submit the report no later than 15 working days following the end of each quarter. However, where an advance either by letter of credit or electronic transfer of funds is authorized at an annualized rate of one million dollars or more, the Federal agency may require the report to be submitted within 15 working days following the end of each month.

(d) *Request for advance or reimbursement*—(1) *Advance payments*. Requests for Treasury check advance payments will be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form will not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) *Reimbursements*. Requests for reimbursement under nonconstruction grants will also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e)(1) of this section.)

(3) The frequency for submitting payment requests is treated in § 3016.41(b)(3).

(e) *Outlay report and request for reimbursement for construction programs*. (1) Grants that support construction activities paid by reimbursement method.

(i) Requests for reimbursement under construction grants will be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Federal agencies may, however, prescribe the Request for Advance or Reimbursement form, specified in § 3016.41(d), instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in § 3016.41(b)(3).

(2) Grants that support construction activities paid by letter of credit, electronic funds transfer or Treasury check advance.

(i) When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee will report its outlays to the Federal agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The Federal agency will provide any necessary special instruction.

However, frequency and due date shall be governed by § 3016.41(b) (3) and (4).

(ii) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances will be requested on the form specified in § 3016.41(d).

(iii) The Federal agency may substitute the Financial Status Report specified in § 3016.41(b) for the Outlay Report and Request for Reimbursement for Construction Programs.

(3) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by § 3016.41(b)(2).

§ 3016.42 Retention and access requirements for records.

(a) *Applicability.* (1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:

(i) Required to be maintained by the terms of this part, program regulations or the grant agreement, or

(ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see § 3016.36(i)(10).

(b) *Length of retention period.* (1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.

(c) *Starting date of retention period*—(1) *General.* When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.

(2) *Real property and equipment records.* The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) *Records for income transactions after grant or subgrant support.* In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.

(4) *Indirect cost rate proposals, cost allocations plans, etc.* This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(i) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(ii) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts from end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) *Substitution of microfilm.* Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) *Access to records*—(1) *Records of grantees and subgrantees.* The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

(2) *Expiration of right of access.* The rights of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

(f) *Restrictions on public access.* The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records Unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.

§ 3016.43 Enforcement.

(a) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,

(4) Withhold further awards for the program, or

(5) Take other remedies that may be legally available.

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to Debarment and Suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to ''Debarment and Suspension'' under E.O. 12549 (see § 3016.35).

§ 3016.44 Termination for convenience.

Except as provided in § 3016.43 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the

case of partial termination, the portion to be terminated, or

(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either § 3016.43 or paragraph (a) of this section.

Subpart D—After-the-Grant Requirements

§ 3016.50 Closeout.

(a) *General*. The Federal agency will close out the award when it determines that all applicable administrative actions and all required work of the grant has been completed.

(b) *Reports*. Within 90 days after the expiration or termination of the grant, the grantee must submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, Federal agencies may extend this timeframe. These may include but are not limited to:

(1) Final performance or progress report.

(2) Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF–271) (as applicable.)

(3) Final request for payment (SF–270) (if applicable).

(4) Invention disclosure (if applicable).

(5) Federally-owned property report:

In accordance with § 3016.32(f), a grantee must submit an inventory of all federally owned property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the Federal agency of property no longer needed.

(c) *Cost adjustment*. The Federal agency will, within 90 days after receipt of reports in paragraph (b) of this section, make upward or downward adjustments to the allowable costs.

(d) *Cash adjustments*. (1) The Federal agency will make prompt payment to the grantee for allowable reimbursable costs.

(2) The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

§ 3016.51 Later disallowances and adjustments.

The closeout of a grant does not affect:

(a) The Federal agency's right to disallow costs and recover funds on the basis of a later audit or other review;

(b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;

(c) Records retention as required in § 3016.42;

(d) Property management requirements in §§ 3016.31 and 3016.32; and

(e) Audit requirements in § 3016.26.

§ 3016.52 Collection of amounts due.

(a) Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government. If not paid within a reasonable period after demand, the Federal agency may reduce the debt by:

(1) Making an adminstrative offset against other requests for reimbursements,

(2) Withholding advance payments otherwise due to the grantee, or

(3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the Federal agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Ch. II). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

Subpart E—Entitlement

SOURCE: 65 FR 49480, Aug. 14, 2000, unless otherwise noted.

§ 3016.60 Special procurement provisions.

(a) Notwithstanding §§ 3016.36(a) and 3016.37(a), States conducting procurements under grants or subgrants under the USDA entitlement programs specified in § 3016.4(b) may elect to follow either the State laws, policies, and procedures as authorized by §§ 3016.36(a) and 3016.37(a), or the procurement standards for other governmental grantees and all governmental subgrantees in accordance with § 3016.36(b) through (i). Regardless of the option selected, States shall ensure that paragraphs (b) and (c) of this section are followed

(b) When conducting a procurement under the USDA entitlement programs specified in § 3016.4(b) of this part, a grantee or subgrantee may enter into a contract with a party that has provided specification information to the grantee or subgrantee for the grantee's or subgrantee's use in developing contract specifications for conducting such a procurement. In order to ensure objective contractor performance and eliminate unfair competitive advantage, however, a person that develops or drafts specifications, requirements, statements of work, invitations for bids, requests for proposals, contract terms and conditions or other documents for use by a grantee or subgrantee in conducting a procurement under the USDA entitlement programs specified in § 3016.4(b) shall be excluded from competing for such procurements. Such persons are ineligible for contract awards resulting from such procurements regardless of the procurement method used. However, prospective contractors may provide grantees or subgrantees with specification information related to a procurement and still compete for the procurement if the grantee or subgrantee, and not the prospective contractor, develops or drafts the specifications, requirements, statements of work, invitations for bid, and/or requests for proposals used to conduct the procurement.

(c) Procurements under USDA entitlement programs specified in § 3016.4(b) shall be conducted in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographic preferences except as provided for in § 3016.36(c)(2).

§ 3016.61 Financial reporting.

The financial reporting provisions found in § 3016.41 do not apply to any of the USDA entitlement programs listed in § 3016.4(b) except the Food Distribution Program on Indian Reservations. The financial reporting requirements for these entitlement programs are found in the following program regulations:

(a) For the National School Lunch Program, 7 CFR part 210;

(b) For the Special Milk Program for Children, 7 CFR part 215;

(c) For the School Breakfast Program, 7 CFR part 220;

(d) For the Summer Food Service Program for Children, 7 CFR part 225;

(e) For the Child and Adult Care Food Program, 7 CFR part 226;

(f) For State Administrative Expense Funds under section 7 of the Child Nutrition Act of 1966, 7 CFR part 235; and

(g) For State Administrative Expenses under section 16 of the Food Stamp Act of 1977, 7 CFR part 277.

PART 3018—NEW RESTRICTIONS ON LOBBYING

Subpart A—General

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APPENDIX A TO PART 3018—CERTIFICATION REGARDING LOBBYING
APPENDIX B TO PART 3018—DISCLOSURE FORM TO REPORT LOBBYING

AUTHORITY: Sec. 319, Pub. L. 101–121 (31 U.S.C. 1352); 5 U.S.C. 301.

SOURCE: 55 FR 6737, 6746, Feb. 26, 1990, unless otherwise noted.

CROSS REFERENCE: See also Office of Management and Budget notice published at 54 FR 52306, December 20, 1989.

Subpart A—General

§3018.100 Conditions on use of funds.

(a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative ageement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, set forth in Appendix A, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.

(c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form, set forth in Appendix B, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.

(d) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, set forth in Appendix A, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

(e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form, set forth in Appendix B, if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

§3018.105 Definitions.

For purposes of this part:

(a) *Agency*, as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

(b) *Covered Federal action* means any of the following Federal actions:

(1) The awarding of any Federal contract;

(2) The making of any Federal grant;

(3) The making of any Federal loan;

(4) The entering into of any cooperative agreement; and,

(5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan. Loan guarantees and loan insurance are addressed independently within this part.

(c) *Federal contract* means an acquisition contract awarded by an agency, including those subject to the Federal Acquisition Regulation (FAR), and any other acquisition contract for real or

personal property or services not subject to the FAR.

(d) *Federal cooperative agreement* means a cooperative agreement entered into by an agency.

(e) *Federal grant* means an award of financial assistance in the form of money, or property in lieu of money, by the Federal Government or a direct appropriation made by law to any person. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, loan insurance, interest subsidies, insurance, or direct United States cash assistance to an individual.

(f) *Federal loan* means a loan made by an agency. The term does not include loan guarantee or loan insurance.

(g) *Indian tribe* and *tribal organization* have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

(h) *Influencing or attempting to influence* means making, with the intent to influence, any communication to or appearance before an officer or employee or any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

(i) *Loan guarantee* and *loan insurance* means an agency's guarantee or insurance of a loan made by a person.

(j) *Local government* means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

(k) *Officer or employee of an agency* includes the following individuals who are employed by an agency:

(1) An individual who is appointed to a position in the Government under title 5, U.S. Code, including a position under a temporary appointment;

(2) A member of the uniformed services as defined in section 101(3), title 37, U.S. Code;

(3) A special Government employee as defined in section 202, title 18, U.S. Code; and,

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, U.S. Code appendix 2.

(l) *Person* means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(m) *Reasonable compensation* means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

(n) *Reasonable payment* means, with respect to perfessional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

(o) *Recipient* includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(p) *Regularly employed* means, with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or a commitment providing for the United States to insure or guarantee a loan, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for

receipt of such contract, grant, loan, cooperative agreement, loan insurance commitment, or loan guarantee commitment. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

(q) *State* means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

§ 3018.110 Certification and disclosure.

(a) Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for:

(1) Award of a Federal contract, grant, or cooperative agreement exceeding $100,000; or

(2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding $150,000.

(b) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:

(1) A Federal contract, grant, or cooperative agreement exceeding $100,000; or

(2) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding $150,000,

Unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.

(c) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:

(1) A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,

(3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(d) Any person who requests or receives from a person referred to in paragraphs (a) or (b) of this section:

(1) A subcontract exceeding $100,000 at any tier under a Federal contract;

(2) A subgrant, contract, or subcontract exceeding $100,000 at any tier under a Federal grant;

(3) A contract or subcontract exceeding $100,000 at any tier under a Federal loan exceeding $150,000; or,

(4) A contract or subcontract exceeding $100,000 at any tier under a Federal cooperative agreement,

Shall file a certification, and a disclosure form, if required, to the next tier above.

(e) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraphs (a) or (b) of this section. That person shall forward all disclosure forms to the agency.

(f) Any certification or disclosure form filed under paragraph (e) of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.

(g) For awards and commitments in process prior to December 23, 1989, but not made before that date, certifications shall be required at award or

commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for awards and commitments in process prior to the December 23, 1989 effective date of these provisions, but not made before December 23, 1989, disclosure forms shall not be required at time of award or commitment but shall be filed within 30 days.

(h) No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either Subpart B or C.

Subpart B—Activities by Own Employees

§ 3018.200 Agency and legislative liaison.

(a) The prohibition on the use of appropriated funds, in § 3018.100 (a), does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(b) For purposes of paragraph (a) of this section, providing any information specifically requested by an agency or Congress is allowable at any time.

(c) For purposes of paragraph (a) of this section, the following agency and legislative liaison activities are allowable at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) For purposes of paragraph (a) of this section, the following agencies and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and,

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95–507 and other subsequent amendments.

(e) Only those activities expressly authorized by this section are allowable under this section.

§ 3018.205 Professional and technical services.

(a) The prohibition on the use of appropriated funds, in § 3018.100 (a), does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or an extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b) For purposes of paragraph (a) of this section, ''professional and technical services'' shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or

technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Only those services expressly authorized by this section are allowable under this section.

§ 3018.210 Reporting.

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

Subpart C—Activities by Other Than Own Employees

§ 3018.300 Professional and technical services.

(a) The prohibition on the use of appropriated funds, in § 3018.100 (a), does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b) The reporting requirements in § 3018.110 (a) and (b) regarding filing a disclosure form by each person, if required, shall not apply with respect to professional or technical services rendered directly in the preparation, submission, or negotiation of any commitment providing for the United States to insure or guarantee a loan.

(c) For purposes of paragraph (a) of this section, ''professional and technical services'' shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting or a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(d) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(e) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(f) Only those services expressly authorized by this section are allowable under this section.

Subpart D—Penalties and Enforcement

§ 3018.400 Penalties.

(a) Any person who makes an expenditure prohibited herein shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure.

(b) Any person who fails to file or amend the disclosure form (see Appendix B) to be filed or amended if required herein, shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

(c) A filing or amended filing on or after the date on which an administrative action for the imposition of a civil penalty is commenced does not prevent the imposition of such civil penalty for a failure occurring before that date. An administrative action is commenced with respect to a failure when an investigating official determines in writing to commence an investigation of an allegation of such failure.

(d) In determining whether to impose a civil penalty, and the amount of any such penalty, by reason of a violation by any person, the agency shall consider the nature, circumstances, extent, and gravity of the violation, the effect on the ability of such person to continue in business, any prior violations by such person, the degree of culpability of such person, the ability of the person to pay the penalty, and such other matters as may be appropriate.

(e) First offenders under paragraphs (a) or (b) of this section shall be subject to a civil penalty of $10,000, absent aggravating circumstances. Second and subsequent offenses by persons shall be subject to an appropriate civil penalty between $10,000 and $100,000, as determined by the agency head or his or her designee.

(f) An imposition of a civil penalty under this section does not prevent the United States from seeking any other remedy that may apply to the same conduct that is the basis for the imposition of such civil penalty.

§ 3018.405 Penalty procedures.

Agencies shall impose and collect civil penalties pursuant to the provisions of the Program Fraud and Civil Remedies Act, 31 U.S.C. sections 3803 (except subsection (c)), 3804, 3805, 3806, 3807, 3808, and 3812, insofar as these provisions are not inconsistent with the requirements herein.

§ 3018.410 Enforcement.

The head of each agency shall take such actions as are necessary to ensure that the provisions herein are vigorously implemented and enforced in that agency.

Subpart E—Exemptions

§ 3018.500 Secretary of Defense.

(a) The Secretary of Defense may exempt, on a case-by-case basis, a covered Federal action from the prohibition whenever the Secretary determines, in writing, that such an exemption is in the national interest. The Secretary shall transmit a copy of each such written exemption to Congress immediately after making such a determination.

(b) The Department of Defense may issue supplemental regulations to implement paragraph (a) of this section.

Subpart F—Agency Reports

§ 3018.600 Semi-annual compilation.

(a) The head of each agency shall collect and compile the disclosure reports (see appendix B) and, on May 31 and November 30 of each year, submit to the Secretary of the Senate and the Clerk of the House of Representatives a report containing a compilation of the

information contained in the disclosure reports received during the six-month period ending on March 31 or September 30, respectively, of that year.

(b) The report, including the compilation, shall be available for public inspection 30 days after receipt of the report by the Secretary and the Clerk.

(c) Information that involves intelligence matters shall be reported only to the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the Committees on Appropriations of the Senate and the House of Representatives in accordance with procedures agreed to by such committees. Such information shall not be available for public inspection.

(d) Information that is classified under Executive Order 12356 or any successor order shall be reported only to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives or the Committees on Armed Services of the Senate and the House of Representatives (whichever such committees have jurisdiction of matters involving such information) and to the Committees on Appropriations of the Senate and the House of Representatives in accordance with procedures agreed to by such committees. Such information shall not be available for public inspection.

(e) The first semi-annual compilation shall be submitted on May 31, 1990, and shall contain a compilation of the disclosure reports received from December 23, 1989 to March 31, 1990.

(f) Major agencies, designated by the Office of Management and Budget (OMB), are required to provide machine-readable compilations to the Secretary of the Senate and the Clerk of the House of Representatives no later than with the compilations due on May 31, 1991. OMB shall provide detailed specifications in a memorandum to these agencies.

(g) Non-major agencies are requested to provide machine-readable compilations to the Secretary of the Senate and the Clerk of the House of Representatives.

(h) Agencies shall keep the originals of all disclosure reports in the official files of the agency.

§ 3018.605 Inspector General report.

(a) The Inspector General, or other official as specified in paragraph (b) of this section, of each agency shall prepare and submit to Congress each year, commencing with submission of the President's Budget in 1991, an evaluation of the compliance of that agency with, and the effectiveness of, the requirements herein. The evaluation may include any recommended changes that may be necessary to strengthen or improve the requirements.

(b) In the case of an agency that does not have an Inspector General, the agency official comparable to an Inspector General shall prepare and submit the annual report, or, if there is no such comparable official, the head of the agency shall prepare and submit the annual report.

(c) The annual report shall be submitted at the same time the agency submits its annual budget justifications to Congress.

(d) The annual report shall include the following: All alleged violations relating to the agency's covered Federal actions during the year covered by the report, the actions taken by the head of the agency in the year covered by the report with respect to those alleged violations and alleged violations in previous years, and the amounts of civil penalties imposed by the agency in the year covered by the report.

APPENDIX A TO PART 3018—CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the

extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

APPENDIX B TO PART 3018—DISCLOSURE FORM TO REPORT LOBBYING

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known:*

Congressional District, *if known:*

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, *if known:*

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, *if applicable:* _____

8. Federal Action Number, *if known:*

9. Award Amount, *if known:*
$

10. a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

b. Individuals Performing Services *(including address if different from No. 10a)*
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply):*
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment *(check all that apply):*
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ **Date:** _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ **Page** _____ **of** _____

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Standard Form - LLL-A

PART 3019—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

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APPENDIX A TO PART 3019—CONTRACT PROVISIONS

AUTHORITY: 5 U.S.C. 301; 31 U.S.C. 901–903; 7 CFR 2.28.

SOURCE: 60 FR 44124, Aug. 24, 1995, unless otherwise noted.

Subpart A—General

§ 3019.1 Purpose.

(a) This part establishes uniform administrative requirements for Federal grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations. Federal awarding agencies shall not impose additional or inconsistent requirements, except as provided in §§ 3019.4, and 3019.14 or unless specifically required by Federal statute or executive order. Non-profit organizations that implement Federal programs for the States are also subject to State requirements.

(b) This part also applies specifically to the grants, agreements and subawards to institutions of higher education, hospitals, and other non-profit organizations that are awarded to carry out the following entitlement programs:

(1) Entitlement grants under the following programs authorized by The Richard B. Russell National School Lunch Act:

(i) National School Lunch Program, General Assistance (section 4 of the Act),

(ii) Commodity Assistance (section 6 of the Act),

(iii) National School Lunch Program, Special Meal Assistance (section 11 of the Act),

(iv) Summer Food Service Program for Children (section 13 of the Act), and

(v) Child and Adult Care Food Program (section 17 of the Act).

(2) Entitlement grants under the following programs authorized by The Child Nutrition Act of 1966:

(i) Special Milk Program for Children (section 3 of the Act), and

(ii) School Breakfast Program (section 4 of the Act).

(3) Entitlement grants for State Administrative Expenses under The Food Stamp Act of 1977 (section 16 of the Act).

[60 FR 44124, Aug. 24, 1995, as amended at 65 FR 49480, Aug. 14, 2000]

§ 3019.2 Definitions.

(a) *Accrued expenditures* means the charges incurred by the recipient during a given period requiring the provision of funds for:

(1) Goods and other tangible property received;

(2) Services performed by employees, contractors, subrecipients, and other payees; and

(3) Other amounts becoming owed under programs for which no current services or performance is required.

(b) *Accrued income* means the sum of:

(1) Earnings during a given period from:

(i) Services performed by the recipient, and

(ii) Goods and other tangible property delivered to purchasers, and

(2) Amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

(c) *Acquisition cost of equipment* means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

(d) *Advance* means a payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

(e) *Award* means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include: technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; contracts which are required to be entered into and administered under procurement laws and regulations; and those agreements that are entered into under the authorities provided by sections 1472(b), 1473A, and 1473C of the National Research Extension, and Teaching Policy Act of 1977 (as amended by the Food Security Act (7 U.S.C. 3318, 3319a and 3319c.) and subsequent authorizations.

(f) *Cash contributions* means the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

(g) *Closeout* means the process by which a Federal awarding agency determines that all applicable administrative actions and all required work of the award have been completed by the recipient and Federal awarding agency.

(h) *Contract* means a procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract.

(i) *Cost sharing or matching* means that portion of project or program costs not borne by the Federal Government.

(j) *Date of completion* means the date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which Federal sponsorship ends.

(k) *Disallowed costs* means those charges to an award that the Federal awarding agency determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

(l) *Equipment* means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5000 or more per unit. However, consistent with recipient policy, lower limits may be established.

(m) *Excess property* means property under the control of any Federal awarding agency that, as determined by the head thereof, is no longer required for its needs or the discharge of its responsibilities.

(n) *Exempt property* means tangible personal property acquired in whole or in part with Federal funds, where the Federal awarding agency has statutory authority to vest title in the recipient without further obligation to the Federal Government. An example of exempt property authority is contained in the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6306), for property acquired under an award to conduct basic or applied research by a non-profit institution of higher education or non-profit organization whose principal purpose is conducting scientific research.

(o) *Federal awarding agency* means the U.S. Department of Agriculture (USDA) or any subagency of the U.S. Department of Agriculture that provides an award to the recipient.

(p) *Federal funds authorized* means the total amount of Federal funds obligated by the Federal Government for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by agency regulations or agency implementing instructions.

(q) *Federal share* of real property, equipment, or supplies means that percentage of the property's acquisition costs and any improvement expenditures paid with Federal funds.

(r) *Funding period* means the period of time when Federal funding is available for obligation by the recipient.

(s) *Intangible property and debt instruments* means, but is not limited to, trademarks, copyrights, patents and patent applications and such property as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether considered tangible or intangible.

(t) *Obligations* means the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.

(u) *Outlays or expenditures* means charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party in-kind contributions applied and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees and other amounts becoming owed under programs for which no current services or performance are required.

(v) *Personal property* means property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

(w) *Prior approval* means written approval by an authorized official evidencing prior consent.

(x) *Program income* means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award (see exclusions in §§ 3019.24 (e) and (h)). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of

commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal awarding agency regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

(y) *Project costs* means all allowable costs, as set forth in the applicable Federal cost principles, incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

(z) *Project period* means the period established in the award document during which Federal sponsorship begins and ends.

(aa) *Property* means, unless otherwise stated, real property, equipment, intangible property and debt instruments.

(bb) *Real property* means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

(cc) *Recipient* means an organization receiving financial assistance directly from Federal awarding agencies to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers. The term may include commercial organizations, foreign or international organizations (such as agencies of the United Nations) which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients at the discretion of the Federal awarding agency. The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as federally-funded research and development centers.

(dd) *Research and development* means all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other non-profit institutions. ''Research'' is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. ''Development'' is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(ee) *Small awards* means a grant or cooperative agreement not exceeding the small purchase threshold fixed at 41 U.S.C. 403(11) (currently $25,000).

(ff) *Subaward* means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of ''award'' in paragraph (e) of this section.

(gg) *Subrecipient* means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations) at the discretion of the Federal awarding agency.

(hh) *Supplies* means all personal property excluding equipment, intangible property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement (''subject inventions''), as defined in 37 CFR part 401, ''Rights to Inventions

Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements.''

(ii) *Suspension* means an action by a Federal awarding agency that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the Federal awarding agency. Suspension of an award is a separate action from suspension under Federal agency regulations implementing E.O.s 12549 and 12689, ''Debarment and Suspension.''

(jj) *Termination* means the cancellation of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

(kk) *Third party in-kind contributions* means the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

(ll) *Unliquidated obligations*, for financial reports prepared on a cash basis, means the amount of obligations incurred by the recipient that have not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

(mm) *Unobligated balance* means the portion of the funds authorized by the Federal awarding agency that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

(nn) *Unrecovered indirect cost* means the difference between the amount awarded and the amount which could have been awarded under the recipient's approved negotiated indirect cost rate.

(oo) *Working capital advance* means a procedure where by funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

[60 FR 44124, Aug. 24, 1995, as amended at 65 FR 49482, Aug. 14, 2000]

§ 3019.3 Effect on other issuances.

For awards subject to this part, all administrative requirements of codified program regulations, program manuals, handbooks and other non-regulatory materials which are inconsistent with the requirements of this part shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in § 3019.4.

§ 3019.4 Deviations.

The Office of Management and Budget (OMB) may grant exceptions for classes of grants or recipients subject to the requirements of this part when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this part shall be permitted only in unusual circumstances. Federal awarding agencies may apply more restrictive requirements to a class of recipients when approved by OMB. Federal awarding agencies may apply less restrictive requirements when awarding small awards, except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by Federal awarding agencies.

§ 3019.5 Subawards.

Unless sections of this part specifically exclude subrecipients from coverage, the provisions of this part shall be applied to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals or other non-profit organizations. State and local government subrecipients are subject to the provisions of regulations implementing the grants management common rule, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government,'' codified at 7 CFR part 3016.

Subpart B—Pre-Award Requirements

§ 3019.10 Purpose.

Sections 3019.11 through 3019.17 prescribe forms and instructions and other pre-award matters to be used in applying for Federal awards.

§ 3019.11 Pre-award policies.

(a) *Use of grants and cooperative agreements, and contracts.* In each instance, the Federal awarding agency shall decide on the appropriate award instrument (*i.e.*, grant, cooperative agreement, or contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–08) governs the use of grants, cooperative agreements and contracts. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, ''substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.'' Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

(b) *Public notice and priority setting.* Federal awarding agencies shall notify the public of its intended funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute.

§ 3019.12 Forms for applying for Federal assistance.

(a) Federal awarding agencies shall comply with the applicable report clearance requirements of 5 CFR part 1320, ''Controlling Paperwork Burdens on the Public,'' with regard to all forms used by the Federal awarding agency in place of or as a supplement to the Standard Form 424 (SF–424) series.

(b) Applicants shall use the SF–424 series or those forms and instructions prescribed by the Federal awarding agency.

(c) For Federal programs covered by E.O. 12372, ''Intergovernmental Review of Federal Programs,'' the applicant shall complete the appropriate sections of the SF–424 (Application for Federal Assistance) indicating whether the application was subject to review by the State Single Point of Contact (SPOC). The name and address of the SPOC for a particular State can be obtained from the Federal awarding agency or the Catalog of Federal Domestic Assistance. The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review. The U.S. Department of Agriculture procedures implementing E.O. 12372 are found at CFR part 3015.

(d) Federal awarding agencies that do not use the SF–424 form should indicate whether the application is subject to review by the State under E.O. 12372.

§ 3019.13 Debarment and suspension.

Federal awarding agencies and recipients shall comply with the nonprocurement debarment and suspension common rule implementing E.O.s 12549 and 12669, ''Debarment and Suspension,'' codified at 7 CFR 3017. This common rule restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

§ 3019.14 Special award conditions.

If an applicant or recipient.

(a) Has a history of poor performance,

(b) Is not financially stable,

(c) Has a management system that does not meet the standards prescribed in this part,

(d) Has not conformed to the terms and conditions of a previous award, or

(e) Is not otherwise responsible,

Federal awarding agencies may impose additional requirements as needed, provided that such applicant or recipient is notified in writing as to: the nature of the additional requirements, the reason why the additional requirements are being imposed, the nature of the corrective action needed, the time allowed for completing the corrective actions, and the method for requesting reconsideration of the additional requirements imposed. Any special conditions shall be promptly removed once the conditions that prompted them have been corrected.

§ 3019.15 Metric system of measurement.

The Metric Conversion Act, as amended by the Omnibus Trade and

Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce. The Act requires each Federal agency to establish a date or dates in consultation with the Secretary of Commerce, when the metric system of measurement will be used in the agency's procurements, grants, and other business-related activities. Metric implementation may take longer where the use of the system is initially impractical or likely to cause significant inefficiencies in the accomplishment of federally-funded activities. Federal awarding agencies shall follow the provisions of E.O. 12770, ''Metric Usage in Federal Government Programs.''

§ 3019.16 Resource Conservation and Recovery Act.

Under the Resource Conservation and Recovery Act (RCRA) (Pub. L. 94–580 codified at 42 U.S.C. 6962), any State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with section 6002. Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA) (40 CFR parts 247–254). Accordingly, State and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.

§ 3019.17 Certifications and representations.

Unless prohibited by statute or codified regulation, each Federal awarding agency is authorized and encouraged to allow recipients to submit certifications and representations required by statute, executive order, or regulation on an annual basis, if the recipients have ongoing and continuing relationships with the agency. Annual certifications and representations shall be signed by responsible officials with the authority to ensure recipients' compliance with the pertinent requirements.

Subpart C—Post-Award Requirements

FINANCIAL AND PROGRAM MANAGEMENT

§ 3019.20 Purpose of financial and program management.

Sections 3019.21 through 3019.28 prescribe standards for financial management systems, methods for making payments and rules for: satisfying cost sharing and matching requirements, accounting for program income, budget revision approvals, making audits, determining allowability of cost, and establishing fund availability.

§ 3019.21 Standards for financial management systems.

(a) Federal awarding agencies shall require recipients to relate financial data to performance data and develop unit cost information whenever practical.

(b) Recipients' financial management systems shall provide for the following.

(1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in § 3019.52. If a Federal awarding agency requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient shall not be required to establish an accrual accounting system. These recipients may develop such accrual data for its reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. Recipients shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever

appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101–453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, ''Withdrawal of Cash From the Treasury for Advances Under Federal Grant and Other Programs.''

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

(c) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, the Federal USDA awarding agency, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

(d) The Federal awarding agency may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to protect the Federal Government's interest.

(e) Where bonds are required in the situations described in paragraphs (c) and (d) of this section, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, ''Surety Companies Doing Business With the United States.''

§ 3019.22 Payment.

(a) Payment methods shall minimize the time elapsing between the transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payment by other means by the recipients. Payment methods of State agencies or instrumentalities shall be consistent with Treasury-State CMIA agreements or default procedures codified at 31 CFR part 205.

(b) Recipients are to be paid in advance, provided they maintain or demonstrate the willingness to maintain: written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient, and financial management systems that meet the standards for fund control and accountability as established in § 3019.21. Cash advances to a recipient organization shall be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program or project costs and the proportionate share of any allowable indirect costs.

(c) Whenever possible, advances shall be consolidated to cover anticipated cash needs for all awards made by the Federal awarding agency to the recipient.

(1) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer.

(2) Advance payment mechanisms are subject to 31 CFR part 205.

(3) Recipients shall be authorized to submit requests for advances and reimbursements at least monthly when electronic fund transfers are not used.

(d) Requests for Treasury check advance payment shall be submitted on SF–270, ''Request for Advance or Reimbursement,'' or other forms as may be authorized by OMB. This form is not to be used when Treasury check advance payments are made to the recipient automatically through the use of a predetermined payment schedule or if precluded by special Federal awarding agency instructions for electronic funds transfer.

(e) Reimbursement is the preferred method when the requirements in paragraph (b) of this section cannot be met. Federal awarding agencies may also

use this method on any construction agreement, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the project.

(1) When the reimbursement method is used, the Federal awarding agency shall make payment within 30 days after receipt of the billing, unless the billing is improper.

(2) Recipients shall be authorized to submit request for reimbursement at least monthly when electronic funds transfers are not used.

(f) If a recipient cannot meet the criteria for advance payments and the Federal awarding agency has determined that reimbursement is not feasible because the recipient lacks sufficient working capital, the Federal awarding agency may provide cash on a working capital advance basis. Under this procedure, the Federal awarding agency shall advance cash to the recipient to cover its estimated disbursement needs for an initial period generally geared to the awardee's disbursing cycle. Thereafter, the Federal awarding agency shall reimburse the recipient for its actual cash disbursements. The working capital advance method of payment shall not be used for recipients unwilling or unable to provide timely advances to their subrecipient to meet the subrecipient's actual cash disbursements.

(g) To the extent available, recipients shall disburse funds from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(h) Unless otherwise required by statute, Federal awarding agencies shall not withhold payments for proper charges made by recipients at any time during the project period unless paragraphs (h)(1) and (h)(2) of this section apply.

(1) A recipient has failed to comply with the project objectives, the terms and conditions of the award, or Federal reporting requirements.

(2) The recipient or subrecipient is delinquent in a debt to the Untied States as defined in OMB Circular A–129, ''Managing Federal Credit Programs.''

(3) Under such conditions, the Federal awarding agency may, upon reasonable notice, inform the recipient that payments shall not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(i) Standards governing the use of banks and other institutions as depositories of funds advanced under awards are as follows.

(1) Except for situations described in paragraph (i)(2) of this section, Federal awarding agencies shall not require separate depository accounts for funds provided to a recipient or establish any eligibility requirements for depositories for funds provided to a recipient. However, recipients must be able to account for the receipt, obligation and expenditure of funds.

(2) Advances of Federal funds shall be deposited and maintained in insured accounts whenever possible.

(j) Consistent with the national goal of expanding the opportunities for women-owned and minority-owned business enterprises, recipients shall be encouraged to use women-owned and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members).

(k) Recipients shall maintain advances of Federal funds in interest bearing accounts, unless paragraphs (k)(1), (k)(2) or (k)(3) of this section apply.

(1) The recipient receives less than $120,000 in Federal awards per year.

(2) The best reasonably available interest bearing account would not be expected to earn interest in excess of $250 per year on Federal cash balances.

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(l) For those entities where CMIA and its implementing regulations do not apply, interest earned on Federal advances deposited in interest bearing accounts shall be remitted annually to Department of Health and Human

Services, Payment Management System, P.O. Box 6021, Rockville, MD 20852. Interest amounts up to $250 per year may be retained by the recipient for administrative expense. In keeping with the Electronic Funds Transfer rules, (31 CFR Part 206), interest should be remitted to the HHS Payment Management System through an electronic medium such as the FEDWIRE Deposit system. Recipients which do not have this capability should use a check. State universities and hospitals shall comply with CMIA, as it pertains to interest. If an entity subject to CMIA uses its own funds to pay pre-award costs for discretionary awards without prior written approval from the Federal awarding agency, it waives its right to recover the interest under CMIA.

(m) Except as noted elsewhere in this part, only the following forms shall be authorized for the recipients in requesting advances and reimbursements. Federal agencies shall not require more than an original and two copies of these forms.

(1) SF–270, Request for Advance or Reimbursement. Each Federal awarding agency shall adopt the SF–270 as a standard form for all nonconstruction programs when electronic funds transfer or predetermined advance methods are not used. Federal awarding agencies, however, have the option of using this form for construction programs in lieu of the SF–271, ''Outlay Report and Request for Reimbursement for Construction Programs.''

(2) SF–271, Outlay Report and Request for Reimbursement for Construction Programs. Each Federal awarding agency shall adopt the SF–271 as the standard form to be used for requesting reimbursement for construction programs. However, a Federal awarding agency may substitute the SF–270 when the Federal awarding agency determines that it provides adequate information to meet Federal needs.

§ 3019.23 Cost sharing or matching.

(a) All contributions, including cash and third party in-kind, shall be accepted as part of the recipient's cost sharing or matching when such contributions meet all of the following criteria.

(1) Are verifiable from the recipient's records.

(2) Are not included as contributions for any other federally-assisted project or program.

(3) Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.

(4) Are allowable under the applicable costs principles.

(5) Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.

(6) Are provided for in the approved budget when required by the Federal awarding agency.

(7) Conform to other provisions of this part, as applicable.

(b) Unrecovered indirect costs may be included as part of cost sharing or matching only with the prior approval of the Federal awarding agency.

(c) Values for recipient contributions of services and property shall be established in accordance with the applicable cost principles. If a Federal awarding agency authorizes recipients to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching shall be the lesser of paragraphs (c)(1) or (c)(2) of this section.

(1) The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation.

(2) The current fair market value. However, when there is sufficient justification, the Federal awarding agency may approve the use of the current fair market value of the donated property, even if it exceeds the certified value at the time of donation to the project.

(d) Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services shall be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates shall be consistent with those

paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(e) When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skill for which the employee is normally paid.

(f) Donated supplies may include such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to donated supplies included in the cost sharing or matching share shall be reasonable and shall not exceed the fair market value of the property at the time of the donation.

(g) The method used for determining cost sharing or matching for donated equipment, buildings and land for which title passes to the recipient may differ according to the purpose of the award, if paragraphs (g)(1) or (g)(2) of this section apply.

(1) If the purpose of the award is to assist the recipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching.

(2) If the purpose of the award is to support activities that require the use of equipment, buildings or land, normally only depreciation or use charges for equipment and buildings may be made. However, the full value of equipment or other capital assets and fair rental charges for land may be allowed, provided that the Federal awarding agency has approved the charges.

(h) The value of donated property shall be determined in accordance with the usual accounting policies of the recipient, with the following qualifications.

(1) The value of donated land and buildings shall not exceed its fair market value at the time of donation to the recipient as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient.

(2) The value of donated equipment shall not exceed the fair market value of equipment of the same age and condition at the time of donation.

(3) The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment shall not exceed its fair rental value.

(5) The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties.

(i) Volunteer services shall be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.

(ii) The basis for determining the valuation of personal service, material, equipment, buildings and land shall be documented.

§ 3019.24 Program income.

(a) Federal awarding agencies shall apply the standards set forth in this section in requiring recipient organizations to account for program income related to projects financed in whole or in part with Federal funds.

(b) Except as provided in paragraph (h) of this section, program income earned during the project period shall be retained by the recipient and, in accordance with Federal awarding agency regulations or the terms and conditions of the award, shall be used in one or more of the ways listed in the following.

(1) Added to funds committed to the project by the Federal awarding agency and recipient and used to further eligible project or program objectives.

(2) Used to finance the non-Federal share of the project or program.

(3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.

(c) When an agency authorizes the disposition of program income as described in paragraphs (b)(1) or (b)(2) of this section, program income in excess of any limits stipulated shall be used in

accordance with paragraph (b)(3) of this section.

(d) In the event that the Federal awarding agency does not specify in its regulations or the terms and conditions of the award how program income is to be used, paragraph (b)(3) of this section shall apply automatically to all projects or programs except research. For awards that support research, paragraph (b)(1) of this section shall apply automatically unless the awarding agency indicates in the terms and conditions another alternative on the award or the recipient is subject to special award conditions, as indicated in § 3019.14.

(e) Unless Federal awarding agency regulations or the terms and conditions of the award provide otherwise, recipients shall have no obligation to the Federal Government regarding program income earned after the end of the project period.

(f) If authorized by Federal awarding agency regulations or the terms and conditions of the award, costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(g) Proceeds from the sale of property shall be handled in accordance with the requirements of the Property Standards (See §§ 3019.30 through 3019.37).

(h) Unless Federal awarding agency regulations or the terms and condition of the award provide otherwise, recipients shall have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research award.

§ 3019.25 Revision of budget and program plans.

(a) The budget plan is the financial expression of the project or program as approved during the award process. It may include either the Federal and non-Federal share, or only the Federal share, depending upon Federal awarding agency requirements. It shall be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions, in accordance with this section.

(c) For nonconstruction awards, recipients shall request prior approvals from Federal awarding agencies for one or more of the following program or budget related reasons.

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or award document.

(3) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The need for additional Federal funding.

(5) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, if approval is required by the Federal awarding agency.

(6) The inclusion, unless waived by the Federal awarding agency, of costs that require prior approval in accordance with OMB Circular A–21, ''Cost Principles for Institutions of Higher Education,'' OMB Circular A–122, ''Cost Principles for Non-Profit Organizations,'' or 45 CFR part 74 Appendix E, ''Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals,'' or 48 CFR part 31, ''Contract Cost Principles and Procedures,'' as applicable.

(7) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.

(8) Unless described in the application and funded in the approved awards, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

(d) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(e) Except for requirements listed in paragraphs (c)(1) and (c)(4) of this section, Federal awarding agencies are authorized, at their option, to waive cost-related and administrative prior written approvals required by this part and OMB Circulars A–21 and A–122. Such waivers may include authorizing recipients to do any one or more of the following.

(1) Incur pre-award costs 90 calendar days prior to award or more than 90 calendar days with the prior approval of the Federal awarding agency. All pre-award costs are incurred at the recipient's risk (*i.e.*, the Federal awarding agency is under no obligation to reimburse such costs if for any reason the recipient does not receive an award or if the award is less than anticipated and inadequate to cover such costs).

(2) Initiate a one-time extension of the expiration date of the award of up to 12 months unless one or more of the following conditions apply. For one-time extensions, the recipient must notify the Federal awarding agency in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award. This one-time extension may not be exercised merely for the purpose of using unobligated balances.

(i) The terms and conditions of award prohibit the extension.

(ii) The extension requires additional Federal funds.

(iii) The extension involves any change in the approved objectives or scope of the project.

(3) Carry forward unobligated balances to subsequent funding periods.

(4) For awards that support research, unless the Federal awarding agency provides otherwise in the award or in the agency's regulations, the prior approval requirements described in this paragraph (e) are automatically waived (*i.e.*, recipients need not obtain such prior approvals) unless one of the conditions included in paragraph (e)(2) of this section applies.

(f) The Federal awarding agency may, at its option, restrict the transfer of funds among direct cost categories or programs, functions and activities for awards in which the Federal share of the project exceeds $100,000 and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the Federal awarding agency. No Federal awarding agency shall permit a transfer that would cause any Federal appropriation or part thereof to be used for purposes other than those consistent with the original intent of the appropriation.

(g) All other changes to nonconstruction budgets, except for the changes described in paragraph (j) of this section, do not require prior approval.

(h) For construction awards, recipients shall request prior written approval promptly from Federal awarding agencies for budget revisions whenever paragraphs (h)(1), (h)(2) or (h)(3) of this section apply.

(1) The revision results from changes in the scope or the objective of the project or program.

(2) The need arises for additional Federal funds to complete the project.

(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in § 3019.27.

(i) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(j) When a Federal awarding agency makes an award that provides support for both construction and nonconstruction work, the Federal awarding agency may require the recipient to request prior approval from the Federal awarding agency before making any fund or budget transfers between the two types of work supported.

(k) For both construction and nonconstruction awards, Federal awarding agencies shall require recipients to notify the Federal awarding agency in writing promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient for the project period by more than $5000 or five percent of the Federal award, whichever is greater. This notification shall not be required if an application

for additional funding is submitted for a continuation award.

(l) When requesting approval for budget revisions, recipients shall use the budget forms that were used in the application unless the Federal awarding agency indicates a letter of request suffices.

(m) Within 30 calendar days from the date of receipt of the request for budget revisions, Federal awarding agencies shall review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the Federal awarding agency shall inform the recipient in writing of the date when the recipient may expect the decision.

§ 3019.26 Non-Federal audits.

(a) Recipients and subrecipients that are institutions of higher education or other non-profit organizations (including hospitals) shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.''

(b) State and local governments shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.''

(c) For-profit hospitals not covered by the audit provisions of revised OMB Circular A–133 shall be subject to the audit requirements of the Federal awarding agencies.

(d) Commercial organizations shall be subject to the audit requirements of the Federal awarding agency or the prime recipient as incorporated into the award document.

(e) In USDA, revised OMB Circular A–133 is implemented in 7 CFR part 3052, ''Audits of States, Local Governments, and Non-Profit Organizations.''

[60 FR 44124, Aug. 24, 1995, as amended at 62 FR 45939, Aug. 29, 1997]

§ 3019.27 Allowable costs.

For each kind of recipient, there is a set of Federal principles for determining allowable costs. Allowability of costs shall be determined in accordance with the cost principles applicable to the entity incurring the costs. Thus, allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, ''Cost Principles for State and Local Governments.'' The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A–122, ''Cost Principles for Non-Profit Organizations.'' The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, ''Cost Principles for Educational Institutions.'' The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR part 74, ''Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.'' The allowability of costs incurred by commercial organizations and those non-profit organizations listed in Attachment C to Circular A–122 is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR part 31.

§ 3019.28 Period of availability of funds.

Where a funding period is specified, a recipient may charge to the grant only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by the Federal awarding agency.

PROPERTY STANDARDS

§ 3019.30 Purpose of property standards.

Sections 3019.31 through 3019.37 set forth uniform standards governing management and disposition of property furnished by the Federal Government whose cost was charged to a project supported by a Federal award. Federal awarding agencies shall require recipients to observe these standards under awards and shall not impose additional requirements, unless specifically required by Federal statute. The recipient may use its own property management standards and procedures

provided it observes the provisions of §§ 3019.31 through 3019.37.

§ 3019.31 Insurance coverage.

Recipients shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided to property owned by the recipient. Federally-owned property need not be insured unless required by the terms and conditions of the award.

§ 3019.32 Real property.

Each Federal awarding agency shall prescribe requirements for recipients concerning the use and disposition of real property acquired in whole or in part under awards. Unless otherwise provided by statute, such requirements, at a minimum, shall contain the following.

(a) Title to real property shall vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project as long as it is needed and shall not encumber the property without approval of the Federal awarding agency.

(b) The recipient shall obtain written approval by the Federal awarding agency for the use of real property in other federally-sponsored projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under federally-sponsored projects (*i.e.*, awards) or programs that have purposes consistent with those authorized for support by the Federal awarding agency.

(c) When the real property is no longer needed as provided in paragraphs (a) and (b), the recipient shall request disposition instructions from the Federal awarding agency or its successor Federal awarding agency. The Federal awarding agency shall observe one or more of the following disposition instructions.

(1) The recipient may be permitted to retain title without further obligation to the Federal Government after it compensates the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project.

(2) The recipient may be directed to sell the property under guidelines provided by the Federal awarding agency and pay the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(3) The recipient may be directed to transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the recipient shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

§ 3019.33 Federally-owned and exempt property.

(a) *Federally-owned property*. (1) Title to federally-owned property remains vested in the Federal Government. Recipients shall submit annually an inventory listing of federally-owned property in their custody to the Federal awarding agency. Upon completion of the award or when the property is no longer needed, the recipient shall report the property to the Federal awarding agency for further Federal agency utilization.

(2) If the Federal awarding agency has no further need for the property, it shall be declared excess and reported to the General Services Administration, unless the Federal awarding agency has statutory authority to dispose of the property by alternative methods (e.g., the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710(I)) to donate research equipment to educational and non-profit organizations in accordance with E.O. 12821, ''Improving Mathematics and Science Education in Support of the National Education Goals''). Appropriate instructions shall be issued to the recipient by the Federal awarding agency.

(b) *Exempt property*. When statutory authority exists, the Federal awarding agency has the option to vest title to property acquired with Federal funds in the recipient without further obligation to the Federal Government and under conditions the Federal awarding agency considers appropriate. Such property is ''exempt property.'' Should a Federal awarding agency not establish conditions, title to exempt property upon acquisition shall vest in the recipient without further obligation to the Federal Government.

§ 3019.34 Equipment.

(a) Title to equipment acquired by a recipient with Federal funds shall vest in the recipient, subject to conditions of this section.

(b) The recipient shall not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the Federal Government retains an interest in the equipment.

(c) The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and shall not encumber the property without approval of the Federal awarding agency. When no longer needed for the original project or program, the recipient shall use the equipment in connection with its other federally-sponsored activities, in the following order of priority:

(1) Activities sponsored by the Federal awarding agency which funded the original project, then

(2) Activities sponsored by other Federal awarding agencies.

(d) During the time that equipment is used on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by the Federal awarding agency that financed the equipment; second preference shall be given to projects or programs sponsored by other Federal awarding agencies. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the Federal awarding agency. User charges shall be treated as program income.

(e) When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of the Federal awarding agency.

(f) The recipient's property management standards for equipment acquired with Federal funds and federally-owned equipment shall include all of the following.

(1) Equipment records shall be maintained accurately and shall include the following information.

(i) A description of the equipment.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii) Source of the equipment, including the award number.

(iv) Whether title vests in the recipient or the Federal Government.

(v) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost.

(vi) Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government).

(vii) Location and condition of the equipment and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the Federal awarding agency for its share.

(2) Equipment owned by the Federal Government shall be identified to indicate Federal ownership.

(3) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at

least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

(4) A control system shall be in effect to ensure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented; if the equipment was owned by the Federal Government, the recipient shall promptly notify the Federal awarding agency.

(5) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(6) Where the recipient is authorized or required to sell the equipment, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return.

(g) When the recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards. For equipment with a current per unit fair market value of $5000 or more, the recipient may retain the equipment for other uses provided that compensation is made to the original Federal awarding agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment. If the recipient has no need for the equipment, the recipient shall request disposition instructions from the Federal awarding agency. The Federal awarding agency shall determine whether the equipment can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the equipment shall be reported to the General Services Administration by the Federal awarding agency to determine whether a requirement for the equipment exists in other Federal agencies. The Federal awarding agency shall issue instructions to the recipient no later than 120 calendar days after the recipient's request and the following procedures shall govern.

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient shall sell the equipment and reimburse the Federal awarding agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the recipient shall be permitted to deduct and retain from the Federal share $500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.

(2) If the recipient is instructed to ship the equipment elsewhere, the recipient shall be reimbursed by the Federal Government by an amount which is computed by applying the percentage of the recipient's participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the recipient is instructed to otherwise dispose of the equipment, the recipient shall be reimbursed by the Federal awarding agency for such costs incurred in its disposition.

(4) The Federal awarding agency may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such transfer shall be subject to the following standards.

(i) The equipment shall be appropriately identified in the award or otherwise made known to the recipient in writing.

(ii) The Federal awarding agency shall issue disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory shall list all equipment acquired with grant funds and federally-owned equipment. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar day period, the recipient shall apply the standards of this section, as appropriate.

(iii) When the Federal awarding agency exercises its right to take title,

the equipment shall be subject to the provisions for federally-owned equipment.

§ 3019.35 Supplies and other expendable property.

(a) Title to supplies and other expendable property shall vest in the recipient upon acquisition. If there is a residual inventory of unused supplies exceeding $5000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federally-sponsored project or program, the recipient shall retain the supplies for use on non-Federal sponsored activities or sell them, but shall, in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as for equipment.

(b) The recipient shall not use supplies acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute as long as the Federal Government retains an interest in the supplies.

§ 3019.36 Intangible property.

(a) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. The Federal awarding agency(ies) reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(b) Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.''

(c) The Federal Government has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d) (1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law, the Federal awarding agency shall request, and the recipient shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the Federal awarding agency obtains the research data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the agency, the recipient, and applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(2) The following definitions apply for purposes of this paragraph (d):

(i) *Research data* is defined as the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This ''recorded'' material excludes physical objects (e.g., laboratory samples). *Research data* also do not include:

(A) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(B) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

(ii) *Published* is defined as either when:

(A) Research findings are published in a peer-reviewed scientific or technical journal; or

(B) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(iii) *Used by the Federal Government in developing an agency action that has the force and effect of law* is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(e) Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient shall use that property for the originally-authorized purpose, and the recipient shall not encumber the property without approval of the Federal awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of § 3019.34(g).

[60 FR 44124, Aug. 24, 1995, as amended at 65 FR 14407, 14408, Mar. 16, 2000]

§ 3019.37 Property trust relationship.

Real property, equipment, intangible property and debt instruments that are acquired or improved with Federal funds shall be held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. Agencies may require recipients to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal funds and that use and disposition conditions apply to the property.

PROCUREMENT STANDARDS

§ 3019.40 Purpose of procurement standards.

Sections 3019.41 through 3019.48 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. No additional procurement standards or requirements shall be imposed by the Federal awarding agencies upon recipients, unless specifically required by Federal statute or executive order or approved by OMB.

§ 3019.41 Recipient responsibilities.

The standards contained in this section do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to the Federal awarding agency, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

§ 3019.42 Codes of conduct.

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

§ 3019.43 Competition.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interests as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

§ 3019.44 Procurement procedures.

(a) All recipients shall establish written procurement procedures. These procedures shall provide for, at a minimum, that paragraphs (a)(1), (a)(2), and (a)(3) of this section apply.

(1) Recipients avoid purchasing unnecessary items.

(2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government.

(3) Solicitations for goods and services provide for all of the following:

(i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.

(ii) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

(iv) The specific features of ''brand name or equal'' descriptions that bidders are required to meet when such items are included in the solicitation.

(v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(b) Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of Federal awards shall take all of the following steps to further this goal.

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(c) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but shall

be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The ''cost-plus-a-percentage-of-cost'' or ''percentage of construction cost'' methods of contracting shall not be used.

(d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the term and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by agencies' implementation of E.O.s 12549 and 12689, ''Debarment and Suspension.''

(e) Recipients shall, on request, make available for the Federal awarding agency, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply.

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in the Federal awarding agency's implementation of this part.

(2) The procurement is expected to exceed the small purchase threshold fixed at 41 U.S.C. 403(11) (currently $25,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(3) The procurement, which is expected to exceed the small purchase threshold, specifies a ''brand name'' product.

(4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.

§ 3019.45 Cost and price analysis.

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

§ 3019.46 Procurement records.

Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum:

(a) Basis for contractor selection,

(b) Justification for lack of competition bids or offers are not obtained, and

(c) Basis for award cost or price.

§ 3019.47 Contract administration.

A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

§ 3019.48 Contract provisions.

The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts.

(a) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be

terminated because of circumstances beyond the control of the contractor.

(c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds $100,00. For those contracts or subcontracts exceeding $100,000, the Federal awarding agency may accept the bonding policy and requirements of the recipient, provided the Federal awarding agency has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows.

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The ''bid guarantee'' shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A ''performance bond'' is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A ''payment bond'' is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, ''Surety Companies Doing Business with the United States.''

(d) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that the recipient, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(e) All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of Appendix A to this part, as applicable.

REPORTS AND RECORDS

§ 3019.50 Purpose of reports and records.

Sections 3019.51 through 3019.53 set forth the procedures for monitoring and reporting on the recipient's financial and program performance and the necessary standard reporting forms. They also set forth record retention requirements.

§ 3019.51 Monitoring and reporting program performance.

(a) Recipients are responsible for managing and monitoring each project, program, subaward, function or activity supported by the award. Recipients shall monitor subawards to ensure subrecipients have met the audit requirements as delineated in Section 3019.26.

(b) The Federal awarding agency shall prescribe the frequency with which the performance reports shall be submitted. Except as provided in paragraph (f) of this section, performance reports shall not be required more frequently than quarterly or, less frequently than annually. Annual reports shall be due 90 calendar days after the grant year; quarterly or semi-annual reports shall be due 30 days after the reporting period. The Federal awarding agency may require annual reports before the anniversary dates of multiple years awards in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the award.

(c) If inappropriate, a final technical or performance report shall not be required after completion of the project.

(d) When required, performance reports shall generally contain, for each

award, brief information on each of the following.

(1) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(2) Reasons why established goals were not met, if appropriate.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(e) Recipients shall not be required to submit more than the original and two copies of performance reports.

(f) Recipients shall immediately notify the Federal awarding agency of developments that have a significant impact on the award-supported activities. Also, notification shall be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

(g) Federal awarding agencies may make site visits, as needed.

(h) Federal awarding agencies shall comply with clearance requirements of 5 CFR part 1320 when requesting performance data from recipients.

§ 3019.52 Financial reporting.

(a) The following forms or such other forms as may be approved by OMB are authorized for obtaining financial information from recipients.

(1) SF–269 or SF–269A, Financial Status Report.

(i) Each Federal awarding agency shall require recipients to use the SF–269 or SF–269A to report the status of funds for all nonconstruction projects or programs. A Federal awarding agency may, however, have the option of not requiring the SF–269 or SF–269A when the SF–270, Request for Advance or Reimbursement, or SF–272, Report of Federal Cash Transactions, is determined to provided adequate information to meet its needs, except that a final SF–269 or SF–269A shall be required at the completion of the project when the SF–270 is used only for advances.

(ii) The Federal awarding agency shall prescribe whether the report shall be on a cash or accrual basis. If the Federal awarding agency requires accrual information and the recipient's accounting records are not normally kept on the accrual basis, the recipient shall not be required to convert its accounting system, but shall develop such accrual information through best estimates based on an analysis of the documentation on hand.

(iii) The Federal awarding agency shall determine the frequency of the Financial Status Report for each project or program, considering the size and complexity of the particular project or program. However, the report shall not be required more frequently than quarterly or less frequently than annually. A final report shall be required at the completion of the agreement.

(iv) The Federal awarding agency shall require recipients to submit the SF–269 or SF–269A (an original and no more than two copies no later than 30 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 calendar days for annual and final reports. Extensions of reporting due dates may be approved by the Federal awarding agency upon request of the recipient.

(2) SF–272, Report of Federal Cash Transactions.

(i) When funds are advanced to recipients the Federal awarding agency shall require each recipient to submit the SF–272 and, when necessary, its continuation sheet, SF–272a. The Federal awarding agency shall use this report to monitor cash advanced to recipients and to obtain disbursement information for each agreement with the recipients.

(ii) Federal awarding agencies may require forecasts of Federal cash requirements in the ''Remarks'' section of the report.

(iii) When practical and deemed necessary, Federal awarding agencies may require recipients to report in the ''Remarks'' section the amount of cash advances received in excess of three days. Recipients shall provide short

narrative explanations of actions taken to reduce the excess balances.

(iv) Recipients shall be required to submit not more than the original and two copies of the SF–272 15 calendar days following the end of each quarter. The Federal awarding agencies may require a monthly report from those recipients receiving advances totaling $1 million or more per year.

(v) Federal awarding agencies may waive the requirement for submission of the SF–272 for any one of the following reasons:

(A) When monthly advances do not exceed $25,000 per recipient, provided that such advances are monitored through other forms contained in this section;

(B) If, in the Federal awarding agency's opinion, the recipient's accounting controls are adequate to minimize excessive Federal advances; or

(C) When the electronic payment mechanisms provide adequate data.

(b) When the Federal awarding agency needs additional information or more frequent reports, the following shall be observed.

(1) When additional information is needed to comply with legislative requirements, Federal awarding agencies shall issue instructions to require recipients to submit such information under the ''Remarks'' section of the reports.

(2) When a Federal awarding agency determines that a recipient's accounting system does not meet the standards in § 3019.21, additional pertinent information to further monitor awards may be obtained upon written notice to the recipient until such time as the system is brought up to standard. The Federal awarding agency, in obtaining this information, shall comply with report clearance requirements of 5 CFR part 1320.

(3) Federal awarding agencies are encouraged to shade out any line item on any report if not necessary.

(4) Federal awarding agencies may accept the identical information from the recipients in machine readable format or computer printouts or electronic outputs in lieu of prescribed formats.

(5) Federal awarding agencies may provide computer or electronic outputs to recipients when such expedites or contributes to the accuracy of reporting.

§ 3019.53 Retention and access requirements for records.

(a) This section sets forth requirements for record retention and access to records for awards to recipients. Federal awarding agencies shall not impose any other record retention or access requirements upon recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by the Federal awarding agency. The only exceptions are the following.

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by the Federal awarding agency, the 3-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocations plans, etc. as specified in paragraph (g) of this section.

(c) Copies of original records may be substituted for the original records if authorized by the Federal awarding agency.

(d) The Federal awarding agency shall request transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, a Federal awarding agency may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) The Federal awarding agency, the Inspector General, Comptroller General of the United States, or any of

their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, no Federal awarding agency shall place restrictions on receipts that limit public access to the records of recipients that are pertinent to an award, except when the Federal awarding agency can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to the Federal awarding agency.

(g) Indirect cost rate proposals, cost allocations plans, etc. Paragraphs (g)(1) and (g)(2) of this section apply to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) If submitted for negotiation. If the recipient submits to the Federal awarding agency or the subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) If not submitted for negotiation. If the recipient is not required to submit to the Federal awarding agency or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

TERMINATION AND ENFORCEMENT

§ 3019.60 Purpose of termination and enforcement.

Sections 3019.61 and 3019.62 set forth uniform suspension, termination and enforcement procedures.

§ 3019.61 Termination.

(a) Awards may be terminated in whole or in part only if paragraphs (a)(1), (a)(2) or (a)(3) of this section apply.

(1) By the Federal awarding agency, if a recipient materially fails to comply with the terms and conditions of an award.

(2) By the Federal awarding agency with the consent of the recipient, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(3) By the recipient upon sending to the Federal awarding agency written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety under either paragraphs (a)(1) or (2) of this section.

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in § 3019.71(a), including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the recipient after termination, as appropriate.

§ 3019.62 Enforcement.

(a) *Remedies for noncompliance*. If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, the Federal awarding

agency may, in addition to imposing any of the special conditions outlined in § 3019.14, take one or more of the following actions, as appropriate in the circumstances.

(1) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by the Federal awarding agency.

(2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards for the project or program.

(5) Take other remedies that may be legally available.

(b) *Hearings and appeals*. In taking an enforcement action, the awarding agency shall provide the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination*. Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension of termination or subsequently. Other recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if paragraphs (c)(1) and (c)(2) of this section apply.

(1) The costs result from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable.

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension*. The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under E.O.s 12549 and 12689 and the Federal awarding agency implementing regulations (see § 3019.13).

Subpart D—After-the-Award Requirements

§ 3019.70 Purpose.

Sections 3019.71 through 3019.73 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

§ 3019.71 Closeout procedures.

(a) Recipients shall submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. The Federal awarding agency may approve extensions when requested by the recipient.

(b) Unless the Federal awarding agency authorizes an extension, a recipient shall liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion as specified in the terms and conditions of the award or in agency implementing instructions.

(c) The Federal awarding agency shall make prompt payments to a recipient for allowable reimbursable costs under the award being closed out.

(d) The recipient shall promptly refund any balances of unobligated cash that the Federal awarding agency has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. OMB Circular A–129 governs unreturned amounts that become delinquent debts.

(e) When authorized by the terms and conditions of the award, the Federal awarding agency shall make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§ 3019.31 through 3019.37.

(g) In the event a final audit has not been performed prior to the closeout of an award, the Federal awarding agency

shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

§ 3019.72 Subsequent adjustments and continuing responsibilities.

(a) The closeout of an award does not affect any of the following.

(1) The right of the Federal awarding agency to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in § 3019.26.

(4) Property management requirements in §§ 3019.31 through 3019.37.

(5) Records retention as required in § 3019.53.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of the Federal awarding agency and the recipient, provided the responsibilities of the recipient referred to in § 3019.73(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

§ 3019.73 Collection of amounts due.

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, the Federal awarding agency may reduce the debt by:

(1) Making an administrative offset against other requests for reimbursements.

(2) Withholding advance payments otherwise due to the recipient.

(3) Taking other action permitted by statute.

(b) Except as otherwise provided by law, the Federal awarding agency shall charge interest on an overdue debt in accordance with 4 CFR Chapter II, ''Federal Claims Collection Standards.''

APPENDIX A TO PART 3019—CONTRACT PROVISIONS

All contracts, awarded by a recipient including small purchases, shall contain the following provisions as applicable:

1. *Equal Employment Opportunity*—All contracts shall contain a provision requiring compliance with E.O. 11246, ''Equal Employment Opportunity,'' as amended by E.O. 11375, ''Amending Executive Order 11246 Relating to Equal Employment Opportunity,'' and as supplemented by regulations at 41 CFR part 60, ''Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.''

2. *Copeland ''Anti-Kickback'' Act (18 U.S.C. 874 and 40 U.S.C. 276c)*—All contracts and subgrants in excess of $2000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland ''Anti-Kickback'' Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, ''Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States''). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.

3. *Davis-Bacon Act, as amended (40 U.S.C. 276a to a–7)*—When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than $2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a–7) and as supplemented by Department of Labor regulations (29 CFR part 5, ''Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction''). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.

4. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)*—Where applicable, all contracts awarded by recipients in excess of $2000 for construction contracts and in excess of $2500 for other contracts that involve the employment of mechanics or laborers

shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. *Rights to Inventions Made Under a Contract or Agreement*—Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,'' and any implementing regulations issued by the awarding agency.

6. *Clean Air Act (42 U.S.C. 7401 et. seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended*—Contracts and subgrants of amounts in excess of $100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 *et seq.*). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

7. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*—Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

8. *Debarment and Suspension (E.O.s 12549 and 12689)*—All parties doing business with the Department of Agriculture should consult the Department's regulations for debarment and suspension found at 7 CFR 3017. No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, ''Debarment and Suspension.'' This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

PART 3021—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

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AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 701 *et seq.*; Pub. L. 101–576, 104 Stat. 2838; 7 CFR § 2.28.

SOURCE: 68 FR 66557, 66565, Nov. 26, 2003, unless otherwise noted.

EFFECTIVE DATE NOTE: At 76 FR 76611, Dec. 8, 2011, Part 3021 was removed, effective Feb. 6, 2012.

Subpart A—Purpose and Coverage

§ 3021.100 What does this part do?

This part carries out the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*, as amended) that applies to grants. It also applies the provisions of the Act to cooperative agreements and other financial assistance awards, as a matter of Federal Government policy.

§ 3021.105 Does this part apply to me?

(a) Portions of this part apply to you if you are either—

(1) A recipient of an assistance award from the Department of Agriculture; or

(2) A(n) Department of Agriculture awarding official. (See definitions of award and recipient in §§ 3021.605 and 3021.660, respectively.)

(b) The following table shows the subparts that apply to you:

If you are . . .	see subparts . . .
(1) A recipient who is not an individual	A, B and E.
(2) A recipient who is an individual	A, C and E.
(3) A(n) Department of Agriculture awarding official.	A, D and E.

§ 3021.110 Are any of my Federal assistance awards exempt from this part?

This part does not apply to any award that the Secretary of Agriculture or designee determines that the application of this part would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government.

§ 3021.115 Does this part affect the Federal contracts that I receive?

It will affect future contract awards indirectly if you are debarred or suspended for a violation of the requirements of this part, as described in § 3021. 510(c). However, this part does not apply directly to procurement contracts. The portion of the Drug-Free Workplace Act of 1988 that applies to Federal procurement contracts is carried out through the Federal Acquisition Regulation in chapter 1 of Title 48 of the Code of Federal Regulations (the drug-free workplace coverage currently is in 48 CFR part 23, subpart 23.5).

Subpart B—Requirements for Recipients Other Than Individuals

§ 3021.200 What must I do to comply with this part?

There are two general requirements if you are a recipient other than an individual.

(a) First, you must make a good faith effort, on a continuing basis, to maintain a drug-free workplace. You must agree to do so as a condition for receiving any award covered by this part. The specific measures that you must take in this regard are described in more detail in subsequent sections of

this subpart. Briefly, those measures are to—

(1) Publish a drug-free workplace statement and establish a drug-free awareness program for your employees (see §§ 3021.205 through 3021.220); and

(2) Take actions concerning employees who are convicted of violating drug statutes in the workplace (see § 3021.225).

(b) Second, you must identify all known workplaces under your Federal awards (see § 3021.230).

§ 3021.205 What must I include in my drug-free workplace statement?

You must publish a statement that—

(a) Tells your employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in your workplace;

(b) Specifies the actions that you will take against employees for violating that prohibition; and

(c) Lets each employee know that, as a condition of employment under any award, he or she:

(1) Will abide by the terms of the statement; and

(2) Must notify you in writing if he or she is convicted for a violation of a criminal drug statute occurring in the workplace and must do so no more than five calendar days after the conviction.

§ 3021.210 To whom must I distribute my drug-free workplace statement?

You must require that a copy of the statement described in § 3021.205 be given to each employee who will be engaged in the performance of any Federal award.

§ 3021.215 What must I include in my drug-free awareness program?

You must establish an ongoing drug-free awareness program to inform employees about—

(a) The dangers of drug abuse in the workplace;

(b) Your policy of maintaining a drug-free workplace;

(c) Any available drug counseling, rehabilitation, and employee assistance programs; and

(d) The penalties that you may impose upon them for drug abuse violations occurring in the workplace.

§ 3021.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?

If you are a new recipient that does not already have a policy statement as described in § 3021.205 and an ongoing awareness program as described in § 3021.215, you must publish the statement and establish the program by the time given in the following table:

If . . .	then you . . .
(a) The performance period of the award is less than 30 days.	must have the policy statement and program in place as soon as possible, but before the date on which performance is expected to be completed.
(b) The performance period of the award is 30 days or more.	must have the policy statement and program in place within 30 days after award.
(c) You believe there are extraordinary circumstances that will require more than 30 days for you to publish the policy statement and establish the awareness program.	may ask the Department of Agriculture awarding official to give you more time to do so. The amount of additional time, if any, to be given is at the discretion of the awarding official.

§ 3021.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?

There are two actions you must take if an employee is convicted of a drug violation in the workplace:

(a) First, you must notify Federal agencies if an employee who is engaged in the performance of an award informs you about a conviction, as required by § 3021.205(c)(2), or you otherwise learn of the conviction. Your notification to the Federal agencies must__

(1) Be in writing;

(2) Include the employee's position title;

(3) Include the identification number(s) of each affected award;

(4) Be sent within ten calendar days after you learn of the conviction; and

(5) Be sent to every Federal agency on whose award the convicted employee was working. It must be sent to every awarding official or his or her official designee, unless the Federal agency has specified a central point for the receipt of the notices.

(b) Second, within 30 calendar days of learning about an employee's conviction, you must either__

(1) Take appropriate personnel action against the employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended; or

(2) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for these purposes by a Federal, State or local health, law enforcement, or other appropriate agency.

§ 3021.230 How and when must I identify workplaces?

(a) You must identify all known workplaces under each Department of Agriculture award. A failure to do so is a violation of your drug-free workplace requirements. You may identify the workplaces__

(1) To the Department of Agriculture official that is making the award, either at the time of application or upon award; or

(2) In documents that you keep on file in your offices during the performance of the award, in which case you must make the information available for inspection upon request by Department of Agriculture officials or their designated representatives.

(b) Your workplace identification for an award must include the actual address of buildings (or parts of buildings) or other sites where work under the award takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

(c) If you identified workplaces to the Department of Agriculture awarding official at the time of application or award, as described in paragraph (a)(1) of this section, and any workplace that you identified changes during the performance of the award, you must inform the Department of Agriculture awarding official.

Subpart C—Requirements for Recipients Who Are Individuals

§ 3021.300 What must I do to comply with this part if I am an individual recipient?

As a condition of receiving a(n) Department of Agriculture award, if you are an individual recipient, you must agree that—

(a) You will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity related to the award; and

(b) If you are convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity, you will report the conviction:

(1) In writing.

(2) Within 10 calendar days of the conviction.

(3) To the Department of Agriculture awarding official or other designee for each award that you currently have, unless § 3021.301 or the award document designates a central point for the receipt of the notices. When notice is made to a central point, it must include the identification number(s) of each affected award.

§ 3021.301 [Reserved]

Subpart D—Responsibilities of Department of Agriculture Awarding Officials

§ 3021.400 What are my responsibilities as a(n) Department of Agriculture awarding official?

As a(n) Department of Agriculture awarding official, you must obtain each recipient's agreement, as a condition of the award, to comply with the requirements in—

(a) Subpart B of this part, if the recipient is not an individual; or

(b) Subpart C of this part, if the recipient is an individual.

Subpart E—Violations of this Part and Consequences

§ 3021.500 How are violations of this part determined for recipients other than individuals?

A recipient other than an individual is in violation of the requirements of this part if the Secretary of Agriculture or designee determines, in writing, that—

(a) The recipient has violated the requirements of subpart B of this part; or

(b) The number of convictions of the recipient's employees for violating criminal drug statutes in the workplace is large enough to indicate that the recipient has failed to make a good faith effort to provide a drug-free workplace.

§ 3021.505 How are violations of this part determined for recipients who are individuals?

An individual recipient is in violation of the requirements of this part if the Secretary of Agriculture or designee determines, in writing, that—

(a) The recipient has violated the requirements of subpart C of this part; or

(b) The recipient is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity.

§ 3021.510 What actions will the Federal Government take against a recipient determined to have violated this part?

If a recipient is determined to have violated this part, as described in § 3021.500 or § 3021.505, the Department of Agriculture may take one or more of the following actions—

(a) Suspension of payments under the award;

(b) Suspension or termination of the award; and

(c) Suspension or debarment of the recipient under 7 CFR part 3017, for a period not to exceed five years.

[68 FR 66557, 66565, Nov. 26, 2003, as amended at 68 FR 66566, Nov. 26, 2003]

§ 3021.515 Are there any exceptions to those actions?

The the Secretary of Agriculture may waive with respect to a particular award, in writing, a suspension of payments under an award, suspension or termination of an award, or suspension or debarment of a recipient if the Secretary of Agriculture determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

Subpart F—Definitions

§ 3021.605 Award.

Award means an award of financial assistance by the Department of Agriculture or other Federal agency directly to a recipient.

(a) The term award includes:

(1) A Federal grant or cooperative agreement, in the form of money or property in lieu of money.

(2) A block grant or a grant in an entitlement program, whether or not the grant is exempted from coverage under the Governmentwide rule 7 CFR part 3016 that implements OMB Circular A–102 (for availability, see 5 CFR 1310.3) and specifies uniform administrative requirements.

(b) The term award does not include:

(1) Technical assistance that provides services instead of money.

(2) Loans.

(3) Loan guarantees.

(4) Interest subsidies.

(5) Insurance.

(6) Direct appropriations.

(7) Veterans' benefits to individuals (*i.e.*, any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States).

[68 FR 66557, 66565, Nov. 26, 2003, as amended at 68 FR 66566, Nov. 26, 2003]

§ 3021.610 Controlled substance.

Controlled substance means a controlled substance in schedules I through V of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1308.11 through 1308.15.

§ 3021.615 Conviction.

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the

Federal or State criminal drug statutes.

§ 3021.620 Cooperative agreement.

Cooperative agreement means an award of financial assistance that, consistent with 31 U.S.C. 6305, is used to enter into the same kind of relationship as a grant (see definition of grant in § 3021.650), except that substantial involvement is expected between the Federal agency and the recipient when carrying out the activity contemplated by the award. The term does not include cooperative research and development agreements as defined in 15 U.S.C. 3710a.

§ 3021.625 Criminal drug statute.

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance.

§ 3021.630 Debarment.

Debarment means an action taken by a Federal agency to prohibit a recipient from participating in Federal Government procurement contracts and covered nonprocurement transactions. A recipient so prohibited is debarred, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and the common rule, Government-wide Debarment and Suspension (Nonprocurement), that implements Executive Order 12549 and Executive Order 12689.

§ 3021.635 Drug-free workplace.

Drug-free workplace means a site for the performance of work done in connection with a specific award at which employees of the recipient are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

§ 3021.640 Employee.

(a) *Employee* means the employee of a recipient directly engaged in the performance of work under the award, including—

(1) All direct charge employees;

(2) All indirect charge employees, unless their impact or involvement in the performance of work under the award is insignificant to the performance of the award; and

(3) Temporary personnel and consultants who are directly engaged in the performance of work under the award and who are on the recipient's payroll.

(b) This definition does not include workers not on the payroll of the recipient (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the payroll; or employees of subrecipients or subcontractors in covered workplaces).

§ 3021.645 Federal agency or agency.

Federal agency or agency means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency.

§ 3021.650 Grant.

Grant means an award of financial assistance that, consistent with 31 U.S.C. 6304, is used to enter into a relationship—

(a) The principal purpose of which is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a law of the United States, rather than to acquire property or services for the Federal Government's direct benefit or use; and

(b) In which substantial involvement is not expected between the Federal agency and the recipient when carrying out the activity contemplated by the award.

§ 3021.655 Individual.

Individual means a natural person.

§ 3021.660 Recipient.

Recipient means any individual, corporation, partnership, association, unit of government (except a Federal agency) or legal entity, however organized, that receives an award directly from a Federal agency.

§ 3021.665 State.

State means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

§ 3021.670 Suspension.

Suspension means an action taken by a Federal agency that immediately prohibits a recipient from participating in Federal Government procurement contracts and covered nonprocurement transactions for a temporary period, pending completion of an investigation and any judicial or administrative proceedings that may ensue. A recipient so prohibited is suspended, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and the common rule, Government-wide Debarment and Suspension (Nonprocurement), that implements Executive Order 12549 and Executive Order 12689. Suspension of a recipient is a distinct and separate action from suspension of an award or suspension of payments under an award.

PART 3022—RESEARCH INSTITUTIONS CONDUCTING USDA-FUNDED EXTRAMURAL RESEARCH; RESEARCH MISCONDUCT

Sec.
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3022.2 Procedures.
3022.3 Inquiry, investigation, and adjudication.
3022.4 USDA panel to determine appropriateness of research misconduct policy.
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3022.6 Notification of USDA of allegations of research misconduct.
3022.7 Notification of ARIO during an inquiry or investigation.
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3022.9 Documents required.
3022.10 Reporting to USDA.
3022.11 Research records and evidence.
3022.12 Remedies for noncompliance.
3022.13 Appeals
3022.14 Relationship to other requirements.

AUTHORITY: Office of Science and Technology Policy (65 FR 76260); USDA Secretary's Memorandum (SM) 2400–007; and USDA OIG, 7 CFR 2610.1(c)(4)(ix).

SOURCE: 75 FR 49359, Aug. 13, 2010, unless otherwise noted.

§ 3022.1 Definitions.

Adjudication. The stage in response to an allegation of research misconduct when the outcome of the investigation is reviewed, and appropriate corrective actions, if any, are determined. Corrective actions generally will be administrative in nature, such as termination of an award, debarment, award restrictions, recovery of funds, or correction of the research record. However, if there is an indication of violation of civil or criminal statutes, civil or criminal sanctions may be pursued.

Agency Research Integrity Officer (ARIO). The individual appointed by a USDA agency that conducts research and who is responsible for:

(1) Receiving and processing allegations of research misconduct as assigned by the USDA RIO;

(2) Informing OIG and the USDA RIO and the research institution associated with the alleged research misconduct, of allegations of research misconduct in the event it is reported to the USDA agency;

(3) Ensuring that any records, documents and other materials relating to a research misconduct allegation are provided to OIG when requested;

(4) Coordinating actions taken to address allegations of research misconduct with respect to extramural research with the research institution(s) at which time the research misconduct is alleged to have occurred, and with the USDA RIO;

(5) Overseeing proceedings to address allegations of extramurally funded research misconduct at intramural research institutions and research institutions where extramural research occurs;

(6) Ensuring that agency action to address allegations of research misconduct at USDA agencies performing extramurally funded research is performed at an organizational level that allows an independent, unbiased, and equitable process;

(7) Immediately notifying OIG, the USDA RIO, and the applicable research institution if:

(i) Public health or safety is at risk;

(ii) USDA's resources, reputation, or other interests need protecting;

(iii) Research activities should be suspended;

(iv) Federal action may be needed to protect the interest of a subject of the investigation or of others potentially affected;

(v) A premature public disclosure of the inquiry into or investigation of the allegation may compromise the process;

(vi) The scientific community or the public should be informed; or

(vii) Behavior that is or may be criminal in nature is discovered at any point during the inquiry, investigation, or adjudication phases of the research misconduct proceedings;

(8) Documenting the dismissal of the allegation, and ensuring that the name of the accused individual and/or institution is cleared if an allegation of research misconduct is dismissed at any point during the inquiry or investigation phase of the proceedings;

(9) Other duties relating to research misconduct proceedings as assigned.

Allegation. A disclosure of possible research misconduct through any means of communication. The disclosure may be by written or oral statement, or by other means of communication to an institutional or USDA official.

Applied research. Systematic study to gain knowledge or understanding necessary to determine the means by which a recognized and specific need may be met.

Assistant Inspector General for Investigations. The individual in OIG who is responsible for OIG's domestic and foreign investigative operations through a headquarters office and the six regional offices.

Basic research. Systematic study directed toward fuller knowledge or understanding of the fundamental aspects of phenomena and of observable facts without specific applications towards processes or products in mind.

Extramural research. Research conducted by any research institution other than the Federal agency to which the funds supporting the research were appropriated. Research institutions conducting extramural research may include Federal research facilities.

Fabrication. Making up data or results and recording or reporting them.

Falsification. Manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

Finding of research misconduct. The conclusion, proven by a preponderance of the evidence, that research misconduct occurred, that such research misconduct represented a significant departure from accepted practices of the relevant research community, and that such research misconduct was committed intentionally, knowingly, or recklessly.

Inquiry. The stage in the response to an allegation of research misconduct when an assessment is made to determine whether the allegation has substance and whether an investigation is warranted.

Intramural research. Research conducted by a Federal Agency, to which funds were appropriated for the purpose of conducting research.

Investigation. The stage in the response to an allegation of research misconduct when the factual record is formally developed and examined to determine whether to dismiss the case, recommend a finding of research misconduct, and/or take other appropriate remedies.

Office of Inspector General (OIG). The Office of Inspector General of the United States Department of Agriculture.

Office of Science and Technology Policy (OSTP). The Office of Science and Technology Policy of the Executive Office of the President.

Plagiarism. The appropriation of another person's ideas, processes, results, or words without giving appropriate credit.

Preponderance of the evidence. Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

Research. All basic, applied, and demonstration research in all fields of science, engineering, and mathematics. This includes, but is not limited to, research in economics, education, linguistics, medicine, psychology, social

sciences, statistics, and research involving human subjects or animals regardless of the funding mechanism used to support it.

Research institution. All organizations using Federal funds for research, including, for example, colleges and universities, Federally funded research and development centers, national user facilities, industrial laboratories, or other research institutes.

Research misconduct. Fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest error or differences of opinion.

Research record. The record of data or results that embody the facts resulting from scientific inquiry, and includes, but is not limited to, research proposals, research records (including data, notes, journals, laboratory records (both physical and electronic)), progress reports, abstracts, theses, oral presentations, internal reports, and journal articles.

United States Department of Agriculture. USDA.

USDA Research Integrity Officer (USDA RIO). The individual designated by the Office of the Under Secretary for Research, Education, and Economics (REE) who is responsible for:

(1) Overseeing USDA agency responses to allegations of research misconduct;

(2) Ensuring that agency research misconduct procedures are consistent with this part;

(3) Receiving and assigning allegations of research misconduct reported by the public;

(4) Developing Memoranda of Understanding with agencies that elect not to develop their own research misconduct procedures;

(5) Monitoring the progress of all research misconduct cases; and

(6) Serving as liaison with OIG to receive allegations of research misconduct when they are received via the OIG Hotline.

§ 3022.2 Procedures.

Research institutions that conduct extramural research funded by USDA must foster an atmosphere conducive to research integrity. They must develop or have procedures in place to respond to allegations of research misconduct that ensure:

(a) Appropriate separations of responsibility for inquiry, investigation, and adjudication;

(b) Objectivity;

(c) Due process;

(d) Whistleblower protection;

(e) Confidentiality. To the extent possible and consistent with a fair and thorough investigation and as allowed by law, knowledge about the identity of subjects and informants is limited to those who need to know; and

(f) Timely resolution.

§ 3022.3 Inquiry, investigation, and adjudication.

A research institution that conducts extramural research funded by USDA bears primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation, and adjudication of research misconduct allegations reported directly to it. The research institution must perform an inquiry in response to an allegation, and must follow the inquiry with an investigation if the inquiry determines that the allegation or apparent instance of research misconduct has substance. The responsibilities for adjudication must be separate from those for inquiry and investigation. In most instances, USDA will rely on a research institution conducting extramural research to promptly:

(a) Initiate an inquiry into any suspected or alleged research misconduct;

(b) Conduct a subsequent investigation, if warranted;

(c) Acquire, prepare, and maintain appropriate records of allegations of extramural research misconduct and all related inquiries, investigations, and findings; and

(d) Take action to ensure the following:

(1) The integrity of research;

(2) The rights and interests of the subject of the investigation and the public are protected;

(3) The observance of legal requirements or responsibilities including cooperation with criminal investigations; and

(4) Appropriate safeguards for subjects of allegations, as well as informants (see § 3022.6). These safeguards should include timely written notification of subjects regarding substantive allegations made against them; a description of all such allegations; reasonable access to the data and other evidence supporting the allegations; and the opportunity to respond to allegations, the supporting evidence and the proposed findings of research misconduct, if any.

§ 3022.4 USDA Panel to determine appropriateness of research misconduct policy.

Before USDA will rely on a research institution to conduct an inquiry, investigation, and adjudication of an allegation in accordance with this part, the research institution where the research misconduct is alleged must provide the ARIO its policies and procedures related to research misconduct at the institution. The research institution has the option of providing either a written copy of such policies and procedures or a Web site address where such policies and procedures can be accessed. The ARIO to whom the policies and procedures were made available shall convene a panel comprised of the USDA RIO and ARIOs from the Forest Service, the Agricultural Research Service, and the National Institute of Food and Agriculture. The Panel will review the research institution's policies and procedures for compliance with the OSTP Policy and render a decision regarding the research institution's ability to adequately resolve research misconduct allegations. The ARIO will inform the research institution of the Panel's determination that its inquiry, investigation, and adjudication procedures are sufficient. If the Panel determines that the research institution does not have sufficient policies and procedures in place to conduct inquiry, investigation, and adjudication proceedings, or that the research institution is in any way unfit or unprepared to handle the inquiry, investigation, and adjudication in a prompt, unbiased, fair, and independent manner, the ARIO will inform the research institution in writing of the Panel's decision. An appropriate USDA agency, as determined by the Panel, will then conduct the inquiry, investigation, and adjudication of research misconduct in accordance with this part. If an allegation of research misconduct is made regarding extramural research conducted at a Federal research institution (whether USDA or not), it is presumed that the Federal research institution has research misconduct procedures consistent with the OSTP Policy. USDA reserves the right to convene the Panel to assess the sufficiency of a Federal agency's research misconduct procedures, should there be any question whether the agency's procedures will ensure a fair, unbiased, equitable, and independent inquiry, investigation, and adjudication process.

§ 3022.5 Reservation of right to conduct subsequent inquiry, investigation, and adjudication.

(a) USDA reserves the right to conduct its own inquiry, investigation, and adjudication into allegations of research misconduct at a research institution conducting extramural research subsequent to the proceedings of the research institution related to the same allegation. This may be necessary if the USDA RIO or ARIO believes, in his or her sound discretion, that despite the Panel's finding that the research institution in question had appropriate and OSTP-compliant research misconduct procedures in place, the research institution conducting the extramural research at issue:

(1) Did not adhere to its own research misconduct procedures;

(2) Did not conduct research misconduct proceedings in a fair, unbiased, or independent manner; or

(3) Has not completed research misconduct inquiry, investigation, or adjudication in a timely manner.

(b) Additionally, USDA reserves the right to conduct its own inquiry, investigation, and adjudication into allegations of research misconduct at a research institution conducting extramural research subsequent to the proceedings of the research institution related to the same allegation for any other reason that the USDA RIO or ARIO considers it appropriate to conduct research misconduct proceedings in lieu of the research institution's

conducting the extramural research at issue. This right is subject to paragraph (c) of this section.

(c) In cases where the USDA RIO or ARIO believes it is necessary for USDA to conduct its own inquiry, investigation, and adjudication subsequent to the proceedings of the research institution related to the same allegation, the USDA RIO or ARIO shall reconvene the Panel, which will determine whether it is appropriate for the relevant USDA agency to conduct the research misconduct proceedings related to the allegation(s) of research misconduct. If the Panel determines that it is appropriate for a USDA agency to conduct the proceedings, the ARIO will immediately notify the research institution in question. The research institution must then promptly provide the relevant USDA agency with documentation of the research misconduct proceedings the research institution has conducted to that point, and the USDA agency will conduct research misconduct proceedings in accordance with the Agency research misconduct procedures.

§ 3022.6 Notification of USDA of allegations of research misconduct.

(a) Research institutions that conduct USDA-funded extramural research must promptly notify OIG and the USDA RIO of all allegations of research misconduct involving USDA funds when the institution inquiry into the allegation warrants the institution moving on to an investigation.

(b) Individuals at research institutions who suspect research misconduct at the institution should report allegations in accordance with the institution's research misconduct policies and procedures. Anyone else who suspects that researchers or research institutions performing federally-funded research may have engaged in research misconduct is encouraged to make a formal allegation of research misconduct to OIG.

(1) OIG may be notified using any of the following methods:

(i) Via the OIG Hotline: Telephone: (202) 690–1622, (800) 424–9121, (202) 690–1202 (TDD).

(ii) E-mail: *usda__hotline@oig.usda.gov*.

(iii) U.S. Mail: United States Department of Agriculture, Office of Inspector General, P.O. Box 23399, Washington, DC 20026–3399.

(2) The USDA RIO may be reached at: USDA Research Integrity Officer, 214W Whitten Building, Washington, DC 20250; telephone: 202–720–5923; E-mail: *researchintegrity@usda.gov*.

(c) To the extent known, the following details should be included in any formal allegation:

(1) The name of the research projects involved, the nature of the alleged misconduct, and the names of the individual or individuals alleged to be involved in the misconduct;

(2) The source or sources of funding for the research project or research projects involved in the alleged misconduct;

(3) Important dates;

(4) Any documentation that bears upon the allegation; and

(5) Any other potentially relevant information.

(d) Safeguards for informants give individuals the confidence that they can bring allegations of research misconduct made in good faith to the attention of appropriate authorities or serve as informants to an inquiry or an investigation without suffering retribution. Safeguards include protection against retaliation for informants who make good faith allegations, fair and objective procedures for the examination and resolution of allegations of research misconduct, and diligence in protecting the positions and reputations of those persons who make allegations of research misconduct in good faith. The identity of informants who wish to remain anonymous will be kept confidential to the extent permitted by law or regulation.

§ 3022.7 Notification of ARIO during an inquiry or investigation.

(a) Research institutions that conduct USDA-funded extramural research must promptly notify the ARIO should the institution become aware during an inquiry or investigation that:

(1) Public health or safety is at risk;

(2) The resources, reputation, or other interests of USDA are in need of protection;

(3) Research activities should be suspended;

(4) Federal action may be needed to protect the interest of a subject of the investigation or of others potentially affected;

(5) A premature public disclosure of the inquiry into or investigation of the allegation may compromise the process;

(6) The scientific community or the public should be informed; or

(7) There is reasonable indication of possible violations of civil or criminal law.

(b) If research misconduct proceedings reveal behavior that may be criminal in nature at any point during the proceedings, the institution must promptly notify the ARIO.

§ 3022.8 Communication of research misconduct policies and procedures.

Institutions that conduct USDA-funded extramural research are to maintain and effectively communicate to their staffs policies and procedures relating to research misconduct, including the guidelines in this part. The institution is to inform their researchers and staff members who conduct USDA-funded extramural research when and under what circumstances USDA is to be notified of allegations of research misconduct, and when and under what circumstances USDA is to be updated on research misconduct proceedings.

§ 3022.9 Documents required.

(a) A research institution that conducts USDA-funded extramural research must maintain the following documents related to an allegation of research misconduct at the research institution:

(1) A written statement describing the original allegation;

(2) A copy of the formal notification presented to the subject of the allegation;

(3) A written report describing the inquiry stage and its outcome including copies of all supporting documentation;

(4) A description of the methods and procedures used to gather and evaluate information pertinent to the alleged misconduct during inquiry and investigation stages;

(5) A written report of the investigation, including the evidentiary record and supporting documentation;

(6) A written statement of the findings; and

(7) If applicable, a statement of recommended corrective actions, and any response to such a statement by the subject of the original allegation, and/or other interested parties, including any corrective action plan.

(b) The research institution must retain the documents specified in paragraph (a) of this section for at least 3 years following the final adjudication of the alleged research misconduct.

§ 3022.10 Reporting to USDA.

Following completion of an investigation into allegations of research misconduct, the institution conducting extramural research must provide to the ARIO a copy of the evidentiary record, the report of the investigation, recommendations made to the institution's adjudicating official, the adjudicating official's determination, the institution's corrective action taken or planned, and the written response of the individual who is the subject of the allegation to any recommendations.

§ 3022.11 Research records and evidence.

(a) A research institution that conducts extramural research supported by USDA funds, as the responsible legal entity for the USDA-supported research, has a continuing obligation to create and maintain adequate records (including documents and other evidentiary matter) as may be required by any subsequent inquiry, investigation, finding, adjudication, or other proceeding.

(b) Whenever an investigation is initiated, the research institution must promptly take all reasonable and practical steps to obtain custody of all relevant research records and evidence as may be necessary to conduct the research misconduct proceedings. This must be accomplished before the research institution notifies the researcher/respondent of the allegation, or immediately thereafter.

(c) The original research records and evidence taken into custody by the research institution shall be inventoried and stored in a secure place and manner. Research records involving raw data shall include the devices or instruments on which they reside. However, if deemed appropriate by the research institution or investigator, research data or records that reside on or in instruments or devices may be copied and removed from those instruments or devices as long as the copies are complete, accurate, and have substantially equivalent evidentiary value as the data or records have when the data or records reside on the instruments or devices. Such copies of data or records shall be made by a disinterested, qualified technician and not by the subject of the original allegation or other interested parties. When the relevant data or records have been removed from the devices or instruments, the instruments or devices need not be maintained as evidence.

§ 3022.12 Remedies for noncompliance.

USDA agencies' implementation procedures identify the administrative actions available to remedy a finding of research misconduct. Such actions may include the recovery of funds, correction of the research record, debarment of the researcher(s) that engaged in the research misconduct, proper attribution, or any other action deemed appropriate to remedy the instance(s) of research misconduct. The agency should consider the seriousness of the misconduct, including, but not limited to, the degree to which the misconduct was knowingly conducted, intentional, or reckless; was an isolated event or part of a pattern; or had significant impact on the research record, research subjects, other researchers, institutions, or the public welfare. In determining the appropriate administrative action, the appropriate agency must impose a remedy that is commensurate with the infraction as described in the finding of research misconduct.

§ 3022.13 Appeals.

(a) If USDA relied on an institution to conduct an inquiry, investigation, and adjudication, the alleged person(s) should first follow the institution's appeal policy and procedures.

(b) USDA agencies' implementation procedures identify the appeal process when a finding of research misconduct is elevated to the agency.

§ 3022.14 Relationship to other requirements.

Some of the research covered by this part also may be subject to regulations of other governmental agencies (e.g., a university that receives funding from a USDA agency and also under a grant from another Federal agency). If more than one agency of the Federal Government has jurisdiction, USDA will cooperate with the other Agency(ies) in designating a lead agency. When USDA is not the lead agency, it will rely on the lead agency following its policies and procedures in determining whether there is a finding of research misconduct. Further, USDA may, in consultation with the lead agency, take action to protect the health and safety of the public, to promote the integrity of the USDA-supported research and research process, or to conserve public funds. When appropriate, USDA will seek to resolve allegations jointly with the other agency or agencies.

PART 3052—AUDITS OF STATES, LOCAL GOVERNMENTS, AND NON-PROFIT ORGANIZATIONS

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Subpart A—General

§ 3052.100 Purpose.

This part sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards.

§ 3052.105 Definitions.

Audit finding means deficiencies which the auditor is required by § 3052.510(a) to report in the schedule of findings and questioned costs.

Auditee means any non-Federal entity that expends Federal awards which must be audited under this part.

Auditor means an auditor, that is a public accountant or a Federal, State or local government audit organization, which meets the general standards specified in generally accepted government auditing standards (GAGAS). The term auditor does not include internal auditors of non-profit organizations.

CFDA number means the number assigned to a Federal program in the Catalog of Federal Domestic Assistance (CFDA).

Cluster of programs means a grouping of closely related programs that share common compliance requirements. The types of clusters of programs are research and development (R&D), student financial aid (SFA), and other clusters. ''Other clusters'' are as defined by the Office of Management and Budget (OMB) in the compliance supplement or as designated by a State for Federal awards the State provides to its subrecipients that meet the definition of a cluster of programs. When designating an ''other cluster,'' a State shall identify the Federal awards included in the cluster and advise the subrecipients of compliance requirements applicable to the cluster, consistent with § 3052.400(d)(1) and § 3052.400(d)(2), respectively. A cluster of programs shall be considered as one program for determining major programs, as described in § 3052.520, and, with the exception of R&D as described in § 3052.200(c), whether a program-specific audit may be elected.

Cognizant agency for audit means the Federal agency designated to carry out the responsibilities described in § 3052.400(a).

Compliance supplement refers to the Circular A–133 Compliance Supplement, included as Appendix B to Circular A–133, or such documents as OMB or its designee may issue to replace it. This document is available from the Government Printing Office, Superintendent of Documents, Washington, DC 20402–9325.

Corrective action means action taken by the auditee that:

(1) Corrects identified deficiencies;

(2) Produces recommended improvements; or

(3) Demonstrates that audit findings are either invalid or do not warrant auditee action.

Federal agency has the same meaning as the term agency in Section 551(1) of title 5, United States Code.

Federal award means Federal financial assistance and Federal cost-reimbursement contracts that non-Federal entities receive directly from Federal awarding agencies or indirectly from pass-through entities. It does not include procurement contracts, under grants or contracts, used to buy goods or services from vendors. Any audits of such vendors shall be covered by the terms and conditions of the contract. Contracts to operate Federal Government owned, contractor operated facilities (GOCOs) are excluded from the requirements of this part.

Federal awarding agency means the Federal agency that provides an award directly to the recipient.

Federal financial assistance means assistance that non-Federal entities receive or administer in the form of grants, loans, loan guarantees, property (including donated surplus property), cooperative agreements, interest subsidies, insurance, food commodities, direct appropriations, and other assistance, but does not include amounts received as reimbursement for services rendered to individuals as described in § 3052.205(h) and § 3052.205(i).

Federal program means:

(1) All Federal awards to a non-Federal entity assigned a single number in the CFDA.

(2) When no CFDA number is assigned, all Federal awards from the same agency made for the same purpose should be combined and considered one program.

(3) Notwithstanding paragraphs (1) and (2) of this definition, a cluster of programs. The types of clusters of programs are:

(i) Research and development (R&D);

(ii) Student financial aid (SFA); and

(iii) ''Other clusters,'' as described in the definition of cluster of programs in this section.

GAGAS means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits.

Generally accepted accounting principles has the meaning specified in generally accepted auditing standards issued by the American Institute of Certified Public Accountants (AICPA).

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Internal control means a process, effected by an entity's management and other personnel, designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

(1) Effectiveness and efficiency of operations;

(2) Reliability of financial reporting; and

(3) Compliance with applicable laws and regulations.

Internal control pertaining to the compliance requirements for Federal programs (Internal control over Federal programs) means a process—effected by an entity's management and other personnel—designed to provide reasonable assurance regarding the achievement of the following objectives for Federal programs:

(1) Transactions are properly recorded and accounted for to:

(i) Permit the preparation of reliable financial statements and Federal reports;

(ii) Maintain accountability over assets; and

(iii) Demonstrate compliance with laws, regulations, and other compliance requirements;

(2) Transactions are executed in compliance with:

(i) Laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on a Federal program; and

(ii) Any other laws and regulations that are identified in the compliance supplement; and

(3) Funds, property, and other assets are safeguarded against loss from unauthorized use or disposition.

Loan means a Federal loan or loan guarantee received or administered by a non-Federal entity.

Local government means any unit of local government within a State, including a county, borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

Major program means a Federal program determined by the auditor to be a major program in accordance with § 3052.520 or a program identified as a major program by a Federal agency or pass-through entity in accordance with § 3052.215(c).

Management decision means the evaluation by the Federal awarding agency or pass-through entity of the audit findings and corrective action plan and the issuance of a written decision as to what corrective action is necessary.

Non-Federal entity means a State, local government, or non-profit organization.

Non-profit organization means:

(1) any corporation, trust, association, cooperative, or other organization that:

(i) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

(ii) Is not organized primarily for profit; and

(iii) Uses its net proceeds to maintain, improve, or expand its operations; and

(2) The term non-profit organization includes non-profit institutions of higher education and hospitals.

OMB means the Executive Office of the President, Office of Management and Budget.

Oversight agency for audit means the Federal awarding agency that provides the predominant amount of direct funding to a recipient not assigned a cognizant agency for audit. When there is no direct funding, the Federal agency with the predominant indirect funding shall assume the oversight responsibilities. The duties of the oversight agency for audit are described in § 3052.400(b). A Federal agency with oversight for an auditee may reassign oversight to another Federal agency, which provides substantial funding and agrees to be the oversight agency for audit. Within 30 days after any reassignment, both the old and the new oversight agency for audit shall notify the auditee, and, if known, the auditor of the reassignment.

Pass-through entity means a non-Federal entity that provides a Federal award to a subrecipient to carry out a Federal program.

Program-specific audit means an audit of one Federal program as provided for in § 3052.200(c) and § 3052.235.

Questioned cost means a cost that is questioned by the auditor because of an audit finding:

(1) Which resulted from a violation or possible violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the use of Federal funds, including funds used to match Federal funds;

(2) Where the costs, at the time of the audit, are not supported by adequate documentation; or

(3) Where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.

Recipient means a non-Federal entity that expends Federal awards received directly from a Federal awarding agency to carry out a Federal program.

Research and development (R&D) means all research activities, both basic and applied, and all development activities that are performed by a non-Federal entity. Research is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function. Development is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

Single audit means an audit which includes both the entity's financial statements and the Federal awards as described in § 3052.500.

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, any multi-State, regional, or interstate entity which has governmental functions, and any Indian tribe as defined in this section.

Student Financial Aid (SFA) includes those programs of general student assistance, such as those authorized by Title IV of the Higher Education Act of 1965, as amended, (20 U.S.C. 1070 et seq.) which is administered by the U.S. Department of Education, and similar programs provided by other Federal agencies. It does not include programs which provide fellowships or similar

Federal awards to students on a competitive basis, or for specified studies or research.

Subrecipient means a non-Federal entity that expends Federal awards received from a pass-through entity to carry out a Federal program, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency. Guidance on distinguishing between a subrecipient and a vendor is provided in § 3052.210.

Types of compliance requirements refers to the types of compliance requirements listed in the compliance supplement. Examples include: activities allowed or unallowed; allowable costs/cost principles; cash management; eligibility; matching, level of effort, earmarking; and, reporting.

Vendor means a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a Federal program. These goods or services may be for an organization's own use or for the use of beneficiaries of the Federal program. Additional guidance on distinguishing between a subrecipient and a vendor is provided in § 3052.210.

[62 FR 45949, Aug. 29, 1997, as amended at 70 FR 34986, June 16, 2005]

Subpart B—Audits

§ 3052.200 Audit requirements.

(a) *Audit required.* Non-Federal entities that expend $500,000 or more in a year in Federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of this part. Guidance on determining Federal awards expended is provided in § 3052.205.

(b) *Single audit.* Non-Federal entities that expend $500,000 or more in a year in Federal awards shall have a single audit conducted in accordance with § 3052.500 except when they elect to have a program-specific audit conducted in accordance with paragraph (c) of this section.

(c) *Program-specific audit election.* When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's laws, regulations, or grant agreements do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with § 3052.235. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.

(d) *Exemption when Federal awards expended are less than $500,000.* Non-Federal entities that expend less than $300,000 a year in Federal awards are exempt from Federal audit requirements for that year, except as noted in § 3052.215(a), but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and General Accounting Office (GAO).

(e) *Federally Funded Research and Development Centers (FFRDC).* Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this part.

[62 FR 45949, Aug. 29, 1997, as amended at 70 FR 34986, June 16, 2005]

§ 3052.205 Basis for determining Federal awards expended.

(a) *Determining Federal awards expended.* The determination of when an award is expended should be based on when the activity related to the award occurs. Generally, the activity pertains to events that require the non-Federal entity to comply with laws, regulations, and the provisions of contracts or grant agreements, such as: expenditure/expense transactions associated with grants, cost-reimbursement contracts, cooperative agreements, and direct appropriations; the disbursement of funds passed through to subrecipients; the use of loan proceeds under loan and loan guarantee programs; the receipt of property; the receipt of surplus property; the receipt or use of program income; the distribution or consumption of food commodities; the disbursement of amounts entitling the non-Federal entity to an interest subsidy; and, the period when insurance is in force.

(b) *Loan and loan guarantees (loans).* Since the Federal Government is at risk for loans until the debt is repaid, the following guidelines shall be used to calculate the value of Federal awards expended under loan programs, except as noted in paragraphs (c) and (d) of this section:

(1) Value of new loans made or received during the fiscal year; plus

(2) Balance of loans from previous years for which the Federal Government imposes continuing compliance requirements; plus

(3) Any interest subsidy, cash, or administrative cost allowance received.

(c) *Loan and loan guarantees (loans) at institutions of higher education.* When loans are made to students of an institution of higher education but the institution does not make the loans, then only the value of loans made during the year shall be considered Federal awards expended in that year. The balance of loans for previous years is not included as Federal awards expended because the lender accounts for the prior balances.

(d) *Prior loan and loan guarantees (loans).* Loans, the proceeds of which were received and expended in prior-years, are not considered Federal awards expended under this part when the laws, regulations, and the provisions of contracts or grant agreements pertaining to such loans impose no continuing compliance requirements other than to repay the loans.

(e) *Endowment funds.* The cumulative balance of Federal awards for endowment funds which are federally restricted are considered awards expended in each year in which the funds are still restricted.

(f) *Free rent.* Free rent received by itself is not considered a Federal award expended under this part. However, free rent received as part of an award to carry out a Federal program shall be included in determining Federal awards expended and subject to audit under this part.

(g) *Valuing non-cash assistance.* Federal non-cash assistance, such as free rent, food stamps, food commodities, donated property, or donated surplus property, shall be valued at fair market value at the time of receipt or the assessed value provided by the Federal agency.

(h) *Medicare.* Medicare payments to a non-Federal entity for providing patient care services to Medicare eligible individuals are not considered Federal awards expended under this part.

(i) *Medicaid.* Medicaid payments to a subrecipient for providing patient care services to Medicaid eligible individuals are not considered Federal awards expended under this part unless a State requires the funds to be treated as Federal awards expended because reimbursement is on a cost-reimbursement basis.

(j) *Certain loans provided by the National Credit Union Administration.* For purposes of this part, loans made from the National Credit Union Share Insurance Fund and the Central Liquidity Facility that are funded by contributions from insured institutions are not considered Federal awards expended.

§ 3052.210 Subrecipient and vendor determinations.

(a) *General.* An auditee may be a recipient, a subrecipient, and a vendor. Federal awards expended as a recipient or a subrecipient would be subject to audit under this part. The payments received for goods or services provided as a vendor would not be considered Federal awards. The guidance in paragraphs (b) and (c) of this section should be considered in determining whether payments constitute a Federal award or a payment for goods and services.

(b) *Federal award.* Characteristics indicative of a Federal award received by a subrecipient are when the organization:

(1) Determines who is eligible to receive what Federal financial assistance;

(2) Has its performance measured against whether the objectives of the Federal program are met;

(3) Has responsibility for programmatic decision making;

(4) Has responsibility for adherence to applicable Federal program compliance requirements; and

(5) Uses the Federal funds to carry out a program of the organization as compared to providing goods or services for a program of the pass-through entity.

(c) *Payment for goods and services.* Characteristics indicative of a payment for goods and services received by a vendor are when the organization:

(1) Provides the goods and services within normal business operations;

(2) Provides similar goods or services to many different purchasers;

(3) Operates in a competitive environment;

(4) Provides goods or services that are ancillary to the operation of the Federal program; and

(5) Is not subject to compliance requirements of the Federal program.

(d) *Use of judgment in making determination.* There may be unusual circumstances or exceptions to the listed characteristics. In making the determination of whether a subrecipient or vendor relationship exists, the substance of the relationship is more important than the form of the agreement. It is not expected that all of the characteristics will be present and judgment should be used in determining whether an entity is a subrecipient or vendor.

(e) *For-profit subrecipient.* Since this part does not apply to for-profit subrecipients, the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients. The contract with the for-profit subrecipient should describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the contract, and post-award audits.

(f) *Compliance responsibility for vendors.* In most cases, the auditee's compliance responsibility for vendors is only to ensure that the procurement, receipt, and payment for goods and services comply with laws, regulations, and the provisions of contracts or grant agreements. Program compliance requirements normally do not pass through to vendors. However, the auditee is responsible for ensuring compliance for vendor transactions which are structured such that the vendor is responsible for program compliance or the vendor's records must be reviewed to determine program compliance. Also, when these vendor transactions relate to a major program, the scope of the audit shall include determining whether these transactions are in compliance with laws, regulations, and the provisions of contracts or grant agreements.

§ 3052.215 Relation to other audit requirements.

(a) *Audit under this part in lieu of other audits.* An audit made in accordance with this part shall be in lieu of any financial audit required under individual Federal awards. To the extent this audit meets a Federal agency's needs, it shall rely upon and use such audits. The provisions of this part neither limit the authority of Federal agencies, including their Inspectors General, or GAO to conduct or arrange for additional audits (e.g., financial audits, performance audits, evaluations, inspections, or reviews) nor authorize any auditee to constrain Federal agencies from carrying out additional audits. Any additional audits shall be planned and performed in such a way as to build upon work performed by other auditors.

(b) *Federal agency to pay for additional audits.* A Federal agency that conducts or contracts for additional audits shall, consistent with other applicable laws and regulations, arrange for funding the full cost of such additional audits.

(c) *Request for a program to be audited as a major program.* A Federal agency may request an auditee to have a particular Federal program audited as a major program in lieu of the Federal agency conducting or arranging for the additional audits. To allow for planning, such requests should be made at least 180 days prior to the end of the fiscal year to be audited. The auditee, after consultation with its auditor, should promptly respond to such request by informing the Federal agency whether the program would otherwise be audited as a major program using the risk-based audit approach described in § 3052.520 and, if not, the estimated incremental cost. The Federal agency shall then promptly confirm to the auditee whether it wants the program audited as a major program. If the program is to be audited as a major

program based upon this Federal agency request, and the Federal agency agrees to pay the full incremental costs, then the auditee shall have the program audited as a major program. A pass-through entity may use the provisions of this paragraph for a subrecipient.

§ 3052.220 Frequency of audits.

Except for the provisions for biennial audits provided in paragraphs (a) and (b) of this section, audits required by this part shall be performed annually. Any biennial audit shall cover both years within the biennial period.

(a) A State or local government that is required by constitution or statute, in effect on January 1, 1987, to undergo its audits less frequently than annually, is permitted to undergo its audits pursuant to this part biennially. This requirement must still be in effect for the biennial period under audit.

(b) Any non-profit organization that had biennial audits for all biennial periods ending between July 1, 1992, and January 1, 1995, is permitted to undergo its audits pursuant to this part biennially.

§ 3052.225 Sanctions.

No audit costs may be charged to Federal awards when audits required by this part have not been made or have been made but not in accordance with this part. In cases of continued inability or unwillingness to have an audit conducted in accordance with this part, Federal agencies and pass-through entities shall take appropriate action using sanctions such as:

(a) Withholding a percentage of Federal awards until the audit is completed satisfactorily;

(b) Withholding or disallowing overhead costs;

(c) Suspending Federal awards until the audit is conducted; or

(d) Terminating the Federal award.

§ 3052.230 Audit costs.

(a) *Allowable costs.* Unless prohibited by law, the cost of audits made in accordance with the provisions of this part are allowable charges to Federal awards. The charges may be considered a direct cost or an allocated indirect cost, as determined in accordance with the provisions of applicable OMB cost principles circulars, the Federal Acquisition Regulation (FAR) (48 CFR parts 30 and 31), or other applicable cost principles or regulations.

(b) *Unallowable costs.* A non-Federal entity shall not charge the following to a Federal award:

(1) The cost of any audit under the Single Audit Act Amendments of 1996 (31 U.S.C. 7501 *et seq.*) not conducted in accordance with this part.

(2) The cost of auditing a non-Federal entity which has Federal awards expended of less than $500,000 per year and is thereby exempted under § 3052.200(d) from having an audit conducted under this part. However, this does not prohibit a pass-through entity from charging Federal awards for the cost of limited scope audits to monitor its subrecipients in accordance with § 3052.400(d)(3), provided the subrecipient does not have a single audit. For purposes of this part, limited scope audits only include agreed-upon procedures engagements conducted in accordance with either the AICPA's generally accepted auditing standards or attestation standards, that are paid for and arranged by a pass-through entity and address only one or more of the following types of compliance requirements: activities allowed or unallowed; allowable costs/cost principles; eligibility; matching, level of effort, earmarking; and, reporting.

[62 FR 45949, Aug. 29, 1997, as amended at 70 FR 34986, June 16, 2005]

§ 3052.235 Program-specific audits.

(a) *Program-specific audit guide available.* In many cases, a program-specific audit guide will be available to provide specific guidance to the auditor with respect to internal control, compliance requirements, suggested audit procedures, and audit reporting requirements. The auditor should contact the Office of Inspector General of the Federal agency to determine whether such a guide is available. When a current program-specific audit guide is available, the auditor shall follow GAGAS and the guide when performing a program-specific audit.

(b) *Program-specific audit guide not available.* (1) When a program-specific audit guide is not available, the

auditee and auditor shall have basically the same responsibilities for the Federal program as they would have for an audit of a major program in a single audit.

(2) The auditee shall prepare the financial statement(s) for the Federal program that includes, at a minimum, a schedule of expenditures of Federal awards for the program and notes that describe the significant accounting policies used in preparing the schedule, a summary schedule of prior audit findings consistent with the requirements of § 3052.315(b), and a corrective action plan consistent with the requirements of § 3052.315(c).

(3) The auditor shall:

(i) Perform an audit of the financial statement(s) for the Federal program in accordance with GAGAS;

(ii) Obtain an understanding of internal control and perform tests of internal control over the Federal program consistent with the requirements of § 3052.500(c) for a major program;

(iii) Perform procedures to determine whether the auditee has complied with laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on the Federal program consistent with the requirements of § 3052.500(d) for a major program; and

(iv) Follow up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee, and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding in accordance with the requirements of § 3052.500(e).

(4) The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) shall state that the audit was conducted in accordance with this part and include the following:

(i) An opinion (or disclaimer of opinion) as to whether the financial statement(s) of the Federal program is presented fairly in all material respects in conformity with the stated accounting policies;

(ii) A report on internal control related to the Federal program, which shall describe the scope of testing of internal control and the results of the tests;

(iii) A report on compliance which includes an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the provisions of contracts or grant agreements which could have a direct and material effect on the Federal program; and

(iv) A schedule of findings and questioned costs for the Federal program that includes a summary of the auditor's results relative to the Federal program in a format consistent with § 3052.505(d)(1) and findings and questioned costs consistent with the requirements of § 3052.505(d)(3).

(c) *Report submission for program-specific audits.* (1) The audit shall be completed and the reporting required by paragraph (c)(2) or (c)(3) of this section submitted within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a longer period is agreed to in advance by the Federal agency that provided the funding or a different period is specified in a program-specific audit guide. (However, for fiscal years beginning on or before June 30, 1988, the audit shall be completed and the required reporting shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or 13 months after the end of the audit period, unless a different period is specified in a program-specific audit guide.) Unless restricted by law or regulation, the auditee shall make report copies available for public inspection.

(2) When a program-specific audit guide is available, the auditee shall submit to the Federal clearinghouse designated by OMB the data collection form prepared in accordance with § 3052.320(b), as applicable to a program-specific audit, and the reporting required by the program-specific audit guide to be retained as an archival copy. Also, the auditee shall submit to the Federal awarding agency or pass-through entity the reporting required by the program-specific audit guide.

(3) When a program-specific audit guide is not available, the reporting package for a program-specific audit shall consist of the financial statement(s) of the Federal program, a summary schedule of prior audit findings, and a corrective action plan as described in paragraph (b)(2) of this section, and the auditor's report(s) described in paragraph (b)(4) of this section. The data collection form prepared in accordance with § 3052.320(b), as applicable to a program-specific audit, and one copy of this reporting package shall be submitted to the Federal clearinghouse designated by OMB to be retained as an archival copy. Also, when the schedule of findings and questioned costs disclosed audit findings or the summary schedule of prior audit findings reported the status of any audit findings, the auditee shall submit one copy of the reporting package to the Federal clearinghouse on behalf of the Federal awarding agency, or directly to the pass-through entity in the case of a subrecipient. Instead of submitting the reporting package to the pass-through entity, when a subrecipient is not required to submit a reporting package to the pass-through entity, the subrecipient shall provide written notification to the pass-through entity, consistent with the requirements of § 3052.320(e)(2). A subrecipient may submit a copy of the reporting package to the pass-through entity to comply with this notification requirement.

(d) *Other sections of this part may apply*. Program-specific audits are subject to § 3052.100 through § 3052.215(b), § 3052.220 through § 3052.230, § 3052.300 through § 3052.305, § 3052.315, § 3052.320(f) through § 3052.320(j), § 3052.400 through § 3052.405, § 3052.510 through § 3052.515, and other referenced provisions of this part unless contrary to the provisions of this section, a program-specific audit guide, or program laws and regulations.

Subpart C—Auditees

§ 3052.300 Auditee responsibilities.

The auditee shall:

(a) Identify, in its accounts, all Federal awards received and expended and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

(b) Maintain internal control over Federal programs that provides reasonable assurance that the auditee is managing Federal awards in compliance with laws, regulations, and the provisions of contracts or grant agreements that could have a material effect on each of its Federal programs.

(c) Comply with laws, regulations, and the provisions of contracts or grant agreements related to each of its Federal programs.

(d) Prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with § 3052.310.

(e) Ensure that the audits required by this part are properly performed and submitted when due. When extensions to the report submission due date required by § 3052.320(a) are granted by the cognizant or oversight agency for audit, promptly notify the Federal clearinghouse designated by OMB and each pass-through entity providing Federal awards of the extension.

(f) Follow up and take corrective action on audit findings, including preparation of a summary schedule of prior audit findings and a corrective action plan in accordance with § 3052.315(b) and § 3052.315(c), respectively.

§ 3052.305 Auditor selection.

(a) *Auditor procurement*. In procuring audit services, auditees shall follow the procurement standards prescribed by the Grants Management Common Rule (hereinafter referred to as the ''A–102 Common Rule'') 7 CFR Part 3016, Circular A–110, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations,'' or the FAR (48 CFR part 42), as applicable (OMB Circulars are available from the Office of Administration, Publications Office, Room 2200, New Executive Office Building, Washington, DC 20503). Whenever possible, auditees shall make positive efforts to utilize small businesses, minority-owned firms, and women's business

enterprises, in procuring audit services as stated in the A–102 Common Rule, OMB Circular A–110, or the FAR (48 CFR part 42), as applicable. In requesting proposals for audit services, the objectives and scope of the audit should be made clear. Factors to be considered in evaluating each proposal for audit services include the responsiveness to the request for proposal, relevant experience, availability of staff with professional qualifications and technical abilities, the results of external quality control reviews, and price.

(b) *Restriction on auditor preparing indirect cost proposals.* An auditor who prepares the indirect cost proposal or cost allocation plan may not also be selected to perform the audit required by this part when the indirect costs recovered by the auditee during the prior year exceeded $1 million. This restriction applies to the base year used in the preparation of the indirect cost proposal or cost allocation plan and any subsequent years in which the resulting indirect cost agreement or cost allocation plan is used to recover costs. To minimize any disruption in existing contracts for audit services, this paragraph applies to audits of fiscal years beginning after June 30, 1998.

(c) *Use of Federal auditors.* Federal auditors may perform all or part of the work required under this part if they comply fully with the requirements of this part.

§ 3052.310 Financial statements.

(a) *Financial statements.* The auditee shall prepare financial statements that reflect its financial position, results of operations or changes in net assets, and, where appropriate, cash flows for the fiscal year audited. The financial statements shall be for the same organizational unit and fiscal year that is chosen to meet the requirements of this part. However, organization-wide financial statements may also include departments, agencies, and other organizational units that have separate audits in accordance with § 3052.500(a) and prepare separate financial statements.

(b) *Schedule of expenditures of Federal awards.* The auditee shall also prepare a schedule of expenditures of Federal awards for the period covered by the auditee's financial statements. While not required, the auditee may choose to provide information requested by Federal awarding agencies and pass-through entities to make the schedule easier to use. For example, when a Federal program has multiple award years, the auditee may list the amount of Federal awards expended for each award year separately. At a minimum, the schedule shall:

(1) List individual Federal programs by Federal agency. For Federal programs included in a cluster of programs, list individual Federal programs within a cluster of programs. For R&D, total Federal awards expended shall be shown either by individual award or by Federal agency and major subdivision within the Federal agency. For example, the National Institutes of Health is a major subdivision in the Department of Health and Human Services.

(2) For Federal awards received as a subrecipient, the name of the pass-through entity and identifying number assigned by the pass-through entity shall be included.

(3) Provide total Federal awards expended for each individual Federal program and the CFDA number or other identifying number when the CFDA information is not available.

(4) Include notes that describe the significant accounting policies used in preparing the schedule.

(5) To the extent practical, pass-through entities should identify in the schedule the total amount provided to subrecipients from each Federal program.

(6) Include, in either the schedule or a note to the schedule, the value of the Federal awards expended in the form of non-cash assistance, the amount of insurance in effect during the year, and loans or loan guarantees outstanding at year end. While not required, it is preferable to present this information in the schedule.

§ 3052.315 Audit findings follow-up.

(a) *General.* The auditee is responsible for follow-up and corrective action on all audit findings. As part of this responsibility, the auditee shall prepare a summary schedule of prior audit findings. The auditee shall also prepare a corrective action plan for current year

audit findings. The summary schedule of prior audit findings and the corrective action plan shall include the reference numbers the auditor assigns to audit findings under § 3052.510(c). Since the summary schedule may include audit findings from multiple years, it shall include the fiscal year in which the finding initially occurred.

(b) *Summary schedule of prior audit findings.* The summary schedule of prior audit findings shall report the status of all audit findings included in the prior audit's schedule of findings and questioned costs relative to Federal awards. The summary schedule shall also include audit findings reported in the prior audit's summary schedule of prior audit findings except audit findings listed as corrected in accordance with paragraph (b)(1) of this section, or no longer valid or not warranting further action in accordance with paragraph (b)(4) of this section.

(1) When audit findings were fully corrected, the summary schedule need only list the audit findings and state that corrective action was taken.

(2) When audit findings were not corrected or were only partially corrected, the summary schedule shall describe the planned corrective action as well as any partial corrective action taken.

(3) When corrective action taken is significantly different from corrective action previously reported in a corrective action plan or in the Federal agency's or pass-through entity's management decision, the summary schedule shall provide an explanation.

(4) When the auditee believes the audit findings are no longer valid or do not warrant further action, the reasons for this position shall be described in the summary schedule. A valid reason for considering an audit finding as not warranting further action is that all of the following have occurred:

(i) Two years have passed since the audit report in which the finding occurred was submitted to the Federal clearinghouse;

(ii) The Federal agency or pass-through entity is not currently following up with the auditee on the audit finding; and

(iii) A management decision was not issued.

(c) *Corrective action plan.* At the completion of the audit, the auditee shall prepare a corrective action plan to address each audit finding included in the current year auditor's reports. The corrective action plan shall provide the name(s) of the contact person(s) responsible for corrective action, the corrective action planned, and the anticipated completion date. If the auditee does not agree with the audit findings or believes corrective action is not required, then the corrective action plan shall include an explanation and specific reasons.

§ 3052.320 Report submission.

(a) *General.* The audit shall be completed and the data collection form described in paragraph (b) of this section and reporting package described in paragraph (c) of this section shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a longer period is agreed to in advance by the cognizant or oversight agency for audit. (However, for fiscal years beginning on or before June 30, 1998, the audit shall be completed and the data collection form and reporting package shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or 13 months after the end of the audit period.) Unless restricted by law or regulation, the auditee shall make copies available for public inspection.

(b) *Data collection.* (1) The auditee shall submit a data collection form which states whether the audit was completed in accordance with this part and provides information about the auditee, its Federal programs, and the results of the audit. The form shall be approved by OMB, available from the Federal clearinghouse designated by OMB, and include data elements similar to those presented in this paragraph. A senior level representative of the auditee (e.g., State controller, director of finance, chief executive officer, or chief financial officer) shall sign a statement to be included as part of the form certifying that: the auditee complied with the requirements of this part, the form was prepared in accordance with this part (and the instructions accompanying the form), and the

information included in the form, in its entirety, are accurate and complete.

(2) The data collection form shall include the following data elements:

(i) The type of report the auditor issued on the financial statements of the auditee (*i.e.*, unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion).

(ii) Where applicable, a statement that reportable conditions in internal control were disclosed by the audit of the financial statements and whether any such conditions were material weaknesses.

(iii) A statement as to whether the audit disclosed any noncompliance which is material to the financial statements of the auditee.

(iv) Where applicable, a statement that reportable conditions in internal control over major programs were disclosed by the audit and whether any such conditions were material weaknesses.

(v) The type of report the auditor issued on compliance for major programs (*i.e.*, unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion).

(vi) A list of the Federal awarding agencies which will receive a copy of the reporting package pursuant to § 3052.320(d)(2) of OMB Circular A–133.

(vii) A yes or no statement as to whether the auditee qualified as a low-risk auditee under § 3052.530 of OMB Circular A–133.

(viii) The dollar threshold used to distinguish between Type A and Type B programs as defined in § 3052.520(b) of OMB Circular A–133.

(ix) The Catalog of Federal Domestic Assistance (CFDA) number for each Federal program, as applicable.

(x) The name of each Federal program and identification of each major program. Individual programs within a cluster of programs should be listed in the same level of detail as they are listed in the schedule of expenditures of Federal awards.

(xi) The amount of expenditures in the schedule of expenditures of Federal awards associated with each Federal program.

(xii) For each Federal program, a yes or no statement as to whether there are audit findings in each of the following types of compliance requirements and the total amount of any questioned costs:

(A) Activities allowed or unallowed.

(B) Allowable costs/cost principles.

(C) Cash management.

(D) Davis-Bacon Act.

(E) Eligibility.

(F) Equipment and real property management.

(G) Matching, level of effort, earmarking.

(H) Period of availability of Federal funds.

(I) Procurement and suspension and debarment.

(J) Program income.

(K) Real property acquisition and relocation assistance.

(L) Reporting.

(M) Subrecipient monitoring.

(N) Special tests and provisions.

(xiii) Auditee Name, Employer Identification Number(s), Name and Title of Certifying Official, Telephone Number, Signature, and Date.

(xiv) Auditor Name, Name and Title of Contact Person, Auditor Address, Auditor Telephone Number, Signature, and Date.

(xv) Whether the auditee has either a cognizant or oversight agency for audit.

(xvi) The name of the cognizant or oversight agency for audit determined in accordance with § 3052.400(a) and § 3052.400(b), respectively.

(3) Using the information included in the reporting package described in paragraph (c) of this section, the auditor shall complete the applicable sections of the form. The auditor shall sign a statement to be included as part of the data collection form that indicates, at a minimum, the source of the information included in the form, the auditor's responsibility for the information, that the form is not a substitute for the reporting package described in paragraph (c) of this section, and that the content of the form is limited to the data elements prescribed by OMB.

(c) *Reporting package.* The reporting package shall include the:

(1) Financial statements and schedule of expenditures of Federal awards discussed in § 3052.310(a) and § 3052.310(b), respectively;

(2) Summary schedule of prior audit findings discussed in § 3052.315(b);

(3) Auditor's report(s) discussed in § 3052.505; and

(4) Corrective action plan discussed in § 3052.315(c).

(d) *Submission to clearinghouse.* All auditees shall submit to the Federal clearinghouse designated by OMB the data collection form described in paragraph (b) of this section and one copy of the reporting package described in paragraph (c) of this section for:

(1) The Federal clearinghouse to retain as an archival copy; and

(2) Each Federal awarding agency when the schedule of findings and questioned costs disclosed audit findings relating to Federal awards that the Federal awarding agency provided directly or the summary schedule of prior audit findings reported the status of any audit findings relating to Federal awards that the Federal awarding agency provided directly.

(e) *Additional submission by subrecipients.* (1) In addition to the requirements discussed in paragraph (d) of this section, auditees that are also subrecipients shall submit to each pass-through entity one copy of the reporting package described in paragraph (c) of this section for each pass-through entity when the schedule of findings and questioned costs disclosed audit findings relating to Federal awards that the pass-through entity provided or the summary schedule of prior audit findings reported the status of any audit findings relating to Federal awards that the pass-through entity provided.

(2) Instead of submitting the reporting package to a pass-through entity, when a subrecipient is not required to submit a reporting package to a pass-through entity pursuant to paragraph (e)(1) of this section, the subrecipient shall provide written notification to the pass-through entity that: an audit of the subrecipient was conducted in accordance with this part (including the period covered by the audit and the name, amount, and CFDA number of the Federal award(s) provided by the pass-through entity); the schedule of findings and questioned costs disclosed no audit findings relating to the Federal award(s) that the pass-through entity provided; and, the summary schedule of prior audit findings did not report on the status of any audit findings relating to the Federal award(s) that the pass-through entity provided. A subrecipient may submit a copy of the reporting package described in paragraph (c) of this section to a pass-through entity to comply with this notification requirement.

(f) *Requests for report copies.* In response to requests by a Federal agency or pass-through entity, auditees shall submit the appropriate copies of the reporting package described in paragraph (c) of this section and, if requested, a copy of any management letters issued by the auditor.

(g) *Report retention requirements.* Auditees shall keep one copy of the data collection form described in paragraph (b) of this section and one copy of the reporting package described in paragraph (c) of this section on file for three years from the date of submission to the Federal clearinghouse designated by OMB. Pass-through entities shall keep subrecipients' submissions on file for three years from date of receipt.

(h) *Clearinghouse responsibilities.* The Federal clearinghouse designated by OMB shall distribute the reporting packages received in accordance with paragraph (d)(2) of this section and § 3052.235(c)(3) to applicable Federal awarding agencies, maintain a data base of completed audits, provide appropriate information to Federal agencies, and follow up with known auditees which have not submitted the required data collection forms and reporting packages.

(i) *Clearinghouse address.* The address of the Federal clearinghouse currently designated by OMB is Federal Audit Clearinghouse, Bureau of the Census, 1201 E. 10th Street, Jeffersonville, IN 47132.

(j) *Electronic filing.* Nothing in this part shall preclude electronic submissions to the Federal clearinghouse in such manner as may be approved by OMB. With OMB approval, the Federal clearinghouse may pilot test methods of electronic submissions.

Subpart D—Federal Agencies and Pass-Through Entities

§ 3052.400 Responsibilities.

(a) *Cognizant agency for audit responsibilities.* Recipients expending more than $50 million in a year in Federal awards shall have a cognizant agency for audit. The designated cognizant agency for audit shall be the Federal awarding agency that provides the predominant amount of direct funding to a recipient unless OMB makes a specific cognizant agency for audit assignment. The determination of the predominant amount of direct funding shall be based upon direct Federal awards expended in the recipient's fiscal years ending in 2004, 2009, 2014, and every fifth year thereafter. For example, audit cognizance for periods ending in 2006 through 2010 will be determined based on Federal awards expended in 2004. (However, for 2001 through 2005, the cognizant agency for audit is determined based on the predominant amount of direct Federal awards expended in the recipient's fiscal year ending in 2000.) Notwithstanding the manner in which audit cognizance is determined, a Federal awarding agency with cognizance for an auditee may reassign cognizance to another Federal awarding agency which provides substantial direct funding and agrees to be the cognizant agency for audit. Within 30 days after any reassignment, both the old and the new cognizant agency for audit shall notify the auditee, and, if known, the auditor of the reassignment. The cognizant agency for audit shall:

(1) Provide technical audit advice and liaison to auditees and auditors.

(2) Consider auditee requests for extensions to the report submission due date required by § 3052.320(a). The cognizant agency for audit may grant extensions for good cause.

(3) Obtain or conduct quality control reviews of selected audits made by non-Federal auditors, and provide the results, when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any direct reporting by the auditee or its auditor of irregularities or illegal acts, as required by GAGAS or laws and regulations.

(5) Advise the auditor and, where appropriate, the auditee of any deficiencies found in the audits when the deficiencies require corrective action by the auditor. When advised of deficiencies, the auditee shall work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency for audit shall notify the auditor, the auditee, and applicable Federal awarding agencies and pass-through entities of the facts and make recommendations for follow-up action. Major inadequacies or repetitive substandard performance by auditors shall be referred to appropriate State licensing agencies and professional bodies for disciplinary action.

(6) Coordinate, to the extent practical, audits or reviews made by or for Federal agencies that are in addition to the audits made pursuant to this part, so that the additional audits or reviews build upon audits performed in accordance with this part.

(7) Coordinate a management decision for audit findings that affect the Federal programs of more than one agency.

(8) Coordinate the audit work and reporting responsibilities among auditors to achieve the most cost-effective audit.

(9) For biennial audits permitted under § 3052.220, consider auditee requests to qualify as a low-risk auditee under § 3052.530(a).

(b) *Oversight agency for audit responsibilities.* An auditee which does not have a designated cognizant agency for audit will be under the general oversight of the Federal agency determined in accordance with § 3052.105. The oversight agency for audit:

(1) Shall provide technical advice to auditees and auditors as requested.

(2) May assume all or some of the responsibilities normally performed by a cognizant agency for audit.

(c) *Federal awarding agency responsibilities.* The Federal awarding agency shall perform the following for the Federal awards it makes:

(1) Identify Federal awards made by informing each recipient of the CFDA title and number, award name and number, award year, and if the award

is for R&D. When some of this information is not available, the Federal agency shall provide information necessary to clearly describe the Federal award.

(2) Advise recipients of requirements imposed on them by Federal laws, regulations, and the provisions of contracts or grant agreements.

(3) Ensure that audits are completed and reports are received in a timely manner and in accordance with the requirements of this part.

(4) Provide technical advice and counsel to auditees and auditors as requested.

(5) Issue a management decision on audit findings within six months after receipt of the audit report and ensure that the recipient takes appropriate and timely corrective action.

(6) Assign a person responsible for providing annual updates of the compliance supplement to OMB.

(d) *Pass-through entity responsibilities.* A pass-through entity shall perform the following for the Federal awards it makes:

(1) Identify Federal awards made by informing each subrecipient of CFDA title and number, award name and number, award year, if the award is R&D, and name of Federal agency. When some of this information is not available, the pass-through entity shall provide the best information available to describe the Federal award.

(2) Advise subrecipients of requirements imposed on them by Federal laws, regulations, and the provisions of contracts or grant agreements as well as any supplemental requirements imposed by the pass-through entity.

(3) Monitor the activities of subrecipients as necessary to ensure that Federal awards are used for authorized purposes in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.

(4) Ensure that subrecipients expending $500,000 or more in Federal awards during the subrecipient's fiscal year have met the audit requirements of this part for that fiscal year.

(5) Issue a management decision on audit findings within six months after receipt of the subrecipient's audit report and ensure that the subrecipient takes appropriate and timely corrective action.

(6) Consider whether subrecipient audits necessitate adjustment of the pass-through entity's own records.

(7) Require each subrecipient to permit the pass-through entity and auditors to have access to the records and financial statements as necessary for the pass-through entity to comply with this part.

[62 FR 45949, Aug. 29, 1997, as amended at 70 FR 34986, June 16, 2005]

§ 3052.405 Management decision.

(a) *General.* The management decision shall clearly state whether or not the audit finding is sustained, the reasons for the decision, and the expected auditee action to repay disallowed costs, make financial adjustments, or take other action. If the auditee has not completed corrective action, a timetable for follow-up should be given. Prior to issuing the management decision, the Federal agency or pass-through entity may request additional information or documentation from the auditee, including a request for auditor assurance related to the documentation, as a way of mitigating disallowed costs. The management decision should describe any appeal process available to the auditee.

(b) *Federal agency.* As provided in § 3052.400(a)(7), the cognizant agency for audit shall be responsible for coordinating a management decision for audit findings that affect the programs of more than one Federal agency. As provided in § 3052.400(c)(5), a Federal awarding agency is responsible for issuing a management decision for findings that relate to Federal awards it makes to recipients. Alternate arrangements may be made on a case-by-case basis by agreement among the Federal agencies concerned.

(c) *Pass-through entity.* As provided in § 3052.400(d)(5), the pass-through entity shall be responsible for making the management decision for audit findings that relate to Federal awards it makes to subrecipients.

(d) *Time requirements.* The entity responsible for making the management decision shall do so within six months of receipt of the audit report. Corrective action should be initiated within

six months after receipt of the audit report and proceed as rapidly as possible.

(e) *Reference numbers.* Management decisions shall include the reference numbers the auditor assigned to each audit finding in accordance with § 3052.510(c).

Subpart E—Auditors

§ 3052.500 Scope of audit.

(a) *General.* The audit shall be conducted in accordance with GAGAS. The audit shall cover the entire operations of the auditee; or, at the option of the auditee, such audit shall include a series of audits that cover departments, agencies, and other organizational units which expended or otherwise administered Federal awards during such fiscal year, provided that each such audit shall encompass the financial statements and schedule of expenditures of Federal awards for each such department, agency, and other organizational unit, which shall be considered to be a non-Federal entity. The financial statements and schedule of expenditures of Federal awards shall be for the same fiscal year.

(b) *Financial statements.* The auditor shall determine whether the financial statements of the auditee are presented fairly in all material respects in conformity with generally accepted accounting principles. The auditor shall also determine whether the schedule of expenditures of Federal awards is presented fairly in all material respects in relation to the auditee's financial statements taken as a whole.

(c) *Internal control.* (1) In addition to the requirements of GAGAS, the auditor shall perform procedures to obtain an understanding of internal control over Federal programs sufficient to plan the audit to support a low assessed level of control risk for major programs.

(2) Except as provided in paragraph (c)(3) of this section, the auditor shall:

(i) Plan the testing of internal control over major programs to support a low assessed level of control risk for the assertions relevant to the compliance requirements for each major program; and

(ii) Perform testing of internal control as planned in paragraph (c)(2)(i) of this section.

(3) When internal control over some or all of the compliance requirements for a major program are likely to be ineffective in preventing or detecting noncompliance, the planning and performing of testing described in paragraph (c)(2) of this section are not required for those compliance requirements. However, the auditor shall report a reportable condition (including whether any such condition is a material weakness) in accordance with § 3052.510, assess the related control risk at the maximum, and consider whether additional compliance tests are required because of ineffective internal control.

(d) *Compliance.* (1) In addition to the requirements of GAGAS, the auditor shall determine whether the auditee has complied with laws, regulations, and the provisions of contracts or grant agreements that may have a direct and material effect on each of its major programs.

(2) The principal compliance requirements applicable to most Federal programs and the compliance requirements of the largest Federal programs are included in the compliance supplement.

(3) For the compliance requirements related to Federal programs contained in the compliance supplement, an audit of these compliance requirements will meet the requirements of this part. Where there have been changes to the compliance requirements and the changes are not reflected in the compliance supplement, the auditor shall determine the current compliance requirements and modify the audit procedures accordingly. For those Federal programs not covered in the compliance supplement, the auditor should use the types of compliance requirements contained in the compliance supplement as guidance for identifying the types of compliance requirements to test, and determine the requirements governing the Federal program by reviewing the provisions of contracts and grant agreements and the laws and regulations referred to in such contracts and grant agreements.

(4) The compliance testing shall include tests of transactions and such other auditing procedures necessary to provide the auditor sufficient evidence to support an opinion on compliance.

(e) *Audit follow-up.* The auditor shall follow-up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with § 3052.315(b), and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding. The auditor shall perform audit follow-up procedures regardless of whether a prior audit finding relates to a major program in the current year.

(f) *Data collection form.* As required in § 3052.320(b)(3), the auditor shall complete and sign specified sections of the data collection form.

§ 3052.505 Audit reporting.

The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) shall state that the audit was conducted in accordance with this part and include the following:

(a) An opinion (or disclaimer of opinion) as to whether the financial statements are presented fairly in all material respects in conformity with generally accepted accounting principles and an opinion (or disclaimer of opinion) as to whether the schedule of expenditures of Federal awards is presented fairly in all material respects in relation to the financial statements taken as a whole.

(b) A report on internal control related to the financial statements and major programs. This report shall describe the scope of testing of internal control and the results of the tests, and, where applicable, refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(c) A report on compliance with laws, regulations, and the provisions of contracts or grant agreements, noncompliance with which could have a material effect on the financial statements. This report shall also include an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the provisions of contracts or grant agreements which could have a direct and material effect on each major program, and, where applicable, refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(d) A schedule of findings and questioned costs which shall include the following three components:

(1) A summary of the auditor's results which shall include:

(i) The type of report the auditor issued on the financial statements of the auditee (*i.e.*, unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(ii) Where applicable, a statement that reportable conditions in internal control were disclosed by the audit of the financial statements and whether any such conditions were material weaknesses;

(iii) A statement as to whether the audit disclosed any noncompliance which is material to the financial statements of the auditee;

(iv) Where applicable, a statement that reportable conditions in internal control over major programs were disclosed by the audit and whether any such conditions were material weaknesses;

(v) The type of report the auditor issued on compliance for major programs (*i.e.*, unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(vi) A statement as to whether the audit disclosed any audit findings which the auditor is required to report under § 3052.510(a);

(vii) An identification of major programs;

(viii) The dollar threshold used to distinguish between Type A and Type B programs, as described in § 3052.520(b); and

(ix) A statement as to whether the auditee qualified as a low-risk auditee under § 3052.530.

(2) Findings relating to the financial statements which are required to be reported in accordance with GAGAS.

(3) Findings and questioned costs for Federal awards which shall include audit findings as defined in § 3052.510(a).

(i) Audit findings (e.g., internal control findings, compliance findings, questioned costs, or fraud) which relate to the same issue should be presented as a single audit finding. Where practical, audit findings should be organized by Federal agency or pass-through entity.

(ii) Audit findings which relate to both the financial statements and Federal awards, as reported under paragraphs (d)(2) and (d)(3) of this section, respectively, should be reported in both sections of the schedule. However, the reporting in one section of the schedule may be in summary form with a reference to a detailed reporting in the other section of the schedule.

§ 3052.510 Audit findings.

(a) *Audit findings reported.* The auditor shall report the following as audit findings in a schedule of findings and questioned costs:

(1) Reportable conditions in internal control over major programs. The auditor's determination of whether a deficiency in internal control is a reportable condition for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program or an audit objective identified in the compliance supplement. The auditor shall identify reportable conditions which are individually or cumulatively material weaknesses.

(2) Material noncompliance with the provisions of laws, regulations, contracts, or grant agreements related to a major program. The auditor's determination of whether a noncompliance with the provisions of laws, regulations, contracts, or grant agreements is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program or an audit objective identified in the compliance supplement.

(3) Known questioned costs which are greater than $10,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor shall also report known questioned costs when likely questioned costs are greater than $10,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor shall include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

(4) Known questioned costs which are greater than $10,000 for a Federal program which is not audited as a major program. Except for audit follow-up, the auditor is not required under this part to perform audit procedures for such a Federal program; therefore, the auditor will normally not find questioned costs for a program which is not audited as a major program. However, if the auditor does become aware of questioned costs for a Federal program which is not audited as a major program (e.g., as part of audit follow-up or other audit procedures) and the known questioned costs are greater than $10,000, then the auditor shall report this as an audit finding.

(5) The circumstances concerning why the auditor's report on compliance for major programs is other than an unqualified opinion, unless such circumstances are otherwise reported as audit findings in the schedule of findings and questioned costs for Federal awards.

(6) Known fraud affecting a Federal award, unless such fraud is otherwise reported as an audit finding in the schedule of findings and questioned costs for Federal awards. This paragraph does not require the auditor to make an additional reporting when the auditor confirms that the fraud was reported outside of the auditor's reports under the direct reporting requirements of GAGAS.

(7) Instances where the results of audit follow-up procedures disclosed that the summary schedule of prior audit findings prepared by the auditee in accordance with § 3052.315(b) materially misrepresents the status of any prior audit finding.

(b) *Audit finding detail.* Audit findings shall be presented in sufficient detail for the auditee to prepare a corrective action plan and take corrective action and for Federal agencies and pass-through entities to arrive at a management decision. The following specific information shall be included, as applicable, in audit findings:

(1) Federal program and specific Federal award identification including the CFDA title and number, Federal award number and year, name of Federal agency, and name of the applicable pass-through entity. When information, such as the CFDA title and number or Federal award number, is not available, the auditor shall provide the best information available to describe the Federal award.

(2) The criteria or specific requirement upon which the audit finding is based, including statutory, regulatory, or other citation.

(3) The condition found, including facts that support the deficiency identified in the audit finding.

(4) Identification of questioned costs and how they were computed.

(5) Information to provide proper perspective for judging the prevalence and consequences of the audit findings, such as whether the audit findings represent an isolated instance or a systemic problem. Where appropriate, instances identified shall be related to the universe and the number of cases examined and be quantified in terms of dollar value.

(6) The possible asserted effect to provide sufficient information to the auditee and Federal agency, or pass-through entity in the case of a subrecipient, to permit them to determine the cause and effect to facilitate prompt and proper corrective action.

(7) Recommendations to prevent future occurrences of the deficiency identified in the audit finding.

(8) Views of responsible officials of the auditee when there is disagreement with the audit findings, to the extent practical.

(c) *Reference numbers.* Each audit finding in the schedule of findings and questioned costs shall include a reference number to allow for easy referencing of the audit findings during follow-up.

§ 3052.515 Audit working papers.

(a) *Retention of working papers.* The auditor shall retain working papers and reports for a minimum of three years after the date of issuance of the auditor's report(s) to the auditee, unless the auditor is notified in writing by the cognizant agency for audit, oversight agency for audit, or pass-through entity to extend the retention period. When the auditor is aware that the Federal awarding agency, pass-through entity, or auditee is contesting an audit finding, the auditor shall contact the parties contesting the audit finding for guidance prior to destruction of the working papers and reports.

(b) *Access to working papers.* Audit working papers shall be made available upon request to the cognizant or oversight agency for audit or its designee, a Federal agency providing direct or indirect funding, or GAO at the completion of the audit, as part of a quality review, to resolve audit findings, or to carry out oversight responsibilities consistent with the purposes of this part. Access to working papers includes the right of Federal agencies to obtain copies of working papers, as is reasonable and necessary.

§ 3052.520 Major program determination.

(a) *General.* The auditor shall use a risk-based approach to determine which Federal programs are major programs. This risk-based approach shall include consideration of: Current and prior audit experience, oversight by Federal agencies and pass-through entities, and the inherent risk of the Federal program. The process in paragraphs (b) through (I) of this section shall be followed.

(b) *Step 1.* (1) The auditor shall identify the larger Federal programs, which shall be labeled Type A programs. Type A programs are defined as Federal programs with Federal awards expended during the audit period exceeding the larger of:

(i) $300,000 or three percent (.03) of total Federal awards expended in the case of an auditee for which total Federal awards expended equal or exceed $300,000 but are less than or equal to $100 million.

(ii) $3 million or three-tenths of one percent (.003) of total Federal awards expended in the case of an auditee for which total Federal awards expended exceed $100 million but are less than or equal to $10 billion.

(iii) $30 million or 15 hundredths of one percent (.0015) of total Federal awards expended in the case of an auditee for which total Federal awards expended exceed $10 billion.

(2) Federal programs not labeled Type A under paragraph (b)(1) of this section shall be labeled Type B programs.

(3) The inclusion of large loan and loan guarantees (loans) should not result in the exclusion of other programs as Type A programs. When a Federal program providing loans significantly affects the number or size of Type A programs, the auditor shall consider this Federal program as a Type A program and exclude its values in determining other Type A programs.

(4) For biennial audits permitted under § 3052.220, the determination of Type A and Type B programs shall be based upon the Federal awards expended during the two-year period.

(c) *Step 2.* (1) The auditor shall identify Type A programs which are low-risk. For a Type A program to be considered low-risk, it shall have been audited as a major program in at least one of the two most recent audit periods (in the most recent audit period in the case of a biennial audit), and, in the most recent audit period, it shall have had no audit findings under § 3052.510(a). However, the auditor may use judgment and consider that audit findings from questioned costs under § 3052.510(a)(3) and § 3052.510(a)(4), fraud under § 3052.510(a)(6), and audit follow-up for the summary schedule of prior audit findings under § 3052.510(a)(7) do not preclude the Type A program from being low-risk. The auditor shall consider: the criteria in § 3052.525(c), § 3052.525(d)(1), § 3052.525(d)(2), and § 3052.525(d)(3); the results of audit follow-up; whether any changes in personnel or systems affecting a Type A program have significantly increased risk; and apply professional judgment in determining whether a Type A program is low-risk.

(2) Notwithstanding paragraph (c)(1) of this section, OMB may approve a Federal awarding agency's request that a Type A program at certain recipients may not be considered low-risk. For example, it may be necessary for a large Type A program to be audited as major each year at particular recipients to allow the Federal agency to comply with the Government Management Reform Act of 1994 (31 U.S.C. 3515). The Federal agency shall notify the recipient and, if known, the auditor at least 180 days prior to the end of the fiscal year to be audited of OMB's approval.

(d) *Step 3.* (1) The auditor shall identify Type B programs which are high-risk using professional judgment and the criteria in § 3052.525. However, should the auditor select Option 2 under Step 4 (paragraph (e)(2)(i)(B) of this section), the auditor is not required to identify more high-risk Type B programs than the number of low-risk Type A programs. Except for known reportable conditions in internal control or compliance problems as discussed in § 3052.525(b)(1), § 3052.525(b)(2), and § 3052.525(c)(1), a single criteria in § 3052.525 would seldom cause a Type B program to be considered high-risk.

(2) The auditor is not expected to perform risk assessments on relatively small Federal programs. Therefore, the auditor is only required to perform risk assessments on Type B programs that exceed the larger of:

(i) $100,000 or three-tenths of one percent (.003) of total Federal awards expended when the auditee has less than or equal to $100 million in total Federal awards expended.

(ii) $300,000 or three-hundredths of one percent (.0003) of total Federal awards expended when the auditee has more than $100 million in total Federal awards expended.

(e) *Step 4.* At a minimum, the auditor shall audit all of the following as major programs:

(1) All Type A programs, except the auditor may exclude any Type A programs identified as low-risk under Step 2 (paragraph (c)(1) of this section).

(2)(i) High-risk Type B programs as identified under either of the following two options:

(A) *Option 1.* At least one half of the Type B programs identified as high-risk under Step 3 (paragraph (d) of this section), except this paragraph (e)(2)(i)(A) does not require the auditor to audit more high-risk Type B programs than the number of low-risk Type A programs identified as low-risk under Step 2.

(B) *Option 2.* One high-risk Type B program for each Type A program identified as low-risk under Step 2.

(ii) When identifying which high-risk Type B programs to audit as major under either Option 1 or 2 in paragraph (e)(2)(i) (A) or (B), the auditor is encouraged to use an approach which provides an opportunity for different high-risk Type B programs to be audited as major over a period of time.

(3) Such additional programs as may be necessary to comply with the percentage of coverage rule discussed in paragraph (f) of this section. This paragraph (e)(3) may require the auditor to audit more programs as major than the number of Type A programs.

(f) *Percentage of coverage rule.* The auditor shall audit as major programs Federal programs with Federal awards expended that, in the aggregate, encompass at least 50 percent of total Federal awards expended. If the auditee meets the criteria in § 3052.530 for a low-risk auditee, the auditor need only audit as major programs Federal programs with Federal awards expended that, in the aggregate, encompass at least 25 percent of total Federal awards expended.

(g) *Documentation of risk.* The auditor shall document in the working papers the risk analysis process used in determining major programs.

(h) *Auditor's judgment.* When the major program determination was performed and documented in accordance with this part, the auditor's judgment in applying the risk-based approach to determine major programs shall be presumed correct. Challenges by Federal agencies and pass-through entities shall only be for clearly improper use of the guidance in this part. However, Federal agencies and pass-through entities may provide auditors guidance about the risk of a particular Federal program and the auditor shall consider this guidance in determining major programs in audits not yet completed.

(i) *Deviation from use of risk criteria.* For first-year audits, the auditor may elect to determine major programs as all Type A programs plus any Type B programs as necessary to meet the percentage of coverage rule discussed in paragraph (f) of this section. Under this option, the auditor would not be required to perform the procedures discussed in paragraphs (c), (d), and (e) of this section.

(1) A first-year audit is the first year the entity is audited under this part or the first year of a change of auditors.

(2) To ensure that a frequent change of auditors would not preclude audit of high-risk Type B programs, this election for first-year audits may not be used by an auditee more than once in every three years.

§ 3052.525 Criteria for Federal program risk.

(a) *General.* The auditor's determination should be based on an overall evaluation of the risk of noncompliance occurring which could be material to the Federal program. The auditor shall use auditor judgment and consider criteria, such as described in paragraphs (b), (c), and (d) of this section, to identify risk in Federal programs. Also, as part of the risk analysis, the auditor may wish to discuss a particular Federal program with auditee management and the Federal agency or pass-through entity.

(b) *Current and prior audit experience.* (1) Weaknesses in internal control over Federal programs would indicate higher risk. Consideration should be given to the control environment over Federal programs and such factors as the expectation of management's adherence to applicable laws and regulations and the provisions of contracts and grant agreements and the competence and experience of personnel who administer the Federal programs.

(i) A Federal program administered under multiple internal control structures may have higher risk. When assessing risk in a large single audit, the auditor shall consider whether weaknesses are isolated in a single operating unit (e.g., one college campus) or pervasive throughout the entity.

(ii) When significant parts of a Federal program are passed through to subrecipients, a weak system for monitoring subrecipients would indicate higher risk.

(iii) The extent to which computer processing is used to administer Federal programs, as well as the complexity of that processing, should be considered by the auditor in assessing risk. New and recently modified computer systems may also indicate risk.

(2) Prior audit findings would indicate higher risk, particularly when the situations identified in the audit findings could have a significant impact on a Federal program or have not been corrected.

(3) Federal programs not recently audited as major programs may be of higher risk than Federal programs recently audited as major programs without audit findings.

(c) *Oversight exercised by Federal agencies and pass-through entities.* (1) Oversight exercised by Federal agencies or pass-through entities could indicate risk. For example, recent monitoring or other reviews performed by an oversight entity which disclosed no significant problems would indicate lower risk. However, monitoring which disclosed significant problems would indicate higher risk.

(2) Federal agencies, with the concurrence of OMB, may identify Federal programs which are higher risk. OMB plans to provide this identification in the compliance supplement.

(d) *Inherent risk of the Federal program.* (1) The nature of a Federal program may indicate risk. Consideration should be given to the complexity of the program and the extent to which the Federal program contracts for goods and services. For example, Federal programs that disburse funds through third party contracts or have eligibility criteria may be of higher risk. Federal programs primarily involving staff payroll costs may have a high-risk for time and effort reporting, but otherwise be at low-risk.

(2) The phase of a Federal program in its life cycle at the Federal agency may indicate risk. For example, a new Federal program with new or interim regulations may have higher risk than an established program with time-tested regulations. Also, significant changes in Federal programs, laws, regulations, or the provisions of contracts or grant agreements may increase risk.

(3) The phase of a Federal program in its life cycle at the auditee may indicate risk. For example, during the first and last years that an auditee participates in a Federal program, the risk may be higher due to start-up or close-out of program activities and staff.

(4) Type B programs with larger Federal awards expended would be of higher risk than programs with substantially smaller Federal awards expended.

§ 3052.530 Criteria for a low-risk auditee.

An auditee which meets all of the following conditions for each of the preceding two years (or, in the case of biennial audits, preceding two audit periods) shall qualify as a low-risk auditee and be eligible for reduced audit coverage in accordance with § 3052.520:

(a) Single audits were performed on an annual basis in accordance with the provisions of this part. A non-Federal entity that has biennial audits does not qualify as a low-risk auditee, unless agreed to in advance by the cognizant or oversight agency for audit.

(b) The auditor's opinions on the financial statements and the schedule of expenditures of Federal awards were unqualified. However, the cognizant or oversight agency for audit may judge that an opinion qualification does not affect the management of Federal awards and provide a waiver.

(c) There were no deficiencies in internal control which were identified as material weaknesses under the requirements of GAGAS. However, the cognizant or oversight agency for audit may judge that any identified material weaknesses do not affect the management of Federal awards and provide a waiver.

(d) None of the Federal programs had audit findings from any of the following in either of the preceding two years (or, in the case of biennial audits, preceding two audit periods) in which they were classified as Type A programs:

(1) Internal control deficiencies which were identified as material weaknesses;

(2) Noncompliance with the provisions of laws, regulations, contracts, or grant agreements which have a material effect on the Type A program; or

(3) Known or likely questioned costs that exceed five percent of the total Federal awards expended for a Type A program during the year.

CHAPTER XXXI—OFFICE OF ENVIRONMENTAL QUALITY, DEPARTMENT OF AGRICULTURE

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PART 3100—CULTURAL AND ENVIRONMENTAL QUALITY

Subparts A–B [Reserved]

Subpart C—Enhancement, Protection, and Management of the Cultural Environment

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3100.46 Responsibilities of the Department of Agriculture.

Subparts A–B [Reserved]

Subpart C—Enhancement, Protection, and Management of the Cultural Environment

AUTHORITY: Sec. 106, National Historic Preservation Act, as amended (16 U.S.C. 470f); National Environmental Policy Act, as amended (42 U.S.C. 4321 *et seq.*); E.O. 11593, 36 FR 8921, May 13, 1971.

SOURCE: 44 FR 66181, Nov. 19, 1979, unless otherwise noted.

§ 3100.40 Purpose.

(a) This subpart establishes USDA policy regarding the enhancement, protection, and management of the cultural environment.

(b) This subpart establishes procedures for implementing Executive Order 11593, and regulations promulgated by the Advisory Council on Historic Preservation (ACHP) ''Protection of Historical and Cultural Properties'' in 36 CFR part 800 as required by § 800.10 of those regulations.

(c) Direction is provided to the agencies of USDA for protection of the cultural environment.

§ 3100.41 Authorities.

These regulations are based upon and implement the following laws, regulations, and Presidential directives:

(a) *Antiquities Act of 1906* (Pub. L. 59–209; 34 Stat. 225; 16 U.S.C. 431 *et seq.*) which provides for the protection of historic or prehistoric remains or any object of antiquity on Federal lands; establishes criminal sanctions for unauthorized destruction or appropriation of antiquities; and authorizes scientific investigation of antiquities on Federal lands, subject to permit and regulations. Paleontological resources also are considered to fall within the authority of this Act.

(b) *Historic Sites Act of 1935* (Pub. L. 74–292; 49 Stat. 666; 16 U.S.C. 461 *et seq.*) which authorizes the establishment of National Historic Sites and otherwise authorizes the preservation of properties of national historical or archeological significance; authorizes the designation of National Historic Landmarks; establishes criminal sanctions for violation of regulations pursuant to the Act; authorizes interagency, intergovernmental, and interdisciplinary efforts for the preservation of cultural resources; and other provisions.

(c) *Reservoir Salvage Act of 1960* (Pub. L. 86–521; 74 Stat. 220; 16 U.S.C. 469–469c.) which provides for the recovery and preservation of historical and archeological data, including relics and specimens, that might be lost or destroyed as a result of the construction of dams, reservoirs, and attendant facilities and activities.

(d) *The National Historic Preservation Act of 1966* as amended (16 U.S.C. 470), which establishes positive national policy for the preservation of the cultural environment, and sets forth a mandate for protection in section 106. The purpose of section 106 is to protect properties on or eligible for the National Register of Historic Places through review and comment by the ACHP of Federal undertakings that affect such properties. Properties are listed on the National Register or declared eligible for listing by the Secretary of the Interior. As developed through the ACHP's regulations, section 106 establishes a public interest process in which the Federal agency proposing an undertaking, the State Historic Preservation Officer, the ACHP, interested organizations and individuals participate. The process is designed to insure that properties, impacts on them, and effects to them are identified, and that alternatives to avoid or mitigate an adverse effect on property eligible for the National Register are adequately considered in the planning process.

(e) *The National Environmental Policy Act of 1969* (NEPA) (Pub. L. 91–190; 83

Stat. 852; 42 U.S.C. 4321 *et seq.*) which declares that it is the policy of the Federal Government to preserve important historic, cultural, and natural aspects of our national heritage. Compliance with NEPA requires consideration of all environmental concerns during project planning and execution.

(f) *Executive Order 11593, ''Protection and Enhancement of the Cultural Environment''*, which gives the Federal Government the responsibility for stewardship of our nation's heritage resources and charges Federal agencies with the task of inventorying historic and prehistoric sites on their lands. E.O. 11593 also charges agencies with the task of identifying and nominating all historic properties under their jurisdiction, and exercising caution to insure that they are not transferred, sold, demolished, or substantially altered.

(g) *Historical and Archeological Data Preservation Act of 1974.* (Pub. L. 93–291; 88 Stat. 174.) which amends the Reservoir Salvage Act of 1960 to extend its provisions beyond the construction of dams to any alteration of the terrain caused as a result of any Federal construction project or federally licensed activity or program. In addition, the Act provides a mechanism for funding the protection of historical and archeological data.

(h) *Presidential memorandum of July 12, 1978, ''Environmental Quality and Water Resource Management''* which directs the ACHP to publish final regulations, implementing section 106 of the National Historic Preservation Act (NHPA), and further directs each agency with water and related land resources responsibilities to publish procedures implementing those regulations.

(i) *36 CFR part 800*, ''Protection of Historic and Cultural Properties'' which establishes procedures for the implementation of section 106 of the NHPA, and directs publication of agency implementing procedures.

(j) *Land use policy of the USDA (Secretary's Memorandum No. 1827 Revised, with Supplement)* which establishes a commitment by the Department to the preservation of farms, rural communities, and rural landscapes.

(k) *Public Buildings Cooperative Use Act of 1976 (40 U.S.C. 611) and Executive Order 12072 (Federal Space Management).* The Act encourages adaptive use of historic buildings as administrative facilities for Federal agencies and activities; the Executive Order directs Federal agencies to locate administrative and other facilities in central business districts.

(l) *American Indian Religious Freedom Act of 1978 (42 U.S.C. 1996)* which declares it to be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians.

§ 3100.42 Definitions.

All definitions are those which appear in 36 CFR part 800. In addition, the following apply in this rule:

Cultural resources (heritage resources) are the remains or records of districts, sites, structures, buildings, networks, neighborhoods, objects, and events from the past. They may be historic, prehistoric, archeological, or architectural in nature. Cultural resources are an irreplaceable and nonrenewable aspect of our national heritage.

Cultural environment is that portion of the environment which includes reminders of the rich historic and prehistoric past of our nation.

§ 3100.43 Policy.

(a) The nonrenewable cultural environment of our country constitutes a valuable and treasured portion of the national heritage of the American people. The Department of Agriculture is committed to the management—identification, protection, preservation, interpretation, evaluation and nomination—of our prehistoric and historic cultural resources for the benefit of all people of this and future generations.

(b) The Department supports the cultural resource goals expressed in Federal legislation. Executive orders, and regulations.

(c) The Department supports the preservation and protection of farms, rural landscapes, and rural communities.

(d) The Department is committed to consideration of the needs of American

Indians, Eskimo, Aleut, and Native Hawaiians in the practice of their traditional religions.

(e) The Department will aggressively implement these policies to meet goals for the positive management of the cultural environment.

§ 3100.44 Implementation.

(a) It is the intent of the Department to carry out its program of management of the cultural environment in the most effective and efficient manner possible. Implementation must consider natural resource utilization, must exemplify good government, and must constitute a noninflationary approach which makes the best use of tax dollars.

(b) The commitment to cultural resource protection is vital. That commitment will be balanced with the multiple departmental goals of food and fiber production, environmental protection, natural resource and energy conservation, and rural development. It is essential that all of these be managed to reduce conflicts between programs. Positive management of the cultural environment can contribute to achieving better land use, protection of rural communities and farm lands, conservation of energy, and more efficient use of resources.

(c) In reaching decisions, the long-term needs of society and the irreversible nature of an action must be considered. The Department must act to preserve future options; loss of important cultural resources must be avoided except in the face of overriding national interest where there are no reasonable alternatives.

(d) To assure the protection of Native American religious practices, traditional religious leaders and other native leaders (or their representatives) should be consulted about potential conflict areas in the management of the cultural environment and the means to reduce or eliminate such conflicts.

§ 3100.45 Direction to agencies.

(a) Each agency of the Department shall consult with OEQ to determine whether its programs and activities may affect the cultural environment. Then, if needed, the agency, in consultation with the OEQ, shall develop its own specific procedures for implementing section 106 of the National Historic Preservation Act, Executive Order 11593, the regulations of the ACHP (36 CFR part 800), the American Indian Religious Freedom Act of 1978 and other relevant legislation and regulations in accordance with the agency's programs, mission and authorities. Such implementing procedures shall be published as proposed and final procedures in the FEDERAL REGISTER, and must be consistent with the requirements of 36 CFR part 800 and this subpart. Where applicable, each agency's procedures must contain mechanisms to insure:

(1) Compliance with section 106 of NHPA and mitigation of adverse effects to cultural properties on or eligible for the National Register of Historic Places;

(2) Clear definition of the kind and variety of sites and properties which should be managed;

(3) Development of a long-term program of management of the cultural environment on lands administered by USDA as well as direction for project-specific protection;

(4) Identification of all properties listed on or eligible for listing in the National Register that may be affected directly or indirectly by a proposed activity;

(5) Location, identification and nomination to the Register of all sites, buildings, objects, districts, neighborhoods, and networks under its management which appear to qualify (in compliance with E.O. 11593);

(6) The exercise of caution to assure that properties managed by USDA which may qualify for nomination are not transferred, sold, demolished, or substantially altered;

(7) Early consultation with, and involvement of, the State Historic Preservation Officer(s), the ACHP, Native American traditional religious leaders and appropriate tribal leaders, and others with appropriate interests or expertise;

(8) Early notification to insure substantive and meaningful involvement by the public in the agency's decision-making process as it relates to the cultural environment;

(9) Identification and consideration of alternatives to a proposed undertaking that would mitigate or minimize adverse effects to a property identified under paragraph (a)(4) of this section;

(10) Funding of mitigation measures where required to minimize the potential for adverse effects on the cultural environment. Funds for mitigation shall be available and shall be spent when needed during the life of the project to mitigate the expected loss; and

(11) Development of plans to provide for the management, protection, maintenance and/or restoration of Register sites under its management.

(b) Each agency of the Department which conducts programs or activities that may have an effect on the cultural environment shall recruit, place, develop, or otherwise have available, professional expertise in anthropology, archeology, history, historic preservation, historic architecture, and/or cultural resource management (depending upon specific need). Such arrangements may include internal hiring, Intergovernmental Personnel Act assignments, memoranda of agreement with other agencies or Departments, or other mechanisms which insure a professionally directed program. Agencies should use Department of the Interior professional standards (36 CFR 61.5) as guidelines to insure Departmentwide competence and consistency.

(c) Compliance with cultural resource legislation is the responsibility of each individual agency. Consideration of cultural resource values must begin during the earliest planning stages of any undertaking.

(d) Agency heads shall insure that cultural resource management activities meet professional standards as promulgated by the Department of the Interior (e.g., 36 CFR parts 60, 63, 66, 1208).

(e) Cultural resource review requirements and compliance with section 106 of NHPA and Executive Order 11593 shall be integrated and run concurrently, rather than consecutively, with the other environmental considerations under NEPA regulations. As such, direct and indirect impacts on cultural resources must be addressed in the environmental assessment for every agency undertaking. In meeting these requirements, agencies shall be guided by regulations implementing the procedural provisions of NEPA (40 CFR parts 1500–1508) and Department of Agriculture regulations (7 CFR part 3100, subpart B).

(f) Each agency shall work closely with the appropriate State Historic Preservation Officer(s) in their preparation of State plans, determination of inventory needs, and collection of data relevant to general plans or specific undertakings in carrying out mutual cultural resource responsibilities.

(g) Each agency shall, to the maximum extent possible, use existing historic structures for administrative purposes in compliance with Public Buildings Cooperative Use Act of 1976 and Executive Order 12072, ''Federal Space Management''.

(h) Each agency should consult with Native American traditional religious leaders or their representatives and other native leaders in the development and implementation of cultural resource programs which may affect their religious customs and practices.

§ 3100.46 Responsibilities of the Department of Agriculture.

(a) Within the Department, the responsibility for the protection of the cultural environment is assigned to the Office of Environmental Quality (OEQ). The Office is responsible for reviewing the development and implementation of agency procedures and insuring Departmental commitment to cultural resource goals.

(b) The Director of the OEQ is the Secretary's Designee to the ACHP.

(c) In order to carry out cultural resource responsibilities, there will be professional expertise within the OEQ to advise agencies, aid the Department in meeting its cultural resource management goals, and to insure that all Departmental and agency undertakings comply with applicable cultural resource protection legislation and regulations.

(d) The OEQ will be involved in individual compliance cases only where resolution cannot be reached at the agency level. Prior to the decision to refer a matter to the full Council of the

ACHP, the OEQ will review the case and make recommendations to the Secretary regarding the position of the Department. The agency also will consult with the OEQ before reaching a final decision in response to the Council's comments. Copies of correspondence relevant to compliance with Section 106 shall be made available to OEQ.

CHAPTER XXXII—OFFICE OF PROCUREMENT AND PROPERTY MANAGEMENT, DEPARTMENT OF AGRICULTURE

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PART 3200—DEPARTMENT OF AGRICULTURE GUIDELINES FOR THE ACQUISITION AND TRANSFER OF EXCESS PERSONAL PROPERTY

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AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 2206a.

SOURCE: 63 FR 57234, Oct. 27, 1998, unless otherwise noted.

§ 3200.1 Purpose.

This Part sets forth the procedures to be utilized by Department of Agriculture (USDA) in the acquisition and transfer of excess property to the 1890 Land Grant Institutions (including Tuskegee University), 1994 Land Grant Institutions, and the Hispanic-Serving Institutions in support of research, educational, technical, and scientific activities or for related programs as authorized by 7 U.S.C. 2206a. Title to the personal property shall pass to the institution.

§ 3200.2 Eligibility.

Institutions that are eligible to receive Federal excess personal property pursuant to the provisions of this part are the 1890 Land Grant Institutions (including Tuskegee University), 1994 Land Grant Institutions, and the Hispanic-Serving Institutions conducting research, educational, technical, and scientific activities or related programs.

§ 3200.3 Definitions.

(a) *1890 Land grant institutions*—any college or university eligible to receive funds under the Act of August 30, 1890 (7 U.S.C. 321 et.seq.), including Tuskegee University.

(b) *1994 Land grant institutions*—any of the tribal colleges or universities as defined in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note).

(c) *Hispanic-serving institutions*—institutions of higher education as defined in section 316(b) of the Higher Education Act of 1965 (20 U.S.C. 1059c (b)).

(d) *Property management officer*—is an authorized USDA or institution official responsible for property management.

(e) *Screener*—is an individual designated by an eligible institution and authorized by the General Services Administration (GSA) to visit property sites for the purpose of inspecting personal property intended for use by the institution.

(f) *Excess personal property*—is any personal property under the control of a Federal agency that is no longer needed.

(g) *Cannibalization*—is the dismantling of equipment for parts to repair or enhance other equipment.

§ 3200.4 Procedures.

(a) To receive information concerning the availability of Federal excess personal property, an eligible institution's property management officer may contact their regional GSA, Area Utilization Officer. For information on USDA excess personal property, visit the USDA Web site at *http://www.nfc.usda.gov/propexcs*. USDA excess property will first be screened by USDA agencies through the Departmental Excess Personal Property Coordinator (DEPPC) using the Departmental Property Management Information System.

(b) Excess property selected by screeners of eligible institutions should be inspected whenever possible, or the holding agency should be contacted to verify the condition of the items, because interpretation of condition codes varies among Federal agencies.

(c) If the condition of the item is acceptable, the institution should ''freeze'' (reserve) items by calling the appropriate GSA office or USDA Departmental Excess Personal Property Coordinator (DEPPC). Since GSA may have several ''freezes'' on a piece of equipment, it is critical that the paperwork be submitted as soon as possible. Further, while transfers of excess personal property normally will be approved by GSA on a first-come-first-serve basis, consideration will be given

to such factors as national defense requirements, emergency needs, preclusion of new procurement, energy conservation, equitable distribution, and retention of title in the Government.

(d) Eligible institutions may submit property requests by mail or fax on a Standard Form 122, ''Transfer Order Excess Personal Property''.

(e) The SF–122 should be signed by the eligible institution's property management officer or authorized designee.

(1) The following information should also be provided:

(i) Date prepared.

(ii) GSA/DEPPC address.

(iii) Ordering Agency and address.

(iv) Holding Agency and address.

(v) Name and address of Institution.

(vi) Location of property.

(vii) Shipping instruction (including institution contact person and phone number).

(viii) Complete description of property including original acquisition cost, serial number, condition code, and quantity.

(2) This statement needs to be added following the property description:

''The property requested hereon is certified to be used in support of research, educational, technical, and scientific activities or for related programs. This transfer is requested pursuant to the provisions of Section 923 Pub. L. 104–127 (7 U.S.C. 2206a). Also, in accordance with these provisions USDA authorizes transfer of title of this property to the college/university/institution.''

(f) The SF–122 should be forwarded to USDA for approval and signature by an authorized USDA official. As confirmation of approval, the eligible institution's property management officer will receive a stamped copy of the SF–122. If the request is disapproved, it will be returned to the property management officer of the eligible institution with an appropriate explanation. All USDA approved SF–122's will be forwarded to DEPPC or the appropriate GSA office for final approval.

(g) Once the excess personal property is physically received, the institution is required to immediately return a copy of the SF–122 to USDA indicating receipt of requested items. Cancellations should also be reported to USDA.

NOTE: USDA shall send an informational copy of all SF–122's transactions to GSA.

[63 FR 57234, Oct. 27, 1998, as amended at 68 FR 75107, Dec. 30, 2003]

§ 3200.5 Dollar limitation.

There is no dollar limitation on excess personal property obtained under these procedures.

§ 3200.6 Restrictions.

(a) Property in the following Federal Supply Groups are prohibited from transfer.

INELIGIBLE FEDERAL SUPPLY CODE GROUPS

FSC Group	Name
10	Weapons.
11	Nuclear ordinance.
13	Ammunition and explosives.
14	Guided missiles.
18	Space vehicles.

(b) The property in the FSC's listed below are discouraged from transfer and not approved on a routine basis. However, Institutions may request items in these FSC groups, but all requests will be referred to the Director, Office of Procurement and Property Management for consideration and approval:

FSC Group	Name
15	Aircraft and airframe structural components.
16	Aircraft components and accessories.
17	Aircraft launching, landing and ground handling equipment.
20	Ship and marine equipment.

(c) Excess personal property may be transferred for the purpose of cannibalization, provided the eligible institution submits a supporting statement which clearly indicates that cannibalizing the requested property for secondary use has greater benefit than utilization of the item in its existing form.

(d) Use of the procedures in this part for the purpose of stockpiling of excess personal property for future cannibalization is prohibited. Transfer requests for the purpose of cannibalization will be considered, but are normally subordinate to requests for complete items.

[63 FR 57234, Oct. 27, 1998, as amended at 68 FR 75107, Dec. 30, 2003]

§ 3200.7 Title.

Title to excess personal property obtained under Part 3200 will automatically pass to the 1890 Land Grant Institutions (including Tuskegee University), 1994 Land Grant Institutions, and the Hispanic-Serving Institutions once USDA receives the SF–122 indicating that the institution has received the property. Note: When competing Federal claims are made for particular items of excess personal property held by agencies other than USDA, with or without payment of reimbursement, GSA will give preference to the Federal agency that will retain title in the Government.

§ 3200.8 Costs.

Excess personal property obtained under this part is provided free of charge. However, the institution must pay all costs associated with packaging and transportation. The institution should specify the method of shipment on the SF–122.

§ 3200.9 Accountability and record keeping.

USDA requires that Federal excess personal property received by an eligible institution pursuant to this part shall be placed into use for a research, educational, technical, or scientific activity, or for a related purpose, within 1 year of receipt of the property, and used for such purpose for at least 1 year thereafter. The institution's property management officer must establish and maintain accountable records identifying the property's location, description, utilization and value. To ensure that the excess personal property is being used for its intended purpose under this part, compliance reviews will be conducted by an authorized representative of USDA. The review will include site visit inspections of the property and the accountability and record keeping systems.

§ 3200.10 Disposal.

Once the requirements in § 3200.9 are met for retention and use of property by the Institution and title is transferred, Federal excess personal property (FEPP) no longer needed by an Institution will be disposed of in accordance with the Institution's disposal practices. Regardless of ownership, FEPP must never be disposed of in any manner which is detrimental or dangerous to public health or safety. Also, any costs incurred during the disposal process are the responsibility of the Institution.

[68 FR 75108, Dec. 30, 2003]

§ 3200.11 Liabilities and losses.

USDA assumes no liability with respect to accidents, bodily injury, illness, or any other damages or loss related to excess personal property transferred under this part.

PART 3201—GUIDELINES FOR DESIGNATING BIOBASED PRODUCTS FOR FEDERAL PROCUREMENT

Subpart A—General

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3201.45 Food cleaners.
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3201.47 Gear lubricants.
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3201.51 Parts wash solutions.
3201.52 Disposable tableware.
3201.53 Expanded polystyrene foam recycling products.
3201.54 Heat transfer fluids.
3201.55 Ink removers and cleaners.
3201.56 Mulch and compost materials.
3201.57 Multipurpose lubricants.
3201.58 [Reserved]
3201.59 Topical pain relief products.
3201.60 Turbine drip oils.
3201.61 Animal repellents.
3201.62 Bath products.
3201.63 Bioremediation materials.
3201.64 Compost activators and accelerators.
3201.65 Concrete and asphalt cleaners.
3201.66 Cuts, burns, and abrasions ointments.
3201.67 Dishwashing products.
3201.68 Erosion control materials.
3201.69 Floor cleaners and protectors.
3201.70 Hair care products.
3201.71 Interior paints and coatings.
3201.72 Oven and grill cleaners.
3201.73 Slide way lubricants.
3201.74 Thermal shipping containers.

SOURCE: 70 FR 1809, Jan. 11, 2005, unless otherwise noted.

AUTHORITY: 7 U.S.C. 8102.

Subpart A—General

SOURCE: 70 FR 1809, Jan. 11, 2005. Redesignated at 76 FR 53632, Aug. 29, 2011.

§ 3201.1 Purpose and scope.

(a) *Purpose*. The purpose of the guidelines in this part is to assist procuring agencies in complying with the requirements of section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA), Public Law 107–171, 116 Stat. 476 (7 U.S.C. 8102), as amended by the Food, Conservation, and Energy Act of 2008, Public Law 110–246, 122 Stat. 1651, as they apply to the procurement of the products designated in subpart B of this part.

(b) *Scope*. The guidelines in this part designate items that are or can be produced with biobased products and whose procurement by procuring agencies will carry out the objectives of section 9002.

[76 FR 6321, Feb. 4, 2011]

§ 3201.2 Definitions.

These definitions apply to this part:

Agricultural materials. Agricultural-based, including plant, animal, and marine materials, raw materials or residues used in the manufacture of commercial or industrial, nonfood/nonfeed products.

ASTM International. ASTM International, a nonprofit organization organized in 1898, is one of the largest voluntary standards development organizations in the world with about 30,000 members in over 100 different countries. ASTM provides a forum for the development and publication of voluntary consensus standards for materials, products, systems, and services.

BEES. An acronym for ''Building for Environmental and Economic Sustainability,'' an analytic tool used to determine the environmental and health benefits and life cycle costs of items, developed by the U.S. Department of Commerce National Institute of Standards and Technology, with support from the U.S. Environmental Protection Agency, Office of Pollution Prevention and Toxics (BEES 3.0, Building for Environmental and Economic Sustainability Technical Manual and User Guide, NISTIR 6916, National Institute of Standards and Technology, U.S. Department of Commerce, October 2002). Also, see *http://www.bfrl.nist.gov/oae/software/bees_USDA.html* for a discussion of how biobased feedstocks are addressed in the BEES Analysis.

Biobased components. Any intermediary biobased materials or parts that, in combination with other components, are functional parts of the biobased product.

Biobased content. Biobased content shall be determined based on the amount of biobased carbon in the material or product as a percent of weight

(mass) of the total organic carbon in the material or product.

Biobased product. A product determined by USDA to be a commercial or industrial product (other than food or feed) that is composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials.

Biodegradability. A quantitative measure of the extent to which a material is capable of being decomposed by biological agents, especially bacteria.

Biological products. Products derived from living materials other than agricultural or forestry materials.

Designated item. A generic grouping of biobased products identified in subpart B that is eligible for the procurement preference established under section 9002 of FSRIA.

Diluent. A substance used to diminish the strength, scent, or other basic property of a substance.

Engineered wood products. Products produced with a combination of wood, food fibers and adhesives.

EPA-designated recovered content product. A product, designated under the Resource Conservation and Recovery Act, that is subject to Federal procurement as specified in section 6002 of the Solid Waste Disposal Act (42 U.S.C. 6962), whereby Federal agencies must give preferred procurement to those products composed of the highest percentage of recovered materials practicable, subject to availability, cost, and performance.

FCEA. The Food, Conservation and Energy Act of 2008, Pub. L. 110–246.

Federal agency. Any executive agency or independent establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, the Architect of the Capitol, and any activities under the Architect's direction).

Filler. A substance added to a product to increase the bulk, weight, viscosity, strength, or other property.

Forest thinnings. Refers to woody materials removed from a dense forest, primarily to improve growth, enhance forest health, or recover potential mortality. (To recover potential mortality means to remove trees that are going to die in the near future.)

Forestry materials. Materials derived from the practice of planting and caring for forests and the management of growing timber. Such materials must come from short rotation woody crops (less than 10 years old), sustainably managed forests, wood residues, or forest thinnings.

Formulated product. A product that is prepared or mixed with other ingredients, according to a specified formula and includes more than one ingredient.

FSRIA. The Farm Security and Rural Investment Act of 2002, Public Law 107–171, 116 Stat. 134 (7 U.S.C. 8102).

Functional unit. A measure of product technical performance that provides a common reference to which all environmental and economic impacts of the product are scaled. This reference is necessary to ensure comparability of performance results across competing products. Comparability of results is critical when competing product alternatives are being assessed to ensure that such comparisons are made on a common basis. For example, the functional unit for competing interior paint products may be defined as ''protecting one square foot of interior wall surface for 50 years.''

Ingredient. A component; part of a compound or mixture; may be active or inactive.

ISO. The International Organization for Standardization, a network of national standards institutes from 145 countries working in partnership with international organizations, governments, industries, business, and consumer representatives.

Neat product. A product that is made of only one ingredient and is not diluted or mixed with other substances.

Procuring agency means any Federal agency that is using Federal funds for procurement or any person contracting with any Federal agency with respect to work performed under the contract.

Relative price. The price of a product as compared to the price of other products on the market that have similar performance characteristics.

Residues. That which remains after a part is taken, separated, removed, or designated; a remnant; a remainder; and, for this purpose, is from agricultural materials, biological products, or forestry materials.

Secretary. The Secretary of the United States Department of Agriculture.

Small and emerging private business enterprise. Any private business which will employ 50 or fewer new employees and has less than $1 million in projected annual gross revenues.

Sustainably managed forests. Refers to the practice of a land stewardship ethic that integrates the reforestation, management, growing, nurturing, and harvesting of trees for useful products while conserving soil and improving air and water quality, wildlife, fish habitat, and aesthetics.

[70 FR 1809, Jan. 11, 2005, as amended at 71 FR 13704, Mar. 16, 2006; 71 FR 42575, July 27, 2006; 76 FR 6321, Feb. 4, 2011]

§ 3201.3 Applicability to Federal procurements.

(a) *Applicability to procurement actions*. The guidelines in this part apply to all procurement actions by procuring agencies involving items designated by USDA in this part, where the procuring agency purchases $10,000 or more worth of one of these items during the course of a fiscal year, or where the quantity of such items or of functionally equivalent items purchased during the preceding fiscal year was $10,000 or more. The $10,000 threshold applies to Federal agencies as a whole rather than to agency subgroups such as regional offices or subagencies of a larger Federal department or agency.

(b) *Exception for procurements subject to EPA regulations under the Solid Waste Disposal Act*. For any procurement by any procuring agency that is subject to regulations of the Administrator of the Environmental Protection Agency under section 6002 of the Solid Waste Disposal Act as amended by the Resource Conservation Act of 1976 (40 CFR part 247), these guidelines do not apply to the extent that the requirements of this part are inconsistent with such regulations.

(c) *Procuring products composed of the highest percentage of biobased content*. Section 9002(a)(2) requires procuring agencies to procure designated items composed of the highest percentage of biobased content practicable or such products that comply with the regulations issued under section 103 of Public Law 100–556 (42 U.S.C. 6914b–1), consistent with maintaining a satisfactory level of competition, considering these guidelines. Procuring agencies may decide not to procure such products if they are not reasonably priced or readily available or do not meet specified or reasonable performance standards.

(d) This guideline does not apply to purchases of designated items that are unrelated to or incidental to Federal funding; *i.e.*, not the direct result of a contract or agreement with persons supplying items to a procuring agency or providing support services that include the supply or use of items.

(e) *Exemptions*. The following applications are exempt from the preferred procurement requirements of this part:

(1) Military equipment: Products or systems designed or procured for combat or combat-related missions.

(2) Spacecraft systems and launch support equipment.

[71 FR 42575, July 27, 2006, as amended at 73 FR 27953, May 14, 2008; 76 FR 6321, Feb. 4, 2011]

§ 3201.4 Procurement programs.

(a) *Integration into the Federal procurement framework*. The Office of Federal Procurement Policy, in cooperation with USDA, has the responsibility to coordinate this policy's implementation in the Federal procurement regulations. These guidelines are not intended to address full implementation of these requirements into the Federal procurement framework. This will be accomplished through revisions to the Federal Acquisition Regulation.

(b) *Federal agency preferred procurement programs*. (1) On or before January 11, 2006, each Federal agency shall develop a procurement program which will assure that items composed of biobased products will be purchased to the maximum extent practicable and which is consistent with applicable provisions of Federal procurement laws. Each procurement program shall contain:

(i) A preference program for purchasing designated items,

(ii) A promotion program to promote the preference program; and

(iii) Provisions for the annual review and monitoring of the effectiveness of the procurement program.

(2) In developing the preference program, Federal agencies shall adopt one of the following options, or a substantially equivalent alternative, as part of the procurement program:

(i) A policy of awarding contracts to the vendor offering a designated item composed of the highest percentage of biobased product practicable except when such items:

(A) Are not available within a reasonable time;

(B) Fail to meet performance standards set forth in the applicable specifications, or the reasonable performance standards of the Federal agency; or

(C) Are available only at an unreasonable price.

(ii) A policy of setting minimum biobased products content specifications in such a way as to assure that the biobased products content required is consistent with section 9002 and the requirements of the guidelines in this part except when such items:

(A) Are not available within a reasonable time;

(B) Fail to meet performance standards for the use to which they will be put, or the reasonable performance standards of the Federal agency; or

(C) Are available only at an unreasonable price.

(3) In implementing the preference program, Federal agencies shall treat as eligible for the preference biobased products from ''designated countries,'' as that term is defined in section 25.003 of the Federal Acquisition Regulation, provided that those products otherwise meet all requirements for participation in the preference program.

(c) *Procurement specifications.* After the publication date of each designated item, Federal agencies that have the responsibility for drafting or reviewing specifications for items procured by Federal agencies shall ensure within a specified time frame that their specifications require the use of designated items composed of biobased products, consistent with the guidelines in this part. USDA will specify the allowable time frame in each designation rule. The biobased content of a designated item may vary considerably from product to product based on the mix of ingredients used in its manufacture. In procuring designated items, the percentage of biobased product content should be maximized, consistent with achieving the desired performance for the product.

[70 FR 1809, Jan. 11, 2005, as amended at 71 FR 42575, July 27, 2006; 76 FR 6322, Feb. 4, 2011]

§ 3201.5 Item designation.

(a) *Procedure.* Designated items are listed in subpart B. In designating items, USDA will designate items composed of generic groupings of specific products and will identify the minimum biobased content for each listed item. As items are designated for procurement preference, they will be added to subpart B. Items are generic groupings of specific products. Products are specific products offered for sale by a manufacturer or vendor. Although manufacturers and vendors may submit recommendations to USDA for future item designations at any time, USDA does not have a formal process for such submissions or for responding to such submissions.

(b) *Considerations.* In designating items, USDA will consider the availability of such items and the economic and technological feasibility of using such items, including life cycle costs. USDA will gather information on individual products within an item and extrapolate that product information to the item level for consideration in designating items. In considering these factors, USDA will use life cycle cost information only from tests using the BEES analytical method.

(c) *Exclusions.* (1) Motor vehicle fuels, heating oil, and electricity are excluded by statute from this program.

(2) USDA additionally will not designate items for preferred procurement that are determined to have mature markets. USDA will determine mature market status by whether the item had significant national market penetration in 1972.

[70 FR 1809, Jan. 11, 2005, as amended at 76 FR 6322, Feb. 4, 2011]

§ 3201.6 Providing product information to Federal agencies.

(a) *Informational Web site.* An informational USDA Web site implementing section 9002 can be found at: *http://www.biopreferred.gov.* USDA will maintain a voluntary Web-based information site for manufacturers and vendors of designated items produced with biobased products and Federal agencies to exchange product information. This Web site will provide information as to the availability, relative price, biobased content, performance and environmental and public health benefits of the designated items. USDA encourages manufacturers and vendors to provide product, business contacts, and product information for designated items. Instructions for posting information are found on the Web site itself. USDA also encourages Federal agencies to utilize this Web site to obtain current information on designated items, contact information on manufacturers and vendors, and access to information on product characteristics relevant to procurement decisions. In addition to any information provided on the Web site, manufacturers and vendors are expected to provide relevant information to Federal agencies, upon request, with respect to product characteristics, including verification of such characteristics if requested.

(b) *Advertising, labeling and marketing claims.* Manufacturers and vendors are reminded that their advertising, labeling, and other marketing claims, including claims regarding health and environmental benefits of the product, must conform to the Federal Trade Commission ''Guides for the Use of Environmental Marketing Claims,'' 16 CFR part 260 (*see: http://www.access.gpo.gov/nara/cfr/waisidx_08/16cfr260_08.html*). For further requirements, click on the link to the ''Guidelines for Marketing the BioPreferred Program.''

[70 FR 1809, Jan. 11, 2005, as amended at 76 FR 6322, Feb. 4, 2011]

§ 3201.7 Determining biobased content.

(a) *Certification requirements.* For any product offered for preferred procurement, manufacturers and vendors must certify that the product meets the biobased content requirements for the designated item within which the product falls. Paragraph (c) of this section addresses how to determine biobased content. Upon request, manufacturers and vendors must provide USDA and Federal agencies information to verify biobased content for products certified to qualify for preferred procurement.

(b) *Minimum biobased content.* Unless specified otherwise in the designation of a particular item, the minimum biobased content requirements in a specific item designation refer to the biobased portion of the product, and not the entire product.

(c) *Determining biobased content.* Verification of biobased content must be based on third party ASTM/ISO compliant test facility testing using the ASTM International Radioisotope Standard Method D 6866. ASTM International Radioisotope Standard Method D 6866 determines biobased content based on the amount of biobased carbon in the material or product as percent of the weight (mass) of the total organic carbon in the material or product.

(d) *Products with the same formulation.* In the case of products that are essentially the same formulation, but marketed under a variety of brand names, biobased content test data need not be brand-name specific.

§ 3201.8 Determining life cycle costs, environmental and health benefits, and performance.

(a) *Providing information on life cycle costs and environmental and health benefits.* Federal agencies may not require manufacturers or vendors of biobased products to provide to procuring agencies more data than would be required to be provided by other manufacturers or vendors offering products for sale to a procuring agency, other than data confirming the biobased contents of the products, as a condition of the purchase of biobased products from the manufacturer or vendor.

(b) *Performance test information.* In assessing performance of qualifying biobased products, USDA requires that procuring agencies rely on results of performance tests using applicable

ASTM, ISO, Federal or military specifications, or other similarly authoritative industry test standards. Such testing must be conducted by an ASTM/ISO compliant laboratory. The procuring official will decide whether performance data must be brand-name specific in the case of products that are essentially of the same formulation.

(c) *Biodegradability information.* If biodegradability is claimed by the manufacturer of a qualifying biobased product as a characteristic of that product, USDA requires that, if requested by procuring agencies, these claims be verified using the appropriate, product-specific ASTM biodegradability standard(s). Such testing must be conducted by an ASTM/ISO-compliant laboratory. The procuring official will decide whether biodegradability data must be brand-name specific in the case of products that are essentially of the same formulation. ASTM biodegradability standards include:

(1) D5338 ''Standard Test Method for Determining Aerobic Biodegradation of Plastic Materials Under Controlled Composting Conditions'';

(2) D5864 ''Standard Test Method for Determining the Aerobic Aquatic Biodegradation of Lubricants or Their Components'';

(3) D6006 ''Standard Guide for Assessing Biodegradability of Hydraulic Fluids'';

(4) D6400 ''Standard Specification for Compostable Plastics'' and the standards cited therein;

(5) D6139 ''Standard Test Method for Determining the Aerobic Aquatic Biodegradation of Lubricants or Their Components Using the Gledhill Shake Flask'';

(6) D6868 ''Standard Specification for Biodegradable Plastics Used as Coatings on Paper and Other Compostable Substrates''; and

(7) D7081 ''Standard Specification for Non-Floating Biodegradable Plastics in the Marine Environment.''

[70 FR 1809, Jan. 11, 2005, as amended at 71 FR 13704, Mar. 16, 2006; 71 FR 42575, July 27, 2006; 76 FR 6322, Feb. 4, 2011]

§ 3201.9 Funding for testing.

(a) *USDA use of funds for biobased content and BEES testing.* USDA will use funds to support testing for biobased content and conduct of BEES testing for products within items USDA has selected to designate for preferred procurement through early regulatory action. USDA initially will focus on gathering the necessary test information on a sufficient number of products within an item (generic grouping of products) to support regulations to be promulgated to designate an item or items for preferred procurement under this program. USDA may accept cost sharing for such testing to the extent consistent with USDA product testing decisions. During this period USDA will not consider cost sharing in deciding what products to test. When USDA has concluded that a critical mass of items have been designated, USDA will exercise its discretion, in accordance with the competitive procedures outlined in paragraph (b) of this section, to allocate a portion of the available USDA testing funds to give priority to testing of products for which private sector firms provide cost sharing for the testing.

(b) *Competitive program for cost sharing for determining life cycle costs, environmental and health benefits, and performance.*

(1) Subject to the availability of funds and paragraph (a) of this section, USDA will announce annually the solicitation of proposals for cost sharing for life cycle costs, environmental and health benefits, and performance testing of biobased products in accordance with the standards set forth in § 3201.8 to carry out this program. Information regarding the submission of proposals for cost sharing also will be posted on the USDA informational Web site, *http://www.biopreferred.gov.*

(2) Proposals will be evaluated and assigned a priority rating. Priority ratings will be based on the following criteria:

(i) A maximum of 25 points will be awarded a proposal based on the market readiness;

(ii) A maximum of 20 points will be awarded a proposal based on the potential size of the market for that product in Federal agencies;

(iii) A maximum of 25 points will be awarded based on the financial need for

assistance of the manufacturer or vendor;

(iv) A maximum of 20 points will be awarded a proposal based on the product's prospective competitiveness in the market place;

(v) A maximum of 10 points will be awarded a proposal based on its likely benefit to the environment.

(3) Cost-sharing proposals will be considered first for high priority products of small and emerging private business enterprises. If funds remain to support further testing, USDA will consider cost sharing proposals for products of all other producers of biobased items as well as the remaining proposals for products of small and emerging private business enterprises. Proposals will be selected based on priority rating until available funds for the fiscal year are committed.

(4)(i) For products selected for life cycle costs and environmental and health benefits testing under this paragraph, USDA could provide up to 50 percent of the cost of determining the life cycle costs and environmental and health effects, up to a maximum of $5,000 of assistance per product.

(ii) For products selected for performance testing under this paragraph, USDA could provide up to 50 percent of the cost for performance testing, up to $100,000 of assistance per product for up to two performance tests (measures of performance) per product.

(5) For selected proposals, USDA will enter into agreements with and provide the funds directly to the testing entities.

(6) Proposals submitted in one fiscal year, but not selected for cost sharing of testing in that year, may be resubmitted to be considered for cost sharing in the following year.

[70 FR 1809, Jan. 11, 2005, as amended at 76 FR 6322, Feb. 4, 2011. Redesignated and amended at 76 FR 53632, Aug. 29, 2011]

Subpart B—Designated Items

SOURCE: 71 FR 13705, Mar. 16, 2006. Redesignated at 76 FR 53632, Aug. 29, 2011.

§ 3201.10 Mobile equipment hydraulic fluids.

(a) *Definition*. Hydraulic fluids formulated for general use in non-stationary equipment, such as tractors, end loaders, or backhoes.

(b) *Minimum biobased content*. The minimum biobased content is 44 percent and shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference effective date*. No later than March 16, 2007, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased mobile equipment hydraulic fluids. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased mobile equipment hydraulic fluids.

(d) *Determining overlap with an EPA-designated recovered content product*. Qualifying biobased products that fall under this item may, in some cases, overlap with the following EPA-designated recovered content product: Re-refined Lubricating Oils. USDA is requesting that manufacturers of these qualifying biobased products provide information for the BioPreferred Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains petroleum-based ingredients, re-refined oil, and/or any other recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated lubricating oils containing re-refined oil and which product should be afforded the preference in purchasing.

NOTE TO PARAGRAPH (d): Mobile equipment hydraulic fluid products within this designated item can compete with similar lubricating oils containing re-refined oil. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated lubricating oils containing re-refined oil as items for which Federal agencies must give preference

in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.11.

[71 FR 13705, Mar. 16, 2006, as amended at 73 FR 27953, May 14, 2008]

§ 3201.11 Roof coatings.

(a) *Definition*. Coatings formulated for use in commercial roof deck systems to provide a single-coat monolith coating system.

(b) *Minimum biobased content*. The minimum biobased content is 20 percent and shall be based on the entire product.

(c) *Preference effective date*. No later than March 16, 2007, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased roof coatings. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased roof coatings.

(d) *Determining overlap with an EPA-designated recovered content product*. Qualifying biobased products that fall under this item may, in some cases, overlap with the following EPA-designated recovered content product: Roofing Materials. USDA is requesting that manufacturers of these qualifying biobased products provide information for the BioPreferred Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any type of recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with recovered content roofing materials and which product should be afforded the preference in purchasing.

NOTE TO PARAGRAPH (d): Roof coating products within this designated item can compete with similar roofing material products. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated roofing material containing recycled material as items for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.12.

[71 FR 13705, Mar. 16, 2006, as amended at 73 FR 27953, May 14, 2008]

§ 3201.12 Water tank coatings.

(a) *Definition*. Coatings formulated for use in potable water storage systems.

(b) *Minimum biobased content*. The minimum biobased content is 59 percent and shall be based on the entire product.

(c) *Preference effective date*. No later than November 20, 2007, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased water tank coatings. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased water tank coatings.

[71 FR 13705, Mar. 16, 2006, as amended at 71 FR 67032, Nov. 20, 2006]

§ 3201.13 Diesel fuel additives.

(a) *Definition*. (1) Any substance, other than one composed solely of carbon and/or hydrogen, that is intentionally added to diesel fuel (including any added to a motor vehicle's fuel system) and that is not intentionally removed prior to sale or use.

(2) Neat biodiesel, also referred to as B100, when used as an additive. Diesel fuel additive does not mean neat biodiesel when used as a fuel or blended biodiesel fuel (e.g., B20).

(b) *Minimum biobased content*. The minimum biobased content is 90 percent and shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference effective date*. No later than March 16, 2007, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased diesel fuel additives. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that

the relevant specifications require the use of biobased diesel fuel additives.

[71 FR 13705, Mar. 16, 2006, as amended at 73 FR 27953, May 14, 2008]

§ 3201.14 Penetrating lubricants.

(a) *Definition*. Products formulated to provide light lubrication and corrosion resistance in close tolerant internal and external applications including frozen nuts and bolts, power tools, gears, valves, chains, and cables.

(b) *Minimum biobased content*. The minimum biobased content is 68 percent and shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference effective date*. No later than March 16, 2007, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased penetrating lubricants. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased penetrating lubricants.

(d) *Determining overlap with an EPA-designated recovered content product*. Qualifying biobased products that fall under this item may, in some cases, overlap with the following EPA-designated recovered content product: Re-refined Lubricating Oils. USDA is requesting that manufacturers of these qualifying biobased products provide information for the BioPreferred Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains petroleum-based ingredients, re-refined oil, and/or any other recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated lubricating oils containing re-refined oil and which product should be afforded the preference in purchasing.

NOTE TO PARAGRAPH (d): Penetrating lubricant products within this designated item can compete with similar re-refined lubricating oil products. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated re-refined lubricating oils containing recycled material as items for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.11.

[71 FR 13705, Mar. 16, 2006, as amended at 73 FR 27953, May 14, 2008]

§ 3201.15 Bedding, bed linens, and towels.

(a) *Definition*. (1) Bedding is that group of woven cloth products used as coverings on a bed. Bedding includes products such as blankets, bedspreads, comforters, and quilts.

(2) Bed linens are woven cloth sheets and pillowcases used in bedding.

(3) Towels are woven cloth products used primarily for drying and wiping.

(b) *Minimum biobased content*. The minimum biobased content is 12 percent and shall be based on the amount of qualifying biobased carbon in the finished product as a percent of the weight (mass) of the total organic carbon in the finished product. The 12 percent biobased content must be of a qualifying biobased feedstock. Cotton, wool, linen, and silk are not qualifying biobased feedstocks for the purpose of determining the biobased content of bedding, bed linens, and towels.

(c) *Preference effective date*. No later than November 20, 2007, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased bedding, bed linens, and towels. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased bedding, bed linens, and towels.

[71 FR 13705, Mar. 16, 2006, as amended at 71 FR 67032, Nov. 20, 2006]

§ 3201.16 Adhesive and mastic removers.

(a) *Definition*. Solvent products formulated for use in removing asbestos, carpet, and tile mastics as well as adhesive materials, including glue, tape, and gum, from various surface types.

(b) *Minimum biobased content*. The preferred procurement product must

have a biobased content of at least 58 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date*. No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased adhesive and mastic removers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased adhesive and mastic removers.

[73 FR 27953, May 14, 2008]

§ 3201.17 Plastic insulating foam for residential and commercial construction.

(a) *Definition*. Spray-in-place plastic foam products designed to provide a sealed thermal barrier for residential or commercial construction applications.

(b) *Minimum biobased content*. The preferred procurement product must have a biobased content of at least 7 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date*. No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased plastic insulating foam for residential and commercial construction. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased plastic insulating foam for residential and commercial construction.

(d) *Determining overlap with an EPA-designated recovered content product*. Qualifying biobased products that fall under this item may, in some cases, overlap with the EPA-designated recovered content product: Building Insulation. USDA is requesting that manufacturers of these qualifying biobased products provide information on the BioPreferred Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated building insulation and which product should be afforded the preference in purchasing.

NOTE TO PARAGRAPH (d): Biobased insulating products within this designated item can compete with similar insulating products with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated building insulation containing recovered materials as items for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.12. EPA provides recovered materials content recommendations for building insulation products in the Recovered Materials Advisory Notice (RMAN) published for these products. The RMAN recommendations can be found by accessing EPA's Web site *http://www.epa.gov/epaoswer/non-hw/procure/products.htm* and then clicking on the appropriate product name.

[73 FR 27953, May 14, 2008]

§ 3201.18 Hand cleaners and sanitizers.

(a) *Definitions*. (1) *Hand cleaners*. Products formulated for personal care use in removing a variety of different soils, greases, and similar substances from human hands with or without the use of water.

(2) *Hand sanitizers*. Products formulated for personal care use in removing bacteria from human hands with or without the use of water. Personal care products that are formulated for use in removing a variety of different soils, greases and similar substances and bacteria from human hands with or without the use of water are classified as hand sanitizers for the purposes of this rule.

(b) *Minimum biobased content*. The minimum biobased content requirement for all hand cleaners and/or sanitizers shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of

the total organic carbon in the finished product. The applicable minimum biobased contents are:

(1) Hand cleaners—64 percent.

(2) Hand sanitizers (including hand cleaners and sanitizers)—73 percent.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased hand cleaners and sanitizers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased hand cleaners and sanitizers.

[73 FR 27953, May 14, 2008]

§ 3201.19 Composite panels.

(a) *Definitions.* (1) *Plastic lumber composite panels.* Engineered products suitable for non-structural outdoor needs such as exterior signs, trash can holders, and dimensional letters.

(2) *Acoustical composite panels.* Engineered products designed for use as structural and sound deadening material suitable for office partitions and doors.

(3) *Interior panels.* Engineered products designed specifically for interior applications and providing a surface that is impact-, scratch-, and wear-resistant and that does not absorb or retain moisture.

(4) *Structural interior panels.* Engineered products designed for use in structural construction applications, including cabinetry, casework, paneling, and decorative panels.

(5) *Structural wall panels.* Engineered products designed for use in structural walls, curtain walls, floors and flat roofs in commercial buildings.

(b) *Minimum biobased content.* The minimum biobased content requirement for all composite panels shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product. The applicable minimum biobased contents are:

(1) Plastic lumber composite panels—23 percent.

(2) Acoustical composite panels—37 percent.

(3) Interior panels—55 percent.

(4) Structural interior panels—89 percent.

(5) Structural wall panels—94 percent.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased composite panels. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased composite panels.

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying biobased products that fall under this item may, in some cases, overlap with the following EPA-designated recovered content products: Laminated Paperboard and Structural Fiberboard; Shower and Restroom Dividers; and Signage. USDA is requesting that manufacturers of these qualifying biobased products provide information on the BioPreferred Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated laminated paperboard, structural fiberboard, shower and restroom dividers, and signage, and which product should be afforded the preference in purchasing.

NOTE TO PARAGRAPH (d): Composite panel products within this designated item can be made with recycled material. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated laminated paperboard and structural fiberboard, shower and restroom dividers, and signage containing recovered materials as items for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.12. EPA provides recovered materials content recommendations for laminated paperboard and structural fiberboard, shower and restroom dividers, and signage in the Recovered Materials Advisory Notice (RMAN) published for

these products. The RMAN recommendations can be found by accessing EPA's Web site *http://www.epa.gov/epaoswer/non-hw/procure/products.htm* and then clicking on the appropriate product name.

[73 FR 27953, May 14, 2008]

§ 3201.20 Fluid-filled transformers.

(a) *Definition.* (1) *Synthetic ester-based fluid-filled transformers.* Electric power transformers that are designed to utilize a synthetic ester-based dielectric (non-conducting) fluid to provide insulating and cooling properties.

(2) *Vegetable oil-based fluid-filled transformers.* Electric power transformers that are designed to utilize a vegetable oil-based dielectric (non-conducting) fluid to provide insulating and cooling properties.

(b) *Minimum biobased content.* The minimum biobased content requirement for all fluid-filled transformers shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product. The applicable minimum biobased contents are:

(1) Synthetic ester-based fluid-filled transformers—66 percent.

(2) Vegetable oil-based fluid-filled transformers—95 percent.

(c) *Preference compliance date.* (1) *Synthetic ester-based fluid-filled transformers.* Determination of the compliance date for synthetic ester-based fluid-filled transformers is deferred until USDA identifies two or more manufacturers of synthetic ester-based fluid-filled transformers. At that time, USDA will publish a document in the FEDERAL REGISTER announcing that Federal agencies have one year from the date of publication to give procurement preference to biobased synthetic ester-based fluid-filled transformers.

(2) *Vegetable oil-based fluid-filled transformers.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased vegetable oil-based fluid-filled transformers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased vegetable oil-based fluid-filled transformers.

[73 FR 27953, May 14, 2008]

§ 3201.21 Disposable containers.

(a) *Definition.* Products designed to be used for temporary storage or transportation of materials including, but not limited to, food items.

(b) *Minimum biobased content.* The preferred procurement product must have a biobased content of at least 72 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Biodegradability.* At the time a manufacturer offers a product under this item for Federal purchase under the BioPreferred Program, the preferred procurement product must be capable of meeting the current version of ASTM D6400 if disposed of in a non-marine environment, the current version of ASTM D7081 if disposed of in a marine environment, or other appropriate and applicable standard for biodegradability.

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying biobased products that fall under this item may, in some cases, overlap with the EPA-designated recovered content product: Paper and Paper Products. USDA is requesting that manufacturers of these qualifying biobased products provide information on the BioPreferred Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated paper and paper products and which product should be afforded the preference in purchasing.

NOTE TO PARAGRAPH (d): Disposable containers can include boxes and packaging made from paper. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated paper and paper products containing recovered materials as items for

which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.10. EPA provides recovered materials content recommendations for paper and paper products in the Recovered Materials Advisory Notice (RMAN) published for these products. The RMAN recommendations can be found on EPA's Web site *http://www.epa.gov/epaoswer/non-hw/procure/products.htm* and then clicking on the appropriate product name.

(e) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased disposable containers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased disposable containers.

[73 FR 27953, May 14, 2008]

§ 3201.22 Fertilizers.

(a) *Definition.* Products formulated or processed to provide nutrients for plant growth and/or beneficial bacteria to convert nutrients into plant usable forms. Biobased fertilizers, which are likely to consist mostly of biobased components, may include both biobased and chemical components.

NOTE TO PARAGRAPH (a): Biobased fertilizers, as well as other fertilizers, may be made with recycled hazardous waste. Such fertilizers need to meet applicable land disposal restriction standards for any hazardous constituents they contain, as required under 40 CFR 266.20(d).

(b) *Minimum biobased content.* The preferred procurement product must have a biobased content of at least 71 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased fertilizers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased fertilizers.

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying biobased products that fall under this item may, in some cases, overlap with the EPA-designated recovered content product: Fertilizer. USDA is requesting that manufacturers of these qualifying biobased products provide information on the BioPreferred Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated fertilizer product and which product should be afforded the preference in purchasing.

NOTE TO PARAGRAPH (d): Fertilizers within this designated item can be made with recycled materials. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated fertilizers containing recovered materials as items for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.15. EPA provides recovered materials content recommendations for fertilizers in the Recovered Materials Advisory Notice (RMAN) published for these products. The RMAN recommendations can be found by accessing EPA's Web site *http://www.epa.gov/epaoswer/non-hw/procure/products.htm* and then clicking on the appropriate product name.

[73 FR 27953, May 14, 2008]

§ 3201.23 Sorbents.

(a) *Definition.* Materials formulated for use in the cleanup and bioremediation of oil and chemical spills, the disposal of liquid materials, or the prevention of leakage or leaching in maintenance applications, shop floors, and fuel storage areas.

(b) *Minimum biobased content.* The preferred procurement product must have a biobased content of at least 89 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the

weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased sorbents. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased sorbents.

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying biobased products that fall under this item may, in some cases, overlap with the EPA-designated recovered content product: Sorbents. USDA is requesting that manufacturers of these qualifying biobased products provide information on the BioPreferred Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated sorbents and which product should be afforded the preference in purchasing.

NOTE TO PARAGRAPH (d): Sorbents within this designated item can be made with recycled materials. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated sorbents containing recovered materials as items for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.17. EPA provides recovered materials content recommendations for sorbents in the Recovered Materials Advisory Notice (RMAN) published for these products. The RMAN recommendations can be found by accessing EPA's Web site *http://www.epa.gov/epaoswer/non-hw/procure/products.htm* and then clicking on the appropriate product name.

[73 FR 27953, May 14, 2008]

§ 3201.24 Graffiti and grease removers.

(a) *Definition.* Industrial solvent products formulated to remove automotive, industrial, or kitchen soils and oils, including grease, paint, and other coatings, from hard surfaces.

(b) *Minimum biobased content.* The preferred procurement product must have a biobased content of at least 34 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product. If the finished product is to be diluted before use, the biobased content of the remover must be determined before dilution.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying graffiti and grease removers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased graffiti and grease removers.

[73 FR 27953, May 14, 2008]

§ 3201.25 2-Cycle engine oils.

(a) *Definition.* Lubricants designed for use in 2-cycle engines to provide lubrication, decreased spark plug fouling, reduced deposit formation, and/or reduced engine wear.

(b) *Minimum biobased content.* The preferred procurement product must have a biobased content of at least 34 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased 2-cycle engine oils. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased 2-cycle engine oils.

[73 FR 27973, May 14, 2008]

§ 3201.26 Lip care products.

(a) *Definition*. Personal care products formulated to replenish the moisture and/or prevent drying of the lips.

(b) *Minimum biobased content*. The preferred procurement product must have a biobased content of at least 82 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date*. No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased lip care products. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased lip care products.

[73 FR 27973, May 14, 2008]

§ 3201.27 Films.

(a) *Definition*. (1) Products that are used in packaging, wrappings, linings, and other similar applications.

(2) Films for which preferred procurement applies are:

(i) *Semi-durable films*. Films that are designed to resist water, ammonia, and other compounds, to be re-used, and to not readily biodegrade. Products in this item are typically used in the production of bags and packaging materials.

(ii) *Non-durable films*. Films that are intended for single use for short-term storage or protection before being discarded. Non-durable films that are designed to have longer lives when used are included in this item.

(b) *Minimum biobased content*. The minimum biobased content for all films shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product. The applicable minimum biobased contents are:

(1) Semi-durable films—45 percent.

(2) Non-durable films—85 percent.

(c) *Preference compliance date*. No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased semi-durable and non-durable films. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased semi-durable and non-durable films.

(d) *Determining overlap with an EPA-designated recovered content product*. Qualifying products within the semi-durable films subcategory may overlap with the EPA-designated recovered content product: Plastic trash bags. USDA is requesting that manufacturers of these qualifying biobased products provide information for the BioPreferred Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated plastic trash bags and which product should be afforded the preference in purchasing.

NOTE TO PARAGRAPH (d): Biobased semi-durable film products within this designated item can compete with plastic trash bag products with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated plastic trash bags containing recovered materials as items for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.16. EPA provides recovered materials content recommendations for plastic trash bags in the May 1, 1995, Recovered Materials Advisory Notice (RMAN I). The RMAN recommendations can be found on EPA's Web site *http://www.epa.gov/epaoswer/non-hw/procure/products.htm* and then clicking on the appropriate product name.

[73 FR 27973, May 14, 2008]

§ 3201.28 Stationary equipment hydraulic fluids.

(a) *Definition*. Fluids formulated for use in stationary hydraulic equipment systems that have various mechanical parts, such as cylinders, pumps, valves, pistons, and gears, that are used for the

transmission of power (and also for lubrication and/or wear, rust, and oxidation protection).

(b) *Minimum biobased content.* The preferred procurement product must have a biobased content of at least 44 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased stationary equipment hydraulic fluids. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased stationary equipment hydraulic fluids.

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying biobased products that fall under this item may, in some cases, overlap with the EPA-designated recovered content product: Re-refined lubricating oils. USDA is requesting that manufacturers of these qualifying biobased products provide information for the BioPreferred Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated re-refined lubricating oils and which product should be afforded the preference in purchasing.

NOTE TO PARAGRAPH (d): Stationary equipment hydraulic fluid products within this designated item can compete with hydraulic fluid products with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated re-refined lubricating oils containing recovered materials as items for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.11. EPA provides recovered materials content recommendations for re-refined lubricating oils in the May 1, 1995, Recovered Materials Advisory Notice (RMAN I). The RMAN recommendations can be found by accessing EPA's Web site *http://www.epa.gov/epaoswer/non-hw/procure/products.htm* and then clicking on the appropriate product name.

[73 FR 27973, May 14, 2008]

§ 3201.29 Disposable cutlery.

(a) *Definition.* Hand-held, disposable utensils designed for one-time use in eating food.

(b) *Minimum biobased content.* The preferred procurement product must have a biobased content of at least 48 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased disposable cutlery. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased disposable cutlery.

[73 FR 27973, May 14, 2008]

§ 3201.30 Glass cleaners.

(a) *Definition.* Cleaning products designed specifically for use in cleaning glass surfaces, such as windows, mirrors, car windows, and computer monitors.

(b) *Minimum biobased content.* The preferred procurement product must have a biobased content of at least 49 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product. If the finished product is to be diluted before use, the biobased content of the cleaner must be determined before dilution.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased glass cleaners. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be

procured shall ensure that the relevant specifications require the use of biobased glass cleaners.

[73 FR 27973, May 14, 2008]

§ 3201.31 Greases.

(a) *Definitions.* (1) Lubricants composed of oils thickened to a semisolid or solid consistency using soaps, polymers or other solids, or other thickeners.

(2) Greases for which preferred procurement applies are:

(i) *Food grade greases.* Lubricants that are designed for use on food-processing equipment as a protective anti-rust film, as a release agent on gaskets or seals of tank closures, or on machine parts and equipment in locations in which there is exposure of the lubricated part to food.

(ii) *Multipurpose greases.* Lubricants that are designed for general use.

(iii) *Rail track greases.* Lubricants that are designed for use on railroad tracks or heavy crane tracks.

(iv) *Truck greases.* Lubricants that are designed for use on the fifth wheel of tractor trailer trucks onto which the semi-trailer rests and pivots.

(v) *Greases not elsewhere specified.* Lubricants that meet the general definition of greases as defined in paragraph (a)(1) of this section, but are not otherwise covered by paragraphs (a)(2)(i) through (iv) of this section.

(b) *Minimum biobased content.* The minimum biobased content for all greases shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product. The applicable minimum biobased contents are:

(1) Food grade grease—42 percent.

(2) Multipurpose grease—72 percent.

(3) Rail track grease—30 percent.

(4) Truck grease—71 percent.

(5) Greases not elsewhere specified—75 percent.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased greases. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased greases.

[73 FR 27973, May 14, 2008]

§ 3201.32 Dust suppressants.

(a) *Definition.* Products formulated to reduce or eliminate the spread of dust associated with gravel roads, dirt parking lots, or similar sources of dust, including products used in equivalent indoor applications.

(b) *Minimum biobased content.* The preferred procurement product must have a biobased content of at least 85 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product. If the finished product is to be diluted before use, the biobased content of the suppressant must be determined before dilution.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased dust suppressants. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased dust suppressants.

[73 FR 27973, May 14, 2008]

§ 3201.33 Carpets.

(a) *Definition.* Floor coverings composed of woven, tufted, or knitted fiber and a backing system.

(b) *Minimum biobased content.* The preferred procurement product must have a biobased content of at least 7 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased carpet. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured

shall ensure that the relevant specifications require the use of biobased carpet.

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying biobased products that fall under this item may, in some cases, overlap with the EPA-designated recovered content product: Carpets (polyester). USDA is requesting that manufacturers of these qualifying biobased products provide information for the BioPreferred Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated carpets (polyester) and which product should be afforded the preference in purchasing.

NOTE TO PARAGRAPH (d): Biobased carpets within this designated item can compete with polyester carpet products with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated carpets (polyester) containing recovered materials as items for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.12. EPA provides recovered materials content recommendations for carpets (polyester) in the May 1, 1995, Recovered Materials Advisory Notice (RMAN I). The RMAN recommendations can be found on EPA's Web site *http://www.epa.gov/epaoswer/non-hw/procure/products.htm* and then clicking on the appropriate product name.

[73 FR 27973, May 14, 2008]

§ 3201.34 Carpet and upholstery cleaners.

(a) *Definition.* (1) Cleaning products formulated specifically for use in cleaning carpets and upholstery, through a dry or wet process, found in locations such as houses, cars, and workplaces.

(2) Carpet and upholstery cleaners for which preferred procurement applies are:

(i) *General purpose cleaners.* Carpet and upholstery cleaners formulated for use in cleaning large areas such as the carpet in an entire room or the upholstery on an entire piece of furniture.

(ii) *Spot removers.* Carpet and upholstery cleaners formulated for use in removing spots or stains in a small confined area.

(b) *Minimum biobased content.* The minimum biobased content for all carpet and upholstery cleaners shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product. The applicable minimum biobased contents are:

(1) General purpose cleaners—54 percent.

(2) Spot removers—7 percent.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased carpet and upholstery cleaners. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased carpet and upholstery cleaners.

[73 FR 27973, May 14, 2008]

§ 3201.35 Bathroom and spa cleaners.

(a) *Definition.* Products that are designed to clean and/or prevent deposits on surfaces found in bathrooms and spas including, but not necessarily limited to, bath tubs and spas, shower stalls, shower doors, shower curtains, and bathroom walls, floors, doors, and counter and sink tops. Products in this item may be designed to be applied to a specific type of surface or to multiple surface types. They are available both in concentrated and ready-to-use forms.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 74 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for

qualifying biobased bathroom and spa cleaners. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased bathroom and spa cleaners.

[73 FR 27994, May 14, 2008]

§ 3201.36 Concrete and asphalt release fluids.

(a) *Definition.* Products that are designed to provide a lubricating barrier between the composite surface materials (e.g., concrete or asphalt) and the container (e.g., wood or metal forms, truck beds, roller surfaces).

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 87 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased concrete and asphalt release fluids. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased concrete and asphalt release fluids.

[73 FR 27994, May 14, 2008]

§ 3201.37 General purpose de-icers.

(a) *Definition.* Chemical products (e.g., salt, fluids) that are designed to aid in the removal of snow and/or ice, and/or in the prevention of the buildup of snow and/or ice, in general use applications by lowering the freezing point of water. Specialized de-icer products, such as those used to de-ice aircraft and airport runways, are not included.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 93 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased general purpose de-icers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased general purpose de-icers.

[73 FR 27994, May 14, 2008]

§ 3201.38 Firearm lubricants.

(a) *Definition.* Lubricants that are designed for use in firearms to reduce the friction and wear between the moving parts of a firearm, and to keep the weapon clean and prevent the formation of deposits that could cause the weapon to jam.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 49 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased firearm lubricants. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased firearm lubricants.

[73 FR 27994, May 14, 2008]

§ 3201.39 Floor strippers.

(a) *Definition.* Products that are formulated to loosen waxes, resins, or varnishes from floor surfaces. They can be in either liquid or gel form, and may also be used with or without mechanical assistance.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 78 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased floor strippers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased floor strippers.

[73 FR 27994, May 14, 2008]

§ 3201.40 Laundry products.

(a) *Definitions.* (1) Products that are designed to clean, condition, or otherwise affect the quality of the laundered material. Such products include but are not limited to laundry detergents, bleach, stain removers, and fabric softeners.

(2) Laundry products for which preferred procurement applies are:

(i) *Pretreatment/spot removers.* These are laundry products specifically used to pretreat laundry to assist in the removal of spots and stains during laundering.

(ii) *General purpose laundry products.* These are laundry products used for regular cleaning activities.

(b) *Minimum biobased content.* The minimum biobased content shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product. The applicable minimum biobased contents for the preferred procurement product are:

(1) Pretreatment/spot removers—46 percent.

(2) General purpose laundry products—34 percent.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased laundry products. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased laundry products.

[73 FR 27994, May 14, 2008]

§ 3201.41 Metalworking fluids.

(a) *Definition.* (1) Fluids that are designed to provide cooling, lubrication, corrosion prevention, and reduced wear on the contact parts of machinery used for metalworking operations such as cutting, drilling, grinding, machining, and tapping.

(2) Metalworking fluids for which preferred procurement applies are:

(i) *Straight oils.* Metalworking fluids that are not diluted with water prior to use and are generally used for metalworking processes that require lubrication rather than cooling.

(ii) *General purpose soluble, semi-synthetic, and synthetic oils.* Metalworking fluids formulated for use in a re-circulating fluid system to provide cooling, lubrication, and corrosion prevention when applied to metal feedstock during normal grinding and machining operations.

(iii) *High performance soluble, semi-synthetic, and synthetic oils.* Metalworking fluids formulated for use in a re-circulating fluid system to provide cooling, lubrication, and corrosion prevention when applied to metal feedstock during grinding and machining operations involving unusually high temperatures or corrosion potential.

(b) *Minimum biobased content.* The minimum biobased content shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product. The applicable minimum biobased contents for the preferred procurement product are:

(1) Straight oils—66 percent.

(2) General purpose soluble, semi-synthetic, and synthetic oils—57 percent.

(3) High performance soluble, semi-synthetic, and synthetic oils—40 percent.

(c) *Preference compliance date.* (1) *Straight oils.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased metalworking fluids—straight oils. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased metalworking fluids—straight oils.

(2) *General purpose soluble, semi-synthetic, and synthetic oils.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased metalworking fluids—general purpose soluble, semi-synthetic, and synthetic oils. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased metalworking fluids—general purpose soluble, semi-synthetic, and synthetic oils.

(3) *High performance soluble, semi-synthetic, and synthetic oils.* Determination of the preference compliance date for metalworking fluids—high performance soluble, semi-synthetic, and synthetic oils is deferred until USDA identifies two or more manufacturers of biobased products within this subcategory. At that time, USDA will publish a document in the FEDERAL REGISTER announcing that Federal agencies have one year from the date of publication to give procurement preference to biobased metalworking fluids—high performance soluble, semi-synthetic, and synthetic oils.

[73 FR 27994, May 14, 2008]

§ 3201.42 Wood and concrete sealers.

(a) *Definition.* (1) Products that are penetrating liquids formulated to protect wood and/or concrete, including masonry and fiber cement siding, from damage caused by insects, moisture, and decaying fungi and to make surfaces water resistant.

(2) Wood and concrete sealers for which preferred procurement applies are:

(i) *Penetrating liquids.* Wood and concrete sealers that are formulated to penetrate the outer surface of the substrate.

(ii) *Membrane concrete sealers.* Concrete sealers that are formulated to form a protective layer on the surface of the substrate.

(b) *Minimum biobased content.* The minimum biobased content shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product. The applicable minimum biobased contents for the preferred procurement product are:

(1) Penetrating liquids—79 percent.

(2) Membrane concrete sealers—11 percent.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased wood and concrete sealers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased wood and concrete sealers.

[73 FR 27994, May 14, 2008]

§ 3201.43 Chain and cable lubricants.

(a) *Definition.* Products designed to provide lubrication in such applications as bar and roller chains, sprockets, and wire ropes and cables. Products may also prevent rust and corrosion in these applications.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 77 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than October 27, 2010, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased chain and cable lubricants. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased chain and cable lubricants.

[74 FR 55093, Oct. 27, 2009]

§ 3201.44 Corrosion preventatives.

(a) *Definition.* Products designed to prevent the deterioration (corrosion) of metals.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 53 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of

the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than October 27, 2010, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased corrosion preventatives. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased corrosion preventatives.

[74 FR 55093, Oct. 27, 2009]

§ 3201.45 Food cleaners.

(a) *Definition.* Anti-microbial products designed to clean the outer layer of various food products, such as fruit, vegetables, and meats.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 53 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than October 27, 2010, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased food cleaners. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased food cleaners.

[74 FR 55093, Oct. 27, 2009]

§ 3201.46 Forming lubricants.

(a) *Definition.* Products designed to provide lubrication during metalworking applications that are performed under extreme pressure. Such metalworking applications include tube bending, stretch forming, press braking, and swaging.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 68 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than October 27, 2010, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased forming lubricants. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased forming lubricants.

[74 FR 55093, Oct. 27, 2009]

§ 3201.47 Gear lubricants.

(a) *Definition.* Products, such as greases or oils, that are designed to reduce friction when applied to a toothed machine part (such as a wheel or cylinder) that meshes with another toothed part to transmit motion or to change speed or direction.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 58 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than October 27, 2010, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased gear lubricants. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of gear lubricants.

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying biobased products that fall under this item may, in some cases, overlap with the following EPA-designated recovered content product: Lubricating oils containing re-refined oil. USDA is requesting that manufacturers of these qualifying biobased products provide information for the BioPreferred Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining

whether or not a qualifying biobased product overlaps with EPA-designated re-refined lubricating oils and which product should be afforded the preference in purchasing.

NOTE TO PARAGRAPH (d): Biobased gear lubricant products within this designated item can compete with similar gear lubricant products with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated re-refined lubricating oils containing recovered materials as items for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.11.

[74 FR 55093, Oct. 27, 2009]

§ 3201.48 General purpose household cleaners.

(a) *Definition*. Products designed to clean multiple common household surfaces. This designated item does not include products that are formulated for use as disinfectants. Task-specific cleaning products, such as spot and stain removers, upholstery cleaners, bathroom cleaners, glass cleaners, etc., are not included in this item.

(b) *Minimum biobased content*. The preferred procurement product must have a minimum biobased content of at least 39 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date*. No later than October 27, 2010, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased general purpose household cleaners. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased general purpose household cleaners.

[74 FR 55093, Oct. 27, 2009]

§ 3201.49 Industrial cleaners.

(a) *Definition*. Products used to remove contaminants, such as adhesives, inks, paint, dirt, soil, and grease, from parts, products, tools, machinery, equipment, vessels, floors, walls, and other production-related work areas. The cleaning products within this item are usually solvents, but may take other forms. They may be used in either straight solution or diluted with water in pressure washers, or in hand wiping applications in industrial or manufacturing settings, such as inside vessels. Task-specific cleaners used in industrial settings, such as parts wash solutions, are not included in this definition.

(b) *Minimum biobased content*. The preferred procurement product must have a minimum biobased content of at least 41 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date*. No later than October 27, 2010, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased industrial cleaners. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased industrial cleaners.

[74 FR 55093, Oct. 27, 2009]

§ 3201.50 Multipurpose cleaners.

(a) *Definition*. Products used to clean dirt, grease, and grime from a variety of items in both industrial and domestic settings. This designated item does not include products that are formulated for use as disinfectants.

(b) *Minimum biobased content*. The preferred procurement product must have a minimum biobased content of at least 56 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date*. No later than October 27, 2010, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased multipurpose cleaners. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that

the relevant specifications require the use of biobased multipurpose cleaners.

[74 FR 55093, Oct. 27, 2009]

§ 3201.51 Parts wash solutions.

(a) *Definition*. Products that are designed to clean parts in manual or automatic cleaning systems. Such systems include, but are not limited to, soak vats and tanks, cabinet washers, and ultrasonic cleaners.

(b) *Minimum biobased content*. The preferred procurement product must have a minimum biobased content of at least 65 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date*. No later than October 27, 2010, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased parts wash solutions. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased parts wash solutions.

[74 FR 55093, Oct. 27, 2009]

§ 3201.52 Disposable tableware.

(a) *Definition*. Products made from, or coated with, plastic resins and used in dining, such as drink ware and dishware, including but not limited to cups, plates, bowls, and serving platters, and that are designed for one-time use. This item does not include disposable cutlery, which is a separate item.

(b) *Minimum biobased content*. The preferred procurement product must have a minimum biobased content of at least 72 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date*. No later than October 18, 2011, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased disposable tableware. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased disposable tableware.

[75 FR 63701, Oct. 18, 2010]

§ 3201.53 Expanded polystyrene (EPS) foam recycling products.

(a) *Definition*. Products formulated to dissolve EPS foam to reduce the volume of recycled or discarded EPS items.

(b) *Minimum biobased content*. The preferred procurement product must have a minimum biobased content of at least 90 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date*. No later than October 18, 2011, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased EPS foam recycling products. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased EPS foam recycling products.

[75 FR 63701, Oct. 18, 2010]

§ 3201.54 Heat transfer fluids.

(a) *Definition*. Products with high thermal capacities used to facilitate the transfer of heat from one location to another, including coolants or refrigerants for use in HVAC applications, internal combustion engines, personal cooling devices, thermal energy storage, or other heating or cooling closed-loops.

(b) *Minimum biobased content*. The preferred procurement product must have a minimum biobased content of at least 89 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date*. No later than October 18, 2011, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased heat transfer fluids. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for

items to be procured shall ensure that the relevant specifications require the use of biobased heat transfer fluids.

[75 FR 63701, Oct. 18, 2010]

§ 3201.55 Ink removers and cleaners.

(a) *Definition.* Chemical products designed to remove ink, haze, glaze, and other residual ink contaminants from the surfaces of equipment, such as rollers, used in the textile and printing industries.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 79 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than October 18, 2011, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased ink removers and cleaners. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased ink removers and cleaners.

[75 FR 63701, Oct. 18, 2010]

§ 3201.56 Mulch and compost materials.

(a) *Definition.* Products designed to provide a protective covering placed over the soil, primarily to keep down weeds and to improve the appearance of landscaping. Compost is the aerobically decomposed remnants of organic materials used in gardening and agriculture as a soil amendment, and commercially by the landscaping and container nursery industries.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 95 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than October 18, 2011, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased mulch and compost materials. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased mulch and compost materials.

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying products within this item may overlap with the EPA-designated recovered content product: Landscaping products—''compost'' and ''hydraulic mulch''. USDA is requesting that manufacturers of these qualifying biobased products provide information on the USDA Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated landscaping products and which product should be afforded the preference in purchasing.

NOTE TO PARAGRAPH (D): Biobased mulch and compost materials within this designated item can compete with similar landscaping products with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated landscaping products containing recovered materials as items for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.15.

[75 FR 63701, Oct. 18, 2010]

§ 3201.57 Multipurpose lubricants.

(a) *Definition.* Products designed to provide lubrication under a variety of conditions and in a variety of industrial settings to prevent friction or rust. Greases, which are lubricants composed of oils thickened to a semi-solid or solid consistency using soaps, polymers or other solids, or other thickeners, are not included in this item. In addition, task-specific lubricants, such as chain and cable lubricants and gear lubricants, are not included in this item.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 88 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than October 18, 2011, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased multipurpose lubricants. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased multipurpose lubricants.

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying products within this item may overlap with the EPA-designated recovered content product: Re-refined lubricating oils. USDA is requesting that manufacturers of these qualifying biobased products provide information on the BioPreferred Web site about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated re-refined lubricating oils and which product should be afforded the preference in purchasing.

NOTE TO PARAGRAPH (D): Biobased multipurpose lubricant products within this designated item can compete with similar multipurpose lubricant products with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated re-refined lubricating oils containing recovered materials as items for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.11.

[75 FR 63701, Oct. 18, 2010]

§ 3201.58 [Reserved]

§ 3201.59 Topical pain relief products.

(a) *Definition.* Products that can be balms, creams and other topical treatments used for the relief of muscle, joint, headache, and nerve pain, as well as sprains, bruises, swelling, and other aches.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 91 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than October 18, 2011, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased topical pain relief products. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased topical pain relief products.

[75 FR 63701, Oct. 18, 2010]

§ 3201.60 Turbine drip oils.

(a) *Definition.* Products that are lubricants for use in drip lubrication systems for water well line shaft bearings, water turbine bearings for irrigation pumps, and other turbine bearing applications.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 87 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than October 18, 2011, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased turbine drip oils. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased turbine drip oils.

[75 FR 63701, Oct. 18, 2010]

§ 3201.61 Animal repellents.

(a) *Definition*. Products used to aid in deterring animals that cause destruction to plants and/or property.

(b) *Minimum biobased content*. The Federal preferred procurement product must have a minimum biobased content of at least 79 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date*. No later than July 23, 2012, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased animal repellents. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased animal repellents.

[76 FR 43817, July 22, 2011]

§ 3201.62 Bath products.

(a) *Definition*. Personal hygiene products including bar soaps, liquids, or gels that are referred to as body washes, body shampoos, or cleansing lotions, but excluding products marketed as hand cleaners and/or hand sanitizers.

(b) *Minimum biobased content*. The Federal preferred procurement product must have a minimum biobased content of at least 61 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date*. No later than July 23, 2012, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased bath products. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased bath products.

[76 FR 43817, July 22, 2011]

§ 3201.63 Bioremediation materials.

(a) *Definition*. Dry or liquid solutions (including those containing bacteria or other microbes but not including sorbent materials) used to clean oil, fuel, and other hazardous spill sites.

(b) *Minimum biobased content*. The Federal preferred procurement product must have a minimum biobased content of at least 86 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date*. No later than July 23, 2012, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased bioremediation materials. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased bioremediation materials.

[76 FR 43817, July 22, 2011]

§ 3201.64 Compost activators and accelerators.

(a) *Definition*. Products in liquid or powder form designed to be applied to compost piles to aid in speeding up the composting process and to ensure successful compost that is ready for consumer use.

(b) *Minimum biobased content*. The Federal preferred procurement product must have a minimum biobased content of at least 95 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date*. No later than July 23, 2012, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased compost activators and accelerators. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require

the use of biobased compost activators and accelerators.

[76 FR 43817, July 22, 2011]

§ 3201.65 Concrete and asphalt cleaners.

(a) *Definition*. Chemicals used in concrete etching as well as to remove petroleum-based soils, lubricants, paints, mastics, organic soils, rust, and dirt from concrete, asphalt, stone and other hard porous surfaces. Products within this item include only those marketed for use in commercial or residential construction or industrial applications.

(b) *Minimum biobased content*. The Federal preferred procurement product must have a minimum biobased content of at least 70 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date*. No later than July 23, 2012, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased concrete and asphalt cleaners. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased concrete and asphalt cleaners.

[76 FR 43817, July 22, 2011]

§ 3201.66 Cuts, burns, and abrasions ointments.

(a) *Definition*. Products designed to aid in the healing and sanitizing of scratches, cuts, bruises, abrasions, sun damaged skin, tattoos, rashes and other skin conditions.

(b) *Minimum biobased content*. The Federal preferred procurement product must have a minimum biobased content of at least 84 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date*. No later than July 23, 2012, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased cuts, burns, and abrasions ointments. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased cuts, burns, and abrasions ointments.

[76 FR 43817, July 22, 2011]

§ 3201.67 Dishwashing products.

(a) *Definition*. Soaps and detergents used for cleaning and clean rinsing of tableware in either hand washing or dishwashing.

(b) *Minimum biobased content*. The Federal preferred procurement product must have a minimum biobased content of at least 58 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date*. No later than July 23, 2012, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased dishwashing products. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased dishwashing products.

[76 FR 43817, July 22, 2011]

§ 3201.68 Erosion control materials.

(a) *Definition*. Woven or non-woven fiber materials manufactured for use on construction, demolition, or other sites to prevent wind or water erosion of loose earth surfaces, which may be combined with seed and/or fertilizer to promote growth.

(b) *Minimum biobased content*. The Federal preferred procurement product must have a minimum biobased content of at least 77 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date*. No later than July 23, 2012, procuring agencies, in accordance with this part, will give a procurement preference for

qualifying biobased erosion control materials. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased erosion control materials.

[76 FR 43817, July 22, 2011]

§ 3201.69 Floor cleaners and protectors.

(a) *Definition*. Cleaning solutions for either direct application or use in floor scrubbers for wood, vinyl, tile, or similar hard surface floors. Products within this item are marketed specifically for use on industrial, commercial, and/or residential flooring.

(b) *Minimum biobased content*. The Federal preferred procurement product must have a minimum biobased content of at least 77 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date*. No later than July 23, 2012, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased floor cleaners and protectors. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased floor cleaners and protectors.

[76 FR 43817, July 22, 2011]

§ 3201.70 Hair care products.

(a) *Definitions*. (1) Personal hygiene products specifically formulated for hair cleaning and treating applications, including shampoos and conditioners.

(2) Hair care products for which Federal preferred procurement applies are:

(i) *Shampoos*. These are products whose primary purpose is cleaning hair. Products that contain both shampoos and conditioners are included in this subcategory because the primary purpose of these products is cleaning the hair.

(ii) *Conditioners*. These are products whose primary purpose is treating hair to improve the overall condition of hair.

(b) *Minimum biobased content*. The minimum biobased content for all hair care products shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product. The applicable minimum biobased contents for the Federal preferred procurement products are:

(1) Shampoos—66 percent.

(2) Conditioners—78 percent.

(c) *Preference compliance date*. No later than July 23, 2012, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased hair care products. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased hair care products.

[76 FR 43817, July 22, 2011]

§ 3201.71 Interior paints and coatings.

(a) *Definition*. (1) Pigmented liquids, formulated for use indoors, that dry to form a film and provide protection and added color to the objects or surfaces to which they are applied.

(2) Interior paints and coatings products for which Federal preferred procurement applies are:

(i) Interior latex and waterborne alkyd paints and coatings.

(ii) Interior oil-based and solventborne alkyd paints and coatings.

(b) *Minimum biobased content*. The minimum biobased content for all interior paints and coatings products shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product. The applicable minimum biobased contents for the Federal preferred procurement products are:

(1) Interior latex and waterborne alkyd paints and coatings—20 percent.

(2) Interior oil-based and solventborne alkyd paints and coatings—67 percent.

(c) *Preference compliance date.* No later than July 23, 2012, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased interior paints and coatings. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased interior paints and coatings.

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying biobased products within the interior latex and waterborne alkyd paints and coatings subcategory may, in some cases, overlap with the EPA-designated recovered content products: Reprocessed latex paints and consolidated latex paints. USDA is requesting that manufacturers of these qualifying biobased products provide information on the USDA Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated reprocessed latex paints and consolidated latex paints and which product should be afforded the preference in purchasing.

Note to paragraph (d): Biobased interior latex and waterborne alkyd paints and coatings products within this subcategory can compete with similar reprocessed latex paint and consolidated latex paint products with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated reprocessed latex paints and consolidated latex paints containing recovered materials as items for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.12.

[76 FR 43817, July 22, 2011]

§ 3201.72 Oven and grill cleaners.

(a) *Definition.* Liquid or gel cleaning agents used on high temperature cooking surfaces such as barbeques, smokers, grills, stoves, and ovens to soften and loosen charred food, grease, and residue.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 66 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than July 23, 2012, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased oven and grill cleaners. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased oven and grill cleaners.

[76 FR 43817, July 22, 2011]

§ 3201.73 Slide way lubricants.

(a) *Definition.* Products used to provide lubrication and eliminate stick-slip and table chatter by reducing friction between mating surfaces, or slides, found in machine tools.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 74 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than July 23, 2012, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased slide way lubricants. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased slide way lubricants.

[76 FR 43817, July 22, 2011]

§ 3201.74 Thermal shipping containers.

(a) *Definitions.* (1) Insulated containers designed for shipping temperature-sensitive materials.

(2) Thermal shipping containers for which Federal preferred procurement applies are:

(i) *Durable thermal shipping container.* These are thermal shipping containers that are designed to be reused over an extended period of time.

(ii) *Non-durable thermal shipping containers.* These are thermal shipping containers that are designed to be used once.

(b) *Minimum biobased content.* The minimum biobased content for all thermal shipping container products shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product. The applicable minimum biobased contents for the Federal preferred procurement products are:

(1) Durable thermal shipping containers—21 percent.

(2) Non-durable thermal shipping containers—82 percent.

(c) *Preference compliance date*—(1) *Durable thermal shipping containers.* Determination of the preference compliance date for durable thermal shipping containers is deferred until USDA identifies two or more manufacturers of biobased durable thermal shipping containers. At that time, USDA will publish a document in the FEDERAL REGISTER announcing that Federal agencies have one year from the date of publication to give procurement preference to biobased durable thermal shipping containers.

(2) *Non-durable thermal shipping containers.* Determination of the preference compliance date for non-durable thermal shipping containers is deferred until USDA identifies two or more manufacturers of biobased non-durable thermal shipping containers. At that time, USDA will publish a document in the FEDERAL REGISTER announcing that Federal agencies have one year from the date of publication to give procurement preference to biobased non-durable thermal shipping containers.

[76 FR 43817, July 22, 2011]

PART 3202—VOLUNTARY LABELING PROGRAM FOR BIOBASED PRODUCTS

Sec.

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§ 3202.1 Purpose and scope.

The purpose of this part is to set forth the terms and conditions for voluntary use of the ''USDA Certified Biobased Product'' certification mark. This part establishes the criteria that biobased products must meet in order to be eligible to become certified biobased products to which the ''USDA Certified Biobased Product'' mark can be affixed, the process manufacturers and vendors must use to obtain and maintain USDA certification, and the recordkeeping requirements for manufacturers and vendors who obtain certification. In addition, this part establishes specifications for the correct and incorrect uses of the certification mark, which apply to manufacturers, vendors, and other entities. Finally, this part establishes actions that constitute voluntary labeling program violations.

§ 3202.2 Definitions.

Applicable minimum biobased content. The biobased content at or above the level set by USDA to qualify for use of the certification mark.

ASTM International (ASTM). American Society for Testing and Materials is a nonprofit organization that provides an international forum for the development and publication of voluntary consensus standards for materials, products, systems, and services.

Biobased content. The amount of biobased carbon in the material or

product expressed as a percent of weight (mass) of the total organic carbon in the material or product. For BioPreferred Products (products that have been identified for Federal preferred procurement), the biobased content shall be defined and determined as specified in the applicable section of subpart B of part 3201. For all other products, the biobased content is to be determined using ASTM Method D6866, Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples Using Radiocarbon Analysis.

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

(1) Composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials; or

(2) An intermediate ingredient or feedstock. For the purposes of this subpart, the term 'biobased product' does not include motor vehicle fuels, heating oil, electricity produced from biomass, or any mature market products.

BioPreferred Product. A biobased product that meets or exceeds minimum biobased content levels set by USDA, and that is found within any of the product categories that have been identified, in subpart B of 7 CFR part 3201, whose products within are eligible for Federal preferred procurement/purchasing.

Certification mark. A combination of the certification mark artwork (as defined in this subpart); one of three statements identifying whether the USDA certification applies to the product, the package, or both the product and package; and, where applicable, the letters ''FP'' to indicate that the product is within a designated product category and eligible for Federal preferred procurement. The certification mark is owned, and its use is managed by, USDA (standard trademark law definition applies).

Certification mark artwork. The distinctive image, as shown in Figures 1–3, that identifies products as USDA Certified.

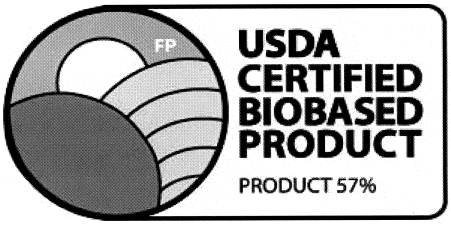

Figure 1. USDA Certified Biobased Product Certification Mark
(Note: actual size will vary depending on application.)

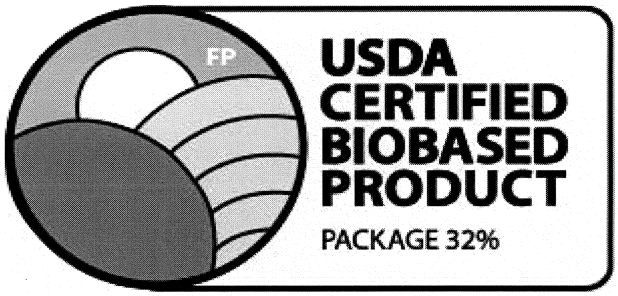

Figure 2. USDA Certified Biobased Product: Package Certification Mark

(Note: actual size will vary depending on application.)

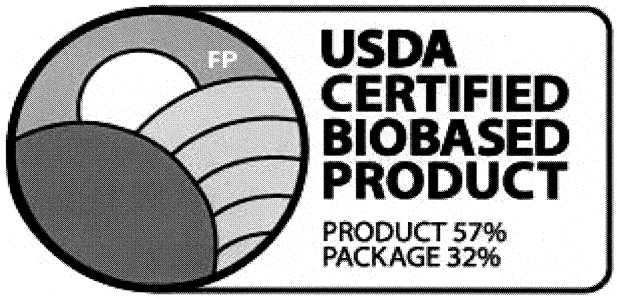

Figure 3. USDA Certified Biobased Product & Package Certification Mark

(Note: actual size will vary depending on application.)

Certified biobased product. A biobased product for which the manufacturer or vendor of the product has received approval from USDA to affix to the product the ''USDA Certified Biobased Product'' certification mark.

Days. As used in this part means calendar days.

Designated item. For the purposes of this part means product categories (generic groupings of products that perform the same function) within which the products have been afforded a procurement preference by Federal agencies under the BioPreferred Program. These BioPreferred Products have been identified for Federal preferred procurement under subpart B of part 3201 of this title.

Designated representative. An entity authorized by a manufacturer or vendor to affix the USDA certification mark to the manufacturer's or vendor's certified biobased product or its packaging.

Intermediate ingredients or feedstocks. Materials or compounds made in whole or in significant part from biological products, including renewable agricultural materials (including plant, animal, and marine materials) or forestry materials, that are subsequently used to make a more complex compound or

product. For the purposes of this subpart, intermediate ingredients or feedstocks do not include raw agricultural or forestry materials, but represent those materials that can be put into a new cycle of production and finishing processes to create finished materials, ready for distribution and consumption.

ISO. The International Organization for Standardization, a network of national standards institutes working in partnership with international organizations, governments, industries, business, and consumer representatives.

ISO 9001 conformant. An entity that meets all of the requirements of the ISO 9001 standard, but that is not required to be ISO 9001 certified. ISO 9001 refers to the International Organization for Standardization's standards and guidelines relating to ''quality management'' systems. ''Quality management'' is defined as what the manufacturer does to ensure that its products or services satisfy the customer's quality requirements and comply with any regulations applicable to those products or services.

Manufacturer. An entity that performs the necessary chemical and/or mechanical processes to make a final marketable product.

Mature market products. Biobased products that are not eligible for Federal preferred procurement or labeling as defined under subpart B of part 3201 of this title because they had significant national market penetration in 1972.

Other entity. Any person, group, public or private organization, or business other than USDA, or manufacturers or vendors of biobased products that may wish to use the ''USDA Certified Biobased Product'' certification mark in informational or promotional material related to a certified biobased product.

Program Manager. The manager of the BioPreferred Program.

USDA. The United States Department of Agriculture.

Vendor. An entity that offers for sale final marketable biobased products that are produced by manufacturers.

[76 FR 3806, Jan. 20, 2011. Redesignated and amended at 76 FR 53632, Aug. 29, 2011]

§ 3202.3 Applicability.

(a) *Manufacturers, vendors, and designated representatives*. The requirements in this part apply to all manufacturers and vendors, and their designated representatives, who wish to participate in the USDA voluntary labeling program for biobased products. Manufacturers and vendors wishing to participate in the voluntary labeling program are required to obtain and maintain product certification.

(b) *Other entities*. The requirements in this part apply to other entities who wish to use the certification mark in promoting the sales or the public awareness of certified biobased products.

§ 3202.4 Criteria for product eligibility to use the certification mark.

A product must meet each of the criteria specified in paragraphs (a) and (b) of this section in order to be eligible to receive biobased product certification.

(a) *Biobased product*. The product for which certification is sought must be a biobased product as defined in § 3202.2 of this part.

(b) *Minimum biobased content*. The biobased content of the product must be equal to or greater than the applicable minimum biobased content, as described in paragraphs (b)(1) through (b)(4) of this section.

(1) *BioPreferred Products*.

(i) *Product is within a single product category*. If the product is within a single product category that, at the time the application for certification is submitted, has been designated by USDA for Federal preferred procurement, the applicable minimum biobased content is the minimum biobased content specified for the item as found in subpart B of 7 CFR part 3201.

(ii) *Product is within multiple product categories*. If a biobased product is marketed within more than one product category identified for preferred Federal purchasing, uses the same packaging for each product, and the applicant seeks certification of the product, the product's biobased content must meet or exceed the specified minimum biobased content for each of the applicable product categories in order to use the certification mark on the product. However, if the manufacturer packages

the product differently for each product category, then the applicable minimum biobased contents are those established under paragraph (b)(1)(i) of this section for each product category for which the applicant seeks to use the certification mark.

(2) *Finished biobased products that are not BioPreferred Products.*

(i) If the product is not an intermediate ingredient or feedstock, and is not within a product category eligible for Federal preferred procurement at the time the application for certification is submitted, the applicable minimum biobased content is 25 percent. Manufacturers, vendors, groups of manufacturers and/or vendors, and trade associations may propose an alternative applicable minimum biobased content for the product by developing, in consultation with USDA, and conducting an analysis to support the proposed alternative applicable minimum biobased content. If approved by USDA, the proposed alternative applicable minimum biobased content would become the applicable minimum biobased content for the product to be labeled.

(ii) If a product certified under paragraph (b)(2)(i) of this section is within a product category that USDA subsequently designates for Federal preferred procurement, the applicable minimum biobased content shall become, as of the effective date of the final designation rule, the minimum biobased content specified for the item as found in subpart B of 7 CFR part 3201.

(3) *Products that are intermediate ingredients or feedstocks.*

(i) If the product is an intermediate ingredient or feedstock that is not eligible for Federal preferred procurement at the time the application for certification is submitted, the applicable minimum biobased content is 25 percent. Manufacturers, vendors, groups of manufacturers and/or vendors, and trade associations may propose an alternative applicable minimum biobased content for the product by developing, in consultation with USDA, and conducting an analysis to support the proposed alternative applicable minimum biobased content. If approved by USDA, the proposed alternative applicable minimum biobased content would become the applicable minimum biobased content for the intermediate ingredient or feedstock product to be labeled.

(ii) If a product certified under paragraph (b)(3)(i) of this section is within a category that USDA subsequently designates for Federal preferred procurement, the applicable minimum biobased content shall become, as of the effective date of the final designation rule, the minimum biobased content specified for the item as found in subpart B of 7 CFR part 3201.

[76 FR 3806, Jan. 20, 2011. Redesignated and amended at 76 FR 53632, Aug. 29, 2011]

§ 3202.5 Initial approval process.

(a) *Application.* Manufacturers and vendors seeking USDA approval to use the certification mark for an eligible biobased product must submit a USDA-approved application for each biobased product. A standardized application form and instructions are available on the USDA BioPreferred Program Web site (*http://www.biopreferred.gov*). The contents of an acceptable application are as specified in paragraphs (a)(1) through (a)(4) of this section.

(1) *General content.* The applicant must provide contact information and product information including all brand names or other identifying information, biobased content and testing documentation, intended uses, and, if applicable, the corresponding product category classification for Federal preferred procurement. The applicant must attach to the application documentation demonstrating that the reported biobased content was tested by a third-party testing entity that is ISO 9001 conformant.

(2) *Certifications.* The applicant must certify in the application that the product for which use of the certification mark is sought is a biobased product as defined in § 3202.2 of this part.

(3) *Commitments.* The applicant must sign a statement in the application that commits the applicant to submitting to USDA the information specified in paragraph (c)(1) through (c)(4) of this section, which USDA will post to the USDA BioPreferred Program Web site, and to providing USDA with up-to-date

information for posting on this Web site.

(4) *Application fee*. Effective (date to be added after authority to collect fee is granted), applicants must submit an application fee of $500 with each completed application for certification. Instructions for submitting the application fee are available on the USDA BioPreferred Program Web site (*http://www.biopreferred.gov*), along with the application form and instructions.

(b) *Evaluation of applications*. (1) USDA will evaluate each application to determine if it contains the information specified in paragraph (a) of this section. If USDA determines that the application is not complete, USDA will return the application to the applicant with an explanation of its deficiencies. Once the deficiencies have been addressed, the applicant may resubmit the application, along with a cover letter explaining the changes made, for re-evaluation by USDA. USDA will evaluate resubmitted applications separately from first-time applications, and those with the earliest original application submittal date will be given first priority.

(2)(i) USDA will evaluate each complete application to determine compliance with the criteria specified in § 3202.4. USDA will provide a written response to each applicant within 60 days after the receipt of a complete application, informing the applicant of whether the application has been conditionally approved or has been disapproved.

(ii) For those applications that are conditionally approved, a notice of certification, as specified in paragraph (c) of this section, must be issued before the use of the certification mark can begin.

(iii) For those applications that are disapproved, USDA will issue a notice of denial of certification and will inform the applicant in writing of each criterion not met. Applicants who receive a notice of denial of certification may appeal using the procedures specified in § 3202.6.

(c) *Notice of certification*. After notification that its application has been conditionally approved, the applicant must provide to USDA (for posting by USDA on the USDA BioPreferred Program Web site) the information specified in paragraphs (c)(1) through (c)(4) of this section. Once USDA confirms that the information is received and complete, USDA will issue a notice of certification to the applicant. Upon receipt of a notice of certification, the applicant may begin using the certification mark on the certified biobased product.

(1) The product's brand name(s), or other identifying information.

(2) Contact information, including the name, mailing address, email address, and telephone number of the applicant.

(3) The biobased content of the product.

(4) A hot link directly to the applicant's Web site (if available).

(d) *Term of certification*.

(1) The effective date of certification is the date that the applicant receives a notice of certification from USDA. Except as specified in paragraphs (d)(2)(i) through (d)(2)(iii) of this section, certifications will remain in effect as long as the product is manufactured and marketed in accordance with the approved application and the requirements of this subpart.

(2)(i) If the product formulation of a certified product is changed such that the biobased content of the product is reduced to a level below that reported in the approved application, the existing certification will not be valid for the product under the revised conditions and the manufacturer or vendor, as applicable, and its designated representatives must discontinue affixing the certification mark to the product and must not initiate any further advertising of the product using the certification mark. USDA will consider a product under such revised conditions to be a reformulated product, and the manufacturer or vendor, as applicable, must submit a new application for certification using the procedures specified in paragraph (a) of this section.

(ii) If the product formulation of a certified product is changed such that the biobased content of the product is increased from the level reported in the approved application, the existing certification will continue to be valid for the product.

(iii) If the applicable required minimum biobased content for a product to be eligible to display the certification mark is revised by USDA, manufacturers and vendors may continue to label their previously certified product only if it meets the new minimum biobased content level. In those cases where the biobased content of a certified product fails to meet the new minimum biobased content level, USDA will notify the manufacturer or vendor that their certification is no longer valid. Such manufacturers and vendors must increase the biobased content of their product to a level at or above the new minimum biobased content level and must re-apply for certification within 60 days if they wish to continue to use the certification mark. Manufacturers and vendors who have re-applied for certification may continue using the existing certification mark until they receive notification from USDA on the results of their re-application for certification.

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§ 3202.6 Appeal processes.

An applicant for certification may appeal a notice of denial of certification to the Program Manager. Entities that have received a notice of violation, and manufacturers and vendors of certified biobased products who have received a notice of suspension or revocation, may appeal to the Program Manager.

(a)(1) Appeals to the Program Manager must be filed within 30 days of receipt by the appellant of a notice of denial of certification, a notice of violation, a notice of suspension, or a notice of revocation. Appeals must be filed in writing and addressed to: Program Manager, USDA Voluntary Labeling Program for Biobased Products, Room 361, Reporters Building, 300 Seventh Street, SW., Washington, DC 20024.

(2) All appeals must include a copy of the adverse decision and a statement of the appellant's reasons for believing that the decision was not made in accordance with applicable program regulations, policies, or procedures, or otherwise was not proper.

(b)(1) If the Program Manager sustains an applicant's appeal of a notice of denial of certification, USDA will issue a notice of certification to the applicant for its biobased product.

(2) If the Program Manager sustains a manufacturer's or vendor's appeal of a notice of violation, USDA will rescind the notice and no further action will be taken by USDA.

(3) If the Program Manager sustains a manufacturer's or vendor's appeal of a notice of suspension, the manufacturer, vendor, and their designated representative(s) may immediately resume affixing the certification mark to the certified biobased product and USDA will reinstate the product's information to the USDA BioPreferred Program Web site.

(4) If the Program Manager sustains a manufacturer's or vendor's appeal of a notice of revocation, the manufacturer or vendor, and its designated representatives may immediately resume affixing the certification mark to the certified biobased product and sell and distribute the certified biobased product with the certification mark. In addition, USDA will reinstate the product's information to the USDA BioPreferred Program Web site.

(c) If the Program Manager sustains a manufacturer's or vendor's appeal of its product's exclusion from the program, the manufacturers or vendors may then apply for certification to use the certification mark on that product, as specified in § 3202.5(a) of this part.

(d) Appeals of any of the Program Manager's decisions may be made to the USDA Assistant Secretary for Administration. Appeals must be made, in writing, within 30 days of receipt of the Program Manager's decision and addressed to: Assistant Secretary for Administration, Room 209A, Whitten Building, 1400 Independence Avenue, SW., Washington, DC 20250–0103. If the Assistant Secretary for Administration sustains an appeal, the provisions of paragraph (b) of this section will apply.

[76 FR 3806, Jan. 20, 2011. Redesignated and amended at 76 FR 53632, Aug. 29, 2011]

§ 3202.7 Requirements associated with the certification mark.

(a) *Who may use the certification mark*?

(1) *Manufacturers and vendors.* Only manufacturers and vendors who have received a notice of certification, or

designated representatives of the manufacturer or vendor, may affix the official certification mark (in one of the three variations, as applicable) to the product or its packaging. A manufacturer or vendor who has received a notice of certification for a product under this part:

(i) May use the certification mark on the product, its packaging, and other related materials including, but not limited to, advertisements, catalogs, specification sheets, procurement databases, promotional material, Web sites, or user manuals for that product, according to the requirements set forth in this section; and

(ii) Is responsible for the manner in which the mark is used by its companies, as well as its designated representatives, including advertising agencies, marketing and public relations firms and subcontractors.

(2) *Other entities.*

(i) Other entities may use the mark to advertise or promote certified biobased products in materials including, but not limited to, advertisements, catalogs, procurement databases, Web sites, and promotional and educational materials, as long as the manufacturer or vendor of the product, or one of their designated representatives, has affixed the mark to the product or its packaging.

(ii) Other entities may use the certification mark; the phrase ''USDA Certified Biobased Product/Package/Product & Package,'' as applicable; and the BioPreferred Program name in general statements as described in paragraph (b) of this section, as long as the statements do not imply that a non-certified biobased product is certified.

(b) *Correct usage of the certification mark.*

(1) The certification mark can be affixed only to certified biobased products and their associated packaging.

(2) The certification mark may be used in material including, but not limited to, advertisements, catalogs, procurement databases, Web sites, and promotional and educational materials to distinguish products that are certified for use of the label from those that are not certified. The certification mark may be used in advertisements for both certified biobased products and non-certified/labeled products if the advertisement clearly indicates which products are certified/labeled. Care must be taken to avoid implying that any non-certified products are certified.

(3) The certification mark may be used without reference to a specific certified biobased product only when informing the public about the purpose of the certification mark. For example, the following or similar claim is acceptable: ''Look for the 'USDA Certified Biobased Product' certification mark. It means that the product meets USDA standards for the amount of biobased content and the manufacturer or vendor has provided relevant information on the product to be posted on the USDA BioPreferred Program Web site.'' This exception allows manufacturers, vendors, and other entities to use the certification mark in documents such as corporate reports, but only in an informative manner, not as a statement of product certification.

(4) The certification mark may appear next to a picture of the product(s) or text describing it.

(5) The certification mark must stand alone and not be incorporated into any other certification mark or logo designs.

(6) The certification mark may be used as a watermark provided the use does not violate any usage restrictions specified in this part.

(7) The text portion of the certification mark must be written in English and may not be translated, even when the certification mark is used outside of the United States.

(c) *Incorrect usage of the certification mark.*

(1) The certification mark shall not be used on any product that has not been certified by USDA as a ''USDA Certified Biobased Product.''

(2) The certification mark shall not be used on any advertisements or informational materials where both certified biobased products and non-certified products are shown unless it is clear that the certification mark applies to only the certified biobased product(s).

(3) The certification mark shall not be used to imply endorsement by USDA or the BioPreferred Program of any

particular product, service, or company.

(4) The certification mark shall not be used in any form that could be misleading to the consumer.

(5) The certification mark shall not be used by manufacturers or vendors of certified products in a manner disparaging to USDA or any other government body.

(6) The certification mark shall not be used with an altered certification mark or incorporated into other label or logo designs.

(7) The certification mark shall not be used on business cards, company letterhead, or company stationery.

(8) The certification mark shall not be used in, or as part of, any company name, logo, product name, service, or Web site, except as may be provided for in this part.

(9) The certification mark shall not be used in a manner that violates any of the applicable requirements contained in this part.

(d) *Imported products.* The certification mark can be used only with a product that is certified by USDA under this part. The certification mark cannot be used to imply that a product meets or exceeds the requirements of biobased programs in other countries. Products imported for sale in the U.S. must adhere to the same guidelines as U.S.-sourced biobased products. Any product sold in the U.S. as a ''USDA Certified Biobased Product/Package/Product & Package'' must have received certification from USDA.

(e) *Contents of the certification mark.* The certification mark shall consist of the certification mark artwork, the biobased content percentage, and one of the three variations of text specified in paragraphs (e)(1) through (e)(3) of this section, as applicable.

(1) USDA Certified Biobased Product.

(2) USDA Certified Biobased Product: Package.

(3) USDA Certified Biobased Product & Package.

(f) *Physical aspects of the certification mark.* The certification mark artwork may not be altered, cut, separated into components, or distorted in appearance or perspective. Certification marks that are applied to biobased products that have been designated for preferred Federal procurement will include the letters ''FP'' as part of the certification mark artwork. The certification mark must appear only in the colors specified in paragraphs (f)(1) through (f)(3) of this section, unless approval is given by USDA for an exception.

(1) A multi-color version of the certification mark is preferred. The certification mark colors to be applied will be stipulated in the ''Marketing Guides'' document available on the USDA BioPreferred Program Web site (*http://www.biopreferred.gov*).

(2) A one-color version of the certification mark may be substituted for the multi-color version as long as the one color used is one of the multi-color choices reapplied without modification. Further guidance on the one-color certification mark application will also be detailed in the ''Marketing Guides.''

(3) A black and white version of the certification mark is acceptable.

(g) *Placement of the certification mark.*

(1) The certification mark can appear directly on a product, its associated packaging, in user manuals, and in other materials including, but not limited to, advertisements, catalogs, procurement databases, and promotional and educational materials.

(2) The certification mark shall not be placed in a manner that is ambiguous about which product is a certified biobased product or that could indicate certification of a non-certified product.

(3) When used to distinguish a certified biobased product in material including, but not limited to, advertisements, catalogs, procurement databases, Web sites, and promotional and educational materials, the certification mark must appear near a picture of the product or the text describing it.

(i) If all products on a page are certified biobased products, the certification mark may be placed anywhere on the page.

(ii) If a page contains a mix of certified biobased products and non-certified products, the certification mark shall be placed in close proximity to the certified biobased products. An individual certification mark near each certified biobased product may be necessary to avoid confusion.

(h) *Minimum size and clear space recommendations for the certification mark.*

(1) The certification mark may be sized to fit the individual application as long as the correct proportions are maintained and the certification mark remains legible.

(2) A border of clear space must surround the certification mark and must be of sufficient width to offset it from surrounding images and text and to avoid confusion. If the certification mark's color is similar to the background color of the product or packaging, the certification mark in a contrasting (*i.e.*, black, white) color may be used.

(i) *Where to obtain copies of the certification mark artwork.* The certification mark artwork is available at the USDA BioPreferred Program Web site *http://www.biopreferred.gov*.

§ 3202.8 Violations.

This section identifies the types of actions that USDA considers violations under this part and the penalties (e.g., the suspension or revocation of certification) associated with such violations.

(a) *General.* Violations under this section occur on a per product basis and the penalties are to be applied on a per product basis. Entities cited for a violation under this section may appeal using the provisions in § 3202.6. If certification for a product is revoked, the manufacturer or vendor whose certification has been revoked may seek recertification for the product using the procedures specified under the provisions in § 3202.5.

(b) *Types of violations.* Actions that will be considered violations of this part include, but are not limited to, the following specific examples:

(1) *Biobased content violations.* The Program Manager will utilize occasional random testing of certified biobased products to compare the biobased content of the tested product with the product's applicable minimum biobased content and the biobased content reported by the manufacturer or vendor in its approved application. Such testing will be conducted using ASTM Method D6866. USDA will provide a copy of the results of its testing to the applicable manufacturer or vendor.

(i) If USDA testing shows that the biobased content of a certified biobased product is less than its applicable minimum biobased content, then a violation of this part will have occurred.

(ii) If USDA testing shows that the biobased content is less than that reported by the manufacturer or vendor in its approved application, but is still equal to or greater than its applicable minimum biobased content(s), USDA will provide written notification to the manufacturer or vendor. The manufacturer or vendor must submit, within 90 days from receipt of USDA written notification, a new application for the lower biobased content. Failure to submit a new application within 90 days will be considered a violation of this part.

(A) The manufacturer or vendor can submit in the new application the biobased content reported to it by USDA in the written notification.

(B) Alternatively, the manufacturer or vendor may elect to retest the product in question and submit the results of the retest in the new application. If the manufacturer or vendor elects to retest the product, it must test a sample of the current product.

(2) *Certification mark violations.*

(i) Any usage or display of the certification mark that does not conform to the requirements specified in § 3202.7.

(ii) Affixing the certification mark to any product prior to issuance of a notice of certification from USDA.

(iii) Affixing the certification mark to a certified biobased product during periods when certification has been suspended or revoked.

(3) *Application violations.* Knowingly providing false or misleading information in any application for certification of a biobased product constitutes a violation of this part.

(4) *USDA BioPreferred Program Web site violations.* Failure to provide to USDA updated information when the information for a certified biobased product becomes outdated or when new information for a certified biobased product becomes available constitutes a violation of this part.

(c) *Notice of violations and associated actions.* USDA will provide the applicable manufacturer or vendor or their

designated representatives and any involved other entity known to USDA written notification of any violations identified by USDA. USDA will first issue a preliminary notice that apparent violations have been identified. If satisfactory resolution of the apparent violation is not reached within 30 days from receipt of the preliminary notice, USDA will issue a notice of violation. Entities who receive a notice of violation for a biobased content violation must correct the violation(s) within 90 days from receipt of the notice of violation. Entities who receive a notice of violation for other types of violations also must correct the violation(s) within 90 days from receipt of the notice of violation. If the entity receiving a notice of violation is a manufacturer, a vendor, or a designated representative of a manufacturer or vendor, USDA will pursue notices of suspensions and revocation, as discussed in paragraphs (c)(1) and (c)(2) of this section. USDA reserves the right to further pursue action against these entities as provided for in paragraph (c)(3) of this section. If the entity receiving a notice of violation is an ''other entity'' (*i.e.*, not a manufacturer, vendor, or designated representative), then USDA will pursue action according to paragraph (c)(3) of this section. Entities that receive notices of suspension or revocation may appeal such notices using the procedures specified in § 3202.6.

(1) *Suspension*.

(i) If a violation is applicable to a manufacturer, vendor, or designated representative and the applicable entity fails to make the required corrections within 90 days of receipt of a notice of violation, USDA will notify the manufacturer or vendor, as appropriate, of the continuing violation, and the USDA certification for that product will be suspended. As of the date that the manufacturer or vendor receives a notice of suspension, the manufacturer or vendor and their designated representatives must not affix the certification mark to any of that product, or associated packaging, not already labeled and must not distribute any additional products bearing the certification mark. USDA will both remove the product information from the USDA BioPreferred Program Web site and actively communicate the product suspension to buyers in a timely and overt manner.

(ii) If, within 30 days from receipt of the notice of suspension, the manufacturer or vendor whose USDA product certification has been suspended makes the required corrections and notifies USDA that the corrections have been made, the manufacturer or vendor and their designated representatives may, upon receipt of USDA approval of the corrections, resume use of the certification mark. USDA will also restore the product information to the USDA BioPreferred Program Web site.

(2) *Revocation*.

(i) If a manufacturer or vendor whose USDA product certification has been suspended fails to make the required corrections and notify USDA of the corrections within 30 days of the date of the suspension, USDA will notify the manufacturer or vendor that the certification for that product is revoked.

(ii) As of the date that the manufacturer or vendor receives the notice revoking USDA certification, the manufacturer or vendor and their designated representatives must not affix the certification mark to any of that product not already labeled. In addition, the manufacturer or vendor and their designated representatives are prohibited from further sales of product to which the certification mark is affixed.

(iii) If a manufacturer or vendor whose product certification has been revoked wishes to use the certification mark, the manufacturer or vendor must follow the procedures required for original certification.

(3) *Other remedies*. In addition to the suspension or revocation of the certification to use the label, depending on the nature of the violation, USDA may pursue suspension or debarment of the entities involved in accordance with 7 CFR part 3017. USDA further reserves the right to pursue any other remedies available by law, including any civil or criminal remedies, against any entity that violates the provisions of this part.

[76 FR 3806, Jan. 20, 2011. Redesignated and amended at 76 FR 53632, Aug. 29, 2011]

§ 3202.9 Recordkeeping requirements.

(a) *Records.* Manufacturers and vendors shall maintain records documenting compliance with this part for each product that has received certification to use the label, as specified in paragraphs (a)(1) through (a)(3) of this section.

(1) The results of all tests, and any associated calculations, performed to determine the biobased content of the product.

(2) The date the applicant receives certification from USDA, the dates of changes in formulation that affect the biobased content of certified biobased products, and the dates when the biobased content of certified biobased products was tested.

(3) Documentation of analyses performed by manufacturers to support claims of environmental or human health benefits, life cycle cost, sustainability benefits, and product performance made by the manufacturer.

(b) *Record retention.* For each certified biobased product, records kept under paragraph (a) of this section must be maintained for at least three years beyond the end of the label certification period (*i.e.,* three years beyond the period of time when manufacturers and vendors cease using the certification mark). Records may be kept in either electronic format or hard copy format. All records kept in electronic format must be readily accessible, and/or provided by request during a USDA audit.

§ 3202.10 Oversight and monitoring.

(a) *General.* USDA will conduct oversight and monitoring of manufacturers, vendors, designated representatives, and other entities involved with the voluntary product labeling program to ensure compliance with this part. This oversight will include, but not be limited to, conducting facility visits of manufacturers and vendors who have certified biobased products, and of their designated representatives. Manufacturers, vendors, and their designated representatives are required to cooperate fully with all USDA audit efforts for the enforcement of the voluntary labeling program.

(b) *Biobased content testing.* USDA will conduct biobased content testing of certified biobased products, as described in § 3202.8(b)(1) to ensure compliance with this part.

(c) *Inspection of records.* Manufacturers, vendors, and their designated representatives must allow Federal representatives access to the records required under § 3202.9 for inspection and copying during normal Federal business hours.

[76 FR 3806, Jan. 20, 2011. Redesignated and amended at 76 FR 53632, Aug. 29, 2011]

PARTS 3203–3299 [RESERVED]

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PART 3300—AGREEMENT ON THE INTERNATIONAL CARRIAGE OF PERISHABLE FOODSTUFFS AND ON THE SPECIAL EQUIPMENT TO BE USED FOR SUCH CARRIAGE (ATP); INSPECTION, TESTING, AND CERTIFICATION OF SPECIAL EQUIPMENT

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AUTHORITY: Sec. 4, Pub. L. 97–325, International Carriage of Perishable Foodstuffs Act (7 U.S.C. 4403).

SOURCE: 51 FR 33879, Sept. 24, 1986, unless otherwise noted.

Subpart A—Introduction

§ 3300.1 Scope of authority and purpose.

The International Carriage of Perishable Foodstuffs Act assigns to the Secretary of Agriculture the responsibility for implementation of the Agreement on the International Carriage of Perishable Foodstuffs and on the Special Equipment to be Used for Such Carriage (ATP). The purpose of this rule is to establish procedures for the inspection, testing, and certification of insulated, refrigerated, mechanically refrigerated, and heated transport equipment in accordance with the Act and the standards specified in the Agreement. In the process, the intent is to utilize existing industry organizations and facilities for testing and inspection of equipment. The Secretary is the sole authority to issue certificates of compliance.

§ 3300.4 Definitions.

Administrator means the Administrator, Office of Transportation, U.S. Department of Agriculture, whose address is: 1405 Auditors Building, 201 14th Street, SW., Washington, DC 20250.

ATP means the Agreement on the International Carriage of Perishable Foodstuffs and on the Special Equipment to be Used for Such Carriage (ATP), and the annexes and appendices thereto, done at Geneva, September 1, 1970, under the auspices of the Economic Commission for Europe, and any subsequent amendments thereto.[1]

ATP manager means the person designated by the Administrator to manage the program established by this rule, whose address is: ATP Manager, Office of Transportation, U.S Department of Agriculture, 1405 Auditors Building, 201 14th Street, SW., Washington, DC 20250.

Contracting party means a country which is signatory to the ATP.

Domestic owner means an organization incorporated or chartered under the laws of, and with principal office in, the United States, and to which one of the following applies:

(a) The organization owns and operates the equipment directly.

(b) The organization owns and operates the equipment through a wholly owned subsidiary in a foreign country.

(c) The organization is a lessee or bailee of the equipment, and a written lease or bailment provides that the organization is responsible for any inspection, testing, and certification of the equipment with respect to the ATP rule.

Equipment means the special transport equipment that meets the definitions and standards set forth in ATP, Annex 1, including, but not limited to, railcars, trucks, trailers, semitrailers, and intermodal freight containers that have an insulated body only, or an insulated body equipped with a refrigerating, mechanically refrigerating, or heating appliance.

Equipment manufacturer means an organization which producers or assembles the complete unit of equipment, that is, the insulated body with the thermal appliance installed.

Foreign owner means an organization registered under the laws of, or with principal office in, a country outside the United States, and which owns or operates the equipment.

Foreign-ATP certificate means a certificate issued by a foreign country which is a contracting party to the ATP, attesting that the equipment listed in the certificate complies with pertinent standards in the ATP.

Identical mechanical refrigerating appliance means an appliance which is of the same model number and design as the reference mechanical refrigerating appliance.

Insulated body means the six-sided structural component of equipment, consisting of insulated doors, sidewalls, roof, floor, and endwall, inside which perishable foodstuffs are carried.

International carriage means transportation of perishable foodstuffs if such foodstuffs are loaded in equipment or the equipment containing them is loaded onto a rail or road vehicle, in the territory of any country and such foodstuffs are, or the equipment containing them is, unloaded in the territory of another country that is a contracting party, where such transportation is by:

(a) Rail,

(b) Road,

(c) Any combination of rail and road, or

(d) Any sea crossing of less than one hundred and fifty kilometers, if preceded or followed by one or more land journeys as referred to in clauses (a), (b), and (c) of this definition, and the perishable foodstuffs are shipped in the same equipment used for such land journeys without transloading of such foodstuffs.

In the case of any transportation that involves one or more sea crossings other than as specified in clause (d) of this definition, each land journey shall be considered separately.

New equipment means equipment produced or assembled on or after the effective date of this rule.

Perishable foodstuffs means the quick deep-frozen and frozen food products listed in Annex 2, and the chilled food products listed in Annex 3 to the ATP.

Reference equipment means a unit of equipment which has passed a test in an approved testing station, and can thereby serve as a basis for certification of related serially-produced equipment.

[1] A copy of the agreement can be obtained by request to the ATP Manager, Office of Transportation, U.S. Department of Agriculture, 1405 Auditors Building, 201 14th Street, SW., Washington, DC 20250.

Reference insulated body means an insulated body which has passed a test in an approved testing station for measurement of the K-coefficient of the body, and can thereby serve as the basis for approval of serially-produced bodies in the case in which the body and the mechanical refrigerating appliance of the equipment are tested separately.

Reference mechanical refrigerating appliance means an appliance which has passed a test in an approved testing laboratory, and can thereby serve as the basis for approval of identical mechanical refrigerating appliances in the case in which the appliance and the insulated body of the equipment are tested separately.

Serially-produced bodies means insulated bodies which meet the definition in ATP, Annex 1 Appendix 1, paragraph 2(c)(i).

Serially-produced equipment means equipment of a specific type (container, semi-trailer, trailer, truck, or container), which meets the definition in ATP, Annex 1, Appendix 1, paragraphs 2(c), (i), (ii), (iii), and (iv).

Thermal appliance means the refrigerating, mechanical refrigerating, or heating appliance which is installed in the insulated body of the equipment.

United States means the fifty States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands of the United States, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States.

U.S. ATP certificate means a certificate issued by the U.S. Department of Agriculture, attesting that the equipment listed in the certificate complies with pertinent standards in the ATP.

U.S. ATP testing laboratory means a facility in the United States which has been approved by the Administrator to conduct tests of mechanical refrigerating appliances.

U.S. ATP testing station means a facility in the United States which has been approved by the Administrator to conduct tests of equipment.

Subpart B—Procedures for Testing of Equipment

§ 3300.7 General.

Testing of equipment according to the ATP is basically done in two phases:

(a) Measurement of the insulating capacity, that is, the K-coefficient, of the insulated body.

(b) Determination of the efficiency of the thermal appliance as installed in the insulated body. In the case of mechanically refrigerated equipment, the mechanical refrigerating appliance may be tested separate from the body.

§ 3300.10 Measurement of the K-coefficient of an insulated body.

The K-coefficient shall be measured according to the procedures in ATP, Annex 1, Appendix 2, paragraphs 1–28, and the following shall apply:

(a) The internal heating method shall be used.

(b) In ATP, Annex 1, Appendix 2, paragraph 8, last line, ''about +20 °C for the mean temperature of the walls of the body shall be interpreted to mean between +19 °C (+66 °F) and 21 °C (+70 °F).

(c) A report of each test shall be completed on a form corresponding to the pertinent test report model prescribed in ATP, Annex 1, Appendix 2. Report forms may be obtained by a request to the ATP manager.

§ 3300.13 Determination of the efficiency of the thermal appliances as installed in the insulated body.

In determining the efficiency of a thermal appliance with respect to maintaining a prescribed temperature inside the body, the procedures in ATP, Annex 1, Appendix 2, paragraphs 31–40 and 43–47 shall be used. A report of each test shall be completed on a form corresponding to the pertinent test report model prescribed in ATP, Annex 1, Appendix 2. Report forms may be obtained by a request to the ATP manager.

Subpart C—Approval of Testing Stations

§ 3300.16 General.

Any public or private organization incorporated or chartered under the laws of, and with principal office in, the United States may apply to have one or more of its facilities in the United States designated as a U.S. ATP testing station.

§ 3300.19 Application for approval.

An application by an officer of the organization shall be submitted to the Administrator for each facility for which approval is sought. Copies of the Form, Application for Approval as a U.S. ATP Testing Station, may be obtained by a request to the ATP manager. The following information must be supplied in the application:

(a) A statement that the organization is incorporated or chartered under the laws of, and that it has its principal office in, the United States, including the name, address, and telephone number of the principal office.

(b) The address and telephone number of the testing station, and name and title of person in charge of the station.

(c) A summary of experience at the facility which would indicate the capability to conduct tests of equipment according to Supart B of this rule.

(d) A general description of the station, including drawings on letter size (8 ½ × 11 inches) paper to show the floor plan and cross-sections of the test chamber, basic dimensions, location of heat exchangers and instruments, and any other pertinent information.

(e) An indication of which of the following types of equipment, as defined in ATP, Annex 1, that the station is capable of testing: intermodal freight containers, semi-trailers, trailers, railcars, and trucks.

(f) A statement that the ATP manager or other representative of the Administrator may, before a decision is made concerning the application, observe a test at the station of a Class ''C'' mechanically refrigerated container or semi-trailer, with Class ''C'' being defined as in ATP, Annex 1, paragraph 3.

(g) A statement that the station will be open to public use, that is, to manufacturers and owners of equipment which may apply to have equipment tested.

(h) A statement that the fees to be charged by the organization for testing will be reasonable with respect to costs involved, and that such fees will be payable directly to the organization by those who seek testing of their equipment.

(i) A statement that the station will maintain records of basic data developed in each test conducted under this rule, such records to be available for review by the ATP manager or other representative of the Administrator upon request. The record for each test shall be maintained for a period of three years.

(j) A statement that the organization will advise the ATP manager as soon as practicable of its intent to conduct a test under this rule and that it will, as soon as possible, advise when a firm test date has been set so that the ATP manager or other representative of the Administrator may observe the test.

(k) A statement that the organization will send to the ATP manager a copy of each test report for equipment tested at the station according to this rule, within 30 days after completion of the test.

(l) A statement that, should any significant change occur in the facility with respect to structure or test equipment as a result of redesign or other cause during the period of approval, the organization will so advise the ATP manager within 30 days after such change.

(m) Any other pertinent information.

§ 3300.22 Response to application for approval.

The Administrator will, within 30 days of receipt of the application and any relevant information required, advise the applicant whether or not the facility is approved as a testing station. Approval is for a 5-year period.

§ 3300.25 Application for renewal of approval.

If an organization wishes to have an approval renewed at the end of a 5-year

period, it shall submit a request for renewal to the Administrator 90 days before expiration of the existing approval. The request for renewal shall contain the same type of information as required in the original application, that is, the information called for in § 3300.19 of subpart C.

§ 3300.28 Response to application for renewal of approval.

The Administrator will, within 30 days of receipt of application and any relevant information required, advise the applicant whether or not approval is renewed. A renewal is good for 5 years.

§ 3300.31 Termination of approval.

An approved testing station may at any time withdraw as an approved testing station by written notice to the Administrator. Similarly, the Administrator may suspend or terminate for cause the approved status of a testing station by written notice to the organization, setting forth the reasons for such action. Examples of causes for suspension or termination of approval of a testing station would be a change in equipment or operations at the station which would render the station incapable of performing tests according to the standards in the ATP, or noncompliance of the station with pertinent portions of this rule.

Subpart D—Procedures for Separate Testing of Mechanical Refrigerating Appliances

§ 3300.34 General.

ATP, Annex 1, Appendix 2, paragraph 41, provides that approval of mechanically refrigerated equipment may be done on the basis of separate testing of the mechanical refrigerating appliance.

§ 3300.37 Testing of a mechanical refrigerating appliance.

For separate testing of a mechanical refrigerating appliance, the following shall pertain:

(a) The calibrated-box method shall be used, as set forth in ARI Standard 1110, Standard for Mechanical Refrigeration Units, of the Air-Conditioning and Refrigeration Institute.

(b) The appliance shall be rated according to the class, or classes, of service for which the appliance is intended, with classes being defined as in ATP, Annex 1, paragraph 3.

(c) A report of each test shall be completed on a form corresponding to the pertinent test report model prescribed in ATP, Annex 1, Appendix 2. Report forms may be obtained by a request to the ATP manager.

Subpart E—Approval of Testing Laboratories

§ 3300.40 General.

Any public or private organization incorporated or chartered under the laws of, and with principal office in, the United States may apply to have one or more of its facilities in the United States designated as a U.S. ATP testing laboratory.

§ 3300.43 Application for approval.

An application by an officer of the organization shall be submitted to the Administrator for each facility for which approval is sought. Copies of the Form, Application for Approval as a U.S. ATP Testing Laboratory, may be obtained by a request to the ATP manager. The following information must be supplied in the application:

(a) A statement that the organization is incorporated or chartered under the laws of, and that it has its principal office in, the United States, including the address and telephone number of the principal office.

(b) The address and telephone number of the testing laboratory, and name and title of person in charge of the laboratory.

(c) A summary of the experience at the facility which would indicate a capability to conduct tests of mechanical refrigerating appliances according to subpart D of this rule.

(d) A general description of the laboratory, including drawings on letter size (8½ × 11 inches) paper to show the floor plan and cross-section of the test chamber, basic dimensions, location of heat exchangers and instruments, and any other pertinent information.

(e) A statement that the ATP manager or other representative of the Administrator may, before a decision is

made concerning the application, observe a test at the laboratory of a mechanical refrigerating appliance for a Class ''C'' mechanically refrigerated container or trailer, with Class ''C'' as defined in ATP, Annex 1, paragraph 3.

(f) A statement that the laboratory will maintain records of basic data developed in each test conducted under this rule, such records to be available for review by the ATP manager or other representative of the Administrator, upon request. The record for each test shall be maintained for a period of three years.

(g) A statement that the organization will advise the ATP manager as soon as practicable of its intent to conduct a test under this rule and that it will, as soon as possible, advise when a firm test has been set so that the ATP manager or other representative of the Administrator may observe the test.

(h) A statement that the organization will send to the ATP manager a copy of each test report for an appliance tested at the laboratory according to this rule, within 30 days after completion of the test.

(i) A statement that, should any significant change occur in the facility with respect to structure or test equipment as a result of redesign or other cause during the period of approval, the organization will so advise the ATP manager within 30 days after such change.

(j) Any other pertinent information.

§ 3300.46 Response to application for approval.

The Administrator will, within 30 days of receipt of an application and any relevant information required, advise the applicant whether or not the facility is approved as a testing laboratory. Approval is for a 5-year period from date of approval.

§ 3300.49 Application for renewal of approval.

If an organization wishes to have an approval renewed at the end of a 5-year period, it shall submit a request for renewal to the Administrator 90 days before expiration of the existing approval. The request for renewal shall contain the same type of information as required in the original application, that is, the information called for in § 3300.43 of subpart E.

§ 3300.52 Response to application for renewal of approval.

The Administrator will, within 30 days of receipt of application and any relevant information required, advise the applicant whether or not approval is renewed. A renewal extends the period of approval for 5 years.

§ 3300.55 Termination of approval.

An approved testing laboratory may at any time withdraw as an approved testing laboratory by written notice to the Administrator. Similarly, the Administrator may suspend or terminate for cause the approved status of a testing laboratory by written notice to the organization, setting forth the reasons for such action. Examples of causes for suspension or termination of approval would be a change in equipment or operations at the laboratory which would render it incapable of performing tests according to the standards in the ATP, or noncompliance of the laboratory with pertinent portions of this rule.

Subpart F—Certification of New Equipment

§ 3300.58 General.

The following shall apply for certification of new equipment:

(a) Domestic owners are eligible to receive U.S. ATP certificates for equipment produced or assembled in the United States or in a foreign country.

(b) Foreign owners are eligible to receive U.S. ATP certificates only for equipment produced or assembled in the United States.

(c) For equipment manufactured (*i.e.*, produced or assembled) in the United States:

(1) When the complete unit of equipment is tested, the test shall be performed in a U.S. ATP testing station.

(2) When the mechanical refrigerating appliance and the insulated body are tested separately, such tests shall be performed in approved testing facilities in the United States or in test facilities located in, and approved by, a foreign country which is a Contracting Party.

(d) For equipment manufactured in a foreign country which is a Contracting Party, a domestic owner may receive a U.S. ATP certiticate in exchange for the Foreign-ATP certificate issued by the country of manufacture.

(e) For equipment manufactured in a foreign country which is not a Contracting Party, tests shall be performed in approved testing facilities in the United States or in facilities located in and approved by a foreign country which is a Contracting Party.

(f) In accordance with ATP, Annex 1, Appendix 1, paragraphs 2(a) and (d), the validity of a test report for a reference equipment shall expire at the end of a period of 3 years or at the end of the manufacture of 1,000 units of serially-produced equipment, whichever occurs first.

(g) The validity of a test report for a reference mechanical refrigerating appliance shall expire at the end of a period of three years, or at the end of the manufacture of 1,000 identical mechanical refrigerating appliances, whichever occurs first.

(h) The validity of a test report for a reference insulated body shall expire at the end of a period of three years, or at the end of the manufacture of 1,000 serially-produced bodies, whichever occurs first.

(i) Serially-produced equipment shall be produced or assembled by the same manufacturer and at the same manufacturing plant as the reference equipment.

(j) Identical mechanical refrigerating appliances shall be manufactured by the same manufacturer and at the same manufacturing plant as the reference mechanical refrigerating appliance.

(k) Serially-produced bodies shall be manufactured by the same manufacturer and at the same manufacturing plant as the reference insulated body.

(l) Equipment manufacturers shall notify the ATP manager 30 days before start of manufacture so that the ATP manager or other representative of the Administrator may observe the manufacturing operation.

(m) Owners who receive a U.S. ATP certificate have the responsibility to manitain the equipment in good repair and operating condition with the understanding that the certificate is valid only so long as:

(1) The insulated body and the thermal appliance are maintained in good condition;

(2) No material alteration is made to the thermal appliance which decreases its refrigerating capacity, and;

(3) If the thermal appliance is replaced, it is replaced by an appliance of equal or greater refrigerating capacity.

§ 3300.61 Testing and verification requirements.

In accordance with ATP, Annex 1, Appendix 1, paragraphs 1, 1(a), 2(a), 2(b), 2(c) and 3, and Appendix 2, paragraph 41, certification of new equipment is based upon the following:

(a) For a unit of equipment, a test of the equipment in an approved testing station.

(b) For serially-produced equipment:

(1) A test of one unit of equipment in an approved testing station, such unit to serve as the reference equipment.

(2) Verification that production of other units of equipment is in conformity with the reference equipment.

(c) For mechanically refrigerated equipment, certification may be based upon a separate test of the mechanical refrigerating appliance and a separate test of the insulated body.

§ 3300.64 Application for certificate for new equipment produced or assembled in the United States or in a foreign country which is not a contracting party to the ATP.

Application for certification shall be submitted to the ATP manager by an officer in the organization of the owner of the equipment. In the case of equipment manufactured in the United States, application may be made by an officer in the organization of the equipment manufacturer, acting on behalf of the owner. Copies of the Form, Application for U.S. ATP Certificate for New Equipment Produced or Assembled in the United States or in a Foreign Country Which is not a Contracting Party to the ATP, may be obtained by a request to the ATP manager. The following information must be supplied in the application:

(a) A statement whether the owner is a domestic owner or a foreign owner, with the name, address and telephone

number of its principal office, and the name and title of person to contact.

(b) If the operator of the equipment is different from the owner, the name and address of the operator.

(c) Type of equipment (intermodal freight container, semi-trailer, trailer, railcar, or truck).

(d) Total number of units of equipment.

(e) Definition and distinguishing mark of the equipment for which certification is sought, referring to ATP, Annex 1, paragraph 3 and Appendix 4.

(f) Name, address, and telephone number of the principal office of the equipment manufacturer, and name and title of the person to contact.

(g) Name and address of the plant at which the equipment was manufactured.

(h) In the case of a unit of equipment (*i.e.*, the insulated body with its mechanical refrigerating appliance installed) that has been tested to serve as the reference equipment for serially-produced equipment:

(1) The original or certified true copy of the test report for the reference equipment.

(2) For the serially-produced equipment:

(i) The manufacturer's make and model number for the equipment, including a brief description of the equipment and enclosure of any brochure on the equipment which might be available.

(ii) The basis upon which the equipment meets the definition of serially-produced equipment, with respect to the reference equipment.

(iii) A statement that the equipment was manufactured at the same plant at which the reference equipment was manufactured.

(iv) A statement that production of the equipment was in conformity with the reference equipment.

(i) In the case where the mechanical refrigerating appliance and the insulated body have been tested separately:

(1) For the reference mechanical refrigerating appliance:

(i) The original or certified true copy of the test report.

(ii) From the test report, the effective refrigerating capacity, W, in watts, of the appliance at an outside temperature of +30 °C and the inside temperature (*see* ATP, Annex 1, paragraph 3 and Appendix 4) for the class of equipment for which certification is sought. ''W'' must be equal to, or greater than, the increased heat transfer rate, H_i, for the reference insulated body. See paragraph (3)(iii) below.

(2) For the identical mechanical refrigerating appliances:

(i) Name and address of the plant at which the identical appliances and reference appliance were manufactured.

(ii) The manufacturer's make, model number, and a brief description of the appliances with enclosure of any brochure on the appliances which might be available.

(iii) A statement that the appliances meet the definition of identical mechanical refrigerating appliances.

(3) For the reference insulated body:

(i) The original or certified true copy of the test report.

(ii) The total heat transfer rate of the body, $H_t = S \times K \times \Delta T$, in watts, where: ''S'' is the mean surface area of the body, from the test report; ''K'' is the heat transfer coefficient of the body, from the test report; and, ''Δ T'' is the difference in degrees Kelvin between an outside temperature of +30 °C and the inside temperature for the class of equipment for which certification is sought.

(iii) The increased beat transfer rate, H_i, obtained by multiplying the total heat transfer rate H_t, by the factor of 1.75.

(4) For the serially-produced insulated bodies:

(i) Name and address of the plant at which the serially-produced bodies and reference body were manufactured.

(ii) The manufacturer's make, model number, and a brief description of the bodies, with any brochure on the bodies which might be available.

(iii) The basis upon which the bodies meet the definition of serially-produced bodies, with respect to the reference insulated body.

(iv) A statement that production of the bodies was in conformity with the reference insulated body.

(j) Information on the equipment after manufacture:

(1) A statement that each mechanical refrigerating appliance, after it was installed in the body, was operated and thoroughly checked and that each appliance functioned properly.

(2) A statement that each body and each appliance has affixed to it a manufacturer's plate or other means of identification which shows the items of information required by ATP, Annex 1, paragraph 6.

(3) A statement that each unit of equipment, before it is put into service, will have affixed to it a certification plate and distinguishing mark as specified in ATP, Annex 1, Appendix 1, paragraphs 4 and 5, and Appendixes 3 and 4.

(4) A list showing, for each unit of equipment, the serial number of the body and the corresponding owner's equipment identification number.

§ 3300.67 Application for certificate for new equipment produced or assembled in a foreign country which is a contracting party to the ATP.

An application for certification of equipment shall be submitted to the ATP manager by an officer in the organization of the owner of the equipment. Copies of the Form, Application for U.S. ATP Certificate for New Equipment Produced or Assembled in a Foreign Country Which is a Contracting Party, may be obtained by a request to the ATP manager. The following information must be submitted in the application:

(a) A statement that the owner is a domestic owner, with the name, address and telephone number of its principal office, and the name and title of the person to contact.

(b) If the operator of the equipment is different from the owner, the name and address of the operator.

(c) The type of equipment (intermodal freight container, trailer, semitrailer, railcar, or truck.)

(d) Total number of units of equipment.

(e) Definition of the equipment for which certification is sought, referring to ATP, Annex 1, paragraph 3, and Appendix 4.

(f) Name, address, and telephone number of the manufacturer of the equipment, and the name and title of the person to contact.

(g) The manufacturer's make and model number for the equipment, including a brief description of the equipment and any brochure on the equipment which might be available.

(h) The original or certified true copy of the test report for the reference equipment.

(i) The original or certified true copy of the Foreign-ATP certificate issued for the equipment.

(j) A statement that each unit of equipment, before it is put into service, will have affixed to it a certification plate and distinguishing mark as specified in ATP, Annex 1, Appendix 1, paragraphs 4 and 5, and Appendixes 3 and 4.

(k) A list showing, for each unit of equipment, the serial number of the body and the corresponding owner's equipment identification number.

§ 3300.70 Issuance of certificate.

The ATP manager will evaluate the documents received and, for equipment deemed qualified, will issue a U.S. ATP certificate to the applicant within 30 days of the receipt of an application and any relevant information required. The certificate will be in the format prescribed in ATP, Annex 1, Appendix 3. For equipment deemed not qualified, the applicant will be advised of the reasons for non-qualification within 30 days of the receipt of an application and any relevant information required.

§ 3300.73 Period of validity of certificates.

In accordance with ATP, Annex 1, Appendix 1, paragraphs 1(a) and 1(b), certificates issued for new equipment are valid for a period of 6 years from date of issue.

Subpart G—Certification of Equipment in Service

§ 3300.76 General.

Only domestic owners are eligible to receive U.S. ATP certificates for equipment in service, with certification based upon the following:

(a) For equipment which has not previously been certified:

(1) For each unit of equipment, a test in a U.S. ATP testing station or in a testing station located in and approved by a country which is a Contracting

Party, to measure the K-coefficient of the insulated body and the efficiency of the thermal appliance in accordance with § 3300.10 and § 3300.13 of this rule.

(2) If the equipment consists of serially-produced equipment manufactured by a particular equipment manufacturer, and belonging to one owner, certification may be based upon the following:

(i) A test of 1 percent of the units of equipment as prescribed in preceding paragraph (a)(1) of this section, the units tested to serve as reference equipment.

(ii) An inspection of each unit of equipment, using the procedures set forth in ATP, Annex 1, Appendix 2, paragraphs 29 and 49. The inspections shall be performed by one of the following, at the choice of the owner:

(A) Persons in the owner's organization whom the owner deems qualified to perform inspections, or;

(B) By an independent inspection agency which the owner deems competent to perform inspections. Fees charged by such inspection agency shall be payable directly to the agency by the owner.

(iii) A report of each inspection shall be completed on a form corresponding to the pertinent test report model in ATP, Annex 1, Appendix 2. Report forms may be obtained by a request to the ATP manager.

(b) For renewal of a U.S. ATP certificate which is nearing its expiration date, any of the following three procedures:

(1) For each unit of equipment, a test as prescribed in preceding paragraph (a)(1) of this section, or;

(2) If the equipment is serially-produced by a particular manufacturer and belongs to one owner, test and inspection of the equipment according to the procedures prescribed in preceding paragraphs (a)(2)(i), (ii), and (iii) of this section, or;

(3) An inspection of each unit of equipment as prescribed in paragraphs (a)(2)(ii) and (iii) of this section.

(c) For equipment which is currently certified according to a U.S. ATP certificate, and which has been transferred from one domestic owner to another, the new owner may obtain a U.S. ATP certificate by submitting the original or certified true copy of the certificate issued to the previous owner, and by performing an inspection and submitting an inspection report for each unit of equipment.

(d) For equipment which is currently certified according to a Foreign-ATP certificate, and which has been transferred from a foreign owner to a domestic owner, the domestic owner may obtain a U.S. ATP certificate by submitting the original or certified true copy of the test report for the reference equipment and the original or certified true copy of the foreign certificate, and by performing an inspection and submitting an inspection report for each unit of equipment.

(e) Owners who receive a U.S. ATP certificate have the responsibility to maintain equipment in good repair and operating condition with the understanding that the certificate is valid only so long as:

(1) The insulated body and the thermal appliance are maintained in good condition;

(2) No material alteration is made to the thermal appliance which decreases its refrigeration capacity, and;

(3) If the thermal appliance is replaced, it is replaced by an appliance of equal or greater refrigerating capacity.

§ 3300.79 Application for certificate.

An application shall be submitted to the ATP manager by an officer in the organization of the owner of the equipment. Copies of the Form, Application for U.S. ATP Certificate for Equipment in Service, may be obtained by a request to the ATP manager. The following information is requested in the application:

(a) A statement that the owner is a domestic owner, with the name, address, and telephone number of its principal office, and name and title of person to contact.

(b) If the operator of the equipment is different from the owner, the name and address of the operator.

(c) The type of equipment (intermodal freight container, trailer, semitrailer, railcar, or truck).

(d) The total number of units of equipment.

(e) The definition of the equipment for which certification is sought, referring to ATP, Annex 1, paragraph 3 and Appendix 4.

(f) For equipment which has not been previously certified, one of the following:

(1) For each unit of equipment, the original or certified true copy of the test report, or;

(2) If the equipment is serially-produced by one manufacturer:

(i) Name of manufacturer.

(ii) The original or certified true copy of the test report(s) of 1 percent of the equipment which was tested to serve as reference equipment.

(iii) A report of inspection for each unit of equipment.

(g) For renewal of a U.S. ATP Certificate which is nearing its expiration date:

(1) The original or certified true copy of that certificate, and;

(2) One of the following, (i) (ii), or (iii):

(i) For each unit of equipment, the original or certified true copy of the test report.

(ii) If the equipment is serially-produced by one manufacturer:

(A) Name of manufacturer.

(B) The original or certified true copy of the test report(s) of 1 percent of the equipment which was tested to serve as reference equipment.

(C) A report of inspection from each unit of equipment.

(iii) A report of inspection for each unit of equipment.

(h) For equipment which is currently certified according to a U.S. ATP certificate, and which has been transferred from one domestic owner to another:

(1) The original or certified true copy of that certificate.

(2) A report of inspection for each unit of equipment.

(i) For equipment which is currently certified according to a Foreign-ATP certificate, and which has been transferred from a foreign owner to a domestic owner:

(1) The original or certified true copy of the test report for the reference equipment.

(2) The original or certified true copy of the Foreign-ATP certificate.

(3) A report of inspection for each unit of equipment.

(j) A statement that each unit of equipment has, or will have, affixed to it a certification plate and distinguishing mark as prescribed in ATP, Annex 1, Appendix 1, paragraphs 4 and 5, and Appendices 3 and 4.

(k) A list showing, for each unit of equipment, the serial number of the body and the corresponding owner's equipment identification number.

§ 3300.82 Issuance of certificate.

The ATP manager will evaluate documents received and, for equipment deemed qualified, will issue a U.S. ATP certificate to the applicant within 30 days of receipt of the application and any relevant information required. The certificate will be in the format prescribed in ATP, Annex 1, Appendix 3. For equipment deemed not qualified, the applicant will be advised of reasons for non-qualification within 30 days of receipt of an application and any relevant information required.

§ 3300.85 Period of validity of certificates.

In accordance with ATP, Annex 1, Appendix 1, paragraphs 1(b), and Appendix 2, paragraphs 29(c) and 49(b) and (d), considered in combination, certificates will be valid for periods as follows:

(a) For equipment which passes a test, 6 years.

(b) For serially-produced equipment of which 1 percent have passed a test, and all units have been inspected and passed such inspection, 6 years.

(c) For renewal of a U.S. ATP certificate which is nearing its expiration date, where the equipment has passed an inspection but has not been tested, 3 years.

(d) For equipment currently certified according to a U.S. ATP certificate, where the equipment has been transferred from one domestic owner to another and the equipment has passed an inspection, 3 years or the date of expiration of the current U.S. ATP certificate, whichever gives the later expiration date on the new U.S. ATP certificate.

(e) For equipment currently certified according to a Foreign-ATP certificate, where the equipment has been transferred from a foreign owner to a domestic owner and the equipment has passed an inspection, 3 years or the date of expiration of the foreign certificate, whichever gives the later expiration date on the newly issued U.S. ATP certificate.

Subpart H—Other Provisions

§ 3300.88 Fees for U.S. ATP certificates.

The fee schedule for issuance of U.S. ATP certificates by the U.S. Department of Agriculture will be calculated according to the criteria in Circular A–25[2], issued by the Office of Management and Budget. Fees may be revised as required on an annual basis.

[2] A copy of Circular A–25 can be obtained by a request to the Office of Management and Budget (OMB), 17th Street and Pennsylvania Avenue, NW., Washington, DC 20503.

§ 3300.91 List of approved testing stations, approved testing laboratories, and fees for certificates.

A current list of U.S. ATP testing stations, U.S. ATP testing laboratories, and fees for issuance of U.S. ATP certificates may be obtained by request to the ATP manager.

§ 3300.94 Appeals.

Any organization aggrieved by an action in connection with this rule may obtain a review of such action by submitting pertinent information by letter to the Administrator. The decision of the Administrator is the final agency action.

PART 3305 [RESERVED]

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PART 3400—SPECIAL RESEARCH GRANTS PROGRAM

Subpart A—General

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AUTHORITY: 7 U.S.C. 450i(c).

SOURCE: 56 FR 58147, Nov 15, 1991, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 3400 appear at 76 FR 4806, Jan. 27, 2011.

Subpart A—General

§ 3400.1 Applicability of regulations.

(a) The regulations of this part apply to special research grants awarded under the authority of subsection (c) of the Competitive, Special, and Facilities Research Grant Act, as amended (7 U.S.C. 450i (c)), to facilitate or expand promising breakthroughs in areas of the food and agricultural sciences of importance to the United States. Subparts A and B, excepting this section, apply only to special research grants awarded under subsection (c)(1)(A). Subpart C, Peer and Merit Review Arranged by Grantees, and Subpart D, Annual Reports, apply to all grants awarded under subsection (c).

(b) Each year the Director of NIFA shall determine and announce through publication of a Notice in such publications as the FEDERAL REGISTER, professional trade journals, agency or program handbooks, the Catalog of Federal Domestic Assistance, or any other appropriate means, research program areas for which proposals will be solicited competitively, to the extent that funds are available.

(c) The regulations of this part do not apply to research, extension or education grants awarded by the Department of Agriculture under any other authority.

[64 FR 34103, June 24, 1999]

§ 3400.2 Definitions.

As used in this part:

(a) *Director* means the Director of the National Institute of Food and Agriculture (NIFA) and any other officer or employee of the Department of Agriculture to whom the authority involved may be delegated.

(b) *Department* means the Department of Agriculture.

(c) *Principal investigator* means a single individual designated by the grantee in the grant application and approved by the Director who is responsible for the scientific and technical direction of the project.

(d) *Grantee* means the entity designated in the grant award document as the responsible legal entity to whom a grant is awarded under this part.

(e) *Research project grant* means the award by the Director of funds to a grantee to assist in meeting the costs of conducting, for the benefit of the public, an identified project which is intended and designed to establish, discover, elucidate, or confirm information or the underlying mechanisms relating to a research program area identified in the annual solicitation of applications.

(f) *Project* means the particular activity within the scope of one or more of the research program areas identified in the annual solicitation of applications, which is supported by a grant award under this part.

(g) *Project period* means the total length of time that is approved by the Director for conducting the research project as outlined in an approved grant application.

(h) *Budget period* means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

(i) *Awarding official* means the Director and any other officer or employee of the Department to whom the authority to issue or modify research project grant instruments has been delegated.

(j) *Peer review group* means an assembled group of experts or consultants qualified by training and experience in particular scientific or technical fields to give expert advice, in accordance with the provisions of this part, on the scientific and technical merit of grant applications in those fields.

(k) *Ad hoc reviewers* means experts or consultants qualified by training and experience in particular scientific or technical fields to render special expert advice, whose written evaluations of grant applications are designed to complement the expertise of the peer review group, in accordance with the provisions of this part, on the scientific or technical merit of grant applications in those fields.

(l) *Research* means any systematic study directed toward new or fuller knowledge and understanding of the subject studied.

(m) *Methodology* means the project approach to be followed and the resources needed to carry out the project.

[56 FR 58147, Nov 15, 1991, as amended at 76 FR 4806, Jan. 27, 2011]

§ 3400.3 Eligibility requirements.

(a) Except where otherwise prohibited by law, any State agricultural experiment station, all colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals, shall be eligible to apply for and to receive a special research project grant under this part, provided that the applicant qualifies as a responsible grantee under the criteria set forth in paragraph (b) of this section.

(b) To qualify as responsible, an applicant must meet the following standards as they relate to a particular project:

(1) Have adequate financial resources for performance, the necessary experience, organizational and technical qualifications, and facilities, or a firm commitment, arrangement, or ability to obtain such (including proposed subagreements);

(2) Be able to comply with the proposed or required completion schedule for the project;

(3) Have a satisfactory record of integrity, judgment, and performance, including, in particular, any prior performance under grants and contracts from the Federal Government;

(4) Have an adequate financial management system and audit procedure which provides efficient and effective accountability and control of all property, funds, and other assets; and

(5) Be otherwise qualified and eligible to receive a research project grant under applicable laws and regulations.

(c) Any applicant who is determined to be not responsible will be notified in writing of such findings and the basis therefor.

§ 3400.4 How to apply for a grant.

(a) A request for proposals will be prepared and announced through publications such as the FEDERAL REGISTER, professional trade journals, agency or program handbooks, the Catalog of Federal Domestic Assistance, or any other appropriate means of solicitation, as early as practicable each fiscal year. It will contain information sufficient to enable all eligible applicants to prepare special research grant proposals and will be as complete as possible with respect to:

(1) Descriptions of specific research program areas which the Department proposes to support during the fiscal year involved, including anticipated funds to be awarded;

(2) Deadline dates for having proposal packages postmarked;

(3) Name and address where proposals should be mailed;

(4) Number of copies to be submitted;

(5) Forms required to be used when submitting proposals; and

(6) Special requirements.

(b) *Grant Application Kit*. A Grant Application Kit will be made available to any potential grant applicant who requests a copy. This kit contains required forms, certifications, and instructions applicable to the submission of grant proposals.

(c) *Format for research grant proposals*. Unless otherwise stated in the specific program solicitation, the following applies:

(1) *Grant Application*. All research grant proposals submitted by eligible applicants should contain a Grant Application form, which must be signed by the proposing principal investigator(s) and endorsed by the cognizant authorized organizational representative who possesses the necessary authority to commit the applicant's time and other relevant resources.

(2) *Title of Project*. The title of the project must be brief (80-character maximum), yet represent the major thrust of the research. This title will be used to provide information to the Congress and other interested parties who may be unfamiliar with scientific terms; therefore, highly technical words or phraseology should be avoided where possible. In addition, phrases such as ''investigation of'' or ''research on'' should not be used.

(3) *Objectives*. Clear, concise, complete, enumerated, and logically arranged statement(s) of the specific aims of the research must be included in all proposals.

(4) *Procedures*. The procedures or methodology to be applied to the proposed research plan should be explicitly stated. This section should include but not necessarily be limited to:

(i) A description of the proposed investigations and/or experiments in the sequence in which it is planned to carry them out;

(ii) Techniques to be employed, including their feasibility;

(iii) Kinds of results expected;

(iv) Means by which data will be analyzed or interpreted;

(v) Pitfalls which might be encountered; and

(vi) Limitations to proposed procedures.

(5) *Justification*. This section should describe:

(i) The importance of the problem to the needs of the Department and to the Nation, including estimates of the magnitude of the problem.

(ii) The importance of starting the work during the current fiscal year, and

(iii) Reasons for having the work performed by the proposing organization.

(6) *Literature review*. A summary of pertinent publications with emphasis on their relationship to the research should be provided and should include all important and recent publications. The citations should be accurate, complete, written in acceptable journal format, and be appended to the proposal.

(7) *Current research*. The relevancy of the proposed research to ongoing and, as yet, unpublished research of both the applicant and any other institutions should be described.

(8) *Facilities and equipment*. All facilities, including laboratories, which are available for use or assignment to the proposed research project during the requested period of support, should be reported and described. Any materials, procedures, situations, or activities, whether or not directly related to a particular phase of the proposed research, and which may be hazardous to personnel, must be fully explained, along with an outline of precautions to be exercised. All items of major instrumentation available for use or assignment to the proposed research project during the requested period of support should be itemized. In addition, items of nonexpendable equipment needed to conduct and bring the proposed project to a successful conclusion should be listed.

(9) *Collaborative arrangements*. If the proposed project requires collaboration with other research scientists, corporations, organizations, agencies, or entities, such collaboration must be fully explained and justified. Evidence should be provided to assure peer reviewers that the collaborators involved agree with the arrangements. It should be specifically indicated whether or not such collaborative arrangements have the potential for any conflict(s) of interest. Proposals which indicate collaborative involvement must state

which proposer is to receive any resulting grant award, since only one eligible applicant, as provided in § 3400.3 of this part, may be the recipient of a research project grant under one proposal.

(10) *Research timetable.* The applicant should outline all important research phases as a function of time, year by year.

(11) *Personnel support.* All personnel who will be involved in the research effort must be clearly identified. For each scientist involved, the following should be included:

(i) An estimate of the time commitments necessary;

(ii) Vitae of the principal investigator(s), senior associate(s), and other professional personnel to assist reviewers in evaluating the competence and experience of the project staff. This section should include curricula vitae of *all* key persons who will work on the proposed research project, whether or not Federal funds are sought for their support. The vitae are to be no more than two pages each in length, excluding publications listings; and

(iii) A chronological listing of the most representative publications during the past five years shall be provided for each professional project member for whom a curriculum vitae appears under this section. Authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these usually appear in journals.

(12) *Budget.* A detailed budget is required for each year of requested support. In addition, a summary budget is required detailing requested support for the overall project period. A copy of the form which must be used for this purpose, along with instructions for completion, is included in the Grant Application Kit identified under § 3400.4(b) of this part and may be reproduced as needed by applicants. Funds may be requested under any of the categories listed, provided that the item or service for which support is requested is allowable under applicable Federal cost principles and can be identified as necessary for successful conduct of the proposed research project. No funds will be awarded for the renovation or refurbishment of research spaces; purchases or installation of fixed equipment in such spaces; or for the planning, repair, rehabilitation, acquisition, or construction of a building or facility. All research project grants awarded under this part shall be issued without regard to matching funds or cost sharing.

(13) *Research involving special considerations.* A number of situations encountered in the conduct of research require special information and supporting documentation before funding can be approved for the project. If such situations are anticipated, the proposal must so indicate. It is expected that a significant number of special research grant proposals will involve the following:

(i) *Recombinant DNA molecules.* All key personnel identified in a proposal and all endorsing officials of a proposed performing entity are required to comply with the guidelines established by the National Institutes of Health entitled, ''Guidelines for Research Involving Recombinant DNA Molecules,'' as revised. The Grant Application Kit, identified above in § 3400.4(b), contains forms which are suitable for such certification of compliance.

(ii) *Human subjects at risk.* Responsibility for safeguarding the rights and welfare of human subjects used in any research project supported with grant funds provided by the Department rests with the performing entity. Regulations have been issued by the Department under 7 CFR Part 1c, Protection of Human Subjects. In the event that a project involving human subjects at risk is recommended for award, the applicant will be required to submit a statement certifying that the research plan has been reviewed and approved by the Institutional Review Board at the proposing organization or institution. The Grant Application Kit, identified above in § 3400.4(b), contains forms which are suitable for such certification.

(iii) *Laboratory animal care.* The responsibility for the humane care and treatment of any laboratory animal, which has the same meaning as ''animal'' in section 2(g) of the Animal Welfare Act of 1966, as amended (7 U.S.C. 2132(g)), used in any research project supported with Special Research Grants Program funds rests with the

performing organization. In this regard, all key personnel identified in a proposal and all endorsing officials of the proposed performing entity are required to comply with applicable provisions of the Animal Welfare Act of 1966, as amended (7 U.S.C. 2131 *et. seq.*) and the regulation promulgated thereunder by the Secretary of Agriculture in 9 CFR parts 1, 2, 3, and 4. In the event that a project involving the use of a laboratory animal is recommended for award, the applicant will be required to submit a statement certifying such compliance. The Grant Application Kit, identified above in § 3400.4(b), contains forms which are suitable of such certification.

(14) *Current and pending support.* All proposals must list any other current public or private research support, in addition to the proposed project, to which key personnel listed in the proposal under consideration have committed portions of their time, whether or not salary support for the person(s) involved is included in the budgets of the various projects. This section must also contain analogous information for all projects underway and for pending research proposals which are currently being considered by, or which will be submitted in the near future to, other possible sponsors, including other Departmental programs or agencies. Concurrent submission of identical or similar projects to other possible sponsors will not prejudice its review or evaluation by the Director or experts or consultants engaged by Director for this purpose. The Grant Application Kit, identified above in § 3400.4(b), contains a form which is suitable for listing current and pending support.

(15) *Additions to project description.* Each project description is expected by the Director, members of peer review groups, and the relevant program staff to be complete in itself. However, in those instances in which the inclusion of additional information is necessary, the number of copies submitted should match the number of copies of the application requested in the annual solicitation of proposals as indicated in § 3400.4(a)(4). Each set of such materials must be identified with the title of the research project as it appears in the Grant Application and the name(s) of the principal investigator(s). Examples of additional materials may include photographs which do not reproduce well, reprints, and other pertinent materials which are deemed to be unsuitable for inclusion in the proposal.

(16) *Organizational management information.* Specific management information relating to an applicant shall be submitted on a one-time basis prior to the award of a research project grant identified under this part if such information has not been provided previously under this or another program for which the sponsoring agency is responsible. Copies of forms recommended for use in fulfilling the requirements contained in this section will be provided by the agency specified in this part once a research project grant has been recommended for funding.

§ 3400.5 Evaluation and disposition of applications.

(a) *Evaluation.* All proposals received from eligible applicants in accordance with eligible research problem or program areas and deadlines established in the applicable request for proposals shall be evaluated by the Director through such officers, employees, and others as the Director determines are uniquely qualified in the areas of research represented by particular projects. To assist in equitably and objectively evaluating proposals and to obtain the best possible balance of viewpoints, the Director shall solicit the advice of peer scientists, *ad hoc* reviewers, or others who are recognized specialists in the research program areas covered by the applications received and whose general roles are defined in §§ 3400.2(j) and 3400.2(k). Specific evaluations will be based upon the criteria established in subpart B § 3400.15, unless NIFA determines that different criteria are necessary for the proper evaluation of proposals in one or more specific program areas, and announces such criteria and their relative importance in the annual program solicitation. The overriding purpose of such evaluations is to provide information upon which the Director can make

informed judgments in selecting proposals for ultimate support. Incomplete, unclear, or poorly organized applications will work to the detriment of applicants during the peer evaluation process. To ensure a comprehensive evaluation, all applications should be written with the care and thoroughness accorded papers for publication.

(b) *Disposition*. On the basis of the Director's evaluation of an application in accordance with paragraph (a) of this section, the Director will

(1) Approve support using currently available funds,

(2) Defer support due to lack of funds or a need for further evaluations, or

(3) Disapprove support for the proposed project in whole or in part.

With respect to approved projects, the Director will determine the project period (subject to extension as provided in § 3400.7(c)) during which the project may be supported. Any deferral or disapproval of an application will not preclude its reconsideration or a reapplication during subsequent fiscal years.

§ 3400.6 Grant awards.

(a) *General*. Within the limit of funds available for such purpose, the awarding official shall make research project grants to those responsible, eligible applicants whose proposals are judged most meritorious in the announced program areas under the evaluation criteria and procedures set forth in this part. The date specified by the Director as the beginning of the project period shall be no later than September 30 of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. All funds granted under this part shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations of this part, the terms and conditions of the award, the applicable Federal cost principles, and the Department's ''Uniform Federal Assistance Regulations'' (part 3015 of this title).

(b) *Grant award document and notice of grant award*—(1) *Grant award document*. The grant award document shall include at a minimum the following:

(i) Legal name and address of performing organization or institution to whom the Director has awarded a special research project grant under the terms of this part;

(ii) Title of project;

(iii) Name(s) and address(es) of principal investigator(s) chosen to direct and control approved activities;

(iv) Identifying grant number assigned by the Department;

(v) Project period, which specifies how long the Department intends to support the effort without requiring recompetition for funds;

(vi) Total amount of Departmental financial assistance approved by the Director during the project period;

(vii) Legal authority(ies) under which the research project grant is awarded to accomplish the purpose of the law;

(viii) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the research project grant award; and

(ix) Other information or provisions deemed necessary by the Department to carry out its granting activities or to accomplish the purpose of a particular research project grant.

(2) *Notice of grant award*. The notice of grant award, in the form of a letter, will be prepared and will provide pertinent instructions or information to the grantee that is not included in the grant award document.

(c) *Categories of grant instruments*. The major categories of grant instruments shall be as follows:

(1) *Standard grant*. This is a grant instrument by which the Department agrees to support a specified level of research effort for a predetermined project period without the announced intention of providing additional support at a future date. This type of research project grant is approved on the basis of peer review and recommendation and is funded for the entire project period at the time of award.

(2) *Renewal grant*. This is a document by which the Department agrees to provide additional funding under a standard grant as specified in paragraph (c)(1) of this section for a project period beyond that approved in an original or amended award, provided that the cumulative period does not exceed the statutory limitation. When a

renewal application is submitted, it should include a summary of progress to date under the previous grant instrument. Such a renewal shall be based upon new application, *de novo* peer review and staff evaluation, new recommendation and approval, and a new award instrument.

(3) *Continuation grant*. This is a grant instrument by which the Department agrees to support a specified level of effort for a predetermined period of time with a statement of intention to provide additional support at a future date, provided that performance has been satisfactory, appropriations are available for this purpose, and continued support would be in the best interests of the Federal Government and the public. It involves a long-term research project that is considered by peer reviewers and Departmental officers to have an unusually high degree of scientific merit, the results of which are expected to have a significant impact on the food and agricultural sciences, and it supports the efforts of experienced scientists with records of outstanding research accomplishments. This kind of document will normally be awarded for an initial one-year period and any subsequent continuation research project grants will also be awarded in one-year increments. The award of a continuation research project grant to fund an initial or succeeding budget period does not constitute an obligation to fund any subsequent budget period. A grantee must submit a separate application for continued support for each subsequent fiscal year. Requests for such continued support must be submitted in duplicate at least three months prior to the expiration date of the budget period currently being funded. Such requests must include: an interim progress report detailing all work performed to date; a Grant Application; a proposed budget for the ensuing period, including an estimate of funds anticipated to remain unobligated at the end of the current budget period; and current information regarding other extramural support for senior personnel. Decisions regarding continued support and the actual funding levels of such support in future years will usually be made administratively after consideration of such factors as the grantee's progress and management practices and within the context of available funds. Since initial peer reviews were based upon the full term and scope of the original special research grant application, additional evaluations of this type generally are not required prior to successive years' support. However, in unusual cases (e.g., when the nature of the project or key personnel change or when the amount of future support requested substantially exceeds the grant application originally reviewed and approved), additional reviews may be required prior to approving continued funding.

(4) *Supplemental grant*. This is an instrument by which the Department agrees to provide small amounts of additional funding under a standard, renewal, or continuation grant as specified in paragraphs (c)(1), (c)(2), and (c)(3) of this section and may involve a short-term (usually six months or less) extension of the project period beyond that approved in an original or amended award, but in no case may the cumulative period of the project, including short term extensions, exceed the statutory time limitation. A supplement is awarded only if required to assure adequate completion of the original scope of work and if there is sufficient justification of need to warrant such action. A request of this nature normally does not require additional peer review.

(d) *Obligation of the Federal Government*. Neither the approval of any application nor the award of any research project grant shall commit or obligate the United States in any way to make any renewal, supplemental, continuation, or other award with respect to any approved application or portion of an approved application.

§ 3400.7 Use of funds; changes.

(a) *Delegation of fiscal responsibility*. The grantee may not delegate or transfer in whole or in part, to another person, institution, or organization the responsibility for use or expenditure of grant funds.

(b) *Change in project plans*. (1) The permissible changes by the grantee, principal investigator(s), or other key

project personnel in the approved research project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the projects' approved goals. If the grantee or the principal investigator(s) is uncertain as to whether a change complies with this provision, the question must be referred to the Director for a final determination.

(2) Changes in approved goals, or objectives, shall be requested by the grantee and approved in writing by the Department prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

(3) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the Department prior to effecting such changes.

(4) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the Department prior to effecting such changes, except as may be allowed in the terms and conditions of the grant award.

(c) *Changes in project period.* The project period determined pursuant to § 3400.5(b) may be extended by the Director without additional financial support for such additional period(s) as the Director determines may be necessary to complete or fulfill the purposes of an approved project. Any extension, when combined with the originally approved or amended project period shall not exceed three (3) years (the limitation established by statute) and shall be further conditioned upon prior request by the grantee and approval in writing by the Department, unless prescribed otherwise in the terms and conditions of a grant award.

(d) *Changes in approved budget.* The terms and conditions of a grant will prescribe circumstances under which written Departmental approval will be requested and obtained prior to instituting changes in an approved budget.

[56 FR 58147, Nov 15, 1991, as amended at 64 FR 34103, June 24, 1999]

§ 3400.8 Other Federal statutes and regulations that apply.

Several other Federal statutes and/or regulations apply to grant proposals considered for review or to research project grants awarded under this part. These include but are not limited to:

7 CFR Part 1c—USDA implementation of the Federal Policy for the Protection of Human Subjects.

7 CFR 1.1—USDA implementation of Freedom of Information Act.

7 CFR Part 3—USDA implementation of OMB Circular A–129 regarding debt collection.

7. CFR Part 15, Subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964.

7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (*i.e.*, Circular Nos. A–110, A–21, and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly, the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR Part 3016—USDA Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, implementing OMB directives (*i.e.*, Circular Nos. A–102 and A–87).

7 CFR Part 3017, as amended—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

7 CFR Part 3018—USDA implementation of New Restrictions on Lobbying. Imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans.

7 CFR Part 3407—NIFA procedures to implement the National Environmental Policy Act.

29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and 7 CFR part 15B (USDA implementation of statute), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

§ 3400.9 Other conditions.

The Director may, with respect to any research project grant or to any class of awards, impose additional conditions prior to or at the time of any award when, in the Director's judgment, such conditions are necessary to assure or protect advancement of the approved project, the interests of the public, or the conservation of grant funds.

Subpart B—Scientific Peer Review of Research Grant Applications

§ 3400.10 Establishment and operation of peer review groups.

Subject to § 3400.5, the Director will adopt procedures for the conduct of peer reviews and the formulation of recommendations under § 3400.14.

§ 3400.11 Composition of peer review groups.

(a) Peer review group members will be selected based upon their training and experience in relevant scientific or technical fields, taking into account the following factors:

(1) The level of formal scientific or technical education by the individual;

(2) The extent to which the individual has engaged in relevant research, the capacities in which the individual has done so (e.g., principal investigator, assistant), and the quality of such research;

(3) Professional recognition as reflected by awards and other honors received from scientific and professional organizations outside of the Department;

(4) The need of the group to include within its membership experts from various areas of specialization within relevant scientific or technical fields;

(5) The need of the group to include within its membership experts from a variety of organizational types (e.g., universities, industry, private consultant(s)) and geographic locations; and

(6) The need of the group to maintain a balanced membership, e.g., minority and female representation and an equitable age distribution.

(b) [Reserved]

§ 3400.12 Conflicts of interest.

Members of peer review groups covered by this part are subject to relevant provisions contained in Title 18 of the United States Code relating to criminal activity, Department regulations governing employee responsibilities and conduct (part O of this title), and Executive Order 11222, as amended.

§ 3400.13 Availability of information.

Information regarding the peer review process will be made available to the extent permitted under the Freedom of Information Act (5 U.S.C. 552), the Privacy Act (5 U.S.C. 552a), and implementing Departmental regulations (part 1 of this title).

§ 3400.14 Proposal review.

(a) All research grant applications will be acknowledged. Prior to technical examination, a preliminary review will be made for responsiveness to the request for proposals (e.g., relationship of application to research program area). Proposals which do not fall within the guidelines as stated in the annual request for proposals will be eliminated from competition and will be returned to the applicant. Proposals whose budgets exceed the maximum allowable amount for a particular program area as announced in the request for proposals may be considered as lying outside the guidelines.

(b) All applications will be carefully reviewed by the Director, qualified officers or employees of the Department, the respective peer review group, and *ad hoc* reviewers, as required. Written comments will be solicited from *ad hoc* reviewers when required, and individual written comments and in-depth discussions will be provided by peer review group members prior to recommending applications for funding. Applications will be ranked and support levels recommended within the limitation of total available funding for each research program area as announced in the applicable request for proposals.

(c) No awarding official will make a research project grant based upon an application covered by this part unless the application has been reviewed by a peer review group and/or *ad hoc* reviewers in accordance with the provisions of this part and said reviewers have

made recommendations concerning the scientific merit of such application.

(d) Except to the extent otherwise provided by law, such recommendations are advisory only and are not binding on program officers or on the awarding official.

§ 3400.15 Review criteria.

(a) Subject to the varying conditions and needs of States, Federal funded agricultural research supported under these provisions shall be designed to, among other things, accomplish one or more of the following purposes:

(1) Continue to satisfy human food and fiber needs;

(2) Enhance the long-term viability and competitiveness of the food production and agricultural system of the United States within the global economy;

(3) Expand economic opportunities in rural America and enhance the quality of life for farmers, rural citizens, and society as a whole;

(4) Improve the productivity of the American agricultural system and develop new agricultural crops and new uses for agricultural commodities;

(5) Develop information and systems to enhance the environment and the natural resource base upon which a sustainable agricultural economy depends; or

(6) Enhance human health.

In carrying out its review under § 3400.14, the peer review group will use the following form upon which the evaluation criteria to be used are enumerated, unless pursuant to § 3400.5(a), different evaluation criteria are specified in the annual solicitation of proposals for a particular program.

Peer Panel Scoring Form

Proposal Identification No. _____

Institution and Project Title _____

I. Basic Requirement:

Proposal falls within guidelines? _____ Yes _____ No. If no, explain why proposal does not meet guidelines under comment section of this form.

II. Selection Criteria:

	Score 1–10	Weight factor	Score X weight factor	Comments
1. Overall scientific and technical quality of proposal	.....	10	.....	.....
2. Scientific and technical quality of the approach	.....	10	.....	.....
3. Relevance and importance of proposed research to solution of specific areas of inquiry	.....	6	.....	.....
4. Feasibility of attaining objectives; adequacy of professional training and experience, facilities and equipment	.....	5	.....	.....

Score _____

Summary Comments _____

(b) Proposals satisfactorily meeting the guidelines will be evaluated and scored by the peer review panel for each criterion utilizing a scale of 1 through 10. A score of one (1) will be considered low and a score of ten (10) will be considered high for each selection criterion. A weighted factor is used for each criterion.

Subpart C—Peer and Merit Review Arranged by Grantees

SOURCE: 64 FR 34104, June 24, 1999, unless otherwise noted.

§ 3400.20 Grantee review prior to award.

(a) *Review requirement.* Prior to the award of a standard or continuation grant by NIFA, any proposed project shall have undergone a review arranged by the grantee as specified in this subpart. For research projects, such review must be a scientific peer review conducted in accordance with § 3400.21. For education and extension projects, such review must be a merit review conducted in accordance with § 3400.22.

(b) *Credible and independent.* Review arranged by the grantee must provide for a credible and independent assessment of the proposed project. A credible review is one that provides an appraisal of technical quality and relevance sufficient for an organizational representative to make an informed judgment as to whether the proposal is

appropriate for submission for Federal support. To provide for an independent review, such review may include USDA employees, but should not be conducted solely by USDA employees.

(c) *Notice of completion and retention of records.* A notice of completion of review shall be conveyed in writing to NIFA either as part of the submitted proposal or prior to the issuance of an award, at the option of NIFA. The written notice constitutes certification by the applicant that a review in compliance with these regulations has occurred. Applicants are not required to submit results of the review to NIFA; however, proper documentation of the review process and results should be retained by the applicant.

(d) *Renewal and supplemental grants.* Review by the grantee is not automatically required for renewal or supplemental grants as defined in § 3400.6. A subsequent grant award will require a new review if, according to NIFA, either the funded project has changed significantly, other scientific discoveries have affected the project, or the need for the project has changed. Note that a new review is necessary when applying for another standard or continuation grant after expiration of the grant term.

§ 3400.21 Scientific peer review for research activities.

Scientific peer review is an evaluation of a proposed project for technical quality and relevance to regional or national goals performed by experts with the scientific knowledge and technical skills to conduct the proposed research work. Peer reviewers may be selected from an applicant organization or from outside the organization, but shall not include principals, collaborators or others involved in the preparation of the application under review.

§ 3400.22 Merit review for education and extension activities.

Merit review is an evaluation of a proposed project or elements of a proposed program whereby the technical quality and relevance to regional or national goals are assessed. The merit review shall be performed by peers and other individuals with expertise appropriate to evaluate the proposed project. Merit reviewers may not include principals, collaborators or others involved in the preparation of the application under review.

Subpart D—Annual Reports

§ 3400.23 Annual reports.

(a) *Reporting requirement.* The recipient shall submit an annual report describing the results of the research, extension, or education activity and the merit of the results.

(b) *Report type and content.* Unless otherwise stipulated, grant recipients will have met the reporting requirement under this subpart by complying with the reporting requirements as set forth in the terms and conditions of the grant at the time of award.

[64 FR 34104, June 24, 1999]

PART 3401—RANGELAND RESEARCH GRANTS PROGRAM

Subpart A—General

Sec.
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Subpart B—Scientific Peer Review of Research Applications for Funding

3401.12 Establishment and operation of peer review groups.
3401.13 Composition of peer review groups.
3401.14 Conflicts of interest.
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3401.16 Proposal review.
3401.17 Review criteria.

AUTHORITY: Section 1470 of the National Agricultural Research, Extension and Teaching Policy Act of 1977 (7 U.S.C. 3316).

SOURCE: 61 FR 27753, May 31, 1996, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 3401 appear at 76 FR 4806, Jan. 27, 2011.

Subpart A—General

§ 3401.1 Applicability of regulations of this part.

(a) The regulations of this part apply to rangeland research grants awarded under the authority of section 1480 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3333) to land-grant colleges and universities, State agricultural experiment stations, and colleges, universities, and Federal laboratories having a demonstrable capacity in rangeland research, as determined by the Secretary, to carry out rangeland research. The Director of the National Institute of Food and Agriculture (NIFA) shall determine and announce, through publication each year of a Notice in the FEDERAL REGISTER, professional trade journals, agency or program handbooks, the catalog of Federal Domestic Assistance or any other appropriate means, research program areas for which proposals will be solicited, to the extent that funds are available.

(b) The regulations of this part do not apply to research grants awarded by the Department of Agriculture under any other authority.

§ 3401.2 Definitions.

As used in this part:

(a) *Director* means the Director of NIFA and any other officer or employee of the Department of Agriculture to whom the authority involved may be delegated.

(b) *Department* means the Department of Agriculture.

(c) *Principal investigator* means a single individual designated by the grantee in the application for funding and approved by the Director who is responsible for the scientific and technical direction of the project.

(d) *Grantee* means the entity designated in the grant award document as the responsible legal entity to whom a grant is awarded under this part.

(e) *Research project grant* means the award by the Director of funds to a grantee to assist in meeting the costs of conducting, for the benefit of the public, an identified project which is intended and designed to establish, discover, elucidate, or confirm information or the underlying mechanisms relating to a research program area identified in the annual solicitation of applications.

(f) *Project* means the particular activity within the scope of one or more of the research program areas identified in the annual solicitation of applications, which is supported by a grant award under this part.

(g) *Project period* means the total length of time that is approved by the Director for conducting the research project as outlined in an approved application for funding.

(h) *Budget period* means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

(i) *Awarding official* means the Director and any other officer or employee of the Department to whom the authority to issue or modify research project grant instruments has been delegated.

(j) *Peer review group* means an assembled group of experts or consultants qualified by training or experience in particular scientific or technical fields to give expert advice, in accordance with the provisions of this part, on the scientific and technical merit of applications for funding in those fields.

(k) *Ad hoc reviewers* means experts or consultants qualified by training or experience in particular scientific or technical fields to render special expert advice, whose written evaluations of applications for funding are designed to complement the expertise of the peer review group, in accordance with the provisions of this part, on the scientific or technical merit of applications for Funding in those fields.

(l) *Research* means any systematic study directed toward new or fuller knowledge and understanding of the subject studied.

(m) *Methodology* means the project approach to be followed and the resources needed to carry out the project.

§ 3401.3 Eligibility requirements.

(a) Except where otherwise prohibited by law, any land-grant college and university, State agricultural experiment station, and college, university,

and Federal laboratory having a demonstrable capacity in rangeland research, as determined by the Secretary, shall be eligible to apply for and to receive a project grant under this part, provided that the applicant qualifies as a responsible grantee under the criteria set forth in paragraph (b) of this section.

(b) To qualify as responsible, an applicant must meet the following standards as they relate to a particular project:

(1) Have adequate financial resources for performance, the necessary experience, organizational and technical qualifications, and facilities, or a firm commitment, arrangement, or ability to obtain such (including proposed subagreements);

(2) Be able to comply with the proposed or required completion schedule for the project;

(3) Have a satisfactory record of integrity, judgment, and performance, including, in particular, any prior performance under grants and contracts from the Federal government;

(4) Have an adequate financial management system and audit procedure which provides efficient and effective accountability and control of all property, funds, and other assets; and

(5) Be otherwise qualified and eligible to receive a research project grant under applicable laws and regulations.

(c) Any applicant who is determined to be not responsible will be notified in writing of such findings and the basis therefor.

§ 3401.4 Matching funds requirement.

In accordance with section 1480 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3333), except in the case of Federal laboratories, each grant recipient must match the Federal funds expended on a research project based on a formula of 50 percent Federal and 50 percent non-Federal funding.

§ 3401.5 Indirect costs and tuition remission costs.

Pursuant to section 1473 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3319), funds made available under this program to recipients other than Federal laboratories shall not be subject to reduction for indirect costs or tuition remission costs. Since indirect costs and tuition remission costs, except in the case of Federal laboratories, are not allowable costs for purposes of this program, such costs may not be used to satisfy the matching requirement set forth in § 3401.4.

§ 3401.6 How to apply for a grant.

(a) *General.* After consultation with the Rangeland Research Advisory Board, established pursuant to section 1482 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3335), a request for proposals will be prepared and announced through publications such as the FEDERAL REGISTER, professional trade journals, agency or program handbooks, the Catalog of Federal Domestic Assistance, or any other appropriate means of solicitation, as early as practicable each fiscal year. It will contain information sufficient to enable all eligible applicants to prepare rangeland research grant proposals and will be as complete as possible with respect to:

(1) Descriptions of specific research program areas which the Department proposes to support during the fiscal year involved, including anticipated funds to be awarded;

(2) Deadline dates for having proposal packages postmarked;

(3) Name and address where proposals should be mailed;

(4) Number of copies to be submitted;

(5) Forms required to be used when submitting proposals; and

(6) Special requirements.

(b) *Application kit.* An Application Kit will be made available to any potential grant applicant who requests a copy. This kit contains required forms, certifications, and instructions applicable to the submission of grant proposals.

(c) *Format for research grant proposals.* Unless otherwise stated in the specific program solicitation, the following format applies:

(1) *Application for funding.* All research grant proposals submitted by eligible applicants should contain an Application for Funding form, which must

be signed by the proposing principal investigator(s) and endorsed by the cognizant authorized organizational representative who possesses the necessary authority to commit the applicant's time and other relevant resources.

(2) *Title of project*. The title of the project must be brief (80-character maximum), yet represent the major thrust of the research. This title will be used to provide information to the Congress and other interested parties who may be unfamiliar with scientific terms; therefore, highly technical words or phraseology should be avoided where possible. In addition, phrases such as ''investigation of'' or ''research on'' should not be used.

(3) *Objectives*. Clear, concise, complete, enumerated, and logically arranged statement(s) of the specific aims of the research must be included in all proposals.

(4) *Procedures*. The procedures of methodology to be applied to the proposed research plan should be stated explicitly. This section should include but not necessarily be limited to:

(i) A description of the proposed investigations and/or experiments in the sequence in which it is planned to carry them out;

(ii) Techniques to be employed, including their feasibility;

(iii) Kinds of results expected;

(iv) Means by which data will be analyzed or interpreted;

(v) Pitfalls which might be encountered; and

(vi) Limitations to proposed procedures.

(5) *Justification*. This section of the grant proposal should describe:

(i) The importance of the problem to the needs of the Department and to the Nation, including estimates of the magnitude of the problem;

(ii) The importance of starting the work during the current fiscal year; and

(iii) Reasons for having the work performed by the proposing organization.

(6) *Literature review*. A summary of pertinent publications with emphasis on their relationship to the research should be provided and should include all important and recent publications. The citations should be accurate, complete, written in acceptable journal format, and be appended to the proposal.

(7) *Current research*. The relevancy of the proposed research to ongoing and, as yet, unpublished research of both the applicant and any other institutions should be described.

(8) *Facilities and equipment*. All facilities, including laboratories, that are available for use or assignment to the proposed research project during the requested period of support, should be reported and described. Any materials, procedures, situations, or activities, whether or nor directly related to a particular phase of the proposed research, and which may be hazardous to personnel, must be explained fully, along with an outline of precautions to be exercised. All items of major instrumentation available for use or assignment to the proposed research project during the requested period of support should be itemized. In addition, items of nonexpendable equipment needed to conduct and bring the proposed project to a successful conclusion should be listed.

(9) *Collaborative arrangements*. If the proposed project requires collaboration with other research scientists, corporations, organizations, agencies, or entities, such collaboration must be explained fully and justified. Evidence should be provided to assure peer reviewers that the collaborators involved agree with the arrangements. It should be specifically indicated whether or not such collaborative arrangements have the potential for any conflict(s) of interest. Proposals which indicate collaborative involvements must state which applicant is to receive any resulting grant award, since only one eligible applicant, as provided in § 3401.3 may be the recipient of a research project grant under one proposal.

(10) *Research timetable*. The applicant should outline all important research phases as a function of time, year by year.

(11) *Personnel support*. All personnel who will be involved in the research effort must be identified clearly. For each scientist involved, the following should be included:

(i) An estimate of the time commitments necessary;

(ii) Vitae of the principal investigator(s), senior associate(s), and other professional personnel to assist reviewers in evaluating the competence and experience of the project staff. This section should include curricula vitae of *all* key persons who will work on the proposed research project, whether or not Federal funds are sought for their support. The vitae are to be no more than two pages each in length, excluding publication listings; and

(iii) A chronological listing of the most representative publications during the past five years shall be provided for each professional project member of whom a curriculum vitae appears under this section. Authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these usually appear in journals.

(12) *Budget.* A detailed budget is required for each year of requested support. In addition, a summary budget is required detailing requested support for the overall project period. A copy of the form which must be used for this purpose, along with instructions for completion, is included in the Application Kit identified under § 3401.6(b) and may be reproduced as needed by applicants. Funds may be requested under any of the categories listed, provided that the item or service for which support is requested is allowable under applicable Federal cost principles and can be identified as necessary for successful conduct of the proposed research project. As stated in § 3401.4 each grant recipient must match the Federal funds expended on a research project based on a formula of 50 percent Federal and 50 percent non-Federal funding. As stated in § 3401.5, indirect costs and tuition remission costs are not allowable costs for purposes of this program and , thus, may not be used to satisfy the matching requirement set forth in § 3401.4.

(13) *Research involving special considerations.* A number of situations encountered in the conduct of research require special information and supporting documentation before funding can be approved for the project. If such situations are anticipated, the proposal must so indicate. It is expected that a significant number of rangeland grant proposals will involve the following:

(i) *Recombinant DNA molecules.* All key personnel identified in a proposal and all endorsing officials of a proposed performing entity are required to comply with the guidelines establishing by the National Institutes of Health entitled, ''Guidelines for Research Involving Recombinant DNA Molecules,'' as revised. The Application Kit, identified above in § 3401.6(b), contains a form which is suitable for such certification of compliance. In the event a project involving recombinant DNA and RNA molecules results in a grant award, the Institutional Biosafety Committee must approve the research before NIFA funds will be released.

(ii) *Human subjects at risk.* Responsibility for safeguarding the rights and welfare of human subjects used in any research project supported with grant funds provided by the Department rests with the performing entity. Regulations have been issued by the Department under 7 CFR part 1c, Protection of Human Subjects. In the event that a project involving human subjects at risk is recommended for award, the applicant will be required to submit a statement certifying that the research plan has been reviewed and approved by the Institutional Review Board at the proposing organization or institution. The Application Kit, identified above in § 3401.6(b), contains a form which is suitable for such certification. In the event a project involving human subjects results in a grant award, funds will be released only after the Institutional Committee has approved the project.

(iii) *Laboratory animal care.* The responsibility for the humane care and treatment of any laboratory animal, which has the same meaning as ''animal'' in section 2(g) of the Animal Welfare Act of 1966, as amended (7 U.S.C. 2132(g)), used in any research project supported with Rangeland Research Grant Program funds rests with the performing organization. In this regard, all key personnel identified in a proposal and all endorsing officials of the proposed performing entity are required to comply with the applicable provisions of the Animal Welfare Act of 1966, as amended (7 U.S.C. 2131 *et seq.*)

and the regulations promulgated thereunder by the Secretary of Agriculture in 9 CFR parts 1, 2, 3, and 4. In the event that a project involving the use of a laboratory animal is recommended for award, the applicant will be required to submit a statement certifying such compliance. The Application Kit, identified above in § 3401.6(b), contains a form which is suitable for such certification. In the event a project involving the use of living vertebrate animals results in a grant award, funds will be released only after the Institutional Animal Care and Use Committee has approved the project.

(14) *Current and pending support.* All proposals must list any other current public or private research support, in addition to the proposed project, to which key personnel listed in the proposal under consideration have committed portions of their time, whether or not salary support for the person(s) involved is included in the budgets of the various projects. This section must also contain analogous information for all projects underway and for pending research proposals which are currently being considered by, or which will be submitted in the near future to, other possible sponsors, including other Departmental programs or agencies. Concurrent submission of identical or similar projects to other possible sponsors will not prejudice its review or evaluation by the Director or experts or consultants engaged by the Director for this purpose. The Application Kit, identified above in § 3401.6(b), contains a form which is suitable for listing current and pending support.

(15) *Additions to project description.* Each project description is expected by the Director, members of peer review groups, and the relevant program staff to be complete in itself. However, in those instances in which the inclusion of additional information is necessary, the number of copies submitted should match the number of copies of the application requested in the annual solicitation of proposals as indicated in § 3401.6(a)(4). Each set of such materials must be identified with the title of the research project as it appears in the Application for Funding and the name(s) of the principal investigator(s). Examples of additional materials may include photographs which do not reproduce well, reprints, and other pertinent materials which are deemed to be unsuitable for inclusion in the proposal.

(16) *National Environmental Policy Act.* As outlined in NIFA's implementing regulations of the National Environmental Policy Act of 1969 (NEPA) at 7 CFR part 3407, environmental data or documentation for the proposed project is to be provided to NIFA in order to assist NIFA in carrying out its responsibilities under NEPA. These responsibilities include determining whether the project requires an Environmental Assessment or an Environmental Impact Statement or whether it can be excluded from this requirement on the basis of several categorical exclusions listed in 7 CFR part 3407. In this regard, the applicant should review the categories defined for exclusion to ascertain whether the proposed project may fall within one or more of the exclusions, and should indicate if it does so on the National Environmental Policy Act Exclusions Form (Form NIFA—1234) provided in the Application Kit. Even though the applicant considers that a proposed project may fall within a categorical exclusion, NIFA may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for a proposed project should substantial controversy on environmental grounds exist or if other extraordinary conditions or circumstances are present that may cause such activity to have a significant environmental effect.

(17) *Organizational management information.* Specific management information relating to an applicant shall be submitted on an *one-time basis prior to the award of a research project grant* identified under this part if such information has not been provided previously under this or another program for which the sponsoring agency is responsible. Copies of forms recommended for use in fulfilling the requirements contained in this section will be provided by the agency specified in this part once a research project grant has been recommended for funding.

§ 3401.7 Evaluation and disposition of applications.

(a) *Evaluation.* All proposals received from eligible applicants in accordance with eligible research problem or program areas and deadlines established in the applicable request for proposals shall be evaluated by the Director through such officers, employees, and others as the Director determines are particularly qualified in the areas of research represented by particular projects. To assist in equitably and objectively evaluating proposals and to obtain the best possible balance of viewpoints, the Director may solicit the advice of peer scientists, *ad hoc* reviewers, or others who are recognized specialists in the research program areas covered by the applications received. Specific evaluations will be based upon the criteria established in subpart B of this part, § 3401.17, unless NIFA determines that different criteria are necessary for the proper evaluation of proposals in one or more specific program areas, and announces such criteria and their relative importance in the annual program solicitation. The overriding purpose of such evaluations is to provide information upon which the Director can make informed judgments in selecting proposals for ultimate support. Incomplete, unclear, or poorly organized applications will work to the detriment of applicants during the peer evaluation process. To ensure a comprehensive evaluation, all applications should be written with the care and thoroughness accorded papers for publication.

(b) *Disposition.* On the basis of the Director's evaluation of an application in accordance with paragraph (a) of this section, the Director will approve using currently available funds, defer support due to lack of funds or a need for further evaluations, or disapprove support for the proposed project in whole or in part. With respect to approved projects, the Director will determine the project period (subject to extension as provided in § 3401.9(c)) during which the project may be supported. Any deferral or disapproval of an application will not preclude its reconsideration or a reapplication during subsequent fiscal years.

§ 3401.8 Grant awards.

(a) *General.* Within the limit of funds available for such purpose, the awarding official shall make research project grants to those responsible, eligible applicants whose proposals are judged most meritorious in the announced program areas under the evaluation criteria and procedures set forth in this part. The date specified by the Director as the beginning of the project period shall be no later than September 30 of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. All funds granted under this part shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations of this part, the terms and conditions of the award, the applicable Federal cost principles, and the Department's ''Uniform Federal Assistance Regulations'' (parts 3015 and 3019 of this title).

(b) *Grant award document and notice of grant award*—(1) *Grant award documents.* The grant award document shall include at a minimum the following:

(i) Legal name and address of performing organization or institution to whom the Director has awarded a rangeland research project grant under the terms of this part;

(ii) Title of project;

(iii) Name(s) and address(es) of principal investigator(s) chosen to direct and control approved activities;

(iv) Identifying grant number assigned by the Department;

(v) Project period, which specifies how long the Department intends to support the effort without requiring recompetition for funds;

(vi) Total amount of Departmental financial assistance approved by the Director during the project period;

(vii) Legal authority(ies) under which the research project grant is awarded to accomplish the purpose of the law;

(viii) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the research project grant award; and

(ix) Other information or provisions deemed necessary by the Department to carry out its granting activities or

to accomplish the purpose of a particular research project grant.

(2) *Notice of grant award.* The notice of grant award, in the form of a letter, will be prepared and will provide pertinent instructions or information to the grantee that is not included in the grant award document.

(c) *Categories of grant instruments.* The major categories of grant instruments by which the Department may provide support are as follows:

(1) *Standard grant.* This is a grant instrument by which the Department agrees to support a specified level of research effort for a predetermined project period without the announced intention of providing additional support at a future date. This type of research project grant is approved on the basis of peer review and recommendation and is funded for the entire project period at the time of award.

(2) *Renewal grant.* This is a document by which the Department agrees to provide additional funding under a standard grant as specified in paragraph (c)(1) of this section for a project period beyond that approved in an original or amended award, provided that the cumulative period does not exceed the statutory limitation. When a renewal application is submitted, it should include a summary of progress to date under the previous grant instrument. Such a renewal shall be based upon new application, *de novo* peer review and staff evaluation, new recommendation and approval, and a new award instrument.

(3) *Continuation grant.* This is a grant instrument by which the Department agrees to support a specified level of effort for a predetermined period of time with a statement of intention to provide additional support at a future date, provided that performance has been satisfactory, appropriations are available for this purpose, and continued support would be in the best interests of the Federal government and the public. It involves a long-term research project that is considered by peer reviewers and Departmental officers to have an unusually high degree of scientific merit, the results of which are expected to have a significant impact on the productivity of the Nation's rangelands, and it supports the efforts of experienced scientists with records of outstanding research accomplishments. This kind of document normally will be awarded for an initial one-year period and any subsequent continuation research project grants also will be awarded in one-year increments, but in no case may the cumulative period of the project exceed the statutory limit. The award of a continuation research project grant to fund an initial or succeeding budget period does not constitute an obligation to fund any subsequent budget period. A grantee must submit a separate application for continued support for each subsequent fiscal year. Requests for such continued support must be submitted in duplicate at least three months prior to the expiration date of the budget period currently being funded. Such requests must include: an interim progress report detailing all work performed to date; an Application for Funding; a proposed budget for the enuring period, including an estimate of funds anticipated to remain unobligated at the end of the current budget period; and current information regarding other extramural support for senior personnel. Decisions regarding continued support and the actual funding levels of such support in future years usually will be made administratively after consideration of such factors as the grantee's progress and management practices and within the context of available funds. Since initial peer reviews were based upon the full term and scope of the original rangeland research application for funding, additional evaluations of this type generally are not required prior to successive years' support. However, in unusual cases (e.g., when the nature of the project or key personnel change or when the amount of future support requested substantially exceeds the application for funding originally reviewed and approved), additional reviews may be required prior to approval of continued funding.

(4) *Supplemental grant.* This is an instrument by which the Department agrees to provide small amounts of additional funding under a standard, renewal, or continuation grant as specified in paragraphs (c)(1), (c)(2), and (c)(3) of this section and may involve a

short-term (usually six months or less) extension of the project period beyond that approved in an original or amended award, but in no case may the cumulative period of the project, including short term extensions, exceed the statutory time limitation. A supplement is awarded only if required to assure adequate completion of the original scope of work and if there is sufficient justification of need to warrant such action. A request of this nature normally does not require additional peer review.

(d) *Obligation of the Federal government.* Neither the approval of any application nor the award of any research project grant shall commit or obligate the United States in any way to make any renewal, supplemental, continuation, or other award with respect to any approved application or portion of an approved application.

§ 3401.9 Use of funds; changes.

(a) *Delegation of fiscal responsibility.* The grantee may not delegate or transfer in whole or in part, to another person, institution, or organization the responsibility for use or expenditure of grant funds.

(b) *Change in project plans.* (1) The permissible changes by the grantee, principal investigator(s), or other key project personnel in the approved research project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the projects' approved goals. If the grantee or the principal investigator(s) is uncertain as to whether a change complies with this provision, the question shall be referred to the Director for a final determination.

(2) Changes in approved goals, or objectives, shall be requested by the grantee and approved in writing by the Department prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

(3) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the Department prior to effecting such changes.

(4) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the Department prior to effecting such changes, except as may be allowed in the terms and conditions of a grant award.

(c) *Changes in project period.* The project period determined pursuant to § 3401.7(b) may be extended by the Director without additional financial support, for such additional period(s) as the Director determines may be necessary to complete, or fulfill the purposes of, an approved project. Any extension, when combined with the originally approved or amended project period, shall be conditioned upon prior request by the grantee and approval in writing by the Department, unless prescribed otherwise in the terms and conditions of a grant award.

(d) *Changes in approved budget.* The terms and conditions of a grant will prescribe circumstances under which written Departmental approval will be requested and obtained prior to instituting changes in an approved budget.

§ 3401.10 Other Federal statutes and regulations that apply.

Several other Federal statutes and/or regulations apply to grant proposals considered for review or to research project grants awarded under this part. These include but are not limited to:

7 CFR Part 1c—USDA implementation of the Federal Policy for the Protection of Human Subjects;

7 CFR Part 1.1—USDA implementation of Freedom of Information Act:

7 CFR Part 3—USDA implementation of OMB Circular A–129 regarding debt collection;

7 CFR Part 15, Subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964;

7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (*i.e.*, Circular Nos. A–110, A–21, and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly, the Federal Grant and Cooperative Agreement Act of 1977), as well as general policy requirements applicable to recipients of Departmental financial assistance;

7 CFR Part 3017, as amended—USDA implementation of Governmentwide Debarment

and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants);

7 CFR Part 3018—USDA implementation of New Restrictions on Lobbying. Imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans;

7 CFR Part 3019—USDA Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations;

7 CFR Part 3051—Audits of Institutions of Higher Education and Other Nonprofit Institutions;

7 CFR Part 3407—NIFA procedures to implement the National Environmental Policy Act;

29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and 7 CFR Part 15B (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs; and

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

§ 3401.11 Other conditions.

The Director may, with respect to any research project grant or to any class of awards, impose additional conditions prior to or at the time of any award when, in the Director's judgment, such conditions are necessary to assure or protect advancement of the approved project, the interests of the public, or the conservation of grant funds.

Subpart B—Scientific Peer Review of Research Applications for Funding

§ 3401.12 Establishment and operation of peer review groups.

Subject to § 3401.7, the Director will adopt procedures for the conduct of peer reviews and the formulation of recommendations under § 3401.16.

§ 3401.13 Composition of peer review groups.

Peer review group members will be selected based upon their training or experience in relevant scientific or technical fields, taking into account the following factors:

(a) The level of formal scientific or technical education by the individual;

(b) The extent to which the individual has engaged in relevant research, the capacities in which the individual has done so (e.g., principal investigator, assistant), and the quality of such research;

(c) Professional recognition as reflected by awards and other honors received from scientific and professional organizations outside of the Department;

(d) The need of the group to include within its membership experts from various areas of specialization within relevant scientific or technical fields;

(e) The need of the group to include within its membership experts from a variety of organizational types (e.g., universities, industry, private consultant(s)) and geographic locations; and

(f) The need of the group to maintain a balanced membership, e.g., minority and female representation and an equitable age distribution.

§ 3401.14 Conflicts of interest.

Members of peer review groups covered by this part are subject to relevant provisions contained in Title 18 of the United States Code relating to criminal activity, Department regulations governing employee responsibilities and conduct (part 0 of this title), and Executive Order 11222 (3 CFR, 1964–1965 Comp., p. 306), as amended.

§ 3401.15 Availability of information.

Information regarding the peer review process will be made available to the extent permitted under the Freedom of Information Act (5 U.S.C. 552), the Privacy Act (5 U.S.C. 552a.), and implementing Departmental regulations (part 1 of this title).

§ 3401.16 Proposal review.

(a) All research Applications for Funding will be acknowledged. Prior to technical examination, a preliminary review will be made for responsiveness to the request for proposals (e.g., relationship of application to research program area). Proposals that do not fall within the guidelines as stated in the annual request for proposals will be

eliminated from competition and will be returned to the applicant. Proposals whose budgets exceed the maximum allowable amount for a particular program area as announced in the request for proposals may be considered as lying outside the guidelines.

(b) All applications will be reviewed carefully by the Director , qualified officers or employees of the Department, the respective merit review panel, and ad hoc reviewers, as required. Written comments will be solicited from ad hoc reviewers, when required, and individual written comments and in-depth discussions will be provided by peer review group members prior to recommending applications for funding. Applications will be ranked and support levels recommended within the limitation of total available funding for each research program area as announced in the applicable request for proposals.

(c) Except to the extent otherwise provided by law, such recommendations are advisory only and are not binding on program officers or on the awarding official.

§ 3401.17 Review criteria.

(a) Federally funded research supported under these provisions shall be designed to, among other things, accomplish one or more of the following purposes:

(1) Improve management of rangelands as an integrated system and/or watershed;

(2) Remedy unstable or unsatisfactory rangeland conditions;

(3) Increase revegetation and/or rehabilitation of rangelands;

(4) Examine the health of rangelands; and

(5) Define economic parameters associated with rangelands.

(b) In carrying out its review under § 3401.16, the peer review panel will use the following form upon which the evaluation criteria to be used are enumerated, unless, pursuant to § 3401.7(a), different evaluation criteria are specified in the annual solicitation of proposals for a particular program:

Peer Panel Scoring Form

Proposal Identification No. _____

Institution and Project Title _____

I. Basic Requirement:

Proposal falls within guidelines? _____ Yes _____ No. If no, explain why proposal does not meet guidelines under comment section of this form.

II. Selection Criteria:

	Score 1–10	Weight factor	Score X weight factor	Comments
1. Overall scientific and technical quality of proposal	.....	10	.....	.....
2. Scientific and technical quality of the approach	.....	10	.....	.....
3. Relevance and importance of proposed research to solution of specific areas of inquiry	.....	6	.....	.....
4. Feasibility of attaining objectives; adequacy of professional training and experience, facilities and equipment	.....	5	.....	.....

Score _____

Summary Comments _____

(c) Proposals satisfactorily meeting the guidelines will be evaluated and scored by the peer review panel for each criterion utilizing a scale of 1 through 10. A score of one (1) will be considered low and a score of ten (10) will be considered high for each selection criterion. A weighted factor is used for each criterion.

PART 3402—FOOD AND AGRICULTURAL SCIENCES NATIONAL NEEDS GRADUATE AND POSTGRADUATE FELLOWSHIP GRANTS PROGRAM

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AUTHORITY: 7 U.S.C. 3316.

SOURCE: 69 FR 62537, Oct. 26, 2004, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 3402 appear at 76 FR 4807, Jan. 27, 2011.

Subpart A—General Introduction

§ 3402.1 Applicability of regulations.

(a) The regulations of this part apply to competitive grants awarded under the provisions of section 1417(b)(6) of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended, 7 U.S.C. 3152(b)(6). The Act designates the U.S. Department of Agriculture (USDA) as the lead Federal agency for agricultural research, extension, and teaching in the food and agricultural sciences. Section 1417(b)(6) authorizes the Secretary of Agriculture, who has delegated the authority to theNational Institute of Food and Agriculture (NIFA), to make competitive grants to land-grant colleges and universities, colleges and universities having significant minority enrollments and a demonstrable capacity to carry out the teaching of food and agricultural sciences, and to other colleges and universities having a demonstrable capacity to carry out the teaching of food and agricultural sciences, to administer and conduct graduate and postdoctoral fellowship programs to help meet the Nation's needs for development of scientific and professional expertise in the food and agricultural sciences. The Graduate Fellowships are intended to encourage outstanding students to pursue and complete graduate degrees in the areas of food and agricultural sciences designated by NIFA through the Office of Higher Education Programs (HEP) as national needs. The postdoctoral Fellowships are intended to provide additional mentoring and training to outstanding USDA Graduate Fellows who completed their doctoral degrees no more than five (5) years before they begin the postdoctoral Fellowships.

(b) The regulations of this part do not apply to grants awarded by the Department of Agriculture under any other authority.

§ 3402.2 Definitions.

As used in this part:

Citizen or national of the United States means—

(1) A citizen or native resident of a State; or,

(2) A person defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22), who, though not a citizen of the United States, owes permanent allegiance to the United States.

College and university means an educational institution in any State which—

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate,

(2) Is legally authorized within such State to provide a program of education beyond secondary education,

(3) Provides an educational program for which a bachelor's degree or any other higher degree is awarded,

(4) Is a public or other nonprofit institution, and

(5) Is accredited by a nationally recognized accrediting agency or association.

Food and agricultural sciences means basic, applied, and developmental research, extension, and teaching activities in the food, agricultural, renewable natural resources, forestry, and physical and social sciences in the broadest sense of these terms including but not limited to research, extension and teaching activities concerned with the production, processing, marketing, distribution, conservation, consumption, research, and development of food and agriculturally related products and services, inclusive of programs in agriculture, natural resources, aquaculture, forestry, veterinary medicine, home economics, rural development, and closely allied fields.

Graduate degree means a master's or doctoral degree.

State means any one of the fifty States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Marianas, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, the Virgin Islands of the United States, and the District of Columbia.

Teaching activities means formal classroom instruction, laboratory instruction, and practicum experience specific to the food and agricultural sciences and matters relating thereto conducted by colleges and universities offering baccalaureate or higher degrees.

§ 3402.3 Institutional eligibility.

Applications may be submitted by land-grant colleges and universities, by colleges and universities having significant minority enrollments and a demonstrable capacity to carry out the teaching of food and agricultural sciences, and by other colleges and universities having a demonstrable capacity to carry out the teaching of food and agricultural sciences. All applicants must be institutions that confer a graduate degree in at least one area of the food and agricultural sciences targeted for National Needs Fellowships, that have a significant on-going commitment to the food and agricultural sciences generally, and that have a significant ongoing commitment to the specific subject area for which a grant application is made. It is the objective to award grants to colleges and universities which have notable teaching and research competencies in the food and agricultural sciences. The Graduate Fellowships are specifically intended to support programs that encourage outstanding students to pursue and complete a graduate degree at such institutions in an area of the food and agricultural sciences for which there is a national need for the development of scientific and professional expertise. The postdoctoral Fellowships are designed to support academic programs that provide additional training and mentoring to USDA Graduate Fellows and have notable teaching and research competencies in the NIFA designated national need areas. Institutions which currently have excellent programs of graduate study and training in the food and agricultural sciences dealing with targeted national needs are particularly encouraged to apply for all National Needs Fellowships.

Subpart B—Program Description

§ 3402.4 Food and agricultural sciences areas targeted for National Needs Graduate and Postdoctoral Fellowship Grants Program support.

Areas of the food and agricultural sciences, including multidisciplinary studies, appropriate for Fellowship grant applications are those in which developing shortages of expertise have been determined and targeted by HEP for National Needs Graduate and Postdoctoral Fellowship Grants Program support. When funds are available and HEP determines that a new competition is warranted, the specific areas and funds per area will be identified in a funding opportunity announcement announcing the program and soliciting program applications.

§ 3402.5 Overview of National Needs Graduate and Postdoctoral Fellowship Grants Program.

(a) The program will provide funds for a limited number of grants to support graduate student stipends and cost-of-education institutional allowances. These grants will be awarded competitively to eligible institutions. In order to encourage the development of special activities that are expected

to contribute to Fellows' advanced degree objectives, the program will also provide competitive, special international study or thesis/dissertation research travel allowances for a limited number of USDA Graduate Fellows. To encourage academic institutions to provide additional training/mentoring to outstanding USDA Graduate Fellows who have completed their doctoral degrees, the program will also provide postdoctoral Fellowship grants to a limited number of USDA Graduate Fellows.

(b) Based on the amount of funds appropriated in any fiscal year, HEP will determine:

(1) Whether new competitions for graduate Fellowships, postdoctoral Fellowships, and/or special international study or thesis/dissertation research travel allowances will be held during that fiscal year;

(2) The degree level(s) to be supported—master's, doctoral and/or postdoctoral;

(3) The proportion of appropriations to be targeted for Fellowship stipends for each respective degree level supported;

(4) The proportion of appropriations to be targeted for the cost-of-education institutional allowances for each respective degree level supported;

(5) The proportion of appropriations to be targeted for the special international study or thesis/dissertation research travel allowances for each respective degree level supported;

(6) The allowable stipend amount for each respective degree level supported, the cost-of-education institutional allowance for each respective degree level supported, and the maximum funds available for each special international study or thesis/dissertation research travel allowance for each respective degree level supported;

(7) The activities for which the cost-of-education allowance may be used for awards made in that year; and

(8) The maximum total funds that may be awarded to an institution under the program in a given fiscal year.

(c) HEP will also determine:

(1) The maximum number of national needs areas for which funding may be requested in a single application;

(2) The degree levels for which funding may be requested in a single application;

(3) The minimum and maximum number of fellowships for which an institution may apply in a single application; and

(4) The limits on the total number of applications that can be submitted by an institution, college, school, or other administrative unit.

(d) These determinations will be published as a part of the solicitation, which will be available at *http://www.grants.gov*.

§ 3402.6 Overview of the special international study and/or thesis/dissertation research travel allowance.

(a) For each USDA Graduate Fellow who desires to be considered for a special international study or thesis/dissertation research travel allowance, the Project Director must apply to HEP for a supplemental grant in accordance with instructions published in the solicitation. Postdoctoral Fellows are not eligible to receive the special international study or thesis/dissertation research travel allowance. Each application must include a ''Proposal Cover Page'' (Form NIFA–2002), ''Project Summary'' (Form NIFA–2003), ''Budget'' (Form NIFA–2004) and National Environmental Policy Act Exclusions Form (Form NIFA—2006).

(1) To provide HEP with sufficient information upon which to evaluate the merits of the requests for a special international study or thesis/dissertation research travel allowance, each application for a supplemental grant must contain a narrative which provides the following:

(i) The specific destination(s) and duration of the travel;

(ii) The specific study or thesis/dissertation research activities in which the Fellow will be engaged;

(iii) How the international experience will contribute to the Fellow's program of study;

(iv) A budget narrative specifying and justifying the dollar amount requested for the travel;

(v) Summary credentials of the faculty or other professionals with whom the Fellow will be working during the international experience (summary

credentials must not exceed three pages per person);

(vi) A letter from the dean of the Fellow's college or equivalent administrative unit supporting the Fellow's travel request and certifying that the travel experience will not jeopardize the Fellow's satisfactory progress toward degree completion; and

(vii) A letter from the fellowship grant Project Director certifying the Fellow's eligibility, the accuracy of the Fellow's travel request, and the relevance of the travel to the Fellow's advanced degree objectives.

(2) The narrative portion of the application must not exceed the page limitation included in the program solicitation.

(b) All complete requests will be evaluated by professional staff from USDA or other Federal agencies, as appropriate. Evaluation criteria will be published in the solicitation. HEP will award grants in accordance with evaluation criteria and to the extent possible based on availability of funds.

(c) Any current Fellow with sufficient time to complete the international experience before the termination date of the grant under which he/she is supported is eligible for a special international study or thesis/dissertation research travel allowance. Before the international study or thesis/dissertation research travel may commence, a Fellow must have completed one academic year of full-time study, as defined by the institution, under the Fellowship appointment and arrangements must have been formalized for the Fellow to study and/or conduct research in the foreign location(s).

§ 3402.7 Fellowship appointments.

(a)(1) Fellows must be identified and Fellowships must be awarded within 18 months of the effective date of a grant. Institutions failing to meet this deadline will be required to refund monies associated with any unawarded Fellowship(s). Graduate Fellowship appointments may be held only by persons who enroll and pursue full-time study in a graduate degree program in the national need area and at the degree level supported by the grant. Postdoctoral Fellowship appointments may be held only by persons who pursue full-time traineeship in research, teaching or extension in the national need area and are supervised by the mentor indicated in the grant application.

(2) It will be the responsibility of the grantee institution to award fellowships to students of superior academic ability.

(3) Graduate Fellows:

(i) Must be appointed before completing two semesters or equivalent hours of full-time study, as defined by the institution, or immediately after passing of candidacy/qualifying examinations, whichever is later;

(ii) Must be citizens or nationals of the United States as determined in accordance with Federal law; and

(iii) Must have strong interest, as judged by the institution, in pursuing a degree in a targeted national need area and in preparing for a career as a food or agricultural scientist or professional.

(4) Postdoctoral Fellows:

(i) Must have been USDA Graduate Fellows who successfully completed their doctoral degrees in areas of the food and agricultural sciences designated by NIFA as national need areas;

(ii) Must not have obtained their doctoral degrees more than five years prior to beginning their postdoctoral Fellowships;

(iii) Must have strong interest, as judged by the institution, in preparing for a career in agricultural research, teaching or extension.

(5)(i) A doctoral level Graduate Fellow who maintains satisfactory progress in his or her course of study is eligible for support for a maximum of 36 months within a 42-month period. A master's level Fellow who maintains satisfactory progress in his or her course of study is eligible for support for a maximum of 24 months during a 30-month period. A postdoctoral Fellow who achieves his or her training objectives is eligible for support for a maximum of 36 months during a 60-month period. It is the intent of this program that Graduate Fellows pursue full-time uninterrupted study or thesis/dissertation research, including time spent pursuing USDA-funded special international study or thesis/dissertation research activities.

(ii) Postdoctoral Fellowship appointments may be held only by persons who pursue full-time traineeship in research, teaching, or extension in the national need area and are supervised by the mentor indicated in the grant application.

However, during the period of support, USDA Graduate and Postdoctoral Fellows are permitted, at the discretion of their institutions, to accept additional supplemental employment that would positively contribute to their training or research and provide eligibility for tuition waivers (e.g., full or partial tuition waivers with research or teaching assignments).

(iii) For graduate Fellows requiring additional time to complete a degree, it is expected that the institution will endeavor to continue supporting individuals originally appointed to Fellowships through such other institutional means as teaching assistantships and research assistantships. For postdoctoral Fellows who terminate the Fellowships prematurely, the institution must return all unexpended monies to USDA. For USDA Graduate Fellows who complete the program of study early (less than 24 months for master's degree or 36 months for doctoral degree) or terminate their Fellowships prematurely, the institution may use any unexpended monies, within the time remaining on the project grant, to support pursuit of a doctoral degree in a discipline in the food and agricultural sciences by a master's degree level Fellow at the grantee institution; or a replacement Graduate Fellow. Where less than one semester/quarter remains before the expiration date of the Graduate Fellowship grant, the institution must refund any unexpended monies to the granting agency. Such funds cannot be used to increase the annual stipend amounts for current USDA Graduate or Postdoctoral Fellows.

(b) Within the framework of the regulations in this part, all decisions with respect to the appointment of Fellows will be made by the institution. However, institutions are urged to take maximum advantage of opportunities for awarding Fellowships to members of underrepresented groups at the graduate and postdoctoral level in the food and agricultural sciences, particularly minorities and women. Throughout a USDA Graduate Fellow's tenure, the institution should satisfy itself that the Fellow is making satisfactory academic progress, and carrying out, or planning to carry out, national needs related research. If an institution finds it necessary to terminate support of a USDA Graduate Fellow or a postdoctoral Fellow for insufficient progress or by decision on the part of the Fellow, the Fellow may no longer receive funds from the active grant. However, termination does not automatically disqualify a Fellow from receiving future grant support under this program. If a graduate or postdoctoral Fellow finds it necessary to interrupt his or her program of study because of health, personal reasons, or outside employment, the institution must reserve the funds for the purpose of allowing the Fellow to resume funded training any time within a six (6) month period. However, a USDA Graduate or Postdoctoral Fellow who finds it necessary to interrupt his/her program of training more than one time cannot exceed a total of six (6) months' cumulative leave status without forfeiting eligibility. For a USDA Graduate Fellowship terminated because of insufficient progress, by decision on the part of the Fellow, or reserved due to an interrupted program but not resumed within the required time period, the institution may use any unexpended monies to support, within the time remaining on the project grant, and subject to the limitations above, a replacement Fellow at the same master's or doctoral levels. For postdoctoral Fellowships terminated because of insufficient progress, by decision on the part of the Fellow, or reserved due to an interrupted program but not resumed within the required time period, the institution must return all the unexpended monies to NIFA.

(c) Only Fellows enrolled in master's programs of study may be supported under master's Fellowship grants. Master's degree level Fellows who complete their degree early may be supported under master's Fellowship grants, if they are enrolled in Ph.D.

programs in areas of the food and agricultural sciences designated as national need areas. Only Fellows enrolled in doctoral programs of study may be supported under doctoral degree Fellowship grants. Only USDA Graduate Fellows who have completed their doctoral degrees may be supported under postdoctoral Fellowship grants.

§ 3402.8 Fellowship activities.

A USDA Graduate Fellow shall be enrolled as a full-time graduate student, as defined by the institution, at all times during the tenure of the Fellowship in the national need area and at the degree level supported by the grant. This includes the time used for special international study or thesis/dissertation research, if the international travel is funded through a special international study or thesis/dissertation research travel allowance under this grant program. However, the normal requirement for formal registration during part of this tenure may be waived if permitted by the policy of the Fellowship institution, provided that the Graduate Fellow is making satisfactory progress toward degree completion and remains engaged in appropriate full-time Fellowship activities such as thesis/dissertation research. Postdoctoral Fellowship appointments may be held only by persons who pursue full-time traineeship in research, teaching, or extension in the national need area and are supervised by the mentor indicated in the grant application. Graduate and postdoctoral Fellows in academic institutions are not entitled to vacations as such. They are entitled to the short normal student holidays observed by the institution. The time between academic semesters or quarters is to be utilized as an active part of the grant period. During the period of support, USDA Graduate and Postdoctoral Fellows are permitted, at the discretion of their institutions, to accept additional supplemental employment that would positively contribute to their training or research and provide eligibility for tuition waivers (e.g., full or partial tuition waivers provided with research or teaching assignments). A Fellow may accept from any other entity a grant supporting the Fellow's research costs.

§ 3402.9 Financial provisions.

An institution may elect to apply the cost-of-education/training institutional allowance to a Fellow's tuition, fees and laboratory expenses and to defray other program expenses (e.g., recruitment, travel, publications, or salaries of project personnel), unless stated otherwise in the solicitation. Tuition and fees are the responsibility of the Fellow unless an institution elects to use its cost-of-education institutional allowance for this purpose or elects to pay such costs out of non-USDA monies. No dependency allowances are provided to any USDA Graduate or Postdoctoral Fellows. Stipend payments and special international study or thesis/dissertation research travel allowances may be made to Fellows by the institution, in accordance with standard institutional procedures for graduate and postdoctoral fellowships and assistantships.

Subpart C—Preparation of an Application

§ 3402.10 Application package.

Applications will be available at *http://www.grants.gov* and through the NIFA Web site. An application package will be made available to any potential grant applicant upon request. This package will include all necessary forms and instructions to apply for a grant under this program.

§ 3402.11 Proposal cover page.

The Proposal Cover Page, Form NIFA–2002, must be completed in its entirety, including all authorizing signatures. One copy of each grant application must contain the original pen-and-ink signatures, or approved electronic equivalent, of:

(a) The Project Director(s); and

(b) The Authorized Organizational Representative for the institution.

§ 3402.12 Project summary.

Using the Project Summary, Form NIFA–2003, applicants must summarize the proposed graduate program of study and/or the academic and research

strengths of the institution in the national need area for which funding is requested. To the extent possible, applicants should emphasize the uniqueness of the proposed program of training. The summary should not include any reference to the specific number of fellowships requested. The information on Form NIFA–2003 will be used in assigning the most appropriate panelists to review an application. If an application is supported, this Form may be used in program publications.

§ 3402.13 National need narrative.

HEP will determine the composition of the narrative for each competition, including page limits, font size, the number and the order of sections, and other supporting information that may be required. Detailed instructions for preparing the narrative will be published in the solicitation.

§ 3402.14 Budget and budget narrative.

Applicants must prepare the Budget, Form NIFA–2004, and a budget narrative identifying all costs associated with the application. Instructions for completing the Budget are provided with the form.

§ 3402.15 Faculty vitae.

This section should include a Summary Vita, no more than 2 pages excluding publications listing, for each faculty member contributing significantly to institutional competence at the level of graduate study for the national need area addressed in the application. Applicants should arrange the faculty vitae with the Project Director(s) first, followed by the remaining faculty, in alphabetical order.

§ 3402.16 Appendix.

Any additional supporting information deemed essential to enhancing the application should be included in an Appendix and referenced in the national need narrative.

Subpart D—Submission and Evaluation of an Application

§ 3402.17 Where to submit an application.

The solicitation will indicate the date for submission of applications and the number of application copies required to apply for a grant. In addition, the solicitation will provide the address to which the application, the required number of accompanying duplicate copies, and any other required forms and materials should be sent.

§ 3402.18 Evaluation criteria.

Applications addressing a particular national need area at a particular Fellowship level (master's, doctoral or postdoctoral) will be evaluated in competition with other applications addressing the same national need area at the same level. Both USDA internal staff and the panelists will evaluate applications on the basis of the criteria published in the solicitation.

Subpart E—Supplementary Information

§ 3402.19 Terms and conditions of grant awards.

Within the limit of funds available for such purpose, the awarding official shall make project grants to those responsible, eligible applicants whose applications are judged most meritorious according to evaluation criteria stated in the solicitation. The beginning of the project period shall be no later than September 30 of the Federal fiscal year in which the project is approved for support. All funds granted under this part shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations of this part, the terms and conditions of the award, the applicable Federal cost principles, and the Department's assistance regulations (parts 3015 and 3019 of 7 CFR).

§ 3402.20 Other Federal statutes and regulations that apply.

Several Federal statutes and regulations apply to grant applications considered for review and to grants awarded under this program. These include, but are not limited to:

7 CFR part 1, subpart A—USDA implementation of the Freedom of Information Act.

7 CFR part 3—USDA implementation of OMB Circular No. A–129 regarding debt collection.

7 CFR part 15, subpart A—USDA implementation of title VI of the Civil Rights Act of 1964, as amended.

7 CFR part 331 and 9 CFR part 121—USDA implementation of the Agricultural Bioterrorism Protection Act of 2002.

7 CFR part 3015, or any successor rule—USDA Uniform Federal Assistance Regulations, as amended, implementing OMB directives (*i.e.*, Circular Nos. A–21 and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. No. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR part 3017—USDA implementation of Government wide Debarment and Suspension (Nonprocurement) and Government wide Requirements for Drug-Free Workplace (Grants).

7 CFR part 3018—USDA implementation of New Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans.

7 CFR part 3019—USDA implementation of OMB Circular No. A–110, Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR part 3052—USDA implementation of OMB Circular No. A–133, Audits of States, Local Governments, and Nonprofit Organizations.

7 CFR part 3407—NIFA implementation of the National Environmental Policy Act.

29 U.S.C. 794, Section 504—Rehabilitation Act of 1973, and

7 CFR part 15b (USDA implementation of statute), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

§ 3402.21 Confidential aspects of applications and awards.

When an application results in a grant, the application and supporting information become part of the record of NIFA transactions, and available to the public upon specific request. Information that the Secretary determines to be of a confidential, privileged, or proprietary nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as confidential, privileged, or proprietary should be clearly marked within the application. The original copy of an application that does not result in a grant will be retained by the Agency for a period of one year. Other copies will be destroyed. Such an application will be released only with the consent of the applicant or to the extent required by law. An application may be withdrawn at any time prior to the final action thereon.

§ 3402.22 Access to peer review information.

After final decisions have been announced, HEP will, upon request, inform the PD of the reasons for its decision on an application. Verbatim copies of summary reviews, not including the identity of the reviewers, will be made available to respective PDs upon specific request.

§ 3402.23 Documentation of progress on funded projects.

(a) Fellowships/Scholarships Entry/Exit Forms (Form NIFA–2010) are available from NIFA upon request. Upon request by HEP, Project Directors awarded Graduate Fellowship (excluding supplemental international and postdoctoral) grants under the program shall complete and submit this form.

(1) Appointment Information shall be submitted to HEP within 3 months of appointment of a Fellow;

(2) The Project Director shall submit an annual update of each Fellow's progress to HEP by September 30 each year. Additional progress reports may be needed to assess continuing progress of Fellows supported by any special

international study or thesis/dissertation research allowance and/or institutional adherence to program guidelines.

(3) Exit Information shall be completed and submitted to HEP by the Project Director for each Fellow supported by a grant as soon as a Fellow either: Graduates; is officially terminated from the Fellowship or the academic program due to unsatisfactory academic progress; or voluntarily withdraws from the Fellowship or the academic program. If a Fellow has not completed all degree requirements at the end of the five-year grant duration, HEP may request a preliminary exit report. In such a case, a final exit report shall be required at a later date. When a final exit report for each Fellow supported by a grant has been accepted by HEP, the grantee will have satisfied the requirement of a final performance report for the grant. Additional follow-up reports to track Fellows' career patterns may be requested.

(b) All grantees (supplemental international, graduate, and postdoctoral) shall submit initial project information and annual and summary reports to NIFA' Current Research Information System (CRIS). The CRIS database contains narrative project information, progress/impact statements, and final technical reports that are made available to the public. For applications recommended for funding, instructions on preparation and submission of project documentation will be provided to the applicant by the agency contact. Documentation must be submitted to CRIS before NIFA funds will be released. Project reports will be requested by the CRIS office when required. For more information about CRIS, visit *http://cris.nifa.usda.gov*.

§ 3402.24 Evaluation of program.

Grantees should be aware that HEP may, as a part of its own program evaluation activities, carry out in-depth evaluations of assisted activities through independent third parties. Thus, grantees should be prepared to cooperate with evaluators retained by HEP to analyze both the institutional context and the impact of any supported project.

PART 3403—SMALL BUSINESS INNOVATION RESEARCH GRANTS PROGRAM

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AUTHORITY: 15 U.S.C. 638.

SOURCE: 72 FR 20703, Apr. 26, 2007, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 3403 appear at 76 FR 4807, Jan. 27, 2011.

Subpart A—General Information

§ 3403.1 Applicability of regulations.

(a) The regulations of this part apply to small business innovation research grants awarded under the general authority of section 630 of the Act making appropriations for Agriculture, Rural Development, and Related Agencies' programs for fiscal year ending 1987, and for other purposes as made applicable by section 101(a) of Pub. L. 99–591, 100 Stat. 3341, and the provisions of the Small Business Innovation Development Act of 1982, as amended (15

U.S.C. 638), and the Small Business Innovation Research Program Reauthorization Act of 2000, Pub. L. 106–554, which extends the SBIR Program through September 30, 2008. The Small Business Innovation Development Act of 1982, as amended, mandates that each Federal agency with an annual extramural budget for research or research and development in excess of $100 million participate in a Small Business Innovation Research (SBIR) program by reserving a statutory percentage of its annual extramural budget for award to small business concerns for research or research and development in order to stimulate technological innovation, use small business to meet Federal research and development needs, increase private sector commercialization of innovations derived from Federal research and development, and foster and encourage the participation of socially and economically disadvantaged small business concerns and women-owned small business concerns in technological innovation. The Department will participate in this program through the issuance of competitive research grants which will be administered by the Office of Extramural Programs, NIFA.

(b) The regulations of this part do not apply to research grants awarded by the Department under any other authority.

§ 3403.2 Definitions.

As used in this part:

Ad hoc reviewers means experts or consultants, qualified by training and experience in particular scientific or technical fields to render expert advice on the scientific technical merit of the grant applications in those fields, who review on an individual basis one or several of the eligible proposals submitted to this program in their area of expertise and who submit to the Department written evaluations of such proposals.

Applicant is the organizational entity that, at the time of award, will qualify as a small business concern and that submits a grant application for a funding agreement under the SBIR Program.

Authorized departmental officer (ADO) means the Secretary or any employee of the Department who has the authority to issue or modify grant instruments on behalf of the Secretary. The ADO is also referred to as the Funding Agreement Officer.

Authorized organizational representative (AOR) means the president, director, or chief executive officer or other designated official of the applicant organization who has the authority to commit the resources of the organization.

Budget Period means the interval of time into which the project period is divided for budgetary and reporting purposes.

Commercialization is the process of developing marketable products or services and producing and delivering products or services for sale (whether by the originating party or by others) to Government or commercial markets.

Department means the U.S. Department of Agriculture.

Essentially equivalent work occurs when:

(1) Substantially the same research is proposed for funding in more than one grant application submitted to the same Federal agency;

(2) Substantially the same research is submitted to two or more different Federal agencies for review and funding consideration; or

(3) A specific research objective and the research design for accomplishing an objective are the same or closely related in two or more proposals or awards, regardless of the funding source.

Funding agreement is any contract, grant, or cooperative agreement entered into between any Federal agency and any small business concern for the performance of experimental, developmental, or research work, including products or services funded in whole or in part by the Federal Government.

A grant is a financial assistance mechanism providing money, property, or both to an eligible entity to carry out the approved project or activity, and substantial programmatic involvement by Government is not anticipated.

Grantee means the small business concern designated in the grant award

document as the responsible legal entity to whom the grant is awarded under this part.

Innovation is something new or improved, having marketable potential including:

(1) Development of new technologies;

(2) Refinement of existing technologies; or

(3) Development of new applications for existing technologies.

Intellectual property means the separate and distinct types of intangible property that are referred to collectively as ''intellectual property,'' including but not limited to: Patents, trademarks, copyrights, trade secrets, SBIR technical data (as defined in this section), ideas, designs, know-how, business, technical and research methods, other types of intangible business assets, and all types of intangible assets either proposed or generated by a small business concern as a result of its participation in the SBIR Program.

Joint venture is an association of concerns with interests in any degree or proportion by way of contract, express or implied, consorting to engage in and carry out a single specific business venture for joint profit, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally. A joint venture is viewed as a business entity in determining power to control its management.

NIFA means the National Institute of Food and Agriculture.

Outcomes are the measure of long-term, eventual, program impact.

Outputs are the measures of near-term program impact.

Peer review group means experts or consultants, qualified by training and experience in particular scientific or technical fields to give expert advice on the scientific and technical merit of grant applications to those fields, who assemble as a group to discuss and evaluate all of the eligible proposals submitted to this program in their area of expertise.

Principal investigator/project director is the one individual designated by the applicant to provide the scientific and technical direction to a project supported by the funding agreement.

Professional Employer Organization is an organization that provides an integrated approach to the management and administration of the human resources and employer risk of its clients, by contractually assuming substantial employer rights, responsibilities, and risk, through the establishment and maintenance of an employer relationship with the workers assigned to its clients.

Program solicitation is a formal request for proposals whereby an agency notifies the small business community of its research or research and development needs and interests in broad and selected areas, as appropriate to the agency, and requests proposals from small business concerns in response to these needs and interests.

Project period means the total length of time that is approved by the Department for conducting the research project as outlined in an approved grant application.

Prototype is a model of something to be further developed, which includes designs, protocols, questionnaires, software, and devices.

Research or research and development (R/R&D) means any activity which is:

(1) A systematic, intensive study directed toward greater knowledge or understanding of the subject studied;

(2) A systematic study directed specifically toward applying new knowledge to meet a recognized need; or

(3) A systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements.

Research project grant means the award by the Department of funds to a grantee to assist in meeting the costs of conducting for the benefit of the public an identified project which is intended and designed to establish, discover, elucidate, or confirm information or the underlying mechanisms relating to a research topic area identified in the annual solicitation of applications.

SBIR Participants are business concerns that have received SBIR awards or that have submitted SBIR proposals/applications.

SBIR Technical Data is defined as all data generated during the performance of an SBIR award.

SBIR Technical Data Rights are the rights a small business concern obtains in data generated during the performance of any SBIR award that an awardee delivers to the Government during or upon completion of a Federally-funded project, and to which the government receives a license.

Small business concern (SBC) means a concern that, on the date of award for both Phase I and Phase II funding agreements:

(1) Is organized for profit, with a place of business located in the United States, which operates primarily within the United States, or which makes a significant contribution to the United States economy through the payment of taxes or use of American products, materials or labor;

(2) Is in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the form is a joint venture, there can be no more than 49 percent participation by foreign business entities in the joint venture;

(3) Is at least 51 percent owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States, except in the case of a joint venture, where each entity in the venture must be 51 percent owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in the United States; and

(4) Has, including its affiliates, not more than 500 employees. The term ''affiliates'' is defined in greater detail in 13 CFR 121.103. The term ''number of employees'' is defined in 13 CFR 121.106.

Socially and economically disadvantaged small business concern is defined in 13 CFR part 124–8(A) Business Development/Small Disadvantaged Business Status Determinations, § 124.103 (Who is socially disadvantaged?) and § 124.104 (Who is economically disadvantaged?).

United States means the 50 states, the territories and possessions of the Federal Government, the Commonwealth of Puerto Rico, the District of Columbia, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

Women-owned small business concern means a small business concern that is at least 51 percent owned by one or more women, or in the case of any publicly owned business, at least 51 percent of the stock is owned by women, and women control the management and daily business operations.

[72 FR 20703, Apr. 26, 2007, as amended at 76 FR 4808, Jan. 27, 2011]

§ 3403.3 Eligibility requirements.

(a) *Eligibility of organization*. (1) To receive SBIR funds, each awardee of a SBIR Phase I or Phase II must qualify as a small business concern.

(2) For Phase I, a minimum of two-thirds of the research or analytical effort, as measured by the budget, must be performed by the awardee. Occasionally, deviations from this requirement may occur, and must be approved in writing by the ADO after consultation with the agency SBIR National Program Leader.

(3) For Phase II, a minimum of one-half of the research or analytical effort, as measured by the budget, must be performed by the awardee. Occasionally, deviations from this requirement may occur, and must be approved in writing by the ADO after consultation with the agency SBIR National Program Leader.

(4) For both Phase I and Phase II, the primary employment of the principal investigator must be with the SBC at the time of award and during the conduct of the proposed project. Primary employment means that more than one-half of the principal investigator's time is spent in the employ of the SBC. This precludes full-time employment with another organization. Occasionally, deviations from this requirement may occur, and must be approved in writing by the ADO after consultation with the agency SBIR National Program Leader. Further, an SBC may replace the principal investigator on an SBIR Phase I or Phase II award, subject to approval in writing by the ADO after consultation with the SBIR National Program Leader. For purposes of the SBIR Program, personnel obtained through a Professional Employer Organization or other similar personnel

leasing company must be considered employees of the awardee. This is consistent with SBA's size regulations, 13 CFR 121.106—Small Business Size Regulations.

(5) For both Phase I and Phase II, the R/R&D must be performed in the United States. However, based on a rare and unique circumstance, ADO approval may be granted to perform a particular portion of the research or research and development work outside of the United States, for example, if a supply of material or other item or project requirement is not available in the United States. The ADO, after consultation with the agency SBIR National Program Leader, must approve each such specific condition in writing.

(b) [Reserved]

Subpart B—Program Description

§ 3403.4 Three-phase program.

The Small Business Innovation Research Grants Program is carried out in three separate phases described in this section. The first two phases are designed to assist USDA in meeting its research or research and development objectives and will be supported with SBIR Program funds. The purpose of the third phase is to pursue the commercial applications or objectives of the research carried out in Phases I and II through the use of private or Federal non-SBIR funds.

(a) *Phase I.* Phase I involves a solicitation of grant applications (hereinafter referred to as proposals) to conduct feasibility-related experimental research and development related to described agency requirements. These requirements, as defined by agency topics contained in the solicitation, may be general or narrow in scope, depending on USDA needs. The object of this phase is to determine the scientific and technical merit and feasibility of the proposed effort and the quality of performance of the small business concern with a relatively small agency investment before consideration of further Federal support in Phase II.

(b) *Phase II* is the principal research or research and development effort in which the results from Phase I are expanded upon and further pursued, normally for a period not to exceed 24 months. Only SBIR awardees in Phase I are eligible to participate in Phase II. This includes those awardees identified via a ''novated'' or ''successor in interest'' or similarly-revised funding agreement, or those that have reorganized with the same key staff, regardless of whether they have been assigned a different tax identification number. For each Phase I project funded, the awardee may apply for a Phase II award only once. Phase I awardees who for valid reasons cannot apply for Phase II support in the next fiscal year funding cycle may normally apply for support no later than the second fiscal year funding cycle.

(c) *Phase III* refers to work that derives from, extends, or logically concludes effort(s) performed under prior SBIR funding agreements, but is funded by sources other than the SBIR Program. Phase III work is typically oriented towards commercialization of SBIR research or technology. This portion of a project is funded by a non-SBIR source through the use of a follow-on funding commitment. A follow-on funding commitment is an agreement between the small business concern and a provider of the follow-on capital for a specified amount of funds to be made available to the small business concern for future development of their effort upon achieving certain mutually agreed upon technical objectives.

Subpart C—Preparation of Proposals

§ 3403.5 Program solicitation.

(a) *Phase I.* A program solicitation requesting Phase I proposals will be prepared each fiscal year in which funds are made available for this purpose. This solicitation will contain information sufficient to enable eligible applicants to prepare grant proposals and will include descriptions of specific research topic areas which the Department will support during the fiscal year involved. A notice of solicitation, and the entire contents of the program solicitation will be published, at a minimum, on the agency's Web site.

(b) *Phase II.* For each fiscal year in which funds are made available for this

purpose, the Department will send correspondence requesting Phase II proposals from the Phase I grantees eligible to apply for Phase II funding in that fiscal year. The correspondence will contain information sufficient to enable eligible applicants to prepare grant proposals.

§ 3403.6 Content of proposals.

(a) The proposed research must be responsive to one of the USDA program interests stated in the research topic descriptions of the program solicitation.

(b) Proposals must cover only scientific/technological research activities. A small business concern must not propose product development, technical assistance, demonstration projects, classified research, or patent applications. Many of the research projects supported by the SBIR program lead to the development of new products based upon the research results obtained during the project. However, projects that seek funding solely for product development where no research is involved, *i.e.*, funds are needed to permit the development of a project based on previously completed research, will not be accepted. Literature surveys should be conducted prior to preparing proposals for submission and must not be proposed as a part of the SBIR Phase I or Phase II effort. Proposals principally for the development of proven concepts toward commercialization or for market research should not be submitted since such efforts are considered the responsibility of the private sector and therefore are not supported by USDA.

(c) A proposal must be limited to only one topic. The same proposal may not be submitted under more than one topic as defined in the solicitation. However, an organization may submit separate proposals on the same topic. Where similar research is discussed under more than one topic, the proposer should choose that topic whose description appears most relevant to the proposer's research concept. USDA will not consider funding duplicate (essentially equivalent work) proposals. In addition, essentially equivalent work funded by another entity will be returned to the applicant without review.

§ 3403.7 Proposal format for phase I applications.

(a) The following items relate to Phase I applications. Further instructions or descriptions for these items as well as any additional items to be included will be provided in the annual solicitation, as necessary.

(1) *SF–424 R&R Cover*. Applicants must submit basic proposal identification information on the first page of the proposals. Applicants must also certify on the first page of the proposals that they meet the definition of a small business concern as stated in the solicitation, and must certify as to whether or not they qualify as socially and economically disadvantaged small business concerns, or women-owned small business concerns.

(2) *Project Summary/Abstract*. The technical abstract should include a brief description of the problem or opportunity, project objectives, and a description of the effort. Anticipated results and potential commercial applications of the proposed research also should be summarized in the space provided. Keywords should characterize the most important aspects of the project. The project summary of successful proposals may be published by USDA and therefore should not contain proprietary information.

(3) *Project Narrative*. The main body of the proposal should include:

(i) Identification and significance of the problem or opportunity.

(ii) Background and rationale.

(iii) Relationship with future research or research and development.

(iv) Phase I technical objectives.

(v) Phase I work plan.

(vi) Related research or research and development.

(vii) References. For each reference cited in the Proposal, provide the complete name for each author, the date of publication, the full title of the article, name of the journal, etc.

(4) *Key personnel and bibliography*. Identify key personnel involved in the effort, including information on their directly related education and experience. For each key person, provide a chronological list of the most recent

representative publications in the topic area.

(5) *Facilities and equipment*. Describe the types, location, and availability of instrumentation and physical facilities necessary to carry out the work proposed. Items of equipment to be purchased must be fully justified under this section.

(6) *Outside services*. Involvement of university or other consultants in the planning and research stages of the project as consultants or through subcontracting arrangements is permitted and may be particularly helpful to small business concerns that have not previously received Federal research awards. If such involvement is intended, it should be described in detail.

(7) *Satisfying the public interest*. Specify how the proposed research will satisfy one or more of the following objectives:

(i) Develops sustainable agriculture production systems;

(ii) Protects natural resources and the environment;

(iii) Creates a safe, nutritious and affordable food supply;

(iv) Develops value-added food and non-food products from agricultural materials;

(v) Enhances global competitiveness; and

(vi) Enhances economic opportunity and quality of life, especially for people in rural areas.

(8) *Potential post applications*. Briefly describe the commercialization potential of the proposed research. Indicate whether and by what means there appears to be a potential for the Federal Government to use the proposed research. Include a brief description of the proposing company (e.g., date founded, number of employees) and its field of interest. What are the major competitive products in this field, and what advantages will the proposed research have over existing technology (in application, performance, technique, efficiency or cost)?

(9) *Similar Proposals or Awards*. (i) WARNING—While it is permissible with proposal notification to submit identical proposals containing a significant amount of essentially equivalent work for consideration under numerous Federal program solicitations, it is unlawful to enter into funding agreements requiring essentially equivalent work. If there is any question concerning this, it must be disclosed to the soliciting agency or agencies before award. If an applicant elects to submit identical proposals or proposals containing a significant amount of essentially equivalent work under other Federal program solicitations, a statement must be included in each such proposal indicating:

(A) Name and address of the agency(ies) to which the proposal was submitted, or will be submitted, or from which an award is expected or has been received.

(B) Date of actual or anticipated proposal submission or date of award, as appropriate.

(C) Title of proposal or award, identifying number assigned to the solicitation or proposal by the agency involved, and the date the proposal(s) were submitted or the award was received.

(D) Applicable research topic area for each proposal submitted or award received.

(E) Titles of research projects.

(F) Name and title of principal investigator for each proposal submitted or award received.

(ii) *USDA will not make awards that duplicate research funded (or to be funded) by other Federal agencies*.

(10) *Cost breakdown on proposal budget*. Complete a budget form for the phase under which you are currently applying. (An applicant for Phase I funding should not submit both Phase I and Phase II budgets.) A budget narrative with supporting detail for each budget category must be included.

(11) *Special Considerations*. If the proposed research will include laboratory animals or human subjects at risk, the applicant may be required to have the research plan reviewed and approved by an Institutional Animal Care and Use Committee (IACUC) or Institutional Review Board (IRB) prior to commencing actual substantive work. If such approval is required, USDA may not release funds for the award until proper documentation is submitted and accepted by USDA. It is suggested that applicants contact local universities,

colleges, or nonprofit research organizations which have established reviewing mechanisms to have this service performed.

(12) *Proprietary information.* (i) If proprietary information is provided by an applicant in a proposal which constitutes a trade secret, proprietary commercial or financial information, confidential personal information, or data affecting the national security, it will be treated in confidence to the extent permitted by law. This information must be clearly marked by the applicant with the term ''confidential proprietary information'' and the following legend must appear on the title page of the proposal: ''These data shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed in whole or in part for any purpose other than evaluation of this proposal. If a funding agreement is awarded to this applicant as a result of or in connection with the submission of these data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the funding agreement and pursuant to applicable law. This restriction does not limit the Government's right to use information contained in the data if it is obtained from another source without restriction. The data subject to this restriction are contained on pages ____ of this proposal.''

(ii) USDA, by law, is required to make the final decision as to whether the information is required to be kept in confidence. Information contained in unsuccessful proposals will remain the property of the applicant. However, USDA will retain for three years one copy of all proposals received; extra copies will be destroyed. Public release of information for any proposal submitted will be subject to existing statutory and regulatory requirements. Any proposal which is funded will be considered an integral part of the award and normally will be made available to the public upon request through the Freedom of Information Act, except for designated proprietary information.

(iii) The inclusion of proprietary information is discouraged unless it is necessary for the proper evaluation of the proposal. If proprietary information is to be included, it should be limited, set apart from other text on a separate page, and keyed to the text by numbers. It should be confined to a few critical technical items which, if disclosed, could jeopardize the obtaining of foreign or domestic patents. Trade secrets, salaries, or other information which could jeopardize commercial competitiveness should be similarly keyed and presented on a separate page. Proposals or reports which attempt to restrict dissemination of large amounts of information may be found unacceptable by USDA.

(13) *Rights in data developed under SBIR funding agreement.* The legend (or statements) in the SBIR datarights clause included in the SBIR award must be affixed to any submissions of technical data. Where such legend is affixed, rights in technical data, including software developed under the terms of any funding agreement resulting from a proposal submitted in response to the program solicitation shall remain with the grantee. The Government may not use, modify, reproduce, release, perform, display, or disclose technical data or computer software marked with this legend for 4 years. After expiration of the 4-year period, the Government has a royalty-free license to use, and to authorize others to use on its behalf, these data for Government purposes, and is relieved of all disclosure prohibitions and assumes no liability for unauthorized use of these data by third parties, except that any such data that is also protected and referenced under a subsequent SBIR award shall remain protected through the protection of that subsequent SBIR award.

(14) *Patents and Inventions.* Allocation of rights to inventions shall be in accordance with 35 U.S.C. 202 through 206 and the Department of Commerce implementing regulations entitled ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts and Cooperative Agreements'' at 37 CFR part 401. These regulations provide that small businesses normally may retain the principal worldwide patent rights to any invention developed with USDA support. USDA receives a royalty-free license

for Federal Government use, reserves the right to require the patentee to license others in certain circumstances, and requires that anyone exclusively licensed to sell the invention in the United States must normally manufacture it domestically. To the extent authorized by 35 U.S.C. 205, USDA will not make public any information disclosing a USDA-supported invention for a four-year period. SBIR awardees must report inventions to the awarding agency within two months of the inventor's report to the awardee. The reporting of inventions shall be made through submission to Interagency Edison as specified in the terms and conditions of the grant.

(15) *Organizational management information.* Before the award of an SBIR funding agreement, USDA requires the submission of certain organizational management, personnel, and financial information to assure responsibility of the applicant. This information is not required unless a project is recommended for funding, and then it is submitted on a one-time basis only. However, new information should be submitted if a small business concern has undergone significant changes in organization, personnel, finance or policies, including those relating to civil rights.

(16) *Documentation of commercialization record of firms with multiple phase II awards.* A small business concern submitting a proposal for a Phase I award that has received more than 15 Phase II SBIR awards during the preceding five fiscal years must document the extent to which it was able to secure Phase III funding to develop concepts resulting from previous Phase II SBIR awards.

(b) [Reserved]

§ 3403.8 Proposal format for phase II applications.

(a) The following items relate to Phase II applications. Further instructions or descriptions for these items as well as any additional items to be included will be identified in the annual program solicitation as necessary. See § 3403.9.

(1) *SF–424 R&R cover sheet.* Follow instructions found in § 3403.7(a)(1).

(2) *Project summary.* Follow instructions found at § 3403.7(a)(2).

(3) *Phase I results.* The proposal should contain an extensive section that lists Phase I objectives and makes detailed presentation of the Phase I results. This section should establish the degree to which Phase I objectives were met and feasibility of the proposed research project was established.

(4) *Proposal.* Since Phase II is the principal research and development effort, proposals should be more comprehensive than those submitted under Phase I. However, the outline and information contained in § 3403.7(a)(3)–(9) and § 3403.7(a)(11)–(14) should be followed, tailoring the information requested to the Phase II project.

(5) *Cost breakdown on proposal budget.* For Phase II, a detailed budget is required for each year of requested support. In addition, a summary budget is required detailing the requested support for the overall project period. A budget narrative, with supporting budget detail for each budget category must be included.

(6) *Organizational management information.* Each Phase II awardee will be asked to submit an updated statement of financial condition (such as the latest audit report, financial statements or balance sheet) and report any changes in management or principals.

(7) *Commercialization Plan.* A succinct commercialization plan must be included in each SBIR Phase II proposal moving toward commercialization. Elements of a commercialization plan may include the following:

(i) *Company information.* Focused objectives/core competencies; size; specialization area(s); products with significant sales; and history of previous Federal and non-Federal funding; regulatory experience; and subsequent commercialization.

(ii) *Customer and competition.* Clear description of key technology objectives, current competition, and advantages compared to competing products or services; description of hurdles to acceptance of the innovation.

(iii) *Market.* Milestone, target dates, analyses of market size, and estimated market share after first year sales and after five years; explanation of plan to obtain market share.

(iv) *Intellectual property.* Patent status, technology lead, trade secrets or

other demonstration of a plan to achieve sufficient protection to realize the commercialization state and attain at least a temporary competitive advantage.

(v) *Financing*. Plans for securing necessary funding in Phase III.

(vi) *Assistance and mentoring*. Plans for securing needed technical or business assistance through mentoring, partnering, or through arrangements with state assistance programs, Small Business Development Centers, Federally-funded research laboratories, manufacturing extension Partnership Centers, or other assistance providers.

(8) *Data Collection*. Each Phase II applicant will be required to provide information to the Tech-Net Database System (*http://technet.sba.gov*) per OMB No. 3245–03356. The following are examples of the data to be entered by applicants into Tech-Net:

(i) Any business concern or subsidiary established for the commercial application of a product or service for which an SBIR award is made;

(ii) Revenue from the sale of new products or services resulting from the research conducted under each Phase II award;

(iii) Additional investment from any source, other than Phase I or Phase II awards, to further the research and development conducted under each Phase II award; and

(iv) Updates to information in the Tech-Net database for any prior Phase II award received by the small business concern.

(b) [Reserved]

Subpart D—Submission and Evaluation of Proposals

§ 3403.9 Submission of proposals.

The SBIR program solicitation for Phase I proposals and the correspondence requesting Phase II proposals will provide the deadline date for submitting proposals, and instructions for submitting the proposal to NIFA for funding consideration.

§ 3403.10 Proposal review.

(a) The receipt of all proposals will be acknowledged.

(b) All Phase I and II proposals will be evaluated and judged on a competitive basis. Proposals will be initially screened to determine responsiveness. Proposals passing this initial screening will be technically evaluated by scientists to determine the most promising technical and scientific approaches. Each proposal will be judged on its own merit. USDA is under no obligation to fund any proposal or any specific number of proposals in a given topic. It also may elect to fund several or none of the proposed approaches to the same topic or subtopic.

(c) Phase I and II proposal evaluation criteria will be published in the ''Method of Selection and Evaluation Criteria'' section of the program solicitation.

(d) External peer reviewers may be used during the technical evaluation stage of this process. Selections will be made from among recognized specialists who are uniquely qualified by training and experience in their respective fields to render expert advice on the merit of proposals received. It is anticipated that such experts will include those located in universities, government, and nonprofit research organizations. If possible, USDA intends that peer review groups shall be balanced with minority and female representation and with an equitable age distribution.

(e) Reviewers will base their conclusions and recommendations on information contained in the Phase I or Phase II proposal. It cannot be assumed that reviewers are acquainted with any experiments referred to within a proposal, with key individuals, or with the firm itself. Therefore, the proposals should be self-contained and written with the care and thoroughness accorded papers for publication.

(f) Final decisions will be made by USDA based upon the rating assigned by reviewers in consideration of the technical and commercial potential of the application, duplication of research, any critical USDA requirements, resubmission and budget limitation. In the event that two or more proposals are of approximately equal merit, the existence of a cooperative research and development agreement (CRADA) with a USDA laboratory will

be an important consideration. The existence of a follow-on funding commitment for continued development in Phase III will also be an important consideration. The value of any commitment will depend upon the degree of financial commitment made by investors, with the maximum value resulting from a signed agreement with reasonable terms for an amount at least equal to funding requested from USDA in Phase II.

§ 3403.11 Availability of information.

Information regarding the peer review process will be made available to the extent permitted under the Freedom of Information Act (5 U.S.C. 552), the Privacy Act (5 U.S.C. 552a), the SBIR Policy Directive, and implementing Departmental and other Federal regulations. Implementing Departmental regulations are found at 7 CFR part 1.

Subpart E—Supplementary Information

§ 3403.12 Terms and conditions of grant awards.

Within the limit of funds available for such purposes, the Authorized Departmental Officer shall make research project grants to those responsible, eligible applicants whose proposals are judged most meritorious in the announced program areas under the evaluation criteria and procedures set forth in the annual program solicitation. The beginning of the project period shall be no later than September 30 of the Federal fiscal year in which the project is approved for support. All funds granted under this part shall be expended solely for the purpose for which funds are granted in accordance with the approved application and budget, the regulations of this part, the terms and conditions of award, the Federal Acquisition Regulations (48 CFR part 31), and the Department's Uniform Federal Assistance Regulations (7 CFR part 3015).

§ 3403.13 Notice of grant awards.

(a) The grant award document may include the following:

(1) Legal name and address of performing organization or institution;

(2) Title of project;

(3) Name and institution of Project Director's chosen to direct and control approved activities;

(4) Identifying grant number assigned by the Department;

(5) Project period, specifying the amount of time the Department intends to support the project;

(6) Total amount of Departmental financial assistance approved for the project period;

(7) Legal authority(ies) under which the grant is awarded;

(8) Appropriate Catalog of Federal Domestic Assistance (CFDA) number;

(9) Applicable award terms and conditions;

(10) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the grant award; and

(11) Other information or provisions deemed necessary by NIFA to carry out its respective granting activities or to accomplish the purpose of a particular grant.

(b) [Reserved]

§ 3403.14 Use of funds; changes.

(a) *Delegation of fiscal responsibility*. Unless the terms and conditions of the grant state otherwise, the grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

(b) *Changes in Project Plans*. (1) The permissible changes by the grantee, Project Director, or other key project personnel in the approved project grant shall be limited to changes in methodology, techniques, or other similar aspects of the project to expedite achievement of the project's approved goals. If the grantee or the Project Director (PD) is uncertain as to whether a change complies with this provision, the question must be referred to the Authorized Departmental Officer (ADO) for a final determination. The signatory of the award document is the ADO, not the program contact.

(2) Changes in approved goals or objectives shall be requested by the grantee and, in consultation with the NIFA SBIR National Program Leader, approved in writing by the ADO prior to effecting such changes. In no event

shall requests for such changes be approved which are outside the scope of the original approved project.

(3) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and, in consultation with the NIFA SBIR National Program Leader, approved in writing by the ADO prior to effecting such changes.

(4) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and, in consultation with the NIFA SBIR National Program Leader, approved in writing by the ADO prior to effecting such transfers, unless prescribed otherwise in the terms and conditions of the grant.

(c) *Changes in Project Period.* The project period may be extended by NIFA without additional financial support, for such additional period(s) as the ADO determines may be necessary to complete or fulfill the purposes of an approved project provided Federal funds remain. Any extension of time shall be conditioned upon prior request by the grantee and approval in writing by the ADO unless otherwise noted in the award terms and conditions. In such cases the extension will not normally exceed 12 months. The Phase I award will still be limited to the approved award amount, and the submission of a Phase II proposal will normally be delayed by no more than one year. The extension allows the grantee to continue expending the remaining Federal funds for the intended purpose over the extension period. In instances where no Federal funds remain, it is unnecessary to approve an extension since the purpose of the extension is to continue using Federal funds. The grantee may opt to continue the Phase I project after the grant's termination and closeout, however, the grantee would have to do so without additional Federal funds. In the latter case, no communication with USDA is necessary.

(d) *Changes in approved budget.* Changes in an approved budget must be requested by the grantee and approved in writing by the ADO prior to instituting such changes if the revision will involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal cost principles, Departmental regulations, or grant award.

(e) *Use of Change of Name and Novation Agreement.* (1) Occasionally, after an award has been made the name of the Awardee may change. NIFA requires execution of a ''Change of Name Agreement'' in such instances. The specific circumstances of each situation will determine which kind of agreement should be executed. This decision will be determined by the ADO.

(i) A Change of Name Agreement is a legal instrument executed by the Awardee and the Government that recognizes a change of the legal name of the Awardee without disturbing the original rights and obligations of the parties. If only a change of the Awardee's name is involved and the Government's and Awardee's rights and obligations remain unaffected, the parties should execute an agreement to reflect the name change.

(ii) In order to execute the actual Change of Name Agreement with USDA, the Awardee is required to submit the following information:

(A) The document effecting the name change, authenticated by a proper official of the State having jurisdiction;

(B) The opinion of the Grantee's legal counsel stating that the change of name was properly effected under applicable law and showing the effective date;

(C) A list of all affected awards between the Grantee and NIFA.

(iii) When NIFA is notified that a change of name has taken place, the ADO will request the aforementioned information from the Grantee. Upon receipt and review of this information, parties will properly execute a Change of Name Agreement and the appropriate changes will be made to the Agency's records. The following suggested format for an agreement may be adapted for specific cases:

CHANGE OF NAME AGREEMENT

THE ABC CORPORATION (Grantee), a corporation duly organized and existing under the laws of _____ (insert State), and theNATIONAL INSTITUTE OF FOOD AND AGRICULTURE, USDA (Government) enter into this Agreement as of _____ (insert

date when the change of name became effective under applicable State law).

(a) THE PARTIES AGREE TO THE FOLLOWING FACTS:

1. The Government, represented by the ADO, has entered into certain awards with XYZ CORPORATION, namely _____ (insert award number or delete ''namely'' and insert ''as shown in the attached list marked 'Exhibit A' and incorporated in this Agreement by reference.'') The term ''the awards,'' as used in this Agreement, means the above awards and all other awards, including all modifications, made by the Government and the Grantee before the effective date of this Agreement (whether or not performance and payment have been completed and releases executed if the Government or the Grantee has any remaining rights, duties, or obligations under these awards.)

2. The XYZ CORPORATION, by an amendment to its certificate of incorporation, dated _____, 20____, has changed its corporate name to ABC CORPORATION.

3. This amendment accomplishes a change of corporate name only and all rights and obligations of the Government and of the Grantee under the awards are unaffected by this change.

4. Documentary evidence of this change of corporate name has been filed with the Government.

(b) IN CONSIDERATION OF THESE FACTS, THE PARTIES AGREE THAT:

1. The awards covered by this Agreement are amended by substituting the name ''ABC CORPORATION'' for the name ''XYZ CORPORATION'' wherever it appears in the awards; and

2. Each party has executed this Agreement as of the day and year first above written.

NATIONAL INSTITUTE OF FOOD AND AGRICULTURE, USDA

BY: _____

TITLE: _____

ABC CORPORATION

BY: _____

TITLE: _____

CERTIFICATE

I, _____, certify that I am the Secretary of ABC CORPORATION, that _____ , who signed this Agreement for this corporation, was then _____ of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporation powers.

WITNESS MY HAND, and the seal of this corporation, this _____ day of _____, 20____.

BY: _____

(CORPORATE SEAL)

(2) From time to time the legal entity performing the research under the award may have to be changed. In such instances, USDA will ensure that all parties properly execute a Novation Agreement (Successor in Interest Agreement).

(i) A Novation Agreement is a legal instrument executed by the Grantee (transferor), the successor in interest (transferee), and the Government by which, among other things, the transferor guarantees performance of the award, the transferee assumes all obligations under the award, and the Government recognizes the transfer of the award and related assets. This occurs when the third party's interest in the award arises out of the transfer of all the Grantee's assets or the entire portion of the assets involved in performing the award. Examples include, but are not limited to: the sale of these assets with a provision for assuming liabilities; the transfer of these assets incident to a merger or corporate consolidation; and the incorporation of a proprietorship or partnership, or the formation of a partnership.

(ii) When a Grantee asks the Government to recognize a successor in interest, the responsible ADO shall obtain the following from the Grantee:

(A) An authenticated copy of the instrument effecting the transfer of assets; e.g., bill of sale, certificate of merger, contract, deed, agreement, or court decree;

(B) A list of all affected awards;

(C) A certified copy of each resolution of the corporate parties' boards of directors authorizing the transfer of assets;

(D) A certified copy of the minutes of each corporate party's stockholder meeting necessary to approve the transfer of assets;

(E) The opinion of legal counsel for the transferor and transferee stating that the transfer was properly effected under applicable law and the effective date of transfer;

(F) An authenticated copy of the transferee's certificate and articles of incorporation, if a corporation was formed for the purpose of receiving the assets involved in performing the Government award;

(G) Evidence of transferee's capability to perform the award; and

(H) Balance sheets of the transferor and transferee as of the dates immediately before and after the transfer of assets, certified for accuracy by independent accountants.

(iii) The ADO will review the Agency's financial records concerning the correct cash-on-hand balances held by the transferor to ensure that they are properly accounted for in the transfer process. If recognizing a successor in interest to a Government award is consistent with the Government's interest, the ADO will prepare a Novation Agreement for execution by all three parties. The agreement will provide that:

(A) The transferee assumes all the transferor's obligations under the award(s);

(B) The transferor waives all rights under the award against the Government;

(C) The transferor guarantees performance of the award by the transferee (a satisfactory performance bond may be accepted instead of the guarantee); and

(D) Nothing in the agreement shall relieve the transferor or transferee from compliance with any Federal law.

(E) The following suggested format for an agreement may be adapted for specific cases:

NOVATION AGREEMENT (SUCCESSOR IN INTEREST AGREEMENT)

THE ABC CORPORATION (Transferor), a corporation duly organized and existing under the laws of _____ (insert state) with its principal office in _____ (insert city); the XYZ CORPORATION (Transferee), a corporation duly organized and existing under the laws of _____ (insert state) with its principal office in _____ (insert city); and theNATIONAL INSTITUTE OF FOOD AND AGRICULTURE, USDA (Government) enter into this Agreement as of _____ (insert the date transfer of assets became effective under applicable State law).

(a) THE PARTIES AGREE TO THE FOLLOWING FACTS:

1. The Government, represented by the ADO has entered into certain awards with the Transferor, namely: _____ (insert award number or delete ''namely'' and insert ''as shown in the attached list marked 'Exhibit A' and incorporated in this Agreement by reference.'') The term ''the awards,'' as used in this Agreement, means the above awards and all other awards, including all modifications, made between the Government and Transferor before the effective date of this Agreement (whether or not performance and payment have been completed and releases executed if the Government or the Transferor has any remaining rights, duties, or obligations under these awards.) Included in the term ''award'' are also all modifications made under the terms and conditions of these awards between the Government and the Transferor, on or after the effective date of this Agreement.

2. As of _____, 20___, the Transferor has transferred to the Transferee all the assets of the Transferor by virtue of a _____ (insert terms or legal transaction involved) between the Transferor and the Transferee.

3. The Transferee has acquired all the assets of the Transferor by virtue of the above transfer.

4. The Transferee has assumed all obligations and liabilities of the Transferor under the awards by virtue of the above transfer.

5. The Transferee is in a position to fully perform all obligations that may exist under the awards.

6. It is consistent with the Government's interest to recognize the Transferee as the successor party to the awards.

7. Evidence of the above transfer has been filed with the Government.

(b) IN CONSIDERATION OF THESE FACTS, THE PARTIES AGREE THAT BY THIS AGREEMENT:

1. The Transferor confirms the transfer to the Transferee, and waives any claims and rights against the Government that it now has or may have in the future in connection with the awards.

2. The Transferee agrees to be bound by and to perform each award in accordance with the conditions contained in the awards. The Transferee also assumes all obligations and liabilities of, and all claims against, the Transferor under the awards as if the Transferee were the original party to the awards.

3. The Transferee ratifies all previous actions taken by the Transferor with respect to the awards, with the same force and effect as if the action had been taken by the Transferee.

4. The Government recognizes the Transferee as the Transferor's successor in interest in and to the awards. The Transferee by this Agreement becomes entitled to all rights, titles, and interests of the Transferor in and to the awards as if the Transferee were the original party to the awards. Following the effective date of this Agreement, the term Grantee, as used in the awards, shall refer to the Transferee.

5. Except as expressly provided in this Agreement, nothing in it shall be construed

as a waiver of any rights of the Government against the Transferor.

6. All payments and reimbursements previously made by the Government to the Transferor, and all other previous actions taken by the Government under the awards, shall be considered to have discharged those parts of the Government's obligations under the awards. All payments and reimbursements made by the Government after the date of this Agreement in the name of or to the Transferor shall have the same force and effect as if made to the Transferee, and shall constitute a complete discharge of the Government's obligations under the awards, to the extent of the amounts paid or reimbursed.

7. The Transferor and the Transferee agree that the Government is not obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the transfer or this Agreement, other than those that the Government in the absence of this transfer or Agreement would have been obligated to pay or reimburse under the terms of the awards.

8. The Transferor guarantees payment of all liabilities and the performance of all obligations that the Transferee (i) assumes under this Agreement or (ii) may undertake in the future should these awards be modified under their terms and conditions. The Transferor waives notice of, and consents to, any such future modifications.

9. The awards shall remain in full force and effect, except as modified by this Agreement. Each party has executed this Agreement as of the day and year first above written.

NATIONAL INSTITUTE OF FOOD AND AGRICULTURE, USDA

BY: _____

TITLE: _____

ABC CORPORATION

BY: _____

TITLE: _____

XYZ CORPORATION

BY: _____

TITLE: _____

CERTIFICATE

I, _____, certify that I am the Secretary of ABC CORPORATION, that _____, who signed this Agreement for this corporation, was then_____ of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporation powers. WITNESS MY HAND, and the seal of this corporation, this _____day of _____, 20____

BY: _____

(CORPORATE SEAL)

CERTIFICATE

I, _____, certify that I am the Secretary of XYZ CORPORATION, that _____, who signed this Agreement for this corporation, was then_____ of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporation powers. WITNESS MY HAND, and the seal of this corporation, this _____day of _____, 20____

BY: _____

(CORPORATE SEAL)

§ 3403.15 Other Federal statues and regulations that apply.

Several other Federal statutes and regulations apply to grant proposals considered for review or to research project grants awarded under this part. These include but are not limited to:

7 CFR part 1, subpart A—USDA implementation of the Freedom of Information Act.

7 CFR part 1c—USDA implementation of the Federal Policy for the Protection of Human Subjects.

7 CFR part 3—USDA implementation of the Debt Collection Act.

7 CFR part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR part 331 and 9 CFR part 121—USDA implementation of the Agricultural Bioterrorism Protection Act of 2002.

7 CFR part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (*i.e.*, OMB Circular Nos. A–21 and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR part 3017—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

7 CFR part 3018—USDA implementation of Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal

contracts, grants, cooperative agreements, and loans.

7 CFR part 3019—USDA implementation of OMB Circular A–110, Uniform Administrative Requirements for Grants and Other Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR part 3052—USDA implementation of OMB Circular No. A–133, Audits of States, Local Governments, and Non-profit Organizations.

7 CFR part 3407—NIFA procedures to implement the National Environmental Policy Act of 1969, as amended.

9 CFR parts 1, 2, 3, and 4—USDA implementation of the Act of August 24, 1966, Pub. L. 89–544, as amended (commonly known as the Laboratory Animal Welfare Act).

48 CFR part 31—Contract Cost Principles and Procedures of the Federal Acquisition Regulations.

29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and 7 CFR part 15b (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 et seq.—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

§ 3403.16 Other considerations.

The Department may, with respect to any research project grant, impose additional conditions prior to or at the time of any award when, in the Department's judgment, such conditions are necessary to assure or protect advancement of the approved project, the interests of the public, or the conservation of grant funds.

PART 3404—PUBLIC INFORMATION

Sec.

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3404.5 Denials.
3404.6 Appeals.

AUTHORITY: 5 U.S.C. 301, 552; 7 CFR part 1, subpart A and appendix A thereto.

SOURCE: 66 FR 57842, Nov. 19, 2001, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 3404 appear at 76 FR 4808, Jan. 27, 2011.

§ 3404.1 General statement.

This part is issued in accordance with the regulations of the Secretary of Agriculture in part 1, subpart A of this title and appendix A thereto, implementing the Freedom of Information Act (FOIA) (5 U.S.C. 552). The Secretary's regulations, as implemented by the regulations in this part, govern the availability of records of the National Institute of Food and Agriculture (NIFA) to the public.

§ 3404.2 Public inspection, copying, and indexing.

5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying and that a current index of these materials be published quarterly or otherwise be made available. Members of the public may request access to such materials maintained by NIFA at the following office: Information Staff, ARS, REE, USDA, Room 1–2248, Mail Stop 5128, 5601 Sunnyside Avenue, Beltsville, MD 20705–5128; Telephone (301) 504–1640 or (301) 504–1655; TTY-VOICE (301) 504–1743. Office hours are 8 a.m. to 4:30 p.m. Information maintained in our electronic reading room can be accessed at *http://www.ars.usda.gov/is/foia/#Electronic*.

§ 3404.3 Requests for records.

Requests for records of NIFA under 5 U.S.C. 552(a)(3) shall be made in accordance with §1.5 of this title and submitted to the FOIA Coordinator, Information Staff, ARS, REE, USDA, Room 1–2248, Mail Stop 5128, 5601 Sunnyside Avenue, Beltsville, MD 20705–5128; Telephone (301) 504–1640 or (301) 504–1655; TTY-VOICE (301) 504–1743; Facsimile (301) 504–1648; or E-mail *shutchison@ars.usda.gov*. The FOIA Coordinator is delegated authority to make determinations regarding such requests in accordance with §1.3(c) of this title.

[66 FR 57842, Nov. 19, 2001, as amended at 76 FR 4808, Jan. 27, 2011]

§ 3404.4 Multitrack processing.

(a) When NIFA has a significant number of requests, the nature of which precludes a determination within 20 working days, the requests may be processed in a multitrack processing system, based on the date of receipt, the amount of work and time involved in processing the request, and whether the request qualifies for expedited processing.

(b) NIFA may establish as many processing tracks as appropriate; processing within each track shall be based on a first-in, first-out concept, and rank-ordered by the date of receipt of the request.

(c) A requester whose request does not qualify for the fastest track may be given an opportunity to limit the scope of the request in order to qualify for the fastest track. This multitrack processing system does not lessen agency responsibility to exercise due diligence in processing requests in the most expeditious manner possible.

(d) NIFA shall process requests in each track on a ''first-in, first-out'' basis, unless there are unusual circumstances as set forth in §1.16 of this title, or the requester is entitled to expedited processing as set forth in §1.9 of this title.

§ 3404.5 Denials.

If the FOIA Coordinator determines that a requested record is exempt from mandatory disclosure and that discretionary release would be improper, the FOIA Coordinator shall give written notice of denial in accordance with §1.7(a) of this title.

§ 3404.6 Appeals.

Any person whose request is denied shall have the right to appeal such denial. Appeals shall be made in accordance with §1.14 of this title and should be addressed as follows: Director, NIFA, U.S. Department of Agriculture, Washington, DC 20250.

PART 3405—HIGHER EDUCATION CHALLENGE GRANTS PROGRAM

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AUTHORITY: Sec. 1470, National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3316).

SOURCE: 62 FR 39317, July 22, 1997, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 3405 appear at 76 FR 4808, Jan. 27, 2011.

Subpart A—General Information

§ 3405.1 Applicability of regulations.

(a) The regulations of this part only apply to competitive Higher Education Challenge Grants awarded under the provisions of section 1417(b)(1) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (NARETPA)(7 U.S.C. 3152(b)(1)), to strengthen institutional

capacities, including curriculum, faculty, scientific instrumentation, instruction delivery systems, and student recruitment and retention. Section 1405 of NARETPA (7 U.S.C. 3121) designates the U.S. Department of Agriculture (USDA) as the lead Federal agency for agricultural research, extension, and teaching in the food and agricultural sciences. Section 1417 of NARETPA (7 U.S.C. 3152) authorizes the Secretary of Agriculture, who has delegated the authority to theDirector of the National Institute of Food and Agriculture (NIFA), to make competitive grants to land-grant colleges and universities, to colleges and universities having significant minority enrollments and a demonstrable capacity to carry out the teaching of food and agricultural sciences, and to other colleges and universities having a demonstrable capacity to carry out the teaching of food and agricultural sciences, for a period not to exceed 5 years, to administer and conduct programs to respond to identified State, regional, national, or international educational needs in the food and agricultural sciences.

(b) To the extent that funds are available, each year NIFA will publish a FEDERAL REGISTER notice announcing the program and soliciting grant applications.

(c)(1) Based on the amount of funds appropriated in any fiscal year, NIFA will determine and cite in the program announcement:

(i) The targeted need area(s) to be supported or, if the entire scope of a particular targeted need area is not to be supported, the specific special interest(s) within that targeted need area to be supported;

(ii) The degree level(s) to be supported;

(iii) The maximum project period a proposal may request;

(iv) The maximum amount of funds that may be requested by an institution under a regular, complementary, or joint project proposal; and

(v) The maximum total funds that may be awarded to an institution under the program in a given fiscal year, including how funds awarded for complementary and for joint project proposals will be counted toward the institutional maximum.

(2) The program announcement will also specify the deadline date for proposal submission, the number of copies of each proposal that must be submitted, the address to which a proposal must be submitted, and whether or not Form NIFA–711, ''Intent to Submit a Proposal,'' is requested.

(d)(1) If it is deemed by NIFA that, for a given fiscal year, additional determinations are necessary, each, as relevant, will be stated in the program announcement. Such determinations may include:

(i) Limits on the subject matter/emphasis areas to be supported;

(ii) The maximum number of proposals that may be submitted on behalf of the same school, college, or equivalent administrative unit within an institution;

(iii) The maximum total number of proposals that may be submitted by an institution;

(iv) The minimum project period a proposal may request;

(v) The minimum amount of funds that may be requested by an institution under a regular, complementary, or joint project proposal;

(vi) The proportion of the appropriation reserved for, or available to, regular, complementary, and joint project proposals;

(vii) The proportion of the appropriation reserved for, or available to, projects in each announced targeted need area;

(viii) The proportion of the appropriation reserved for, or available to, each subject matter/emphasis area;

(ix) The maximum number of grants that may be awarded to an institution under the program in a given fiscal year; and

(x) Limits on the use of grant funds for travel or to purchase equipment, if any.

(2) The program announcement also will contain any other limitations deemed necessary by NIFA for proper conduct of the program in the applicable year.

(e) The regulations of this part do not apply to grants awarded by the Department of Agriculture under any other authority.

§ 3405.2 Definitions.

As used in this part:

(a) *Authorized departmental officer* means the Secretary or any employee of the Department who has the authority to issue or modify grant instruments on behalf of the Secretary.

(b) *Authorized organizational representative* means the president of the institution or the official, designated by the president of the institution, who has the authority to commit the resources of the institution.

(c) *Budget period* means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

(d) *Cash contributions* means the applicant's cash outlay, including the outlay of money contributed to the applicant by non-Federal third parties.

(e) *Citizen or national of the United States means:*

(1) A citizen or native resident of a State; or,

(2) A person defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22), who, though not a citizen of the United States, owes permanent allegiance to the United States.

(f) *College* or *University* means an educational institution in any State which:

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which a baccalaureate degree or any other higher degree is awarded;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association.

(g) *Complementary project proposal* means a proposal for a project which involves coordination with one or more other projects for which funding was awarded under this program in a previous fiscal year, or for which funding is requested under this program in the current fiscal year.

(h) *Department* or *USDA* means the United States Department of Agriculture.

(i) *Eligible institution* means a land-grant or other U.S. college or university offering a baccalaureate or first professional degree in at least one discipline or area of the food and agricultural sciences. The definition includes a research foundation maintained by an eligible college or university.

(j) *Eligible participant* means, for purposes of § 3405.6(b), Faculty Preparation and Enhancement for Teaching, and § 3405.6(f), Student Recruitment and Retention, an individual who: Is a citizen or national of the United States, as defined in § 3405.2(e); or is a citizen of the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau. Where eligibility is claimed under § 3405.2(e)(2), documentary evidence from the Immigration and Naturalization Service as to such eligibility must be made available to NIFA upon request.

(k) *Food and agricultural sciences* means basic, applied, and developmental research, extension, and teaching activities in the food, agricultural, renewable natural resources, forestry, and physical and social sciences, in the broadest sense of these terms, including but not limited to, activities concerned with the production, processing, marketing, distribution, conservation, consumption, research, and development of food and agriculturally related products and services, and inclusive of programs in agriculture, natural resources, aquaculture, forestry, veterinary medicine, home economics, rural development, and closely allied disciplines.

(l) *Grantee* means the eligible institution designated in the grant award document as the responsible legal entity to which a grant is awarded.

(m) *Joint project proposal* means a proposal for a project, which will involve the applicant institution and two or more other colleges, universities, community colleges, junior colleges, or other institutions, each of which will assume a major role in the conduct of the proposed project, and for which the applicant institution will transfer at least one-half of the awarded funds to the other institutions participating in

the project. Only the applicant institution must meet the definition of ''eligible institution'' as specified in § 3405.2(i); the other institutions participating in a joint project proposal are not required to meet the definition of ''eligible institution'' as specified in § 3405.2(i), nor required to meet the definition of ''college'' or ''university'' as specified in § 3405.2(f).

(n) *Land-grant colleges and universities* means those institutions eligible to receive funds under the Act of July 2, 1862 (12 Stat. 503–505, as amended; 7 U.S.C. 301–305, 307 and 308), or the Act of August 30, 1890 (26 Stat. 417–419, as amended; 7 U.S.C. 321–326 and 328), including Tuskegee University.

(o) *Matching* or *Cost-sharing* means that portion of project costs not borne by the Federal Government, including the value of in-kind contributions.

(p) *Peer review panel* means a group of experts or consultants, qualified by training and experience in particular fields of science, education, or technology to give expert advice on the merit of grant applications in such fields, who evaluate eligible proposals submitted to this program in their personal area(s) of expertise.

(q) *Prior approval* means written approval evidencing prior consent by an authorized departmental officer as defined in § 3405.2(a) of this part.

(r) *Project* means the particular activity within the scope of one or more of the targeted areas supported by a grant awarded under this program.

(s) *Project director* means the single individual designated by the grantee in the grant application and approved by the Secretary who is responsible for the direction and management of the project.

(t) *Project period* means the period, as stated in the award document and modifications thereto, if any, during which Federal sponsorship begins and ends.

(u) *Secretary* means the Secretary of Agriculture and any other officer or employee of the Department of Agriculture to whom the authority involved may be delegated.

(v) *State* means any one of the fifty States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Marianas, the Virgin Islands of the United States, and the District of Columbia.

(w) *Teaching* means formal classroom instruction, laboratory instruction, and practicum experience in the food and agricultural sciences and matters related thereto (such as faculty development, student recruitment and services, curriculum development, instructional materials and equipment, and innovative teaching methodologies) conducted by colleges and universities offering baccalaureate or higher degrees.

(x) *Third party in-kind contributions* means non-cash contributions of property or services provided by non-Federal third parties, including real property, equipment, supplies and other expendable property, directly benefiting and specifically identifiable to a funded project or program.

(y) *United States* means the several States, the territories and possessions of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Marianas, the Virgin Islands of the United States, and the District of Columbia.

§ 3405.3 Institutional eligibility.

Proposals may be submitted by land-grant and other U.S. colleges and universities offering a baccalaureate or first professional degree in at least one discipline or area of the food and agricultural sciences. Each applicant must have a demonstrable capacity for, and a significant ongoing commitment to, the teaching of food and agricultural sciences generally and to the specific need and/or subject area(s) for which a grant is requested. Awards may be made only to eligible institutions as defined in § 3405.2(i).

Subpart B—Program Description

§ 3405.4 Purpose of the program.

The Department of Agriculture is designated as the lead Federal agency for higher education in the food and agricultural sciences. In this context, NIFA has specific responsibility to initiate and support projects to strengthen college and university teaching programs in the food and agricultural sciences. One national initiative for

carrying out this responsibility is the competitive Higher Education Challenge Grants Program. A primary goal of the program is to attract and ensure a continual flow of outstanding students into food and agricultural sciences higher education programs and to provide them with an education of the highest quality available anywhere in the world and which reflects the unique needs of the Nation. It is designed to stimulate and enable colleges and universities to provide the quality of education necessary to produce baccalaureate or higher degree level graduates capable of strengthening the Nation's food and agricultural scientific and professional work force. It is intended that projects supported by the program will:

(a) Address a State, regional, national, or international educational need;

(b) Involve a creative or nontraditional approach toward addressing that need which can serve as a model to others;

(c) Encourage and facilitate better working relationships in the university science and education community, as well as between universities and the private sector, to enhance program quality and supplement available resources; and

(d) Result in benefits which will likely transcend the project duration and USDA support.

§ 3405.5 Matching funds.

Each application must provide for matching support from a non-Federal source. NIFA will cite in the program announcement the required percentage of institutional cost sharing.

§ 3405.6 Scope of program.

This program supports projects related to strengthening undergraduate or graduate teaching programs as specified in the annual program announcement. Only proposals addressing one or more of the specific targeted need areas(s) identified in the program announcement will be funded. Proposals may focus on any subject matter area(s) in the food and agricultural sciences unless limited by determinations as specified in the annual program announcement. A proposal may address a single targeted need area or multiple targeted need areas, and may be focused on a single subject matter area or multiple subject matter areas, in any combination (e.g., curriculum development in horticulture; curriculum development, faculty enhancement, and student experiential learning in animal science; faculty enhancement in food science and agribusiness management; or instruction delivery systems and student experiential learning in plant science, horticulture, and entomology). Targeted need areas will consist of one or more of the following:

(a) *Curricula design and materials development.* (1) The purpose of this initiative is to promote new and improved curricula and materials to increase the quality of, and continuously renew, the Nation's academic programs in the food and agricultural sciences. The overall objective is to stimulate the development and facilitate the use of exemplary education models and materials that incorporate the most recent advances in subject matter, research on teaching and learning theory, and instructional technology. Proposals may emphasize: the development of courses of study, degree programs, and instructional materials; the use of new approaches to the study of traditional subjects; or the introduction of new subjects, or new applications of knowledge, pertaining to the food and agricultural sciences.

(2) Examples include, but are not limited to, curricula and materials that promote:

(i) Raising the level of scholastic achievement of the Nation's graduates in the food and agricultural sciences.

(ii) Addressing the special needs of particular groups of students, such as minorities, gifted and talented, or those with educational backgrounds that warrant enrichment.

(iii) Using alternative instructional strategies or methodologies, including computer-assisted instruction or simulation modeling, media programs that reach large audiences efficiently and effectively, activities that provide hands-on learning experiences, and educational programs that extend learning beyond the classroom.

(iv) Using sound pedagogy, particularly with regard to recent research on

how to motivate students to learn, retain, apply, and transfer knowledge, skills, and competencies.

(v) Building student competencies to integrate and synthesize knowledge from several disciplines.

(b) *Faculty preparation and enhancement for teaching.* (1) The purpose of this initiative is to advance faculty development in the areas of teaching competency, subject matter expertise, or student recruitment and advising skills. Teachers are central to education. They serve as models, motivators, and mentors—the catalysts of the learning process. Moreover, teachers are agents for developing, replicating, and exchanging effective teaching materials and methods. For these reasons, education can be strengthened only when teachers are adequately prepared, highly motivated, and appropriately recognized and rewarded.

(2) Each faculty recipient of support for developmental activities under § 3405.6(b) must be an ''eligible participant'' as defined in § 3405.2(j) of this part.

(3) Examples of developmental activities include, but are not limited to, those which enable teaching faculty to:

(i) Gain experience with recent developments or innovative technology relevant to their teaching responsibilities.

(ii) Work under the guidance and direction of experts who have substantial expertise in an area related to the developmental goals of the project.

(iii) Work with scientists or professionals in government, industry, or other colleges or universities to learn new applications in a field.

(iv) Obtain personal experience working with new ideas and techniques.

(v) Expand competence with new methods of information delivery, such as computer-assisted or televised instruction.

(vi) Increase understanding of the special needs of non-traditional students or students from groups that are underrepresented in the food and agricultural sciences workforce.

(c) *Instruction delivery systems.* (1) The purpose of this initiative is to encourage the use of alternative methods of delivering instruction to enhance the quality, effectiveness, and cost efficiency of teaching programs. The importance of this initiative is evidenced by advances in educational research which have substantiated the theory that differences in the learning styles of students often require alternative instructional methodologies. Also, the rising costs of higher education strongly suggest that colleges and universities undertake more efforts of a collaborative nature in order to deliver instruction which maximizes program quality and reduces unnecessary duplication. At the same time, advancements in knowledge and technology continue to introduce new subject matter areas which warrant consideration and implementation of innovative instruction techniques, methodologies, and delivery systems.

(2) Examples include, but are not limited to:

(i) Use of computers.

(ii) Teleconferencing.

(iii) Networking via satellite communications.

(iv) Regionalization of academic programs.

(v) Mobile classrooms and laboratories.

(vi) Individualized learning centers.

(vii) Symposia, forums, regional or national workshops, etc.

(d) *Scientific instrumentation for teaching.* (1) The purpose of this initiative is to provide students in science-oriented courses the necessary experience with suitable, up-to-date equipment in order to involve them in work central to scientific understanding and progress. This program initiative will support the acquisition of instructional laboratory and classroom equipment to assure the achievement and maintenance of outstanding food and agricultural sciences higher education programs. A proposal may request support for acquiring new, state-of-the-art instructional scientific equipment, upgrading existing equipment, or replacing nonfunctional or clearly obsolete equipment.

(2) Examples include, but are not limited to:

(i) Rental or purchase of modern instruments to improve student learning experiences in courses, laboratories, and field work.

(ii) Development of new ways of using instrumentation to extend instructional capabilities.

(iii) Establishment of equipment-sharing capability via consortia or centers that develop innovative opportunities, such as mobile laboratories or satellite access to industry or government laboratories.

(e) *Student experiential learning.* (1) The purpose of this initiative is to further the development of student scientific and professional competencies through experiential learning programs which provide students with opportunities to solve complex problems in the context of real-world situations. Effective experiential learning is essential in preparing future graduates to advance knowledge and technology, enhance quality of life, conserve resources, and revitalize the Nation's economic competitiveness. Such experiential learning opportunities are most effective when they serve to advance decision-making and communication skills as well as technological expertise.

(2) Examples include, but are not limited to, projects which:

(i) Provide opportunities for students to participate in research projects, either as a part of an ongoing research project or in a project designed especially for this program.

(ii) Provide opportunities for students to complete apprenticeships, internships, or similar participatory learning experiences.

(iii) Expand and enrich courses which are of a practicum nature.

(iv) Provide career mentoring experiences that link students with outstanding professionals.

(f) *Student recruitment and retention.* (1) The purpose of this initiative is to strengthen student recruitment and retention programs in order to promote the future strength of the Nation's scientific and professional work force. The Nation's economic competitiveness and quality of life rest upon the availability of a cadre of outstanding research scientists, university faculty, and other professionals in the food and agricultural sciences. A substantial need exists to supplement efforts to attract increased numbers of academically outstanding students to prepare for careers as food and agricultural scientists and professionals. It is particularly important to augment the racial, ethnic, and gender diversity of the student body in order to promote a robust exchange of ideas and a more effective use of the full breadth of the Nation's intellectual resources.

(2) Each student recipient of monetary support for education costs or developmental purposes under § 3405.6(f) must be enrolled at an eligible institution and meet the requirement of an ''eligible participant'' as defined in § 3405.2(j) of this part.

(3) Examples include, but are not limited to:

(i) Special outreach programs for elementary and secondary students as well as parents, counselors, and the general public to broaden awareness of the extensive nature and diversity of career opportunities for graduates in the food and agricultural sciences.

(ii) Special activities and materials to establish more effective linkages with high school science classes.

(iii) Unique or innovative student recruitment activities, materials, and personnel.

(iv) Special retention programs to assure student progression through and completion of an educational program.

(v) Development and dissemination of stimulating career information materials.

(vi) Use of regional or national media to promote food and agricultural sciences higher education.

(vii) Providing financial incentives to enable and encourage students to pursue and complete an undergraduate or graduate degree in an area of the food and agricultural sciences.

(viii) Special recruitment programs to increase the participation of students from non-traditional or underrepresented groups in courses of study in the food and agricultural sciences.

§ 3405.7 Joint project proposals.

Applicants are encouraged to submit joint project proposals as defined in § 3405.2(m), which address regional or national problems and which will result overall in strengthening higher education in the food and agricultural sciences. The goals of such joint initiatives should include maximizing the

use of limited resources by generating a critical mass of expertise and activity focused on a targeted need area(s), increasing cost-effectiveness through achieving economies of scale, strengthening the scope and quality of a project's impact, and promoting coalition building likely to transcend the project's lifetime and lead to future ventures.

§ 3405.8 Complementary project proposals.

Institutions may submit proposals that are complementary in nature as defined in § 3405.2(g). Such complementary project proposals may be submitted by the same or by different eligible institutions.

§ 3405.9 Use of funds for facilities.

Under the Higher Education Challenge Grants Program, the use of grant funds to plan, acquire, or construct a building or facility is not allowed. With prior approval, in accordance with the cost principles set forth in OMB Circular No. A–21, some grant funds may be used for minor alterations, renovations, or repairs deemed necessary to retrofit existing teaching spaces in order to carry out a funded project. However, requests to use grant funds for such purposes must demonstrate that the alterations, renovations, or repairs are incidental to the major purpose for which a grant is made.

Subpart C—Preparation of a Proposal

§ 3405.10 Program application materials.

Program application materials in an application package will be made available to eligible institutions upon request. These materials include the program announcement, the administrative provisions for the program, and the forms needed to prepare and submit grant applications under the program.

§ 3405.11 Content of a proposal.

(a) *Proposal cover page.* (1) Form NIFA–712, ''Higher Education Proposal Cover Page,'' must be completed in its entirety. Note that providing a Social Security Number is voluntary, but is an integral part of the NIFA information system and will assist in the processing of the proposal.

(2) One copy of the Form NIFA–712 must contain the pen-and-ink signatures of the Project Director(s) and authorized organizational representative for the applicant institution.

(3) The title of the project shown on the ''Higher Education Proposal Cover Page'' must be brief (80-character maximum) yet represent the major thrust of the project. This information will be used by the Department to provide information to the Congress and other interested parties.

(4) In block 7. of Form NIFA–712, enter ''Higher Education Challenge Grants Program.''

(5) In block 8.a. of Form NIFA–712, enter ''Teaching.'' In block 8.b. identify the code for the targeted need area(s) as found on the reverse of the form. If a proposal focuses on multiple targeted need areas, enter each code associated with the project and place an asterisk (*) immediately following the code for the primary targeted need area. In block 8.c. identify the major area(s) of emphasis as found on the reverse of the form. If a proposal focuses on multiple areas of emphasis, enter each code associated with the project. This information will be used by program staff for the proper assignment of proposals to peer reviewers.

(6) In block 9. of Form NIFA–712, indicate if the proposal is a complementary project proposal or a joint project proposal as defined in § 3405.2(g) and § 3405.2(m), respectively, of this part. If it is not a complementary project proposal or a joint project proposal, identify it as a regular project proposal.

(7) In block 13. of Form NIFA–712, indicate if the proposal is a new, first-time submission or if the proposal is a resubmission of a proposal that has been submitted to, but not funded under, the Higher Education Challenge Grants Program in a previous competition.

(b) *Table of contents.* For ease in locating information, each proposal must contain a detailed table of contents just after the Proposal Cover Page. The Table of Contents should include page numbers for each component of the

proposal. Pagination should begin immediately following the Table of Contents.

(c) *Project summary*. (1) A Project Summary should immediately follow the Table of Contents. The information provided in the Project Summary may be used by the program staff for a variety of purposes, including the proper assignment of proposals to peer reviewers and providing information to peer reviewers prior to the peer panel meeting. The name of the institution, the targeted need area(s), and the title of the proposal must be identified exactly as shown on the ''Higher Education Proposal Cover Page.''

(2) If the proposal is a complementary project proposal, as defined in § 3405.2(g) of this part, indicate such and identify the other complementary project(s) by citing the name of the submitting institution, the title of the project, the project director, and the grant number (if funded in a previous year) exactly as shown on the cover page of the complementary project so that appropriate consideration can be given to the interrelatedness of the proposals in the evaluation process.

(3) If the proposal is a joint project proposal, as defined in § 3405.2(m) of this part, indicate such and identify the other participating institutions and the key faculty member or other individual responsible for coordinating the project at each institution.

(4) The Project Summary should be a concise description of the proposed activity suitable for publication by the Department to inform the general public about awards under the program. The text must not exceed one page, single-spaced. The Project Summary should be a self-contained description of the activity which would result if the proposal is funded by USDA. It should include: The objectives of the project; a synopsis of the plan of operation; a description of how the project will strengthen higher education in the food and agricultural sciences in the United States; and the plans for disseminating project results. The Project Summary should be written so that a technically literate reader can evaluate the use of Federal funds in support of the project.

(d) *Resubmission of a proposal*—(1) *Resubmission of previously unfunded proposals*. If a proposal has been submitted previously, but was not funded, such should be indicated in block 13. on Form NIFA–712, ''Higher Education Proposal Cover Page,'' and the following information should be included in the proposal: The fiscal year(s) in which the proposal was submitted previously; a summary of the peer reviewers' comments; and how these comments have been addressed in the current proposal, including the page numbers in the current proposal where the peer reviewers' comments have been addressed. This information may be provided as a section of the proposal following the Project Summary and preceding the proposal narrative or it may be placed in the Appendix (see § 3405.11(i)). In either case, the location of this information should be indicated in the Table of Contents. Further, when possible, the information should be presented in tabular format. Applicants who choose to resubmit proposals that were previously submitted, but not funded, should note that resubmitted proposals must compete equally with newly submitted proposals. Submitting a proposal that has been revised based on a previous peer review panel's critique of the proposal does not guarantee the success of the resubmitted proposal.

(2) *Resubmission of previously funded proposals*. The Higher Education Challenge Grants Program is not designed to support activities that essentially are repetitive in nature over multiple grant awards. Project directors who have had their projects funded previously are discouraged from resubmitting relatively identical proposals for further funding. Proposals that are sequential continuations or new stages of previously funded Challenge Grants Program projects must compete with first-time proposals. Therefore, project directors should thoroughly demonstrate how the project proposed in the current application expands substantially upon a previously funded project (*i.e.*, demonstrate how the new project will advance the former project to the next level of attainment or will achieve expanded goals). The proposal must also show the degree to which the

new phase promotes innovativeness and creativity beyond the scope of the previously funded project.

(e) *Narrative of a proposal.* The narrative portion of the proposal is limited to 20 pages in length. The one-page Project Summary is not included in the 20-page limitation. The narrative must be typed on one side of the page only, using a font no smaller than 12 point, and double-spaced. All margins must be at least one inch. All pages following the Table of Contents must be paginated. It should be noted that peer reviewers will not be required to read beyond 20 pages of the narrative to evaluate the proposal. The narrative should contain the following sections:

(1) *Potential for advancing the quality of education*—(i) *Impact.* (A) Identify the targeted need area(s).

(B) Clearly state the specific instructional problem or opportunity to be addressed.

(C) Describe how and by whom the focus and scope of the project were determined. Summarize the body of knowledge which substantiates the need for the proposed project.

(D) Describe ongoing or recently completed significant activities related to the proposed project for which previous funding was received under this program.

(E) Discuss how the project will be of value at the State, regional, national, or international level(s).

(F) Discuss how the benefits to be derived from the project will transcend the applicant institution or the grant period. Also discuss the probabilities of the project being adapted by other institutions. For example, can the project serve as a model for others?

(ii) *Continuation plans.* Discuss the likelihood of, or plans for, continuation or expansion of the project beyond USDA support. For example, does the institution's long-range budget or academic plan provide for the realistic continuation or expansion of the initiative undertaken by this project after the end of the grant period, are plans for eventual self-support built into the project, are plans being made to institutionalize the program if it meets with success, and are there indications of other continuing non-Federal support?

(iii) *Innovation.* Describe the degree to which the proposal reflects an innovative or non-traditional approach to solving a higher education problem or strengthening the quality of higher education in the food and agricultural sciences.

(iv) *Products and results.* Explain the expected products and results and their potential impact on strengthening food and agricultural sciences higher education in the United States.

(2) *Overall approach and cooperative linkages*—(i) *Proposed approach*—(A) *bjectives.* Cite and discuss the specific objectives to be accomplished under the project.

(B) *Plan of operation.* (*1*) Describe procedures for accomplishing the objectives of the project.

(*2*) Describe plans for management of the project to ensure its proper and efficient administration.

(*3*) Describe the way in which resources and personnel will be used to conduct the project.

(C) *Timetable.* Provide a timetable for conducting the project. Identify all important project milestones and dates as they relate to project start-up, execution, evaluation, dissemination, and close-out.

(ii) *Evaluation plans.* (A) Provide a plan for evaluating the accomplishment of stated objectives during the conduct of the project. Indicate the criteria, and corresponding weight of each, to be used in the evaluation process, describe any data to be collected and analyzed, and explain the methodology that will be used to determine the extent to which the needs underlying the project are met.

(B) Provide a plan for evaluating the effectiveness of the end results upon conclusion of the project. Include the same kinds of information requested in § 3405.11(e)(2)(ii)(A).

(iii) *Dissemination plans.* Discuss plans to disseminate project results and products. Identify target audiences and explain methods of communication.

(iv) *Partnerships and collaborative efforts.* (A) Explain how the project will maximize partnership ventures and collaborative efforts to strengthen food and agricultural sciences higher education (e.g., involvement of faculty in

related disciplines at the same institution, joint projects with other colleges or universities, or cooperative activities with business or industry). Also explain how it will stimulate academia, the States, or the private sector to join with the Federal partner in enhancing food and agricultural sciences higher education.

(B) Provide evidence, via letters from the parties involved, that arrangements necessary for collaborative partnerships or joint initiatives have been discussed and realistically can be expected to come to fruition, or actually have been finalized contingent on an award under this program. Letters must be signed by an official who has the authority to commit the resources of the organization. Such letters should be referenced in the plan of operation, but the actual letters should be included in the Appendix section of the proposal. Any potential conflict(s) of interest that might result from the proposed collaborative arrangements must be discussed in detail.

(3) *Institutional commitment and resources*—(i) *Institutional commitment.* Discuss the institution's commitment to the project. For example, substantiate that the institution attributes a high priority to the project, discuss how the project will contribute to the achievement of the institution's long-term (five-to ten-year) goals, explain how the project will help satisfy the institution's high-priority objectives, or show how this project is linked to and supported by the institution's strategic plan.

(ii) *Institutional resources.* Document the commitment of institutional resources to the project, and show that the institutional resources to be made available to the project, when combined with the support requested from USDA, will be adequate to carry out the activities of the project. Discuss institutional facilities, equipment, computer services, and other appropriate resources available to the project.

(f) *Key personnel.* A Form NIFA–708, ''Summary Vita—Teaching Proposal,'' should be included for each key person associated with the project.

(g) *Budget and cost-effectiveness*—(1) *Budget form.* (i) Prepare Form NIFA–713, ''Higher Education Budget,'' in accordance with instructions provided with the form. Proposals may request support for a period to be identified in each year's program announcement. A budget form is required for each year of requested support. In addition, a summary budget is required detailing the requested total support for the overall project period. Form NIFA–713 may be reproduced as needed by proposers. Funds may be requested under any of the categories listed on the form, provided that the item or service for which support is requested is allowable under the authorizing legislation, the applicable Federal cost principles, and these administrative provisions, and can be justified as necessary for the successful conduct of the proposed project.

(ii) The approved negotiated instruction rate or the rate allowed by law should be used when computing indirect costs. If a reduced rate of indirect costs is voluntarily requested from USDA, the remaining allowable indirect costs may be used as matching funds.

(2) *Matching funds.* When documenting matching contributions, use the following guidelines:

(i) When preparing the column of Form NIFA–713 entitled ''Applicant Contributions to Matching Funds,'' only those costs to be contributed by the applicant for the purposes of matching should be shown. The total amount of this column should be indicated in item M.

(ii) In item N of Form NIFA–713, show a total dollar amount for Cash Contributions from both the applicant and any third parties; also show a total dollar amount (based on current fair market value) for Non-cash Contributions from both the applicant and any third parties.

(iii) To be counted toward the matching requirements stated in § 3405.5 of this part, proposals must include written verification of any actual commitments of matching support (including both cash and non-cash contributions) from third parties. Written verification means—

(A) For any third party cash contributions, a separate pledge agreement for each donation, signed by the

authorized organizational representative(s) of the donor organization and the applicant institution, which must include:

(*1*) The name, address, and telephone number of the donor;

(*2*) The name of the applicant institution;

(*3*) The title of the project for which the donation is made;

(*4*) The dollar amount of the cash donation; and

(*5*) A statement that the donor will pay the cash contribution during the grant period; and

(B) For any third party non-cash contributions, a separate pledge agreement for each contribution, signed by the authorized organizational representative(s) of the donor organization and the applicant institution, which must include:

(*1*) The name, address, and telephone number of the donor;

(*2*) The name of the applicant institution;

(*3*) The title of the project for which the donation is made;

(*4*) A good faith estimate of the current fair market value of the non-cash contribution; and

(*5*) A statement that the donor will make the contribution during the grant period.

(iv) All pledge agreements referenced in § 3405.11(g)(2)(iii) (A) and (B) must be placed in the proposal immediately following Form NIFA–713. The sources and amounts of all matching support from outside the applicant institution should be summarized in the Budget Narrative section of the proposal.

(v) Applicants should refer to OMB Circulars A–110, ''Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Nonprofit Organizations,'' and A–21, ''Cost Principles for Educational Institutions,'' for further guidance and other requirements relating to matching and allowable costs.

(3) *Chart on shared budget for joint project proposal.* For a joint project proposal, a plan must be provided indicating how funds will be distributed to the participating institutions. The budget section of a joint project proposal should include a chart indicating: The names of the participating institutions; the amount of funds to be disbursed to those institutions; and the way in which such funds will be used in accordance with items A through L of Form NIFA–713, ''Higher Education Budget.'' If a proposal is not for a joint project, such a chart is not required.

(4) *Budget narrative.* (i) Discuss how the budget specifically supports the proposed project activities. Explain how such budget items as professional or technical staff, travel, equipment, etc., are essential to achieving project objectives.

(ii) Justify that the total budget, including funds requested from USDA and any matching support provided, will be adequate to carry out the activities of the project. Provide a summary of sources and amounts of all third party matching support.

(iii) Justify the project's cost-effectiveness. Show how the project maximizes the use of limited resources, optimizes educational value for the dollar, achieves economies of scale, or leverages additional funds. For example, discuss how the project has the potential to generate a critical mass of expertise and activity focused on a targeted need area, or to promote coalition building that could lead to future ventures.

(iv) Include the percentage of time key personnel will work on the project, both during the academic year and summer. When salaries of university personnel will be paid by a combination of USDA and institutional funds, the total compensation must not exceed the faculty member's regular annual compensation. In addition, the total commitment of time devoted to the project, when combined with time for teaching and research duties, other sponsored agreements, and other employment obligations to the institution, must not exceed 100 percent of the normal workload for which the employee is compensated, in accordance with established university policies and applicable Federal cost principles.

(v) If the proposal addresses more than one targeted need area (e.g., student experiential learning and instruction delivery systems), estimate the proportion of the funds requested from

USDA that will support each respective targeted need area.

(h) *Current and pending support.* Each applicant must complete Form NIFA–663, ''Current and Pending Support,'' identifying any other current public- or private-sponsored projects, in addition to the proposed project, to which key personnel listed in the proposal under consideration have committed portions of their time, whether or not salary support for the person(s) involved is included in the budgets of the various projects. This information should also be provided for any pending proposals which are currently being considered by, or which will be submitted in the near future to other possible sponsors, including other USDA programs or agencies. Concurrent submission of identical or similar projects to other possible sponsors will not prejudice the review or evaluation of a project under this program.

(i) *Appendix.* Each project narrative is expected to be complete in itself and to meet the 20-page limitation. Inclusion of material in an Appendix should not be used to circumvent the 20-page limitation of the proposal narrative. However, in those instances where inclusion of supplemental information is necessary to guarantee the peer review panel's complete understanding of a proposal or to illustrate the integrity of the design or a main thesis of the proposal, such information may be included in an Appendix. Examples of supplemental material are photographs, journal reprints, brochures and other pertinent materials which are deemed to be illustrative of major points in the narrative but unsuitable for inclusion in the proposal narrative itself. Information on previously submitted proposals may also be presented in the Appendix (refer to § 3405.11(d)). When possible, information in the Appendix should be presented in tabular format. A complete set of the Appendix material must be attached to each copy of the grant application submitted. The Appendix must be identified with the title of the project as it appears on Form NIFA–712 of the proposal and the name(s) of the project director(s). The Appendix must be referenced in the proposal narrative.

Subpart D—Submission of a Proposal

§ 3405.12 Intent to submit a proposal.

To assist NIFA in preparing for the review of proposals, institutions planning to submit proposals may be requested to complete Form NIFA–711, ''Intent to Submit a Proposal,'' provided in the application package. NIFA will determine each year if Intent to Submit a Proposal forms will be requested and provide such information in the program announcement. If Intent to Submit a Proposal forms are required, one form should be completed and returned for each proposal an institution anticipates submitting. Submitting this form does not commit an institution to any course of action, nor does failure to send this form prohibit an institution from submitting a proposal.

§ 3405.13 When and where to submit a proposal.

The program announcement will provide the deadline date for submitting a proposal, the number of copies of each proposal that must be submitted, and the address to which proposals must be submitted.

Subpart E—Proposal Review and Evaluation

§ 3405.14 Proposal review.

The proposal evaluation process includes both internal staff review and merit evaluation by peer review panels comprised of scientists, educators, business representatives, and Government officials. Peer review panels will be selected and structured to provide optimum expertise and objective judgment in the evaluation of proposals.

§ 3405.15 Evaluation criteria.

The maximum score a proposal can receive is 200 points. Unless otherwise stated in the annual solicitation published in the FEDERAL REGISTER, the peer review panel will consider the following criteria and weights to evaluate proposals submitted:

Evaluation Criterion	Weight
(a) *Potential for advancing the quality of education:* This criterion is used to assess the likelihood that the project will have a substantial impact upon and advance the quality of food and agricultural sciences higher education by strengthening institutional capacities through promoting education reform to meet clearly delineated needs.	
(1) Impact—Does the project address a targeted need area(s)? Is the problem or opportunity clearly documented? Does the project address a State, regional, national, or international problem or opportunity? Will the benefits to be derived from the project transcend the applicant institution and/or the grant period? Is it probable that other institutions will adapt this project for their own use? Can the project serve as a model for others?.	20 points.
(2) Continuation plans—Are there plans for continuation or expansion of the project beyond USDA support? Are there indications of external, non-Federal support? Are there realistic plans for making the project self-supporting?.	10 points.
(3) Innovation—Are significant aspects of the project based on an innovative or a non-traditional approach toward solving a higher education problem or strengthening the quality of higher education in the food and agricultural sciences? If successful, is the project likely to lead to education reform?.	20 points.
(4) Products and results—Are the expected products and results of the project clearly explained? Do they have the potential to strengthen food and agricultural sciences higher education? Are the products likely to be of high quality? Will the project contribute to a better understanding of or improvement in the quality, distribution, effectiveness, or racial, ethnic, or gender diversity of the Nation's food and agricultural scientific and professional expertise base?.	20 points.
(b) *Overall approach and cooperative linkages:* This criterion relates to the soundness of the proposed approach and the quality of the partnerships likely to evolve as a result of the project.	
(1) Proposed approach—Do the objectives and plan of operation appear to be sound and appropriate relative to the targeted need area(s) and the impact anticipated? Are the procedures managerially, educationally, and/or scientifically sound? Is the overall plan integrated with or does it expand upon other major efforts to improve the quality of food and agricultural sciences higher education? Does the timetable appear to be readily achievable?.	20 points.
(2) Evaluation—Are the evaluation plans adequate and reasonable? Do they allow for continuous and/or frequent feedback during the life of the project? Are the individuals involved in project evaluation skilled in evaluation strategies and procedures? Can they provide an objective evaluation? Do evaluation plans facilitate the measurement of project progress and outcomes?.	10 points.
(3) Dissemination—Does the proposed project include clearly outlined and realistic mechanisms that will lead to widespread dissemination of project results, including national electronic communication systems, publications, presentations at professional conferences, and/or use by faculty development or research/teaching skills workshops.	10 points.
(4) Partnerships and collaborative efforts—Will the project expand partnership ventures among disciplines at a university, between colleges and universities, or with the private sector? Will the project lead to long-term relationships or cooperative partnerships that are likely to enhance program quality or supplement resources available to food and agricultural sciences higher education?.	20 points.
(c) *Institutional commitment and resources:* This criterion relates to the institution's commitment to the project and the adequacy of institutional resources available to carry out the project.	
(1) Institutional commitment—Is there evidence to substantiate that the institution attributes a high-priority to the project, that the project is linked to the achievement of the institution's long-term goals, that it will help satisfy the institution's high-priority objectives, or that the project is supported by the institution's strategic plans?.	10 points.
(2) Institutional resources—Will the project have adequate support to carry out the proposed activities? Will the project have reasonable access to needed resources such as instructional instrumentation, facilities, computer services, library and other instruction support resources?.	10 points.
(d) *Key personnel:* This criterion relates to the number and qualifications of the key persons who will carry out the project. Are designated project personnel qualified to carry out a successful project? Are there sufficient numbers of personnel associated with the project to achieve the stated objectives and the anticipated outcomes?	20 points.
(e) *Budget and cost-effectiveness:* This criterion relates to the extent to which the total budget adequately supports the project and is cost-effective.	
(1) Budget—Is the budget request justifiable? Are costs reasonable and necessary? Will the total budget be adequate to carry out project activities? Are the source(s) and amount(s) of non-Federal matching support clearly identified and appropriately documented? For a joint project proposal, is the shared budget explained clearly and in sufficient detail?.	10 points.
(2) Cost-effectiveness—Is the proposed project cost-effective? Does it demonstrate a creative use of limited resources, maximize educational value per dollar of USDA support, achieve economies of scale, leverage additional funds or have the potential to do so, focus expertise and activity on a targeted need area, or promote coalition building for current or future ventures?.	10 points.
(f) *Overall quality of proposal:* This criterion relates to the degree to which the proposal complies with the application guidelines and is of high quality. Is the proposal enhanced by its adherence to instructions (table of contents, organization, pagination, margin and font size, the 20-page limitation, appendices, etc.); accuracy of forms; clarity of budget narrative; well prepared vitae for all key personnel associated with the project; and presentation (are ideas effectively presented, clearly articulated, and thoroughly explained, etc.)?	10 points.

Subpart F—Supplementary Information

§ 3405.16 Access to peer review information.

After final decisions have been announced, NIFA will, upon request, inform the project director of the reasons for its decision on a proposal. Verbatim copies of summary reviews, not including the identity of the peer reviewers, will be made available to respective project directors upon specific request.

§ 3405.17 Grant awards.

(a) *General.* Within the limit of funds available for such purpose, the authorized departmental officer shall make project grants to those responsible, eligible applicants whose proposals are judged most meritorious in the announced targeted need areas under the evaluation criteria and procedures set forth in this part. The beginning of the project period shall be no later than September 30 of the Federal fiscal year in which the project is approved for support. All funds granted under this part shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations of this part, the terms and conditions of the award, the applicable Federal cost principles, and the Department's Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (7 CFR part 3019).

(b) *Organizational management information.* Specific management information relating to a proposing institution shall be submitted on a one-time basis prior to the award of a project grant identified under this part if such information has not been provided previously under this or another program for which the sponsoring agency is responsible. Copies of the forms used to fulfill this requirement will be sent to the proposing institution by the sponsoring agency as part of the pre-award process.

(c) *Notice of grant award.* The grant award document shall include at a minimum the following:

(1) Legal name and address of performing organization.

(2) Title of project.

(3) Name(s) and address(es) of project director(s).

(4) Identifying grant number assigned by the Department.

(5) Project period, which specifies how long the Department intends to support the effort without requiring reapplication for funds.

(6) Total amount of Federal financial assistance approved during the project period.

(7) Legal authority(ies) under which the grant is awarded.

(8) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the grant award.

(9) Other information or provisions deemed necessary by the Department to carry out its granting activities or to accomplish the purpose of this particular project grant.

(d) *Obligation of the Federal Government.* Neither the approval of any application nor the award of any project grant shall legally commit or obligate NIFA or the United States to provide further support of a project or any portion thereof.

§ 3405.18 Use of funds; changes.

(a) *Delegation of fiscal responsibility.* The grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

(b) *Change in project plans.* (1) The permissible changes by the grantee, project director(s), or other key project personnel in the approved project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the grantee or the project director(s) are uncertain as to whether a change complies with this provision, the question must be referred to the Department for a final determination.

(2) Changes in approved goals, or objectives, shall be requested by the grantee and approved in writing by the authorized departmental officer prior to effecting such changes. In no event shall requests for such changes be approved that are outside the scope of the approved project.

(3) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the authorized departmental officer prior to effecting such changes.

(4) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the authorized departmental officer prior to effecting such transfers.

(c) *Changes in project period.* The project period may be extended by the authorized departmental officer without additional financial support for such additional period(s) as the authorized departmental officer determines may be necessary to complete or fulfill the purposes of an approved project. However, due to statutory restriction, no grant may be extended beyond five years from the original start date of the grant, or pre-award date, if applicable. Grant extensions shall be conditioned upon prior request by the grantee and approval in writing by the authorized departmental officer, unless prescribed otherwise in the terms and conditions of a grant.

(d) *Changes in approved budget.* Changes in an approved budget shall be requested by the grantee and approved in writing by the authorized departmental officer prior to instituting such changes if the revision will:

(1) Involve transfers of amounts budgeted for indirect costs to absorb an increase in direct costs;

(2) Involve transfers of amounts budgeted for direct costs to accommodate changes in indirect cost rates negotiated during a budget period and not approved when a grant was awarded; or

(3) Involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal cost principles, Departmental regulations, or in the grant award.

§ 3405.19 Monitoring progress of funded projects.

(a) During the tenure of a grant, project directors must attend at least one national project directors meeting, if offered, in Washington, DC or any other announced location. The purpose of the meeting will be to discuss project and grant management opportunities for collaborative efforts, future directions for education reform, and opportunities to enhance dissemination of exemplary end products/results.

(b) An Annual Performance Report must be submitted to the USDA program contact person within 90 days after the completion of the first year of the project and annually thereafter during the life of the grant. Generally, the Annual Performance Reports should include a summary of the overall progress toward project objectives, current problems or unusual developments, the next year's activities, and any other information that is pertinent to the ongoing project or which may be specified in the terms and conditions of the award.

(c) A Final Performance Report must be submitted to the USDA program contact person within 90 days after the expiration date of the project. The expiration date is specified in the award documents and modifications thereto, if any. Generally, the Final Performance Report should be a summary of the completed project, including: A review of project objectives and accomplishments; a description of any products and outcomes resulting from the project; activities undertaken to disseminate products and outcomes; partnerships and collaborative ventures that resulted from the project; future initiatives that are planned as a result of the project; the impact of the project on the project director(s), the institution, and the food and agricultural sciences higher education system; and data on project personnel and beneficiaries. The Final Performance Report should be accompanied by samples or copies of any products or publications resulting from or developed by the project. The Final Performance Report must also contain any other information which may be specified in the terms and conditions of the award.

§ 3405.20 Other Federal statutes and regulations that apply.

Several other Federal statutes and regulations apply to grant proposals

considered for review and to project grants awarded under this part. These include but are not limited to:

7 CFR Part 1, Subpart A—USDA implementation of Freedom of Information Act.
7 CFR Part 3—USDA implementation of OMB Circular No. A–129 regarding debt collection.
7 CFR Part 15, Subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.
7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (*i.e.*, Circular Nos. A–21 and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance.
7 CFR Part 3017, as amended—Governmentwide Debarment and Suspension (Nonprocurement); Governmentwide Requirements for Drug-Free Workplace (Grants), implementing Executive Order 12549 on debarment and suspension and the Drug-Free Workplace Act of 1988 (41 U.S.C. 701).
7 CFR Part 3018—Restrictions on Lobbying, prohibiting the use of appropriated funds to influence Congress or a Federal agency in connection with the making of any Federal grant and other Federal contracting and financial transactions.
7 CFR Part 3019—USDA implementation of OMB Circular A–110, Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.
7 CFR Part 3051—USDA implementation of OMB Circular No. A–133 regarding audits of institutions of higher education and other nonprofit institutions.
29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and 7 CFR part 15B (USDA implementation of statute), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.
35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

§ 3405.21 Confidential aspects of proposals and awards.

When a proposal results in a grant, it becomes a part of the record of the Agency's transactions, available to the public upon specific request. Information that the Secretary determines to be of a privileged nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as privileged should be clearly marked as such and sent in a separate statement, two copies of which should accompany the proposal. The original copy of a proposal that does not result in a grant will be retained by the Agency for a period of one year. Other copies will be destroyed. Such a proposal will be released only with the consent of the applicant or to the extent required by law. A proposal may be withdrawn at any time prior to the final action thereon.

§ 3405.22 Evaluation of program.

Grantees should be aware that NIFA may, as a part of its own program evaluation activities, carry out in-depth evaluations of assisted activities. Thus, grantees should be prepared to cooperate with NIFA personnel, or persons retained by NIFA, evaluating the institutional context and the impact of any supported project. Grantees may be asked to provide general information on any students and faculty supported, in whole or in part, by a grant awarded under this program; information that may be requested includes, but is not limited to, standardized academic achievement test scores, grade point average, academic standing, career patterns, age, race/ethnicity, gender, citizenship, and disability.

PART 3406—1890 INSTITUTION CAPACITY BUILDING GRANTS PROGRAM

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AUTHORITY: Sec. 1470, National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3316).

SOURCE: 62 FR 39331, July 22, 1997, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 3406 appear at 76 FR 4809, Jan. 27, 2011.

Subpart A—General Information

§ 3406.1 Applicability of regulations.

(a) The regulations of this part apply only to capacity building grants awarded to the 1890 land-grant institutions and Tuskegee University under the provisions of section 1417(b)(4) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (NARETPA) (7 U.S.C. 3152(b)(4)) and pursuant to annual appropriations made available specifically for an 1890 capacity building program. Section 1417(b)(4) authorizes the Secretary of Agriculture, who has delegated the authority to theDirector of the National Institute of Food and Agriculture (NIFA), to make competitive grants to land-grant colleges and universities, to colleges and universities having significant minority enrollments and a demonstrable capacity to carry out the teaching of food and agricultural sciences, and to other colleges and universities having a demonstrable capacity to carry out the teaching of food and agricultural sciences, for a period not to exceed 5 years, to design and implement food and agricultural programs to build teaching and research capacity at colleges and universities having significant minority enrollments. Based on and subject to the express provisions of the annual appropriations act, only 1890 land-grant institutions and Tuskegee University are eligible for this grants program.

(b) To the extent that funds are available, each year NIFA will publish a FEDERAL REGISTER notice announcing the program and soliciting grant applications.

(c)(1) Based on the amount of funds appropriated in any fiscal year, NIFA will determine and cite in the program announcement:

(i) The program area(s) to be supported (teaching, research, or both);

(ii) The proportion of the appropriation reserved for, or available to, teaching projects and research projects;

(iii) The targeted need area(s) in teaching and in research to be supported;

(iv) The degree level(s) to be supported;

(v) The maximum project period a proposal may request;

(vi) The maximum amount of funds that may be requested by an institution under a regular, complementary, or joint project proposal; and

(vii) The maximum total funds that may be awarded to an institution under the program in a given fiscal

year, including how funds awarded for complementary and for joint projects will be counted toward the institutional maximum.

(2) The program announcement will also specify the deadline date for proposal submission, the number of copies of each proposal that must be submitted, the address to which a proposal must be submitted, and whether or not Form NIFA–711, ''Intent to Submit a Proposal,'' is requested.

(d)(1) If it is deemed by NIFA that, for a given fiscal year, additional determinations are necessary, each, as relevant, will be stated in the program announcement. Such determinations may include:

(i) Limits on the subject matter/emphasis areas to be supported;

(ii) The maximum number of proposals that may be submitted on behalf of the same school, college, or equivalent administrative unit within an institution;

(iii) The maximum total number of proposals that may be submitted by an institution;

(iv) The maximum number of proposals that may be submitted by an individual in any one targeted need area;

(v) The minimum project period a proposal may request;

(vi) The minimum amount of funds that may be requested by an institution under a regular, complementary, or joint project proposal;

(vii) The proportion of the appropriation reserved for, or available to, regular, complementary, and joint project proposals;

(viii) The proportion of the appropriation reserved for, or available to, projects in each announced targeted need area;

(ix) The proportion of the appropriation reserved for, or available to, each subject matter/emphasis area;

(x) The maximum number of grants that may be awarded to an institution under the program in a given fiscal year, including how grants awarded for complementary and joint projects will be counted toward the institutional maximum; and

(xi) Limits on the use of grant funds for travel or to purchase equipment, if any.

(2) The program announcement also will contain any other limitations deemed necessary by NIF for proper conduct of the program in the applicable year.

(e) The regulations of this part prescribe that this is a competitive program; it is possible that an institution may not receive any grant awards in a particular year.

(f) The regulations of this part do not apply to grants for other purposes awarded by the Department of Agriculture under section 1417 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3152) or any other authority.

§ 3406.2 Definitions.

As used in this part:

Authorized departmental officer means the Secretary or any employee of the Department who has the authority to issue or modify grant instruments on behalf of the Secretary.

Authorized organizational representative means the president of the 1890 Institution or the official, designated by the president of the institution, who has the authority to commit the resources of the institution.

Budget period means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

Cash contributions means the applicant's cash outlay, including the outlay of money contributed to the applicant by non-Federal third parties.

Citizen or national of the United States means:

(1) A citizen or native resident of a State; or,

(2) a person defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22), who, though not a citizen of the United States, owes permanent allegiance to the United States.

College or *University* means an educational institution in any State which:

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which a baccalaureate degree or any other higher degree is awarded;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association.

Complementary project proposal means a proposal for a project which involves coordination with one or more other projects for which funding was awarded under this program in a previous fiscal year, or for which funding is requested under this program in the current fiscal year.

Cost-sharing or *Matching* means that portion of project costs not borne by the Federal Government, including the value of in-kind contributions.

Department or *USDA* means the United States Department of Agriculture.

1890 Institution or *1890 land-grant institution* or *1890 colleges and universities* means one of those institutions eligible to receive funds under the Act of August 30, 1890 (26 Stat. 417–419, as amended; 7 U.S.C. 321–326 and 328), or a research foundation maintained by such institution, that are the intended recipients of funds under programs established in Subtitle G of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3221 *et seq.*), including Tuskegee University.

Eligible participant means, for purposes of § 3406.11(b), Faculty Preparation and Enhancement for Teaching, and § 3406.11(f), Student Recruitment and Retention, an individual who:

(1) Is a citizen or national of the United States, as defined in this section; or

(2) Is a citizen of the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau. Where eligibility is claimed under paragraph (2) of the definition of ''citizen or national of the United States'' as specified in this section, documentary evidence from the Immigration and Naturalization Service as to such eligibility must be made available to NIFA upon request.

Food and agricultural sciences means basic, applied, and developmental research, extension, and teaching activities in the food, agricultural, renewable natural resources, forestry, and physical and social sciences, in the broadest sense of these terms, including but not limited to, activities concerned with the production, processing, marketing, distribution, conservation, consumption, research, and development of food and agriculturally related products and services, and inclusive of programs in agriculture, natural resources, aquaculture, forestry, veterinary medicine, home economics, rural development, and closely allied disciplines.

Grantee means the 1890 Institution designated in the grant award document as the responsible legal entity to which a grant is awarded.

Joint project proposal means a proposal for a project, which will involve the applicant 1890 Institution and two or more other colleges, universities, community colleges, junior colleges, or other institutions, each of which will assume a major role in the conduct of the proposed project, and for which the applicant institution will transfer at least one-half of the awarded funds to the other institutions participating in the project. Only the applicant institution must meet the definition of ''1890 Institution'' as specified in this section; the other institutions participating in a joint project proposal are not required to meet the definition of ''1890 Institution'' as specified in this section, nor required to meet the definition of ''college'' or ''university'' as specified in this section.

Peer review panel means a group of experts or consultants, qualified by training and experience in particular fields of science, education, or technology to give expert advice on the merit of grant applications in such fields, who evaluate eligible proposals submitted to this program in their personal area(s) of expertise.

Principal investigator/project director means the single individual designated by the grantee in the grant application and approved by the Secretary who is responsible for the direction and management of the project.

Prior approval means written approval evidencing prior consent by an ''authorized departmental officer'' as defined in this section.

Project means the particular teaching or research activity within the scope of one or more of the targeted areas supported by a grant awarded under this program.

Project period means the period, as stated in the award document and modifications thereto, if any, during which Federal sponsorship begins and ends.

Research means any systematic inquiry directed toward new or fuller knowledge and understanding of the subject studied.

Research capacity means the quality and depth of an institution's research infrastructure as evidenced by its: faculty expertise in the natural or social sciences, scientific and technical resources, research environment, library resources, and organizational structures and reward systems for attracting and retaining first-rate research faculty or students at the graduate and post-doctorate levels.

Research project grant means a grant in support of a project that addresses one or more of the targeted need areas or specific subject matter/emphasis areas identified in the annual program announcement related to strengthening research programs including, but not limited to, such initiatives as: Studies and experimentation in food and agricultural sciences, centralized research support systems, technology delivery systems, and other creative projects designed to provide needed enhancement of the Nation's food and agricultural research system.

Secretary means the Secretary of Agriculture and any other officer or employee of the Department of Agriculture to whom the authority involved may be delegated.

State means any one of the fifty States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Marianas, the Virgin Islands of the United States, and the District of Columbia.

Teaching means formal classroom instruction, laboratory instruction, and practicum experience in the food and agricultural sciences and matters related thereto (such as faculty development, student recruitment and services, curriculum development, instructional materials and equipment, and innovative teaching methodologies) conducted by colleges and universities offering baccalaureate or higher degrees.

Teaching capacity means the quality and depth of an institution's academic programs infrastructure as evidenced by its: Curriculum, teaching faculty, instructional delivery systems, student experiential learning opportunities, scientific instrumentation for teaching, library resources, academic standing and racial, ethnic, or gender diversity of its faculty and student body as well as faculty and student recruitment and retention programs provided by a college or university in order to achieve maximum results in the development of scientific and professional expertise for the Nation's food and agricultural system.

Teaching project grant means a grant in support of a project that addresses one or more of the targeted need areas or specific subject matter/emphasis areas identified in the annual program announcement related to strengthening teaching programs including, but not limited to, such initiatives as: Curricula design and materials development, faculty preparation and enhancement for teaching, instruction delivery systems, scientific instrumentation for teaching, student experiential learning, and student recruitment and retention.

Third party in-kind contributions means non-cash contributions of property or services provided by non-Federal third parties, including real property, equipment, supplies and other expendable property, directly benefiting and specifically identifiable to a funded project or program.

USDA agency cooperator means any agency or office of the Department which has reviewed and endorsed an applicant's request for support, and indicates a willingness to make available non-monetary resources or technical assistance throughout the life of a project to ensure the accomplishment

of the objectives of a grant awarded under this program.

[62 FR 39331, July 22, 1997, as amended at 76 FR 4810, Jan. 27, 2011]

§ 3406.3 Institutional eligibility.

Proposals may be submitted by any of the 16 historically black 1890 land-grant institutions and Tuskegee University. The 1890 land-grant institutions are: Alabama A&M University; University of Arkansas—Pine Bluff; Delaware State University; Florida A&M University; Fort Valley State College; Kentucky State University; Southern University and A&M College; University of Maryland—Eastern Shore; Alcorn State University; Lincoln University; North Carolina A&T State University; Langston University; South Carolina State University; Tennessee State University; Prairie View A&M University; and Virginia State University. An institution eligible to receive an award under this program includes a research foundation maintained by an 1890 land-grant institution or Tuskegee University.

Subpart B—Program Description

§ 3406.4 Purpose of the program.

(a) The Department of Agriculture and the Nation depend upon sound programs in the food and agricultural sciences at the Nation's colleges and universities to produce well trained professionals for careers in the food and agricultural sciences. The capacity of institutions to offer suitable programs in the food and agricultural sciences to meet the Nation's need for a well trained work force in the food and agricultural sciences is a proper concern for the Department.

(b) Historically, the Department has had a close relationship with the 1890 colleges and universities, including Tuskegee University. Through its role as administrator of the Second Morrill Act, the Department has borne the responsibility for helping these institutions develop to their fullest potential in order to meet the needs of students and the needs of the Nation.

(c) The institutional capacity building grants program is intended to stimulate development of quality education and research programs at these institutions in order that they may better assist the Department, on behalf of the Nation, in its mission of providing a professional work force in the food and agricultural sciences.

(d) This program is designed specifically to build the institutional teaching and research capacities of the 1890 land-grant institutions through cooperative programs with Federal and non-Federal entities. The program is competitive among the 1890 Institutions and encourages matching funds on the part of the States, private organizations, and other non-Federal entities to encourage expanded linkages with 1890 Institutions as performers of research and education, and as developers of scientific and professional talent for the United States food and agricultural system. In addition, through this program, NIFA will strive to increase the overall pool of qualified job applicants from underrepresented groups in order to make significant progress toward achieving the objectives of work force diversity within the Federal Government, particularly the U.S. Department of Agriculture.

§ 3406.5 Matching support.

The Department strongly encourages and may require non-Federal matching support for this program. In the annual program solicitation, NIFA will announce any incentives that may be offered to applicants for committing their own institutional resources or securing third party contributions in support of capacity building projects. NIFA may also announce any required fixed dollar amount or percentage of institutional cost sharing, if applicable.

§ 3406.6 USDA agency cooperator requirement.

(a) Each application must provide documentation that at least one USDA agency or office has agreed to cooperate with the applicant institution on the proposed project. The documentation should describe the expected benefits of the partnership venture for the USDA agency and for the 1890 Institution, and describe the partnership effort between USDA and the 1890 Institution in regard to the proposed

project. Such USDA agency cooperation may include, but is not limited to, assisting the applicant institution with proposal development, identifying possible sources of matching funds, securing resources, implementing funded projects, providing technical assistance and expertise throughout the life of the project, participating in project evaluation, and disseminating project results.

(b) The designated NIFA agency contact can provide suggestions to institutions seeking to secure a USDA agency cooperator on a particular proposal.

(c) USDA 1890 Liaison Officers, and other USDA employees serving on the campuses of the 1890 colleges and universities, may assist with proposal development and project execution to satisfy the cooperator requirement, in whole or in part, but may not serve as project directors or principal investigators.

(d) Any USDA office responsible for administering a competitive or formula grants program specifically targeted to 1890 Institutions may not be a cooperator for this program.

§ 3406.7 General scope of program.

This program supports both teaching project grants and research project grants. Such grants are intended to strengthen the teaching and research capabilities of applicant institutions. Each 1890 Institution may submit one or more grant applications for either category of grants (as allowed by the annual program notice). However, each application must be limited to either a teaching project grant proposal or a research project grant proposal.

§ 3406.8 Joint project proposals.

Applicants are encouraged to submit joint project proposals as defined in § 3406.2, which address regional or national problems and which will result overall in strengthening the 1890 university system. The goals of such joint initiatives should include maximizing the use of limited resources by generating a critical mass of expertise and activity focused on a targeted need area(s), increasing cost-effectiveness through achieving economies of scale, strengthening the scope and quality of a project's impact, and promoting coalition building likely to transcend the project's lifetime and lead to future ventures.

§ 3406.9 Complementary project proposals.

Institutions may submit proposals that are complementary in nature as defined in § 3406.2. Such complementary project proposals may be submitted by the same or by different eligible institutions.

§ 3406.10 Use of funds for facilities.

Under the 1890 Institution Capacity Building Grants Program, the use of grant funds to plan, acquire, or construct a building or facility is not allowed. With prior approval, in accordance with the cost principles set forth in OMB Circular No. A–21, some grant funds may be used for minor alterations, renovations, or repairs deemed necessary to retrofit existing teaching or research spaces in order to carry out a funded project. However, requests to use grant funds for such purposes must demonstrate that the alterations, renovations, or repairs are incidental to the major purpose for which a grant is made.

Subpart C—Preparation of a Teaching Proposal

§ 3406.11 Scope of a teaching proposal.

The teaching component of the program will support the targeted need area(s) related to strengthening teaching programs as specified in the annual program announcement. Proposals may focus on any subject matter area(s) in the food and agricultural sciences unless limited by determinations as specified in the annual program announcement. A proposal may address a single targeted need area or multiple targeted need areas, and may be focused on a single subject matter area or multiple subject matter areas, in any combination (e.g., curriculum development in horticulture; curriculum development, faculty enhancement, and student experiential learning in animal science; faculty enhancement in food science and agribusiness management; or instruction delivery systems and student experiential learning in plant science,

horticulture, and entomology). Applicants are also encouraged to include a library enhancement component related to the teaching project in their proposals. A proposal may be directed toward the undergraduate or graduate level of study as specified in the annual program announcement. Targeted need areas for teaching programs will consist of one or more of the following:

(a) *Curricula design and materials development*. (1) The purpose of this need area is to promote new and improved curricula and materials to increase the quality of, and continuously renew, the Nation's academic programs in the food and agricultural sciences. The overall objective is to stimulate the development and facilitate the use of exemplary education models and materials that incorporate the most recent advances in subject matter, research on teaching and learning theory, and instructional technology. Proposals may emphasize: The development of courses of study, degree programs, and instructional materials; the use of new approaches to the study of traditional subjects; or the introduction of new subjects, or new applications of knowledge, pertaining to the food and agricultural sciences.

(2) Examples include, but are not limited to, curricula and materials that promote:

(i) Raising the level of scholastic achievement of the Nation's graduates in the food and agricultural sciences.

(ii) Addressing the special needs of particular groups of students, such as minorities, gifted and talented, or those with educational backgrounds that warrant enrichment.

(iii) Using alternative instructional strategies or methodologies, including computer-assisted instruction or simulation modeling, media programs that reach large audiences efficiently and effectively, activities that provide hands-on learning experiences, and educational programs that extend learning beyond the classroom.

(iv) Using sound pedagogy, particularly with regard to recent research on how to motivate students to learn, retain, apply, and transfer knowledge, skills, and competencies.

(v) Building student competencies to integrate and synthesize knowledge from several disciplines.

(b) *Faculty preparation and enhancement for teaching*. (1) The purpose of this need area is to advance faculty development in the areas of teaching competency, subject matter expertise, or student recruitment and advising skills. Teachers are central to education. They serve as models, motivators, and mentors—the catalysts of the learning process. Moreover, teachers are agents for developing, replicating, and exchanging effective teaching materials and methods. For these reasons, education can be strengthened only when teachers are adequately prepared, highly motivated, and appropriately recognized and rewarded.

(2) Each faculty recipient of support for developmental activities under § 3406.11(b) must be an ''eligible participant'' as defined in § 3406.2 of this part.

(3) Examples of developmental activities include, but are not limited to, those which enable teaching faculty to:

(i) Gain experience with recent developments or innovative technology relevant to their teaching responsibilities.

(ii) Work under the guidance and direction of experts who have substantial expertise in an area related to the developmental goals of the project.

(iii) Work with scientists or professionals in government, industry, or other colleges or universities to learn new applications in a field.

(iv) Obtain personal experience working with new ideas and techniques.

(v) Expand competence with new methods of information delivery, such as computer-assisted or televised instruction.

(c) *Instruction delivery systems*. (1) The purpose of this need area is to encourage the use of alternative methods of delivering instruction to enhance the quality, effectiveness, and cost efficiency of teaching programs. The importance of this initiative is evidenced by advances in educational research which have substantiated the theory that differences in the learning styles of students often require alternative instructional methodologies. Also, the

rising costs of higher education strongly suggest that colleges and universities undertake more efforts of a collaborative nature in order to deliver instruction which maximizes program quality and reduces unnecessary duplication. At the same time, advancements in knowledge and technology continue to introduce new subject matter areas which warrant consideration and implementation of innovative instruction techniques, methodologies, and delivery systems.

(2) Examples include, but are not limited to:

(i) Use of computers.

(ii) Teleconferencing.

(iii) Networking via satellite communications.

(iv) Regionalization of academic programs.

(v) Mobile classrooms and laboratories.

(vi) Individualized learning centers.

(vii) Symposia, forums, regional or national workshops, etc.

(d) *Scientific Instrumentation for teaching*. (1) The purpose of this need area is to provide students in science-oriented courses the necessary experience with suitable, up-to-date equipment in order to involve them in work central to scientific understanding and progress. This program initiative will support the acquisition of instructional laboratory and classroom equipment to assure the achievement and maintenance of outstanding food and agricultural sciences higher education programs. A proposal may request support for acquiring new, state-of-the-art instructional scientific equipment, upgrading existing equipment, or replacing nonfunctional or clearly obsolete equipment.

(2) Examples include, but are not limited to:

(i) Rental or purchase of modern instruments to improve student learning experiences in courses, laboratories, and field work.

(ii) Development of new ways of using instrumentation to extend instructional capabilities.

(iii) Establishment of equipment-sharing capability via consortia or centers that develop innovative opportunities, such as mobile laboratories or satellite access to industry or government laboratories.

(e) *Student experiential learning*. (1) The purpose of this need area is to further the development of student scientific and professional competencies through experiential learning programs which provide students with opportunities to solve complex problems in the context of real-world situations. Effective experiential learning is essential in preparing future graduates to advance knowledge and technology, enhance quality of life, conserve resources, and revitalize the Nation's economic competitiveness. Such experiential learning opportunities are most effective when they serve to advance decision-making and communication skills as well as technological expertise.

(2) Examples include, but are not limited to, projects which:

(i) Provide opportunities for students to participate in research projects, either as a part of an ongoing research project or in a project designed especially for this program.

(ii) Provide opportunities for students to complete apprenticeships, internships, or similar participatory learning experiences.

(iii) Expand and enrich courses which are of a practicum nature.

(iv) Provide career mentoring experiences that link students with outstanding professionals.

(f) *Student recruitment and retention*. (1) The purpose of this need area is to strengthen student recruitment and retention programs in order to promote the future strength of the Nation's scientific and professional work force. The Nation's economic competitiveness and quality of life rest upon the availability of a cadre of outstanding research scientists, university faculty, and other professionals in the food and agricultural sciences. A substantial need exists to supplement efforts to attract increased numbers of academically outstanding students to prepare for careers as food and agricultural scientists and professionals. It is particularly important to augment the racial, ethnic, and gender diversity of the student body in order to promote a robust exchange of ideas and a more effective

use of the full breadth of the Nation's intellectual resources.

(2) Each student recipient of monetary support for education costs or developmental purposes under § 3406.11(f) must be enrolled at an eligible institution and meet the requirement of an ''eligible participant'' as defined in § 3406.2 of this part.

(3) Examples include, but are not limited to:

(i) Special outreach programs for elementary and secondary students as well as parents, counselors, and the general public to broaden awareness of the extensive nature and diversity of career opportunities for graduates in the food and agricultural sciences.

(ii) Special activities and materials to establish more effective linkages with high school science classes.

(iii) Unique or innovative student recruitment activities, materials, and personnel.

(iv) Special retention programs to assure student progression through and completion of an educational program.

(v) Development and dissemination of stimulating career information materials.

(vi) Use of regional or national media to promote food and agricultural sciences higher education.

(vii) Providing financial incentives to enable and encourage students to pursue and complete an undergraduate or graduate degree in an area of the food and agricultural sciences.

§ 3406.12 Program application materials—teaching.

Program application materials in an application package will be made available to eligible institutions upon request. These materials include the program announcement, the administrative provisions for the program, and the forms needed to prepare and submit teaching grant applications under the program.

§ 3406.13 Content of a teaching proposal.

(a) *Proposal cover page.* (1) Form NIFA–712, ''Higher Education Proposal Cover Page,'' must be completed in its entirety. Note that providing a Social Security Number is voluntary, but is an integral part of the NIFA information system and will assist in the processing of the proposal.

(2) One copy of the Form NIFA–712 must contain the pen-and-ink signatures of the project director(s) and authorized organizational representative for the applicant institution.

(3) The title of the teaching project shown on the ''Higher Education Proposal Cover Page'' must be brief (80-character maximum) yet represent the major thrust of the project. This information will be used by the Department to provide information to the Congress and other interested parties.

(4) In block 7. of Form NIFA–712, enter ''1890 Institution Capacity Building Grants Program.''

(5) In block 8.a. of Form NIFA–712, enter ''Teaching.'' In block 8.b. identify the code for the targeted need area(s) as found on the reverse of the form. If a proposal focuses on multiple targeted need areas, enter each code associated with the project. In block 8.c. identify the major area(s) of emphasis as found on the reverse of the form. If a proposal focuses on multiple areas of emphasis, enter each code associated with the project; however, limit the selection to three areas. This information will be used by program staff for the proper assignment of proposals to reviewers.

(6) In block 9. of Form NIFA–712, indicate if the proposal is a complementary project proposal or a joint project proposal as defined in § 3406.2 of this part. If it is not a complementary project proposal or a joint project proposal, identify it as a regular project proposal.

(7) In block 13. of Form NIFA–712, indicate if the proposal is a new, first-time submission or if the proposal is a resubmission of a proposal that has been submitted to, but not funded under, the 1890 Institution Capacity Building Grants Program in a previous competition.

(b) *Table of contents.* For ease in locating information, each proposal must contain a detailed table of contents just after the Proposal Cover Page. The Table of Contents should include page numbers for each component of the proposal. Pagination should begin immediately following the summary documentation of USDA agency cooperation.

(c) *USDA agency cooperator*. To be considered for funding, each proposal must include documentation of cooperation with at least one USDA agency or office. If multiple agencies are involved as cooperators, documentation must be included from each agency. When documenting cooperative arrangements, the following guidelines should be used:

(1) A summary of the cooperative arrangements must immediately follow the Table of Contents. This summary should:

(i) Bear the signatures of the Agency Head (or his/her designated authorized representative) and the university project director;

(ii) Indicate the agency's willingness to commit support for the project;

(iii) Identify the person(s) at the USDA agency who will serve as the liaison or technical contact for the project;

(iv) Describe the degree and nature of the USDA agency's involvement in the proposed project, as outlined in § 3406.6(a) of this part, including its role in:

(A) Identifying the need for the project;

(B) Developing a conceptual approach;

(C) Assisting with project design;

(D) Identifying and securing needed agency or other resources (e.g., personnel, grants/contracts; in-kind support, etc.);

(E) Developing the project budget;

(F) Promoting partnerships with other institutions to carry out the project;

(G) Helping the institution launch and manage the project;

(H) Providing technical assistance and expertise;

(I) Providing consultation through site visits, E-mail, conference calls, and faxes;

(J) Participating in project evaluation and dissemination of final project results; and

(K) Seeking other innovative ways to ensure the success of the project and advance the needs of the institution or the agency; and

(v) Describe the expected benefits of the partnership venture for the USDA agency and for the 1890 Institution.

(2) A detailed discussion of these partnership arrangements should be provided in the narrative portion of the proposal, as outlined in paragraph (f)(2)(iv)(C) of this section.

(3) Additional documentation, including letters of support or cooperation, may be provided in the Appendix.

(d) *Project summary*. (1) A Project Summary should immediately follow the summary documentation of USDA agency cooperation section. The information provided in the Project Summary will be used by the program staff for a variety of purposes, including the proper assignment of proposals to reviewers and providing information to reviewers prior to the peer panel meeting. The name of the institution, the targeted need area(s), and the title of the proposal must be identified exactly as shown on the ''Higher Education Proposal Cover Page.''

(2) If the proposal is a complementary project proposal, as defined in § 3406.2 of this part, indicate such and identify the other complementary project(s) by citing the name of the submitting institution, the title of the project, the project director, and the grant number (if funded in a previous year) exactly as shown on the cover page of the complementary project so that appropriate consideration can be given to the interrelatedness of the proposals in the evaluation process.

(3) If the proposal is a joint project proposal, as defined in § 3406.2 of this part, indicate such and identify the other participating institutions and the key faculty member or other individual responsible for coordinating the project at each institution.

(4) The Project Summary should be a concise description of the proposed activity suitable for publication by the Department to inform the general public about awards under the program. The text must not exceed one page, single-spaced. The Project Summary should be a self-contained description of the activity which would result if the proposal is funded by USDA. It should include: The objectives of the project; a synopsis of the plan of operation; a statement of how the project will enhance the teaching capacity of the institution; a description of how

the project will strengthen higher education in the food and agricultural sciences in the United States; a description of the partnership efforts between, and the expected benefits for, the USDA agency cooperator(s) and the 1890 Institution; and the plans for disseminating project results. The Project Summary should be written so that a technically literate reader can evaluate the use of Federal funds in support of the project.

(e) *Resubmission of a proposal*—(1) *Resubmission of previously unfunded proposals.* (i) If a proposal has been submitted previously, but was not funded, such should be indicated in block 13. on Form NIFA–712, ''Higher Education Proposal Cover Page,'' and the following information should be included in the proposal:

(A) The fiscal year(s) in which the proposal was submitted previously;

(B) A summary of the peer reviewers' comments; and

(C) How these comments have been addressed in the current proposal, including the page numbers in the current proposal where the peer reviewers' comments have been addressed.

(ii) This information may be provided as a section of the proposal following the Project Summary and preceding the proposal narrative or it may be placed in the Appendix (see paragraph (j) of this section). In either case, the location of this information should be indicated in the Table of Contents, and the fact that the proposal is a resubmitted proposal should be stated in the proposal narrative. Further, when possible, the information should be presented in tabular format. Applicants who choose to resubmit proposals that were previously submitted, but not funded, should note that resubmitted proposals must compete equally with newly submitted proposals. Submitting a proposal that has been revised based on a previous peer review panel's critique of the proposal does not guarantee the success of the resubmitted proposal.

(2) *Resubmission of previously funded proposals.* Recognizing that capacity building is a long-term ongoing process, the 1890 Institution Capacity Building Grants Program is interested in funding subsequent phases of previously funded projects in order to build institutional capacity, and institutions are encouraged to build on a theme over several grant awards. However, proposals that are sequential continuations or new stages of previously funded Capacity Building Grants must compete with first-time proposals. Therefore, project directors should thoroughly demonstrate how the project proposed in the current application expands substantially upon a previously funded project (*i.e.*, demonstrate how the new project will advance the former project to the next level of attainment or will achieve expanded goals). The proposal must also show the degree to which the new phase promotes innovativeness and creativity beyond the scope of the previously funded project. Please note that the 1890 Institution Capacity Building Grants Program is not designed to support activities that are essentially repetitive in nature over multiple grant awards. Project directors who have had their projects funded previously are discouraged from resubmitting relatively identical proposals for further funding.

(f) *Narrative of a teaching proposal.* The narrative portion of the proposal is limited to 20 pages in length. The one-page Project Summary is not included in the 20-page limitation. The narrative must be typed on one side of the page only, using a font no smaller than 12 point, and double-spaced. All margins must be at least one inch. All pages following the summary documentation of USDA agency cooperation must be paginated. It should be noted that peer reviewers will not be required to read beyond 20 pages of the narrative to evaluate the proposal. The narrative should contain the following sections:

(1) *Potential for advancing the quality of education*—(i) *Impact.* (A) Identify the targeted need area(s).

(B) Clearly state the specific instructional problem or opportunity to be addressed.

(C) Describe how and by whom the focus and scope of the project were determined. Summarize the body of knowledge which substantiates the need for the proposed project.

(D) Describe ongoing or recently completed significant activities related to the proposed project for which previous funding was received under this program.

(E) Discuss how the project will be of value at the State, regional, national, or international level(s).

(F) Discuss how the benefits to be derived from the project will transcend the proposing institution or the grant period. Also discuss the probabilities of its adaptation by other institutions. For example, can the project serve as a model for others?

(ii) *Continuation plans.* Discuss the likelihood of, or plans for, continuation or expansion of the project beyond USDA support. For example, does the institution's long-range budget or academic plan provide for the realistic continuation or expansion of the initiative undertaken by this project after the end of the grant period, are plans for eventual self-support built into the project, are plans being made to institutionalize the program if it meets with success, and are there indications of other continuing non-Federal support?

(iii) *Innovation.* Describe the degree to which the proposal reflects an innovative or non-traditional approach to solving a higher education problem or strengthening the quality of higher education in the food and agricultural sciences.

(iv) *Products and results.* Explain the kinds of results and products expected and their impact on strengthening food and agricultural sciences higher education in the United States, including attracting academically outstanding students and increasing the ethnic, racial, and gender diversity of the Nation's food and agricultural scientific and professional expertise base.

(2) *Overall approach and cooperative linkages*—(i) *Proposed approach*—(A) *Objectives.* Cite and discuss the specific objectives to be accomplished under the project.

(B) *Plan of operation.* (*1*) Describe procedures for accomplishing the objectives of the project.

(*2*) Describe plans for management of the project to enhance its proper and efficient administration.

(*3*) Describe the way in which resources and personnel will be used to conduct the project.

(C) *Timetable.* Provide a timetable for conducting the project. Identify all important project milestones and dates as they relate to project start-up, execution, dissemination, evaluation, and close-out.

(ii) *Evaluation plans.* (A) Provide a plan for evaluating the accomplishment of stated objectives during the conduct of the project. Indicate the criteria, and corresponding weight of each, to be used in the evaluation process, describe any data to be collected and analyzed, and explain the methodology that will be used to determine the extent to which the needs underlying the project are met.

(B) Provide a plan for evaluating the effectiveness of the end results upon conclusion of the project. Include the same kinds of information requested in paragraph (f) (2)(ii)(A) of this section.

(iii) *Dissemination plans.* Discuss plans to disseminate project results and products. Identify target audiences and explain methods of communication.

(iv) *Partnerships and collaborative efforts.* (A) Explain how the project will maximize partnership ventures and collaborative efforts to strengthen food and agricultural sciences higher education (e.g., involvement of faculty in related disciplines at the same institution, joint projects with other colleges or universities, or cooperative activities with business or industry). Also explain how it will stimulate academia, the States, or the private sector to join with the Federal partner in enhancing food and agricultural sciences higher education.

(B) Provide evidence, via letters from the parties involved, that arrangements necessary for collaborative partnerships or joint initiatives have been discussed and realistically can be expected to come to fruition, or actually have been finalized contingent on an award under this program. Letters must be signed by an official who has the authority to commit the resources of the organization. Such letters should be referenced in the plan of operation, but the actual letters should be included in the Appendix section of

the proposal. Any potential conflict(s) of interest that might result from the proposed collaborative arrangements must be discussed in detail. Proposals which indicate joint projects with other institutions must state which proposer is to receive any resulting grant award, since only one submitting institution can be the recipient of a project grant under one proposal.

(C) Explain how the project will create a new or enhance an existing partnership between the USDA agency cooperator(s) and the 1890 Institution(s). This section should expand upon the summary information provided in the documentation of USDA agency cooperation section, as outlined in paragraph (c)(1) of this section. This is particularly important because the focal point of attention in the peer review process is the proposal narrative. Therefore, a comprehensive discussion of the partnership effort between USDA and the 1890 Institution should be provided.

(3) *Institutional capacity building*—(i) *Institutional enhancement.* Explain how the proposed project will strengthen the teaching capacity, as defined in § 3406.2 of this part, of the applicant institution and, if applicable, any other institutions assuming a major role in the conduct of the project. For example, describe how the proposed project is intended to strengthen the institution's academic infrastructure by expanding the current faculty's expertise base, advancing the scholarly quality of the institution's academic programs, enriching the racial, ethnic, or gender diversity of the student body, helping the institution establish itself as a center of excellence in a particular field of education, helping the institution maintain or acquire state-of-the-art scientific instrumentation or library collections for teaching, or enabling the institution to provide more meaningful student experiential learning opportunities.

(ii) *Institutional commitment.* (A) Discuss the institution's commitment to the project and its successful completion. Provide, as relevant, appropriate documentation in the Appendix. Substantiate that the institution attributes a high priority to the project.

(B) Discuss how the project will contribute to the achievement of the institution's long-term (five- to ten-year) goals and how the project will help satisfy the institution's high-priority objectives. Show how this project is linked to and supported by the institution's strategic plan.

(C) Discuss the commitment of institutional resources to the project. Show that the institutional resources to be made available to the project will be adequate, when combined with the support requested from USDA, to carry out the activities of the project and represent a sound commitment by the institution. Discuss institutional facilities, equipment, computer services, and other appropriate resources available to the project.

(g) *Key personnel.* A Form NIFA–708, ''Summary Vita—Teaching Proposal,'' should be included for each key person associated with the project.

(h) *Budget and cost-effectiveness*—(1) *Budget form.* (i) Prepare Form NIFA–713, ''Higher Education Budget,'' in accordance with instructions provided with the form. Proposals may request support for a period to be identified in each year's program announcement. A budget form is required for each year of requested support. In addition, a summary budget is required detailing the requested total support for the overall project period. Form NIFA–713 may be reproduced as needed by proposers. Funds may be requested under any of the categories listed on the form, provided that the item or service for which support is requested is allowable under the authorizing legislation, the applicable Federal cost principles, the administrative provisions in this part, and can be justified as necessary for the successful conduct of the proposed project.

(ii) The approved negotiated instruction rate or the maximum rate allowed by law should be used when computing indirect costs. If a reduced rate of indirect costs is voluntarily requested from USDA, the remaining allowable indirect costs may be used as matching funds.

(2) *Matching funds.* When documenting matching contributions, use the following guidelines:

(i) When preparing the column entitled ''Applicant Contributions to Matching Funds'' of Form NIFA–713, only those costs to be contributed by the applicant for the purposes of matching should be shown. The total amount of this column should be indicated in item M.

(ii) In item N of Form NIFA–713, show a total dollar amount for Cash Contributions from both the applicant and any third parties; also show a total dollar amount (based on current fair market value) for Non-cash Contributions from both the applicant and any third parties.

(iii) To qualify for any incentive benefits stemming from matching support or to satisfy any cost sharing requirements, proposals must include written verification of any actual commitments of matching support (including both cash and non-cash contributions) from third parties. Written verification means—

(A) For any third party cash contributions, a separate pledge agreement for each donation, signed by the authorized organizational representative(s) of the donor organization (or by the donor if the gift is from an individual) and the applicant institution, which must include:

(*1*) The name, address, and telephone number of the donor;

(*2*) The name of the applicant institution;

(*3*) The title of the project for which the donation is made;

(*4*) The dollar amount of the cash donation; and

(*5*) A statement that the donor will pay the cash contribution during the grant period; and

(B) For any third party non-cash contributions, a separate pledge agreement for each contribution, signed by the authorized organizational representative(s) of the donor organization (or by the donor if the gift is from an individual) and the applicant institution, which must include:

(*1*) The name, address, and telephone number of the donor;

(*2*) The name of the applicant institution;

(*3*) The title of the project for which the donation is made;

(*4*) A good faith estimate of the current fair market value of the non-cash contribution; and

(*5*) A statement that the donor will make the contribution during the grant period.

(iv) All pledge agreements must be placed in the proposal immediately following Form NIFA–713. The sources and amounts of all matching support from outside the applicant institution should be summarized in the Budget Narrative section of the proposal.

(v) Applicants should refer to OMB Circulars A–110, ''Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Nonprofit Organizations,'' and A–21, ''Cost Principles for Educational Institutions,'' for further guidance and other requirements relating to matching and allowable costs.

(3) *Chart on shared budget for joint project proposal.* (i) For a joint project proposal, a plan must be provided indicating how funds will be distributed to the participating institutions. The budget section of a joint project proposal should include a chart indicating:

(A) The names of the participating institutions;

(B) the amount of funds to be disbursed to those institutions; and

(C) the way in which such funds will be used in accordance with items A through L of Form NIFA–713, ''Higher Education Budget.''

(ii) If a proposal is not for a joint project, such a chart is not required.

(4) *Budget narrative.* (i) Discuss how the budget specifically supports the proposed project activities. Explain how each budget item (such as salaries and wages for professional and technical staff, student stipends/scholarships, travel, equipment, etc.) is essential to achieving project objectives.

(ii) Justify that the total budget, including funds requested from USDA and any matching support provided, will be adequate to carry out the activities of the project. Provide a summary of sources and amounts of all third party matching support.

(iii) Justify the project's cost-effectiveness. Show how the project maximizes the use of limited resources, optimizes educational value for the dollar, achieves economies of scale, or leverages additional funds. For example, discuss how the project has the potential to generate a critical mass of expertise and activity focused on a targeted need area or promote coalition building that could lead to future ventures.

(iv) Include the percentage of time key personnel will work on the project, both during the academic year and summer. When salaries of university project personnel will be paid by a combination of USDA and institutional funds, the total compensation must not exceed the faculty member's regular annual compensation. In addition, the total commitment of time devoted to the project, when combined with time for teaching and research duties, other sponsored agreements, and other employment obligations to the institution, must not exceed 100 percent of the normal workload for which the employee is compensated, in accordance with established university policies and applicable Federal cost principles.

(v) If the proposal addresses more than one targeted need area (e.g., student experiential learning and instruction delivery systems), estimate the proportion of the funds requested from USDA that will support each respective targeted need area.

(i) *Current and pending support*. Each applicant must complete Form NIFA–663, ''Current and Pending Support,'' identifying any other current public- or private-sponsored projects, in addition to the proposed project, to which key personnel listed in the proposal under consideration have committed portions of their time, whether or not salary support for the person(s) involved is included in the budgets of the various projects. This information should also be provided for any pending proposals which are currently being considered by, or which will be submitted in the near future to, other possible sponsors, including other USDA programs or agencies. Concurrent submission of identical or similar projects to other possible sponsors will not prejudice the review or evaluation of a project under this program.

(j) *Appendix*. Each project narrative is expected to be complete in itself and to meet the 20-page limitation. Inclusion of material in an Appendix should not be used to circumvent the 20-page limitation of the proposal narrative. However, in those instances where inclusion of supplemental information is necessary to guarantee the peer review panel's complete understanding of a proposal or to illustrate the integrity of the design or a main thesis of the proposal, such information may be included in an Appendix. Examples of supplemental material are photographs, journal reprints, brochures and other pertinent materials which are deemed to be illustrative of major points in the narrative but unsuitable for inclusion in the proposal narrative itself. Information on previously submitted proposals may also be presented in the Appendix (refer to paragraph (e) of this section). When possible, information in the Appendix should be presented in tabular format. A complete set of the Appendix material must be attached to each copy of the grant application submitted. The Appendix must be identified with the title of the project as it appears on Form NIFA–712 of the proposal and the name(s) of the project director(s). The Appendix must be referenced in the proposal narrative.

Subpart D—Review and Evaluation of a Teaching Proposal

§ 3406.14 Proposal review—teaching.

The proposal evaluation process includes both internal staff review and merit evaluation by peer review panels comprised of scientists, educators, business representatives, and Government officials who are highly qualified to render expert advice in the areas supported. Peer review panels will be selected and structured to provide optimum expertise and objective judgment in the evaluation of proposals.

§ 3406.15 Evaluation criteria for teaching proposals.

The maximum score a teaching proposal can receive is 150 points. Unless

otherwise stated in the annual solicitation published in the FEDERAL REGISTER, the peer review panel will consider the following criteria and weights to evaluate proposals submitted:

Evaluation criterion	Weight
(a) Potential for advancing the quality of education:	
This criterion is used to assess the likelihood that the project will have a substantial impact upon and advance the quality of food and agricultural sciences higher education by strengthening institutional capacities through promoting education reform to meet clearly delineated needs.	
(1) Impact—Does the project address a targeted need area(s)? Is the problem or opportunity clearly documented? Does the project address a State, regional, national, or international problem or opportunity? Will the benefits to be derived from the project transcend the applicant institution or the grant period? Is it probable that other institutions will adapt this project for their own use? Can the project serve as a model for others?	15 points.
(2) Continuation plans—Are there plans for continuation or expansion of the project beyond USDA support with the use of institutional funds? Are there indications of external, non-Federal support? Are there realistic plans for making the project self-supporting?	10 points.
(3) Innovation—Are significant aspects of the project based on an innovative or a non-traditional approach toward solving a higher education problem or strengthening the quality of higher education in the food and agricultural sciences? If successful, is the project likely to lead to education reform?	10 points.
(4) Products and results—Are the expected products and results of the project clearly defined and likely to be of high quality? Will project results be of an unusual or unique nature? Will the project contribute to a better understanding of or an improvement in the quality, distribution, or effectiveness of the Nation's food and agricultural scientific and professional expertise base, such as increasing the participation of women and minorities?	15 points.
(b) Overall approach and cooperative linkages:	
This criterion relates to the soundness of the proposed approach and the quality of the partnerships likely to evolve as a result of the project.	
(1) Proposed approach—Do the objectives and plan of operation appear to be sound and appropriate relative to the targeted need area(s) and the impact anticipated? Are the procedures managerially, educationally, and scientifically sound? Is the overall plan integrated with or does it expand upon other major efforts to improve the quality of food and agricultural sciences higher education? Does the timetable appear to be readily achievable?	15 points.
(2) Evaluation—Are the evaluation plans adequate and reasonable? Do they allow for continuous or frequent feedback during the life of the project? Are the individuals involved in project evaluation skilled in evaluation strategies and procedures? Can they provide an objective evaluation? Do evaluation plans facilitate the measurement of project progress and outcomes?	5 points.
(3) Dissemination—Does the proposed project include clearly outlined and realistic mechanisms that will lead to widespread dissemination of project results, including national electronic communication systems, publications, presentations at professional conferences, or use by faculty development or research/teaching skills workshops?	5 points.
(4) Partnerships and collaborative efforts—Does the project have significant potential for advancing cooperative ventures between the applicant institution and a USDA agency? Does the project workplan include an effective role for the cooperating USDA agency(s)? Will the project expand partnership ventures among disciplines at a university, between colleges and universities, or with the private sector? Will the project lead to long-term relationships or cooperative partnerships that are likely to enhance program quality or supplement resources available to food and agricultural sciences higher education?	15 points.
(c) Institutional capacity building:	
This criterion relates to the degree to which the project will strengthen the teaching capacity of the applicant institution. In the case of a joint project proposal, it relates to the degree to which the project will strengthen the teaching capacity of the applicant institution and that of any other institution assuming a major role in the conduct of the project.	
(1) Institutional enhancement—Will the project help the institution to: Expand the current faculty's expertise base; attract, hire, and retain outstanding teaching faculty; advance and strengthen the scholarly quality of the institution's academic programs; enrich the racial, ethnic, or gender diversity of the faculty and student body; recruit students with higher grade point averages, higher standardized test scores, and those who are more committed to graduation; become a center of excellence in a particular field of education and bring it greater academic recognition; attract outside resources for academic programs; maintain or acquire state-of-the-art scientific instrumentation or library collections for teaching; or provide more meaningful student experiential learning opportunities?	15 points.
(2) Institutional commitment—Is there evidence to substantiate that the institution attributes a high-priority to the project, that the project is linked to the achievement of the institution's long-term goals, that it will help satisfy the institution's high-priority objectives, or that the project is supported by the institution's strategic plans? Will the project have reasonable access to needed resources such as instructional instrumentation, facilities, computer services, library and other instruction support resources?	15 points.
(d) Personnel Resources: This criterion relates to the number and qualifications of the key persons who will carry out the project. Are designated project personnel qualified to carry out a successful project? Are there sufficient numbers of personnel associated with the project to achieve the stated objectives and the anticipated outcomes?	10 points.
(e) Budget and cost-effectiveness:	

Evaluation criterion	Weight
This criterion relates to the extent to which the total budget adequately supports the project and is cost-effective.	
(1) Budget—Is the budget request justifiable? Are costs reasonable and necessary? Will the total budget be adequate to carry out project activities? Are the source(s) and amount(s) of non-Federal matching support clearly identified and appropriately documented? For a joint project proposal, is the shared budget explained clearly and in sufficient detail?	10 points.
(2) Cost-effectiveness—Is the proposed project cost-effective? Does it demonstrate a creative use of limited resources, maximize educational value per dollar of USDA support, achieve economies of scale, leverage additional funds or have the potential to do so, focus expertise and activity on a targeted need area, or promote coalition building for current or future ventures?	5 points.
(f) Overall quality of proposal: This criterion relates to the degree to which the proposal complies with the application guidelines and is of high quality. Is the proposal enhanced by its adherence to instructions (table of contents, organization, pagination, margin and font size, the 20-page limitation, appendices, etc.); accuracy of forms; clarity of budget narrative; well prepared vitae for all key personnel associated with the project; and presentation (are ideas effectively presented, clearly articulated, and thoroughly explained, etc.)?	5 points.

Subpart E—Preparation of a Research Proposal

§ 3406.16 Scope of a research proposal.

The research component of the program will support projects that address high-priority research initiatives in areas such as those illustrated in this section where there is a present or anticipated need for increased knowledge or capabilities or in which it is feasible for applicants to develop programs recognized for their excellence. Applicants are also encouraged to include in their proposals a library enhancement component related to the initiative(s) for which they have prepared their proposals.

(a) *Studies and experimentation in food and agricultural sciences.* (1) The purpose of this initiative is to advance the body of knowledge in those basic and applied natural and social sciences that comprise the food and agricultural sciences.

(2) Examples include, but are not limited to:

(i) Conduct plant or animal breeding programs to develop better crops, forests, or livestock (e.g., more disease resistant, more productive, yielding higher quality products).

(ii) Conceive, design, and evaluate new bioprocessing techniques for eliminating undesirable constituents from or adding desirable ones to food products.

(iii) Propose and evaluate ways to enhance utilization of the capabilities and resources of food and agricultural institutions to promote rural development (e.g., exploitation of new technologies by small rural businesses).

(iv) Identify control factors influencing consumer demand for agricultural products.

(v) Analyze social, economic, and physiological aspects of nutrition, housing, and life-style choices, and of community strategies for meeting the changing needs of different population groups.

(vi) Other high-priority areas such as human nutrition, sustainable agriculture, biotechnology, agribusiness management and marketing, and aquaculture.

(b) *Centralized research support systems.* (1) The purpose of this initiative is to establish centralized support systems to meet national needs or serve regions or clientele that cannot otherwise afford or have ready access to the support in question, or to provide such support more economically thereby freeing up resources for other research uses.

(2) Examples include, but are not limited to:

(i) Storage, maintenance, characterization, evaluation and enhancement of germplasm for use by animal and plant breeders, including those using the techniques of biotechnology.

(ii) Computerized data banks of important scientific information (e.g., epidemiological, demographic, nutrition, weather, economic, crop yields, etc.).

(iii) Expert service centers for sophisticated and highly specialized methodologies (e.g., evaluation of organoleptic and nutritional quality of foods, toxicology, taxonomic identifications, consumer preferences, demographics, etc.).

(c) *Technology delivery systems.* (1) The purpose of this initiative is to promote innovations and improvements in the delivery of benefits of food and agricultural sciences to producers and consumers, particularly those who are currently disproportionately low in receipt of such benefits.

(2) Examples include, but are not limited to:

(i) Computer-based decision support systems to assist small-scale farmers to take advantage of relevant technologies, programs, policies, etc.

(ii) Efficacious delivery systems for nutrition information or for resource management assistance for low-income families and individuals.

(d) *Other creative proposals.* The purpose of this initiative is to encourage other creative proposals, outside the areas previously outlined, that are designed to provide needed enhancement of the Nation's food and agricultural research system.

§ 3406.17 Program application materials—research.

Program application materials in an application package will be made available to eligible institutions upon request. These materials include the program announcement, the administrative provisions for the program, and the forms needed to prepare and submit research grant applications under the program.

§ 3406.18 Content of a research proposal.

(a) *Proposal cover page.* (1) Form NIFA–712, ''Higher Education Proposal Cover Page,'' must be completed in its entirety. Note that providing a Social Security Number is voluntary, but is an integral part of the NIFA information system and will assist in the processing of the proposal.

(2) One copy of Form NIFA–712 must contain the pen-and-ink signatures of the principal investigator(s) and Authorized Organizational Representative for the applicant institution.

(3) The title of the research project shown on the ''Higher Education Proposal Cover Page'' must be brief (80-character maximum) yet represent the major thrust of the project. This information will be used by the Department to provide information to the Congress and other interested parties.

(4) In block 7. of Form NIFA–712, enter ''Capacity Building Grants Program.''

(5) In block 8.a. of Form NIFA–712, enter ''Research.'' In block 8.b. identify the code of the targeted need area(s) as found on the reverse of the form. If a proposal focuses on multiple targeted need areas, enter each code associated with the project. In block 8.c. identify the major area(s) of emphasis as found on the reverse of the form. If a proposal focuses on multiple areas of emphasis, enter each code associated with the project; however, please limit your selection to three areas. This information will be used by the program staff for the proper assignment of proposals to reviewers.

(6) In block 9. of Form NIFA–712, indicate if the proposal is a complementary project proposal or joint project proposal as defined in § 3406.2 of this part. If it is not a complementary project proposal or a joint project proposal, identify it as a regular proposal.

(7) In block 13. of Form NIFA–712, indicate if the proposal is a new, first-time submission or if the proposal is a resubmission of a proposal that has been submitted to, but not funded under the 1890 Institution Capacity Building Grants Program in a previous competition.

(b) *Table of contents.* For ease of locating information, each proposal must contain a detailed table of contents just after the Proposal Cover Page. The Table of Contents should include page numbers for each component of the proposal. Pagination should begin immediately following the summary documentation of USDA agency cooperation.

(c) *USDA agency cooperator.* To be considered for funding, each proposal must include documentation of cooperation with at least one USDA agency or office. If multiple agencies are involved as cooperators, documentation must be included from each agency. When documenting cooperative arrangements, the following guidelines should be used:

(1) A summary of the cooperative arrangements must immediately follow

the Table of Contents. This summary should:

(i) Bear the signatures of the Agency Head (or his/her designated authorized representative) and the university project director;

(ii) Indicate the agency's willingness to commit support for the project;

(iii) Identify the person(s) at the USDA agency who will serve as the liaison or technical contact for the project;

(iv) Describe the degree and nature of the USDA agency's involvement in the proposed project, as outlined in § 3406.6(a) of this part, including its role in:

(A) Identifying the need for the project;

(B) Developing a conceptual approach;

(C) Assisting with project design;

(D) Identifying and securing needed agency or other resources (e.g., personnel, grants/contracts; in-kind support, etc.);

(E) Developing the project budget;

(F) Promoting partnerships with other institutions to carry out the project;

(G) Helping the institution launch and manage the project;

(H) Providing technical assistance and expertise;

(I) Providing consultation through site visits, E-mail, conference calls, and faxes;

(J) Participating in project evaluation and dissemination of final project results; and

(K) Seeking other innovative ways to ensure the success of the project and advance the needs of the institution or the agency; and

(v) Describe the expected benefits of the partnership venture for the USDA agency and for the 1890 Institution.

(2) A detailed discussion of these partnership arrangements should be provided in the narrative portion of the proposal, as outlined in paragraph (f)(2)(iv)(C) of this section.

(3) Additional documentation, including letters of support or cooperation, may be provided in the Appendix.

(d) *Project summary*. (1) A Project Summary should immediately follow the summary documentation of USDA agency cooperation. The information provided in the Project Summary will be used by the program staff for a variety of purposes, including the proper assignment of proposals to peer reviewers and providing information to peer reviewers prior to the peer panel meeting. The name of the institution, the targeted need area(s), and the title of the proposal must be identified exactly as shown on the ''Higher Education Proposal Cover Page.''

(2) If the proposal is a complementary project proposal, as defined in § 3406.2 of this part, clearly state this fact and identify the other complementary project(s) by citing the name of the submitting institution, the title of the project, the principal investigator, and the grant number (if funded in a previous year) exactly as shown on the cover page of the complementary project so that appropriate consideration can be given to the interrelatedness of the proposals in the evaluation process.

(3) If the proposal is a joint project proposal, as defined in § 3406.2 of this part, indicate such and identify the other participating institutions and the key person responsible for coordinating the project at each institution.

(4) The Project Summary should be a concise description of the proposed activity suitable for publication by the Department to inform the general public about awards under the program. The text should not exceed one page, single-spaced. The Project Summary should be a self-contained description of the activity which would result if the proposal is funded by USDA. It should include: The objective of the project, a synopsis of the plan of operation, a statement of how the project will enhance the research capacity of the institution, a description of how the project will enhance research in the food and agricultural sciences, and a description of the partnership efforts between, and the expected benefits for, the USDA agency cooperator(s) and the 1890 Institution and the plans for disseminating project results. The Project Summary should be written so that a technically literate reader can evaluate the use of Federal funds in support of the project.

(e) *Resubmission of a proposal*—(1) *Resubmission of previously unfunded proposals.* (i) If the proposal has been submitted previously, but was not funded, such should be indicated in block 13. on Form NIFA–712, ''Higher Education Proposal Cover Page,'' and the following information should be included in the proposal:

(A) The fiscal year(s) in which the proposal was submitted previously;

(B) A summary of the peer reviewers' comments; and

(C) How these comments have been addressed in the current proposal, including the page numbers in the current proposal where the peer reviewers' comments have been addressed.

(ii) This information may be provided as a section of the proposal following the Project Summary and preceding the proposal narrative or it may be placed in the Appendix (see paragraph (j) of this section). In either case, the location of this information should be indicated in the Table of Contents, and the fact that the proposal is a resubmitted proposal should be stated in the proposal narrative. Further, when possible, the information should be presented in a tabular format. Applicants who choose to resubmit proposals that were previously submitted, but not funded, should note that resubmitted proposals must compete equally with newly submitted proposals. Submitting a proposal that has been revised based on a previous peer review panel's critique of the proposal does not guarantee the success of the resubmitted proposal.

(2) *Resubmission of previously funded proposals.* Recognizing that capacity building is a long-term ongoing process, the 1890 Institution Capacity Building Grants Program is interested in funding subsequent phases of previously funded projects in order to build institutional capacity, and institutions are encouraged to build on a theme over several grant awards. However, proposals that are sequential continuations or new stages of previously funded Capacity Building Grants must compete with first-time proposals. Therefore, principal investigators should thoroughly demonstrate how the project proposed in the current application expands substantially upon a previously funded project (*i.e.*, demonstrate how the new project will advance the former project to the next level of attainment or will achieve expanded goals). The proposal must also show the degree to which the new phase promotes innovativeness and creativity beyond the scope of the previously funded project. Please note that the 1890 Institution Capacity Building Grants Program is not designed to support activities that are essentially repetitive in nature over multiple grant awards. Principal investigators who have had their projects funded previously are discouraged from resubmitting relatively identical proposals for future funding.

(f) *Narrative of a research proposal.* The narrative portion of the proposal is limited to 20 pages in length. The one-page Project Summary is not included in the 20-page limitation. The narrative must be typed on one side of the page only, using a font no smaller than 12 point, and double-spaced. All margins must be at least one inch. All pages following the summary documentation of USDA agency cooperation must be paginated. It should be noted that peer reviewers will not be required to read beyond 20 pages of the narrative to evaluate the proposal. The narrative should contain the following sections:

(1) *Significance of the problem*—(i) *Impact*—(A) *Identification of the problem or opportunity*. Clearly identify the specific problem or opportunity to be addressed and present any research questions or hypotheses to be examined.

(B) *Rationale.* Provide a rationale for the proposed approach to the problem or opportunity and indicate the part that the proposed project will play in advancing food and agricultural research and knowledge. Discuss how the project will be of value and importance at the State, regional, national, or international level(s). Also discuss how the benefits to be derived from the project will transcend the proposing institution or the grant period.

(C) *Literature review.* Include a comprehensive summary of the pertinent scientific literature. Citations may be footnoted to a bibliography in the Appendix. Citations should be accurate, complete, and adhere to an acceptable

journal format. Explain how such knowledge (or previous findings) is related to the proposed project.

(D) *Current research and related activities*. Describe the relevancy of the proposed project to current research or significant research support activities at the proposing institution and any other institution participating in the project, including research which may be as yet unpublished.

(ii) *Continuation plans*. Discuss the likelihood or plans for continuation or expansion of the project beyond USDA support. Discuss, as applicable, how the institution's long-range budget, and administrative and academic plans, provide for the realistic continuation or expansion of the line of research or research support activity undertaken by this project after the end of the grant period. For example, are there plans for securing non-Federal support for the project? Is there any potential for income from patents, technology transfer or university-business enterprises resulting from the project? Also discuss the probabilities of the proposed activity or line of inquiry being pursued by researchers at other institutions.

(iii) *Innovation*. Describe the degree to which the proposal reflects an innovative or non-traditional approach to a food and agricultural research initiative.

(iv) *Products and results*. Explain the kinds of products and results expected and their impact on strengthening food and agricultural sciences higher education in the United States, including attracting academically outstanding students or increasing the ethnic, racial, and gender diversity of the Nation's food and agricultural scientific and professional expertise base.

(2) *Overall approach and cooperative linkages*—(i) *Approach*—(A) *Objectives*. Cite and discuss the specific objectives to be accomplished under the project.

(B) *Plan of operation*. The procedures or methodologies to be applied to the proposed project should be explicitly stated. This section should include, but not necessarily be limited to a description of:

(*1*) The proposed investigations, experiments, or research support enhancements in the sequence in which they will be carried out.

(*2*) Procedures and techniques to be employed, including their feasibility.

(*3*) Means by which data will be collected and analyzed.

(*4*) Pitfalls that might be encountered.

(*5*) Limitations to proposed procedures.

(C) *Timetable*. Provide a timetable for execution of the project. Identify all important research milestones and dates as they relate to project start-up, execution, dissemination, evaluation, and close-out.

(ii) *Evaluation plans*. (A) Provide a plan for evaluating the accomplishment of stated objectives during the conduct of the project. Indicate the criteria, and corresponding weight of each, to be used in the evaluation process, describe any performance data to be collected and analyzed, and explain the methodologies that will be used to determine the extent to which the needs underlying the project are being met.

(B) Provide a plan for evaluating the effectiveness of the end results upon conclusion of the project. Include the same kinds of information requested in paragraph (f)(2)(ii)(A) of this section.

(iii) Dissemination plans. Provide plans for disseminating project results and products including the possibilities for publications. Identify target audiences and explain methods of communication.

(iv) *Partnerships and collaborative efforts*. (A) Explain how the project will maximize partnership ventures and collaborative efforts to strengthen food and agricultural sciences higher education (e.g., involvement of faculty in related disciplines at the same institution, joint projects with other colleges or universities, or cooperative activities with business or industry). Also explain how it will stimulate academia, the States, or the private sector to join with the Federal partner in enhancing food and agricultural sciences higher education.

(B) Provide evidence, via letters from the parties involved, that arrangements necessary for collaborative partnerships or joint initiatives have been

discussed and realistically can be expected to come to fruition, or actually have been finalized contingent on an award under this program. Letters must be signed by an official who has the authority to commit the resources of the organization. Such letters should be referenced in the plan of operation, but the actual letters should be included in the Appendix section of the proposal. Any potential conflict(s) of interest that might result from the proposed collaborative arrangements must be discussed in detail. Proposals which indicate joint projects with other institutions must state which proposer is to receive any resulting grant award, since only one submitting institution can be the recipient of a project grant under one proposal.

(C) Explain how the project will create a new or enhance an existing partnership between the USDA agency cooperator(s) and the 1890 Institution(s). This section should expand upon the summary information provided in the documentation of USDA agency cooperation section, as outlined in paragraph (c)(1) of this section. This is particularly important because the focal point of attention in the peer review process is the proposal narrative. Therefore, a comprehensive discussion of the partnership effort between USDA and the 1890 Institution should be provided.

(3) *Institutional capacity building*—(i) *Institutional enhancement.* Explain how the proposed project will strengthen the research capacity, as defined in § 3406.2 of this part, of the applicant institution and, if applicable, any other institutions assuming a major role in the conduct of the project. For example, describe how the proposed project is intended to strengthen the institution's research infrastructure by advancing the expertise of the current faculty in the natural or social sciences; providing a better research environment, state-of-the-art equipment, or supplies; enhancing library collections; or enabling the institution to provide efficacious organizational structures and reward systems to attract and retain first-rate research faculty and students—particularly those from underrepresented groups.

(ii) *Institutional commitment.* (A) Discuss the institution's commitment to the project and its successful completion. Provide, as relevant, appropriate documentation in the Appendix. Substantiate that the institution attributes a high priority to the project.

(B) Discuss how the project will contribute to the achievement of the institution's long-term (five- to ten-year) goals and how the project will help satisfy the institution's high-priority objectives. Show how this project is linked to and supported by the institution's strategic plan.

(C) Discuss the commitment of institutional resources to the project. Show that the institutional resources to be made available to the project will be adequate, when combined with the support requested from USDA, to carry out the activities of the project and represent a sound commitment by the institution. Discuss institutional facilities, equipment, computer services, and other appropriate resources available to the project.

(g) *Key personnel.* A Form NIFA–710, ''Summary Vita—Research Proposal,'' should be included for each key person associated with the project.

(h) *Budget and cost-effectiveness*—(1) *Budget form.* (i) Prepare Form NIFA–713, ''Higher Education Budget,'' in accordance with instructions provided with the form. Proposals may request support for a period to be identified in each year's program announcement. A budget form is required for each year of requested support. In addition, a summary budget is required detailing the requested total support for the overall project period. Form NIFA–713 may be reproduced as needed by proposers. Funds may be requested under any of the categories listed on the form, provided that the item or service for which support is requested is allowable under the authorizing legislation, the applicable Federal cost principles, the administrative provisions in this part, and can be justified as necessary for the successful conduct of the proposed project.

(ii) The approved negotiated research rate or the maximum rate allowed by law should be used when computing indirect costs. If a reduced rate of indirect costs is voluntarily requested from

USDA, the remaining allowable indirect costs may be used as matching funds. In the event that a proposal reflects an incorrect indirect cost rate and is recommended for funding, the correct rate will be applied to the approved budget in the grant award.

(2) *Matching funds.* When documenting matching contributions, use the following guidelines:

(i) When preparing the column entitled ''Applicant Contributions to Matching Funds'' of Form NIFA–713, only those costs to be contributed by the applicant for the purposes of matching should be shown. The total amount of this column should be indicated in item M.

(ii) In item N of Form NIFA–713, show a total dollar amount for Cash Contributions from both the applicant and any third parties; also show a total dollar amount (based on current fair market value) for Non-cash Contributions from both the applicant and any third parties.

(iii) To qualify for any incentive benefits stemming from matching support or to satisfy any cost sharing requirements, proposals must include written verification of any actual commitments of matching support (including both cash and non-cash contributions) from third parties. Written verification means—

(A) For any third party cash contributions, a separate pledge agreement for each donation, signed by the authorized organizational representative(s) of the donor organization (or by the donor if the gift is from an individual) and the applicant institution, which must include:

(*1*) The name, address, and telephone number of the donor;

(*2*) The name of the applicant institution;

(*3*) The title of the project for which the donation is made;

(*4*) The dollar amount of the cash donation; and

(*5*) A statement that the donor will pay the cash contribution during the grant period; and

(B) For any third party non-cash contributions, a separate pledge agreement for each contribution, signed by the authorized organizational representative(s) of the donor organization (or by the donor if the gift is from an individual) and the applicant institution, which must include:

(*1*) The name, address, and telephone number of the donor;

(*2*) The name of the applicant institution;

(*3*) The title of the project for which the donation is made;

(*4*) A good faith estimate of the current fair market value of the non-cash contribution; and

(*5*) A statement that the donor will make the contribution during the grant period.

(iv) All pledge agreements must be placed in the proposal immediately following Form NIFA–713. The sources and amounts of all matching support from outside the applicant institution should be summarized in the Budget Narrative section of the proposal.

(v) Applicants should refer to OMB Circulars A–110, ''Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Nonprofit Organizations,'' and A–21, ''Cost Principles for Educational Institutions,'' for further guidance and other requirements relating to matching and allowable costs.

(3) *Chart on shared budget for joint project proposal.* (i) For a joint project proposal, a plan must be provided indicating how funds will be distributed to the participating institutions. The budget section of a joint project proposal should include a chart indicating:

(A) The names of the participating institutions;

(B) the amount of funds to be disbursed to those institutions; and

(C) the way in which such funds will be used in accordance with items A through L of Form NIFA–713, ''Higher Education Budget.''

(ii) If a proposal is not for a joint project, such a chart is not required.

(4) *Budget narrative.* (i) Discuss how the budget specifically supports the proposed project activities. Explain how each budget item (such as salaries and wages for professional and technical staff, student workers, travel, equipment, etc.) is essential to achieving project objectives.

(ii) Justify that the total budget, including funds requested from USDA

and any matching support provided, will be adequate to carry out the activities of the project. Provide a summary of sources and amounts of all third party matching support.

(iii) Justify the project's cost-effectiveness. Show how the project maximizes the use of limited resources, optimizes research value for the dollar, achieves economies of scale, or leverages additional funds. For example, discuss how the project has the potential to generate a critical mass of expertise and activity focused on a high-priority research initiative(s) or promote coalition building that could lead to future ventures.

(iv) Include the percentage of time key personnel will work on the project, both during the academic year and summer. When salaries of university project personnel will be paid by a combination of USDA and institutional funds, the total compensation must not exceed the faculty member's regular annual compensation. In addition, the total commitment of time devoted to the project, when combined with time for teaching and research duties, other sponsored agreements, and other employment obligations to the institution, must not exceed 100 percent of the normal workload for which the employee is compensated, in accordance with established university policies and applicable Federal cost principles.

(v) If the proposal addresses more than one targeted need area, estimate the proportion of the funds requested from USDA that will support each respective targeted need area.

(i) *Current and pending support.* Each applicant must complete Form NIFA–663, ''Current and Pending Support,'' identifying any other current public- or private-sponsored projects, in addition to the proposed project, to which key personnel listed in the proposal under consideration have committed portions of their time, whether or not salary support for the person(s) involved is included in the budgets of the various projects. This information should also be provided for any pending proposals which are currently being considered by, or which will be submitted in the near future to, other possible sponsors, including other USDA programs or agencies. Concurrent submission of identical or similar projects to other possible sponsors will not prejudice the review or evaluation of a project under this program.

(j) *Appendix.* Each project narrative is expected to be complete in itself and to meet the 20-page limitation. Inclusion of material in the Appendix should not be used to circumvent the 20-page limitation of the proposal narrative. However, in those instances where inclusion of supplemental information is necessary to guarantee the peer review panel's complete understanding of a proposal or to illustrate the integrity of the design or a main thesis of the proposal, such information may be included in the Appendix. Examples of supplemental material are photographs, journal reprints, brochures and other pertinent materials which are deemed to be illustrative of major points in the narrative but unsuitable for inclusion in the proposal narrative itself. Information on previously submitted proposals may also be presented in the Appendix (refer to paragraph (e) of this section). When possible, information in the Appendix should be presented in tabular format. A complete set of the Appendix material must be attached to each copy of the grant application submitted. The Appendix must be identified with the title of the project as it appears on Form NIFA–712 of the proposal and the name(s) of the principal investigator(s). The Appendix must be referenced in the proposal narrative.

(k) *Special considerations.* A number of situations encountered in the conduct of research require special information or supporting documentation before funding can be approved for the project. If such situations are anticipated, proposals must so indicate via completion of Form NIFA–662, ''Assurance Statement(s).'' It is expected that some applications submitted in response to these guidelines will involve the following:

(1) *Recombinant DNA research.* All key personnel identified in the proposal and all endorsing officials of the proposing organization are required to comply with the guidelines established by the National Institutes of Health entitled ''Guidelines for Research Involving Recombinant DNA Molecules,'' as revised.

All applicants proposing to use recombinant DNA techniques must so indicate by checking the appropriate box on Form NIFA–712, ''Higher Education Proposal Cover Page,'' and by completing the applicable section of Form NIFA–662. In the event a project involving recombinant DNA or RNA molecules results in a grant award, the Institutional Biosafety Committee of the proposing institution must approve the research plan before NIFA will release grant funds.

(2) *Protection of human subjects.* Responsibility for safeguarding the rights and welfare of human subjects used in any grant project supported with funds provided by NIFA rests with the performing organization. Guidance on this is contained in Department of Agriculture regulations under 7 CFR part 1c. All applicants who propose to use human subjects for experimental purposes must indicate their intention by checking the appropriate block on Form NIFA–712, ''Higher Education Proposal Cover Page,'' and by completing the appropriate portion of Form NIFA–662. In the event a project involving human subjects results in a grant award, the Institutional Review Board of the proposing institution must approve the research plan before NIFA will release grant funds.

(3) *Laboratory animal care.* Responsibility for the humane care and treatment of laboratory animals used in any grant project supported with funds provided by NIFA rests with the performing organization. All key project personnel and all endorsing officials of the proposing organization are required to comply with the Animal Welfare Act of 1966, as amended (7 U.S.C. 2131 *et seq.*), and the regulations promulgated thereunder by the Secretary of Agriculture in 9 CFR parts 1, 2, 3, and 4 pertaining to the care, handling, and treatment of laboratory animals. All applicants proposing a project which involves the use of laboratory animals must indicate their intention by checking the appropriate block on Form NIFA–712, ''Higher Education Proposal Cover Page,'' and by completing the appropriate portion of Form NIFA–662. In the event a project involving the use of living vertebrate animals results in a grant award, the Institutional Animal Care and Use Committee of the proposing institution must approve the research plan before NIFA will release grant funds.

(l) *Compliance with the National Environmental Policy Act (NEPA).* As outlined in 7 CFR part 3407 (the Agriculture regulations implementing NEPA), the environmental data for any proposed project is to be provided to NIFA so that NIFA may determine whether any further action is needed. In some cases, however, the preparation of environmental data may not be required. Certain categories of actions are excluded from the requirements of NEPA.

(1) *NEPA determination.* In order for NIFA to determine whether any further action is needed with respect to NEPA, pertinent information regarding the possible environmental impacts of a particular project is necessary; therefore, Form NIFA–1234, ''NEPA Exclusions Form,''ust be included in the proposal indicating whether the applicant is of the opinion that the project falls within a categorical exclusion and the reasons therefor. If it is the applicant's opinion that the proposed project falls within the categorical exclusions, the specific exclusion must be identified. Form NIFA–1234 and any supporting documentation should be placed at the end of the proposal and identified in the Table of Contents.

(2) *Exceptions to categorical exclusions.* Even though a project may fall within the categorical exclusions, NIFA may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for an activity, if substantial controversy on environmental grounds exists or if other extraordinary conditions or circumstances are present which may cause such activity to have a significant environmental effect.

Subpart F—Review and Evaluation of a Research Proposal

§ 3406.19 Proposal review—research.

The proposal evaluation process includes both internal staff review and merit evaluation by peer review panels comprised of scientists, educators, business representatives, and Government officials who are highly qualified

to render expert advice in the areas supported. Peer review panels will be selected and structured to provide optimum expertise and objective judgment in the evaluation of proposals.

§ 3406.20 Evaluation criteria for research proposals.

The maximum score a research proposal can receive is 150 points. Unless otherwise stated in the annual solicitation published in the FEDERAL REGISTER, the peer review panel will consider the following criteria and weights to evaluate proposals submitted:

Evaluation criterion	Weight
(a) Significance of the problem:	
This criterion is used to assess the likelihood that the project will advance or have a substantial impact upon the body of knowledge constituting the natural and social sciences undergirding the agricultural, natural resources, and food systems.	
(1) Impact—Is the problem or opportunity to be addressed by the proposed project clearly identified, outlined, and delineated? Are research questions or hypotheses precisely stated? Is the project likely to further advance food and agricultural research and knowledge? Does the project have potential for augmenting the food and agricultural scientific knowledge base? Does the project address a State, regional, national, or international problem(s)? Will the benefits to be derived from the project transcend the applicant institution or the grant period?	15 points.
(2) Continuation plans—Are there plans for continuation or expansion of the project beyond USDA support? Are there plans for continuing this line of research or research support activity with the use of institutional funds after the end of the grant? Are there indications of external, non-Federal support? Are there realistic plans for making the project self-supporting? What is the potential for royalty or patent income, technology transfer or university-business enterprises? What are the probabilities of the proposed activity or line of inquiry being pursued by researchers at other institutions?	10 points.
(3) Innovation—Are significant aspects of the project based on an innovative or a non-traditional approach? Does the project reflect creative thinking? To what degree does the venture reflect a unique approach that is new to the applicant institution or new to the entire field of study?	10 points.
(4) Products and results—Are the expected products and results of the project clearly outlined and likely to be of high quality? Will project results be of an unusual or unique nature? Will the project contribute to a better understanding of or an improvement in the quality, distribution, or effectiveness of the Nation's food and agricultural scientific and professional expertise base, such as increasing the participation of women and minorities?	15 points.
(b) Overall approach and cooperative linkages:	
This criterion relates to the soundness of the proposed approach and the quality of the partnerships likely to evolve as a result of the project.	
(1) Proposed approach—Do the objectives and plan of operation appear to be sound and appropriate relative to the proposed initiative(s) and the impact anticipated? Is the proposed sequence of work appropriate? Does the proposed approach reflect sound knowledge of current theory and practice and awareness of previous or ongoing related research? If the proposed project is a continuation of a current line of study or currently funded project, does the proposal include sufficient preliminary data from the previous research or research support activity? Does the proposed project flow logically from the findings of the previous stage of study? Are the procedures scientifically and managerially sound? Are potential pitfalls and limitations clearly identified? Are contingency plans delineated? Does the timetable appear to be readily achievable?	5 points.
(2) Evaluation—Are the evaluation plans adequate and reasonable? Do they allow for continuous or frequent feedback during the life of the project? Are the individuals involved in project evaluation skilled in evaluation strategies and procedures? Can they provide an objective evaluation? Do evaluation plans facilitate the measurement of project progress and outcomes?	5 points
(3) Dissemination—Does the proposed project include clearly outlined and realistic mechanisms that will lead to widespread dissemination of project results, including national electronic communication systems, publications and presentations at professional society meetings?	5 points.
(4) Partnerships and collaborative efforts—Does the project have significant potential for advancing cooperative ventures between the applicant institution and a USDA agency? Does the project workplan include an effective role for the cooperating USDA agency(s)? Will the project encourage and facilitate better working relationships in the university science community, as well as between universities and the public or private sector? Does the project encourage appropriate multi-disciplinary collaboration? Will the project lead to long-term relationships or cooperative partnerships that are likely to enhance research quality or supplement available resources?	15 points.
(c) Institutional capacity building:	
This criterion relates to the degree to which the project will strengthen the research capacity of the applicant institution. In the case of a joint project proposal, it relates to the degree to which the project will strengthen the research capacity of the applicant institution and that of any other institution assuming a major role in the conduct of the project.	
(1) Institutional enhancement—Will the project help the institution to advance the expertise of current faculty in the natural or social sciences; provide a better research environment, state-of-the-art equipment, or supplies; enhance library collections related to the area of research; or enable the institution to provide efficacious organizational structures and reward systems to attract, hire and retain first-rate research faculty and students—particularly those from underrepresented groups?	15 points.

Evaluation criterion	Weight
(2) Institutional commitment—Is there evidence to substantiate that the institution attributes a high-priority to the project, that the project is linked to the achievement of the institution's long-term goals, that it will help satisfy the institution's high-priority objectives, or that the project is supported by the institution's strategic plans? Will the project have reasonable access to needed resources such as scientific instrumentation, facilities, computer services, library and other research support resources?	15 points.
(d) Personnel Resources	10 Points
This criterion relates to the number and qualifications of the key persons who will carry out the project. Are designated project personnel qualified to carry out a successful project? Are there sufficient numbers of personnel associated with the project to achieve the stated objectives and the anticipated outcomes? Will the project help develop the expertise of young scientists at the doctoral or post-doctorate level?	
(e) Budget and cost-effectiveness:	
This criterion relates to the extent to which the total budget adequately supports the project and is cost-effective.	
(1) Budget—Is the budget request justifiable? Are costs reasonable and necessary? Will the total budget be adequate to carry out project activities? Are the source(s) and amount(s) of non-Federal matching support clearly identified and appropriately documented? For a joint project proposal, is the shared budget explained clearly and in sufficient detail?	10 points.
(2) Cost-effectiveness—Is the proposed project cost-effective? Does it demonstrate a creative use of limited resources, maximize research value per dollar of USDA support, achieve economies of scale, leverage additional funds or have the potential to do so, focus expertise and activity on a high-priority research initiative(s), or promote coalition building for current or future ventures?	5 points.
(f) Overall quality of proposal	5 points
This criterion relates to the degree to which the proposal complies with the application guidelines and is of high quality. Is the proposal enhanced by its adherence to instructions (table of contents, organization, pagination, margin and font size, the 20-page limitation, appendices, etc.); accuracy of forms; clarity of budget narrative; well prepared vitae for all key personnel associated with the project; and presentation (are ideas effectively presented, clearly articulated, thoroughly explained, etc.)?	

Subpart G—Submission of a Teaching or Research Proposal

§ 3406.21 Intent to submit a proposal.

To assist NIFA in preparing for the review of proposals, institutions planning to submit proposals may be requested to complete Form NIFA–711, ''Intent to Submit a Proposal,'' provided in the application package. NIFA will determine each year if Intent to Submit a Proposal forms will be requested and provide such information in the program announcement. If Intent to Submit a Proposal forms are required, one form should be completed and returned for each proposal an institution anticipates submitting. Submitting this form does not commit an institution to any course of action, nor does failure to send this form prohibit an institution from submitting a proposal.

§ 3406.22 When and where to submit a proposal.

The program announcement will provide the deadline date for submitting a proposal, the number of copies of each proposal that must be submitted, and the address to which proposals must be submitted.

Subpart H—Supplementary Information

§ 3406.23 Access to peer review information.

After final decisions have been announced, NIFA will, upon request, inform the principal investigator/project director of the reasons for its decision on a proposal. Verbatim copies of summary reviews, not including the identity of the peer reviewers, will be made available to the respective principal investigator/project directors upon specific request.

§ 3406.24 Grant awards.

(a) *General*. Within the limit of funds available for such purpose, the authorized departmental officer shall make project grants to those responsible, eligible applicants whose proposals are judged most meritorious in the announced targeted need areas under the evaluation criteria and procedures set forth in this part. The beginning of the project period shall be no later than September 30 of the Federal fiscal year in which the project is approved for support. All funds granted under this part shall be expended solely for the

purpose for which the funds are granted in accordance with the approved application and budget, the regulations of this part, the terms and conditions of the award, the applicable Federal cost principles, and the Department's Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (7 CFR part 3019).

(b) *Organizational management information.* Specific management information relating to a proposing institution shall be submitted on a one-time basis prior to the award of a project grant identified under this part if such information has not been provided previously under this or another program for which the sponsoring agency is responsible. Copies of forms used to fulfill this requirement will be sent to the proposing institution by the sponsoring agency as part of the pre-award process.

(c) *Notice of grant award.* The grant award document shall include at a minimum the following:

(1) Legal name and address of performing organization.

(2) Title of project.

(3) Name(s) and address(es) of principal investigator(s)/project director(s).

(4) Identifying grant number assigned by the Department.

(5) Project period, which specifies how long the Department intends to support the effort without requiring reapplication for funds.

(6) Total amount of Federal financial assistance approved during the project period.

(7) Legal authority(ies) under which the grant is awarded.

(8) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the grant award.

(9) Other information or provisions deemed necessary by the Department to carry out its granting activities or to accomplish the purpose of this particular project grant.

(d) *Obligation of the Federal Government.* Neither the approval of any application nor the award of any project grant shall legally commit or obligate NIFA or the United States to provide further support of a project or any portion thereof.

§ 3406.25 Use of funds; changes.

(a) *Delegation of fiscal responsibility.* The grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

(b) *Change in project plans.* (1) The permissible changes by the grantee, principal investigator(s)/project director(s), or other key project personnel in the approved project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the grantee or the principal investigator(s)/project director(s) are uncertain as to whether a change complies with this provision, the question must be referred to the Department for a final determination.

(2) Changes in approved goals, or objectives, shall be requested by the grantee and approved in writing by the authorized departmental officer prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the approved project.

(3) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the authorized departmental officer prior to effecting such changes.

(4) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the authorized departmental officer prior to effecting such transfers.

(c) *Changes in project period.* The project period may be extended by the authorized departmental officer without additional financial support for such additional period(s) as the authorized departmental officer determines may be necessary to complete or fulfill the purposes of an approved project. However, due to statutory restriction, no grant may be extended beyond five years from the original start date of the grant. Grant extensions shall be

conditioned upon prior request by the grantee and approval in writing by the authorized departmental officer, unless prescribed otherwise in the terms and conditions of a grant.

(d) *Changes in approved budget.* Changes in an approved budget must be requested by the grantee and approved in writing by the authorized departmental officer prior to instituting such changes if the revision will:

(1) Involve transfers of amounts budgeted for indirect costs to absorb an increase in direct costs;

(2) Involve transfers of amounts budgeted for direct costs to accommodate changes in indirect cost rates negotiated during a budget period and not approved when a grant was awarded; or

(3) Involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal cost principles, Departmental regulations, or in the grant award.

§ 3406.26 Monitoring progress of funded projects.

(a) During the tenure of a grant, principal investigators/project directors must attend at least one national principal investigators/project directors meeting, if offered, in Washington, DC or any other announced location. The purpose of the meeting will be to discuss project and grant management, opportunities for collaborative efforts, future directions for education reform, research project management, advancing a field of science, and opportunities to enhance dissemination of exemplary end products/results.

(b) An Annual Performance Report must be submitted to the USDA program contact person within 90 days after the completion of the first year of the project and annually thereafter during the life of the grant. Generally, the Annual Performance Reports should include a summary of the overall progress toward project objectives, current problems or unusual developments, the next year's planned activities, and any other information that is pertinent to the ongoing project or which may be specified in the terms and conditions of the award. These reports are in addition to the annual Current Research Information System (CRIS) reports required for all research grants under the award's ''Special Terms and Conditions.''

(c) A Final Performance Report must be submitted to the USDA program contact person within 90 days after the expiration date of the project. The expiration date is specified in the award documents and modifications thereto, if any. Generally, the Final Performance Report should be a summary of the completed project, including: A review of project objectives and accomplishments; a description of any products and outcomes resulting from the project; activities undertaken to disseminate products and outcomes; partnerships and collaborative ventures that resulted from the project; future initiatives that are planned as a result of the project; the impact of the project on the principal investigator(s)/project director(s), the institution, and the food and agricultural sciences higher education system; and data on project personnel and beneficiaries. The Final Performance Report should be accompanied by samples or copies of any products or publications resulting from or developed by the project. The Final Performance Report must also contain any other information which may be specified in the terms and conditions of the award.

§ 3406.27 Other Federal statutes and regulations that apply.

Several other Federal statutes and regulations apply to grant proposals considered for review and to project grants awarded under this part. These include but are not limited to:

7 CFR Part 1, Subpart A—USDA implementation of Freedom of Information Act.

7 CFR Part 3—USDA implementation of OMB Circular No. A–129 regarding debt collection.

7 CFR Part 15, Subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (*i.e.*, Circular Nos. A–21 and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR Part 3017—Governmentwide Debarment and Suspension (Nonprocurement);

Governmentwide Requirements for Drug-Free Workplace (Grants), implementing Executive Order 12549 on debarment and suspension and the Drug-Free Workplace Act of 1988 (41 U.S.C. 701).

7 CFR Part 3018—Restrictions on Lobbying, prohibiting the use of appropriated funds to influence Congress or a Federal agency in connection with the making of any Federal grant and other Federal contracting and financial transactions.

7 CFR Part 3019—USDA implementation of OMB Circular A–110, Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR Part 3051—Audits of Institutions of Higher Education and other Nonprofit Institutions.

29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and 7 CFR Part 15b (USDA implementation of statute), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

§ 3406.28 Confidential aspects of proposals and awards.

When a proposal results in a grant, it becomes a part of the record of the Agency's transactions, available to the public upon specific request. Information that the Secretary determines to be of a privileged nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as privileged should be clearly marked as such and sent in a separate statement, two copies of which should accompany the proposal. The original copy of a proposal that does not result in a grant will be retained by the Agency for a period of one year. Other copies will be destroyed. Such a proposal will be released only with the consent of the applicant or to the extent required by law. A proposal may be withdrawn at any time prior to the final action thereon.

§ 3406.29 Evaluation of program.

Grantees should be aware that NIFA may, as a part of its own program evaluation activities, carry out in-depth evaluations of assisted activities. Thus, grantees should be prepared to cooperate with NIFA personnel, or persons retained by NIFA, evaluating the institutional context and the impact of any supported project. Grantees may be asked to provide general information on any students and faculty supported, in whole or in part, by a grant awarded under this program; information that may be requested includes, but is not limited to, standardized academic achievement test scores, grade point average, academic standing, career patterns, age, race/ethnicity, gender, citizenship, and disability.

PART 3407—IMPLEMENTATION OF NATIONAL ENVIRONMENTAL POLICY ACT

Sec.
3407.1 Background and purpose.
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3407.10 Preparation of environmental assessments.
3407.11 Preparation of environmental impact statements.

AUTHORITY: National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.*; E.O. 11514, 34 FR 4247, as amended by E.O. 11991, 42 FR 26927; E.O. 12144, 44 FR 11957; 5 U.S.C. 301; 40 CFR parts 1500–1508; and 7 CFR part 1b.

SOURCE: 56 FR 49245, Sept. 27, 1991, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 3407 appear at 76 FR 4810, Jan. 27, 2011.

§ 3407.1 Background and purpose.

(a) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*) establishes national policies and goals for the protection of the human environment. Section 102(2) of NEPA directs all Federal agencies to give appropriate consideration to the environmental consequences of proposed actions in their decisionmaking and to prepare detailed environmental statements on major Federal actions

significantly affecting the quality of the human environment.

(b) The purpose of this regulation is to supplement the regulations for implementation of NEPA established by the Council on Environmental Quality (CEQ) and codified at 40 CFR parts 1500–1508, as adopted by USDA in 7 CFR part 1b.

(c) Unless otherwise noted, parenthetical citations throughout this part refer to the CEQ regulations.

§ 3407.2 Definitions.

(a) *Authorized Departmental Officer* means the NIFA official, acting within the scope of delegated authority, who is responsible for awarding and administering project grants on behalf of USDA and for carrying out NEPA responsibilities as outlined in § 3407.4(d) of this part. The Authorized Departmental Officer's responsibilities do not include the review, approval, management, or similar activity relating to programs or projects funded by NIFA on the basis of statutory formula and also do not include parallel responsibilities relating to the management or administration of cooperative agreements awarded by NIFA.

(b) Other terms used in this regulation have the same meaning as they have in the CEQ regulations.

§ 3407.3 Policy.

(a) It is NIFA policy to comply with the provisions of NEPA and related laws and policies and with the implementing regulations cited in § 3407.1(b) of this part.

(b) Environmental documents should be concise, written in plain language, and address the issues pertinent to the decision being made.

(c) Environmental documents may be substituted for or combined with other reports which serve to facilitate decisionmaking (40 CFR 1506.4).

(d) NIFA personnel will cooperate with other Federal and State agencies or units thereof, as well as with grantees, contractors, and other cooperating individuals or entities undertaking activities funded or recommended for funding by NIFA to assure that NEPA considerations are addressed early in the planning process to avoid delays and conflicts (40 CFR 1501.2).

(e) NIFA reserves the right to require project participants outside of NIFA to furnish environmental data or documentation to assist NIFA in carrying out its responsibilities under NEPA. When an applicant, grantee, or other cooperating individual or organization is required to submit environmental data to NIFA, including preparation of an environmental assessment (EA), or when a contractor hired by a grantee or other cooperating party prepares environmental data or documentation, NIFA shall provide advance instructions to the applicant, grantee, or other cooperator relating to the preparation and submission of the required information. All information supplied by external project participants shall be subject to verification by NIFA (40 CFR 1506.5).

(f) When possible, costs of analyses and development of required environmental documents shall be planned for during the budgetary process relating to the plan or program. Where the nature of particular program agreements (e.g., grants, cooperative agreements, formula projects) are determined by NIFA to require environmental documentation, the cost of preparing such documentation and of reasonable mitigation efforts shall be considered allowable costs and may be charged to the project as a portion of the Federal or the non-Federal share of project costs. However, NIFA funds above those authorized for the program award will not be made available to recipients to cover such costs.

(g) Final environmental documents, decision notices, and records of decision shall be available to the public for review. There shall be an early and open process for determining the scope of issues to be addressed during environmental analysis (40 CFR 1501.7).

(h) The concept of tiering to eliminate repetitive discussions applicable to EISs (40 CFR part 1502) is applicable to EAs also.

(i) NIFA officials may adopt an existing Federal EA or EIS when a proposed action is substantially the same as the action for which an existing EA or EIS was prepared (40 CFR 1506.3), provided that the EA or EIS or portion thereof meets the standards for an adequate EA or EIS under these regulations.

(j) Existing environmental documents may be incorporated by reference to reduce the bulk of an EA or EIS (40 CFR 1502.21).

(k) After prior consultation with the Council on Environmental Quality, NIFA personnel may, in emergency situations, implement alternative arrangements for compliance with these procedures in accordance with 40 CFR 1506.11.

§ 3407.4 Responsibilities.

The NIFA officials identified below are responsibe for carrying out the provisions of NEPA as indicated:

(a) . The is responsible for providing leadership, formulating agency policies and procedures to implement NEPA, and making available necessary resources to ensure that NEPA goals are met.

(b) *Deputy Directors and Assistant Directors*. Deputy Directors and Assistant Directors are responsible for:

(1) Ensuring that eligible institutions under NIFA formula grant programs are notified of agency environmental requirements before projects to be funded with formula funds are submitted to NIFA for approval;

(2) Assuring that adequate consideration is given to environmental effects of proposed actions during programmatic planning and decision-making processes for grants, cooperative agreements, and formula projects;

(3) Ensuring that environmental information is reviewed and that required documentation is developed in a timely and satisfactory manner for grants, cooperative agreements, and formula projects; and

(4) Approving courses of action within the range of alternatives presented including, as appropriate, approval or recommendation of EAs and EISs for grants, cooperative agreements, and formula projects.

(c) *Program Managers*. NIFA Program Managers are responsible for:

(1) Preparing EISs when required;

(2) Reviewing and making recommendations relating to environmental documentation submitted by project recipients;

(3) Recommending and implementing courses of action within the range of alternatives presented; and

(4) Monitoring results.

(d) *Authorized Departmental Officer*. The Authorized Departmental Officer is responsible for:

(1) Ensuring that eligible applicants under NIFA's project grant programs are notified of agency environmental requirements in advance of proposal preparation;

(2) Providing terms and conditions of grant award for adequate environmental documentation; and

(3) Authorizing the commencement of approved project activities.

NOTE: Where agency environmental requirements are set forth in program regulations, solicitations of applications, program guidelines, or other documents that apprise applicants of environmental requirements, the requirement for advance notification to potential applicants shall be satisfied.

§ 3407.5 Classes of action.

The following describes typical classes of action associated with NIFA programs and related activities:

(a) Actions which normally do not require the preparation of an EA or an EIS are those actions which ordinarily do not have significant individual or cumulative effect on the quality of the human environment. These include those activities described in §§ 3407.6 (a)(1) and (a)(2) of this part.

(b) Actions normally requiring an EA, but not necessarily an EIS, are those projects in which at least some level of uncertainty exists regarding individual or cumulative effects on the quality of the human environment. Such actions generally include those identified in §§ 3407.6(b) and 3407.7 of this part.

(c) Actions normally requiring an EIS are projects which are determined to have a significant impact on the quality of the human environment or which will be performed under extraordinary circumstances. These types of actions are identified in §§ 3407.6(b) and 3407.8 of this part.

§ 3407.6 Categorical exclusions.

(a) All NIFA actions will be analyzed by the appropriate NIFA official specified in § 3407.4(c) to determine whether the project under consideration will have a significant environmental effect prior to recommending to the official responsible for approving a formula

project in the case of formula grants, or the official responsible for awarding a grant or cooperative agreement in the case of a grant or cooperative agreement that the action be undertaken. Unless otherwise determined to be necessary under the provisions of paragraph (b) of this section, however, the preparation of an EA or EIS is not required for the following categories of actions:

(1) *Department of Agriculture Categorical Exclusions (7 CFR 1b.3)*. (i) Policy development, planning and implementation which are related to routine activities such as personnel, organizational changes, or similar administrative functions;

(ii) Activities which deal solely with the functions of programs, such as program budget proposals, disbursement, and transfer or reprogramming of funds;

(iii) Inventories, research activities and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity;

(iv) Educational and informational programs and activities;

(v) Civil and criminal law enforcement and investigative activities;

(vi) Activities which are advisory and consultative to other agencies and public and private entities; and

(vii) Activities related to trade representation and market development activities abroad.

(2) *NIFA categorical exclusions* Based on previous experience, the following categories of NIFA actions are excluded because they have been found to have limited scope and intensity and to have no significant individual or cumulative impacts on the quality of the human environment:

(i) The following categories of research programs or projects of limited size and magnitude or with only short-term effects on the environment:

(A) Research conducted within any laboratory, greenhouse, or other contained facility where research practices and safeguards prevent environmental impacts;

(B) Surveys, inventories, and similar studies that have limited context and minimal intensity in terms of changes in the environment; and

(C) Testing outside of the laboratory, such as in small isolated field plots, which involves the routine use of familiar chemicals or biological materials.

(ii) Routine renovation, rehabilitation, or revitalization of physical facilities, including the acquisition and installation of equipment, where such activity is limited in scope and intensity.

(b) Exceptions to categorical exclusions. Notwithstanding paragraph (a) of this section, an EA or EIS shall be prepared for an activity which is normally within the purview of categorical exclusion where it is determined by NIFA that substantial controversy on environmental grounds exists or that other extraordinary conditions or circumstances are present which may cause such activity to have a significant environmental effect.

§ 3407.7 Actions normally requiring an environmental assessment.

The following actions normally will require an EA:

(a) Programs supported in whole or in part by NIFA which may result in a particular technology's moving from the field evaluation stage to large-scale demonstration or simulated commercial phase.

(b) Field work that is expected to have an effect on the human environment such as large-scale excavations or the use of explosives.

(c) Projects for the construction or renovation of physical facilities, unless categorically excluded under § 3407.6(a)(2)(ii).

(d) Activities specified in § 3407.6(b).

§ 3407.8 Actions normally requiring an environmental impact statement.

An EIS normally will be required for major actions where it is determined by NIFA that such activity will significantly affect the quality of the human environment, including those specified in § 3407.6(b).

§ 3407.9 Use of environmental documents in decisionmaking.

In carrying out agency responsibilities under NEPA, NIFA officials shall:

(a) Consider all relevant environmental documents in evaluating programs, proposals, or projects for final agency action.

(b) Make all relevant final environmental documents, comments, and responses part of the record in rulemaking and adjudicatory proceedings.

(c) Ensure that all relevant final environmental documents, comments, and responses are submitted to NIFA in a timely fashion, are subjected to normal agency review processes, and are made a part of the official record.

(d) Consider only those alternatives encompassed by the range of alternatives discussed in the relevant environmental documents when evaluating plans, programs, or proposals for agency action.

§ 3407.10 Preparation of environmental assessments.

(a) *Format and content.* An EA may be prepared in any format provided that it covers, in a logical and succinct fashion, the information necessary for determining whether a proposed NIFA action may have a significant environmental impact and thus warrant preparation of an EIS. The information must include brief discussions on the need for the project, alternatives to the proposed action, environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted (40 CFR 1508.9). Where possible, EAs should be limited to 10–15 pages. NOTE: It is the scope and complexity of the environmental issues, rather than the size of the project, that should be used to determine the length of the EA

(b) *Supplements to environmental assessments.* Where substantial changes occur in a project or activity for which an EA has been prepared and it is determined by a responsible NIFA official specified in § 3407.4(b) that the changes are pertinent to environmental concerns, a supplement to the EA may be required. Supplements to EAs shall be evaluated and processed as stated in paragraph (c) of this section.

(c) *Decision notice.* Upon completion of an EA and any supplement thereto, the responsible NIFA official will evaluate the information it contains, determine whether an EIS is required or whether no significant environmental impact is likely to occur, and will document the decision and the reasons upon which it is based (40 CFR 1508.13). The EA shall be available to the public.

§ 3407.11 Preparation of environmental impact statements.

(a) *Actions involving more than one agency.* If more than one Federal agency participates in a program activity, a lead agency shall be selected in accordance with 40 CFR 1501.5(c). The lead agency, in full cooperation with all participating agencies, shall assume responsibility for involving the public as required in 40 CFR 1501.4(b) and shall prepare the EIS or shall cause the EIS to be prepared as provided in 40 CFR 1501.5.

(b) *Notice of intent.* If a responsible NIFA official designated in § 3407.4(b) of this part recommends the preparation of an EIS, the public shall be apprised of the decision. This notice shall be prepared according to 40 CFR 1508.2.

(c) *Draft and Final EIS.* The process of preparing the draft and final EIS, as well as the format of the document, shall comply with the provisions of 40 CFR parts 1502–1506.

(d) *Supplemental statements.* Where substantial changes occur or new information becomes available under a project or activity for which an EIS or draft EIS has been prepared and it is determined by a responsible NIFA official specified in § 3407.4(b) that the changes are pertinent to environmental concerns, a supplement to the EIS or draft EIS may be required. The supplement shall be evaluated and processed in accordance with 40 CFR 1502.9(c).

(e) *Decisionmaking and implementation.* A responsible NIFA official designated in § 3407.4(b) may make a decision no sooner than thirty days after the notice of availability of the final EIS has been published in the FEDERAL REGISTER by the Environmental Protection Agency (40 CFR 1506.10). The decision will be documented in a record of decision as required by 40 CFR 1505.2, and monitoring and mitigation activities will be implemented as required by 40 CFR 1505.3.

PART 3411—NATIONAL RESEARCH INITIATIVE COMPETITION GRANTS PROGRAM [RESERVED]

PART 3415—BIOTECHNOLOGY RISK ASSESSMENT RESEARCH GRANTS PROGRAM

Subpart A—General

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AUTHORITY: 5 U.S.C. 301 and 7 U.S.C. 5921.

SOURCE: 58 FR 65647, Dec. 15, 1993, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 3415 appear at 76 FR 4811, Jan. 27, 2011.

Subpart A—General

§ 3415.1 Applicability of regulations.

(a) The regulations of this part apply to research grants awarded under the authority of section 1668 of the Food, Agriculture, Conservation, and Trade Act of 1990, (7 U.S.C. 5921). Grants awarded under this section will support biotechnology risk assessment research to help address concerns about the effects of introducing certain biotechnology products into the environment and to help regulators develop policies concerning the introduction of such products. Taking into consideration any determinations made through consultations with such entities as the Animal and Plant Health Inspection Service, the Forest Service, the Environmental Protection Agency, the Office of Agricultural Biotechnology, and the Agricultural Biotechnology Research Advisory Committee, the Director of NIFA and Administrator of ARS shall determine and announce, through publication of a Notice in such publications as the FEDERAL REGISTER, professional trade journals, agency or program handbooks, the Catalog of Federal Domestic Assistance, or any other appropriate means, specific areas of research for which preproposals or proposals will be solicited and the extent that funds are available therefor.

(b) The regulations of this part do not apply to grants awarded by the Department of Agriculture under any other authority.

§ 3415.2 Definitions.

As used in this part:

(a) *Ad hoc reviewers* means experts or consultants qualified by training and experience in particular scientific or technical fields to render special expert advice, through written evaluations of grant applications, in accordance with the provisions of this part, on the scientific or technical merit of grant applications in those fields.

(b) *Administrator* means the Administrator of the Agricultural Research Service (ARS) and any other officer or employee of the Department of Agriculture to whom the authority involved may be delegated.

(c) *Awarding official* means the Director or Administrator and any other officer or employee of the Department to whom the authority to issue or modify grant instruments has been delegated.

(d) *Biotechnology* means any technique that uses living organisms (or parts of organisms) to make or modify products, to improve plants or animals, or to develop microorganisms for specific use. The development of materials that mimic molecular structures or functions of living systems is included.

(e) *Budget period* means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

(f) *Department* means the Department of Agriculture.

(g) *Director* means the Director of the National Institute of Food and Agriculture (NIFA) and any other officer or

employee of the Department of Agriculture to whom the authority involved may be delegated.

(h) *Grant* means the award by the Director or Administrator of funds to a grantee to assist in meeting the costs of conducting, for the benefit of the public, an identified project which is intended and designed to establish, discover, elucidate, or confirm information or the underlying mechanisms relating to a research program area identified in program solicitation.

(i) *Grantee* means the entity designated in the grant award document as the responsible legal entity to whom a grant is awarded under this part.

(j) *Peer review group* means an assembled group of experts or consultants qualified by training and experience in particular scientific or technical fields to give expert advice, in accordance with the provisions of this part, on the scientific and technical merit of grant applications in those fields.

(k) *Principal investigator* means a single individual who is responsible for the scientific and technical direction of the project, as designated by the grantee in the grant application and approved by the Director or Administrator.

(l) *Project* means the particular activity within the scope of one or more of the research program areas identified in the annual program solicitation that is supported by a grant under this part.

(m) *Project period* means the total time approved by the Director or Administrator for conducting the proposed project as outlined in an approved grant application.

(n) *Research* means any systematic study directed toward new or fuller knowledge and understanding of the subject studied.

(o) *Methodology* means the project approach to be followed to carry out the project.

[58 FR 65647, Dec. 15, 1993, as amended at 76 FR 4811, Jan. 27, 2011]

§ 3415.3 Eligibility requirements.

(a) Except where otherwise prohibited by law, any public or private research or educational institution or organization shall be eligible to apply for and to receive a grant award under this part, provided that the applicant qualifies as a responsible grantee under the criteria set forth in paragraph (b) of this section.

(b) To qualify as responsible, an applicant must meet the following standards as they relate to a particular project:

(1) Adequate financial resources for performance, the necessary experience, organizational and technical qualifications, and facilities, or a firm commitment, arrangement, or ability to obtain same (including by proposed subagreements);

(2) Ability to comply with the proposed or required completion schedule for the project;

(3) Satisfactory record of integrity, judgment, and performance, including, in particular, any prior performance under grants or contracts from the Federal government;

(4) Adequate financial management system and audit procedures that provide efficient and effective accountability and control of all funds, property, and other assets; and

(5) Otherwise be qualified and eligible to receive a grant under the applicable laws and regulations.

(c) Any applicant who is determined to be not responsible will be notified in writing of such finding and the basis therefor.

§ 3415.4 How to apply for a grant.

(a) A program solicitation will be prepared and announced through publications such as the FEDERAL REGISTER, professional trade journals, agency or program handbooks, the Catalog of Federal Domestic Assistance, or any other appropriate means, as early as practicable each fiscal year.

The Department may elect to solicit preproposals each fiscal year in order to eliminate from consideration proposed research that does not address narrowly focused program objectives. A preproposal will be limited in length (in comparison to a full proposal) to alleviate waste of time and effort by applicants in the preparation of proposals and USDA staff in the review of proposals. If the Department solicits preproposals through publication of the annual program solicitation, the Department does not anticipate publishing a subsequent solicitation for

full proposals. Applicants submitting preproposals deemed appropriate to the objectives of this program as set out in the annual solicitation will be requested to submit full proposals; the full proposals will then be evaluated in accordance with § 3415.5 through § 3415.15 of this part.

The annual program solicitation will contain information sufficient to enable applicants to prepare preproposals or full proposals under this program and will be as complete as possible with respect to:

(1) Descriptions of the specific research areas that the Department proposes to support during the fiscal year involved, including anticipated funds to be awarded;

(2) Eligibility requirements;

(3) Obtaining application kits;

(4) Deadline dates for submission of preproposal or proposal packages;

(5) Name and mailing address to send preproposals or proposals;

(6) Number of copies to submit; and

(7) Special requirements.

(b) *Application Kit*. An Application Kit will be made available to any potential grant applicant who requests a copy. This kit contains required forms, certifications, and instructions applicable to the submission of grant preproposals or proposals.

(c) *Format for preproposals*. As stated above, the Department may elect to solicit preproposals under this program. Unless otherwise indicated by the Department in the annual program solicitation, the following general format applies for the preparation of preproposals:

(1) ''*Application for Funding (Form NIFA–661)*''. All preproposals submitted by eligible applicants should contain an ''Application for Funding'', Form NIFA–661, which must be signed by the proposing principal investigator(s) and endorsed by the cognizant authorized organizational representative who possesses the necessary authority to commit the applicant's time and other relevant resources. The title of the proposal must be brief (80-character maximum), yet represent the major thrust of the project. Because this title will be used to provide information to those who may not be familiar with the proposed project, highly technical words or phraseology should be avoided where possible. In addition, phrases such as ''investigation of'' and ''research on'' should not be used.

(2) *Project summary*. Each preproposal must contain a project summary, the text of which may not exceed three (3) single- or double-spaced pages. The Department reserves the option of not forwarding for further consideration a preproposal in which the project summary page limit is exceeded. The project summary is not intended for the general reader; consequently, it may contain technical language comprehensible primarily by persons in disciplines relating to the food and agricultural sciences. The project summary should be a self-contained specific description of the activity to be undertaken and should focus on:

(i) Overall project goal(s) and supporting objectives;

(ii) Plans to accomplish project goal(s); and

(iii) Relevance or significance of the project to United States agriculture.

(3) *Budget*. A budget detailing requested support for the proposed project period must be included in each preproposal. A copy of the form which must be used for this purpose, along with instructions for completion, is included in the Application Kit identified under § 3415.4(b) of this part and may be reproduced as needed by applicants. Funds may be requested under any of the categories listed on the budget form, provided that the item or service for which support is requested may be identified as necessary for successful conduct of the proposed project, is allowable under applicable Federal cost principles, and is not prohibited under any applicable Federal statute.

(4) *Special requirements*. (i) The annual program solicitation will describe any special preproposal submission requirements, such as paper size or type pitch to be used in the preparation of preproposals. The solicitation will also describe special program requirements, such as conference attendance or electronic project reporting, for which applicants may allocate funds when preparing proposed budgets.

(ii) By signing the ''Application for Funding'' identified under § 3415.4(c)(1) in its submission of a preproposal, the

applicant is certifying compliance with the restrictions on the use of appropriated funds for lobbying set out in 7 CFR part 3018.

(5) *Evaluation of preproposals.* Preproposals shall be evaluated to determine whether the substance of the proposed project is appropriate to the objectives of this program as set out in the annual program solicitation. Subsequently, the Director or Administrator shall request full proposals from those applicants proposing projects deemed appropriate to the objectives of this program as set out in the annual program solicitation. Such proposals shall conform to the format for full proposals set out below and shall be evaluated in accordance with § 3415.5 through § 3415.15 of this part.

(d) *Format for full proposals.* Unless otherwise indicated by the Department in the annual program solicitation, the following general format applies for the preparation of full proposals under this program:

(1) *''Application for Funding'' (Form NIFA–661).* All full proposals submitted by eligible applicants should contain an Application for Funding'', Form NIFA–661, which must be signed by the proposed principal investigator(s) and endorsed by the cognizant authorized organizational representative who possesses the necessary authority to commit the applicant's time and other relevant resources. Investigators who do not sign the full proposal cover sheet will not be listed on the grant document in the event an award is made. The title of the proposal must be brief (80-character maximum), yet represent The major emphasis of the project. Because this title will be used to provide information to those who may not be familiar with the proposed project, highly technical words or phraseology should be avoided where possible. In addition, phrases such as ''investigation of'' or ''research on'' should not be used.

(2) *Project summary.* Each full proposal must contain a project summary, the length of which may not exceed three (3) single- or double-spaced pages. This summary is not intended for the general reader; consequently, it may contain technical language comprehensible primarily by persons in disciplines relating to the food and agricultural sciences. The project summary should be a self-contained, specific description of the activity to be undertaken and should focus on:

(i) Overall project goal(s) and supporting objectives;

(ii) Plans to accomplish project goal(s); and

(iii) Relevance or significance of the project to United States agriculture.

(3) *Project description.* The specific aims of the project must be included in all proposals. The text of the project description may not exceed 15 single- or double-spaced pages. The Department reserves the option of not forwarding for further consideration proposals in which the project description exceeds this page limit. The project description must contain the following components:

(i) *Introduction.* A clear statement of the long-term goal(s) and supporting objectives of the proposed project should preface the project description. The most significant published work in the field under consideration, including the work of key project personnel on the current application, should be reviewed. The current status of research in the particular scientific field also should be described. All work cited, including that of key personnel, should be referenced.

(ii) *Progress report.* If the proposal is a renewal of an existing project supported under this program, include a clearly marked performance report describing results to date from the previous award. This section should contain the following information:

(A) A comparison of actual accomplishments with the goals established for the previous award;

(B) The reasons established goals were not met, if applicable; and

(C) A listing of any publications resulting from the award. Copies of reprints or preprints may be appended to the proposal if desired.

(4) *Rationale and significance.* Present concisely the rationale behind the proposed project. The objectives' specific relationship and relevance to the area in which an application is submitted

and the objectives' specific relationship and relevance to potential regulatory issues of United States biotechnology research should be shown clearly. Any novel ideas or contributions that the proposed project offers also should be discussed in this section.

(5) *Experimental plan*. The hypotheses or questions being asked and the methodology to be applied to the proposed project should be stated explicitly. Specifically, this section must include:

(i) A description of the investigations and/or experiments proposed and the sequence in which the investigations or experiments are to be performed;

(ii) Techniques to be used in carrying out the proposed project, including the feasibility of the techniques;

(iii) Results expected;

(iv) Means by which experimental data will be analyzed or interpreted;

(v) Pitfalls that may be encountered;

(vi) Limitations to proposed procedures; and

(vii) Tentative schedule for conducting major steps involved in these investigations and/or experiments.

In describing the experimental plan, the applicant must explain fully any materials, procedures, situations, or activities that may be hazardous to personnel (whether or not they are directly related to a particular phase of the proposed project), along with an outline of precautions to be exercised to avoid or mitigate the effects of such hazards.

(6) *Facilities and equipment*. All facilities and major items of equipment that are available for use or assignment to the proposed research project during the requested period of support should be described. In addition, items of nonexpendable equipment necessary to conduct and successfully conclude the proposed project should be listed.

(7) *Collaborative arrangements*. If the nature of the proposed project requires collaboration or subcontractual arrangements with other research scientists, corporations, organizations, agencies, or entities, the applicant must identify the collaborator(s) and provide a full explanation of the nature of the collaboration. Evidence (*i.e.*, letters of intent) should be provided to assure peer reviewers that the collaborators involved have agreed to render this service. In addition, the proposal must indicate whether or not such a collaborative arrangement(s) has the potential for conflict(s) of interest.

(8) *Personnel support*. To assist peer reviewers in assessing the competence and experience of the proposed project staff, key personnel who will be involved in the proposed project must be identified clearly. For each principal investigator involved, and for all senior associates and other professional personnel who expect to work on the project, whether or not funds are sought for their support, the following should be included:

(i) An estimate of the time commitments necessary;

(ii) Curriculum vitae. The curriculum vitae should be limited to a presentation of academic and research credentials, e.g., educational, employment and professional history, and honors and awards. Unless pertinent to the project, to personal status, or to the status of the organization, meetings attended, seminars given, or personal data such as birth date, marital status, or community activities should not be included. The vitae shall be no more than two pages each in length, excluding the publication lists. The Department reserves the option of not forwarding for further consideration a proposal in which each vitae exceeds the two-page limit; and

(iii) Publication List(s). A chronological list of all publications in referred journals during the past five years, including those in press, must be provided for each professional project member for whom a curriculum vitae is provided. Authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these items usually appear in journals.

(9) *Budget*. A detailed budget is required for each year of requested support. In addition, a summary budget is required detailing requested support for the overall project period. A copy of the form which must be used for this purpose, Form NIFA–55, along with instructions for completion, is included in the Application Kit identified under § 3415.4(b) of this part and may be reproduced as needed by applicants. Funds may be requested under any of

the categories listed, provided that the item or service for which support is requested may be identified as necessary for successful conduct of the proposed project, is allowable under applicable Federal cost principles, and is not prohibited under any applicable Federal statute.

(10) *Research involving special considerations.* A number of situations encountered in the conduct of research require special information and supporting documentation before funding can be approved for the project. If any such situation is anticipated, the proposal must so indicate. It is expected that a significant number of proposals will involve the following:

(i) *Recombinant DNA and RNA molecules.* All key personnel identified in a proposal and all endorsing officials of a proposed performing entity are required to comply with the guidelines established by the National Institutes of Health entitled, ''Guidelines for Research Involving Recombinant DNA Molecules,'' as revised. The Application Kit, identified above in § 3415.4(b), contains a form which is suitable for such certification of compliance (Form NIFA–662).

(ii) *Human subjects at risk.* Responsibility for safeguarding the rights and welfare of human subjects used in any proposed project supported with grant funds provided by the Department rests with the performing entity. Regulations have been issued by the Department under 7 CFR Part 1c, Protection of Human Subjects. In the event that a project involving human subjects at risk is recommended for award, the applicant will be required to submit a statement certifying that the project plan has been reviewed and approved by the Institutional Review Board at the proposing organization or institution. The Application Kit, identified above in § 3415.4(b), contains a form which is suitable for such certification (Form NIFA–662).

(iii) *Experimental vertebrate animal care.* The responsibility for the humane care and treatment of any experimental vertebrate animal, which has the same meaning as ''animal'' in section 2(g) of the Animal Welfare Act of 1966, as amended (7 U.S.C. 2132(g)), used in any project supported with grant funds rests with the performing organization. In this regard, all key personnel associated with any supported project and all endorsing officials of the proposed performing entity are required to comply with the applicable provisions of the Animal Welfare Act of 1966, as amended (7 U.S.C. 2131 *et seq.*) and the regulations promulgated thereunder by the Secretary of Agriculture in 9 CFR parts 1, 2, 3, and 4. The applicant must submit a statement certifying that the proposed project is in compliance with the aforementioned regulations, and that the proposed project is either under review by or has been reviewed and approved by an Institutional Animal Care and Use Committee. The Application Kit, identified above in § 3415.4(b), contains a form which is suitable for such certification (Form NIFA–662).

(11) *Current and pending support.* All proposals must list any other current public or private research support (including in-house support) to which key personnel identified in the proposal have committed portions of their time, whether or not salary support for the person(s) involved is included in the budget. Analogous information must be provided for any pending proposals that are being considered by, or that will be submitted in the near future to, other possible sponsors, including other USDA programs or agencies. Concurrent submission of identical or similar proposals to other possible sponsors will not prejudice proposal review or evaluation by the Director or Administrator or experts or consultants engaged by the Director or Administrator for this purpose. However, a proposal that duplicates or overlaps substantially with a proposal already reviewed and funded (or that will be funded) by another organization or agency will not be funded under this program. The Application Kit, identified above in § 3415.4(b), contains a form which is suitable for listing current and pending support (Form NIFA–663).

(12) *Additions to project description.* Each project description is expected by the Director or Administrator, the members of peer review groups, and the relevant program staff to be complete while meeting the page limit established in § 3415.4(d)(3). However, if the

inclusion of additional information is necessary to ensure the equitable evaluation of the proposal (e.g., photographs that do not reproduce well, reprints, and other pertinent materials that are deemed to be unsuitable for inclusion in the text of the proposal), the number of copies submitted should match the number of copies of the application requested in the program solicitation. Each set of such materials must be identified with the name of the submitting organization, and the name(s) of the principal investigator(s). Information may not be appended to a proposal to circumvent page limitations prescribed for the project description. Extraneous materials will not be used during the peer review process.

(13) *Organizational management information*. Specific management information relating to an applicant shall be submitted on a one-time basis prior to the award of a grant identified under this Part if such information has not been provided previously under this or another program for which the sponsoring agency is responsible. The Department will contact an applicant to request organizational management information once a proposal has been recommended for funding.

§ 3415.5 Evaluation and disposition of applications.

(a) *Evaluation*. All proposals received from eligible applicants and submitted in accordance with deadlines established in the annual program solicitation shall be evaluated by the Director or Administrator through such officers, employees, and others as the Director or Administrator determines are uniquely qualified in the areas of research represented by particular projects. To assist in equitably and objectively evaluating proposals and to obtain the best possible balance of viewpoints, the Director or Administrator shall solicit the advice of peer scientists, *ad hoc* reviewers, or others who are recognized specialists in the areas covered by the applications received and whose general roles are defined in § 3415.2. Specific evaluations will be based upon the criteria established in subpart B, § 3415.15, unless NIFA and/or ARS determine that different criteria are necessary for the proper evaluation of proposals in one or more specific program areas, or for specific types of projects to be supported, and announces such criteria and their relative importance in the annual program solicitation. The overriding purpose of these evaluations is to provide information upon which the Administrator may make an informed judgment in selecting proposals for support. Incomplete, unclear, or poorly organized applications will work to the detriment of applicants during the peer evaluation process. To ensure a comprehensive evaluation, all applications should be written with the care and thoroughness accorded papers for publication.

(b) *Disposition*. On the basis of the Director's or Administrator's evaluation of an application in accordance with paragraph (a) of this section, the Director or Administrator will (1) approve support using currently available funds, (2) defer support due to lack of funds or a need for further evaluation, or (3) disapprove support for the proposed project in whole or in part. With respect to approved projects, the Director or Administrator will determine the project period (subject to extension as provided in § 3415.7(c)) during which the project may be supported. Any deferral or disapproval of an application will not preclude its reconsideration or a reapplication during subsequent fiscal years.

§ 3415.6 Grant awards.

(a) *General*. Within the limit of funds available for such purpose, the awarding official of NIFA or ARS shall make grants to those responsible, eligible applicants whose proposals are judged most meritorious in the announced program areas under the evaluation criteria and procedures set forth in this part. The date specified by the Director or Administrator as the effective date of the grant shall be no later than September 30 of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. It should be noted that the project need not be initiated on the grant effective date, but as soon thereafter as practicable so that project

goals may be attained within the funded project period. All funds granted by NIFA or ARS under this Part shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations of this part, the terms and conditions of the award, the applicable Federal cost principles, and the Department's assistance regulations (part 3015 and part 3016 of this title).

(b) *Grant award document and notice of grant award*—(1) *Grant award document*. The grant award document shall include at a minimum the following:

(i) Legal name and address of performing organization or institution to whom the Director or Administrator has awarded a grant under the terms of this Part;

(ii) Title of project;

(iii) Name(s) and address(es) of principal investigator(s) chosen to direct and control approved activities;

(iv) Identifying grant number assigned by the Department;

(v) Project period, specifying the amount of time the Department intends to support the project without requiring recompetition for funds;

(vi) Total amount of Departmental financial assistance approved by the Director or Administrator during the project period;

(vii) Legal authority(ies) under which the grant is awarded;

(viii) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the grant award; and

(ix) Other information or provisions deemed necessary by NIFA or ARS to carry out their respective granting activities or to accomplish the purpose of a particular grant.

(2) *Notice of grant award*. The notice of grant award, in the form of a letter, will be prepared and will provide pertinent instructions or information to the grantee that is not included in the grant award document.

(c) *Types of grant instruments*. The major types of grant instruments shall be as follows:

(1) *New grant*. This is a grant instrument by which NIFA or ARS agrees to support a specified level of effort for a project that generally has not been supported previously under this program. This type of grant is approved on the basis of peer review recommendation.

(2) *Renewal grant*. This is a grant instrument by which NIFA or ARS agrees to provide additional funding for a project period beyond that approved in an original or amended award. When a renewal application is submitted, it should include a summary of progress to date from the previous granting period. A renewal grant shall be based upon new application, *de novo* peer review and staff evaluation, new recommendation and approval, and a new award action reflecting that the grant has been renewed.

(3) *Supplemental grant*. This is an instrument by which NIFA or ARS agrees to provide small amounts of additional funding under a new or renewal grant as specified in paragraphs (c)(1) and (c)(2) of this section and may involve a short-term (usually six months or less) extension of the project period beyond that approved in an original or amended award. A supplement is awarded only if required to assure adequate completion of the original scope of work and if there is sufficient justification to warrant such action. A request of this nature normally will not require additional peer review.

(d) *Funding mechanisms*. The two mechanisms by which NIFA or ARS may elect to award new, renewal, and supplemental grants are as follows:

(1) *Standard grant*. This is a funding mechanism whereby NIFA or ARS agrees to support a specified level of effort for a predetermined time period without the announced intention of providing additional support at a future date.

(2) *Continuation grant*. This is a funding mechanism whereby NIFA or ARS agrees to support a specified level of effort for a predetermined period of time with a statement of intention to provide additional support at a future date, provided that performance has been satisfactory, appropriations are available for this purpose, and continued support would be in the best interests of the Federal government and the public. This kind of mechanism normally will be awarded for an initial one-year period, and any subsequent

continuation project grants also will be awarded in one-year increments. The award of a continuation project grant to fund an initial or succeeding budget period does not constitute an obligation to fund any subsequent budget period. Unless prescribed otherwise by NIFA or ARS, a grantee must subject a separate application for continued support for each subsequent fiscal year. Requests for such continued support must be submitted in duplicate at least three months prior to the expiration date of the budget period currently being funded. Decisions regarding continued support and the actual funding levels of such support in future years usually will be made administratively after consideration of such factors as the grantee's progress and management practices and the availability of funds. Since initial peer reviews are based upon the full term and scope of the original grant application, additional evaluations of this type generally are not required prior to successive years' support. However, in unusual cases (e.g., when the nature of the project or key personnel change or when the amount of future support requested substantially exceeds the grant application originally reviewed and approved), additional reviews may be required prior to approving continued funding.

(e) *Obligation of the Federal Government.* Neither the approval of any application nor the award of any project grant commits or obligates the United States in any way to make any renewal, supplemental, continuation, or other award with respect to any approved application or portion thereof.

§ 3415.7 Use of funds; changes.

(a) *Delegation of fiscal responsibility.* The grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

(b) *Change in project plans.* (1) The permissible changes by the grantee, principal investigator(s), or other key project personnel in the approved grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the grantee or the principal investigator(s) is uncertain whether a particular change complies with this provision, the question must be referred to the awarding official of NIFA or ARS, as appropriate, for a final determination.

(2) Changes in approved goals, or objectives, shall be requested by the grantee and approved in writing by the awarding official of NIFA or ARS, as appropriate, prior to effecting such changes. Normally, no requests for such changes that are outside the scope of the original approved project will be approved.

(3) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the awarding official of NIFA or ARS, as appropriate, prior to effecting such changes.

(4) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the awarding official of NIFA or ARS, as appropriate, prior to effecting such changes, unless prescribed otherwise in the terms and conditions of a grant.

(c) *Changes in project period.* The project period determined pursuant to § 3415.5(b) may be extended by the awarding official of NIFA or ARS, as appropriate, without additional financial support, for such additional period(s) as the appropriate awarding official determines may be necessary to complete, or fulfill the purposes of, an approved project. Any extension of time shall be conditioned upon prior request by the grantee and approval in writing by the appropriate awarding official, unless prescribed otherwise in the terms and conditions of a grant.

(d) *Changes in approved budget.* The terms and conditions of a grant will prescribe the circumstances under which written approval must be requested and obtained from the awarding official of NIFA or ARS, as appropriate, prior to instituting changes in an approved budget.

§ 3415.8 Other Federal statutes and regulations that apply.

Several other Federal statutes and regulations apply to grant preproposals or proposals considered for review or to grants awarded under this part. These include but are not limited to:

7 CFR 1.1—USDA implementation of the Freedom of Information Act;

7 CFR Part 1c—USDA implementation of the Federal Policy for the Protection of Human Subjects;

7 CFR Part 3—USDA implementation of OMB Circular A–129 regarding debt collection;

7 CFR Part 15, Subpart A—USDA implementation of title VI of the Civil Rights Act of 1964;

7 CFR Part 520—ARS implementation of the National Environmental Policy Act;

7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (*i.e.*, Circular Nos. A–110, A–21, and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly, the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance;

7 CFR Part 3016—USDA Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;

7 CFR Part 3017, as amended—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants);

7 CFR Part 3018—USDA implementation of New Restrictions on Lobbying. Imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans;

7 CFR Part 3051—Audits of Institutions of Higher Education and Other Nonprofit Institutions;

7 CFR Part 3407—NIFA implementation of the National Environmental Policy Act;

29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and 7 CFR Part 15B (USDA implementation of the statute), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs;

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

§ 3415.9 Other conditions.

The Director or Administrator may elect to use a portion of available funding each fiscal year to support an Annual Conference, the purpose of which will be to bring together scientists and regulatory officials relevant to this program. At the Annual Conference, the participants may offer individual opinions regarding research needs, update information and discuss progress, or may offer individual opinions on areas of risk assessment research appropriate to agricultural biotechnology. The annual program solicitation will indicate whether funds are available to support an Annual Conference and, if so, will include instructions on the preparation and submission of proposals requesting funds from the Department for support of an Annual Conference. The Department may also elect to require principal investigators whose research is funded under this program to attend an Annual Conference and to present data on the results of their research efforts. Should attendance at an Annual Conference be required, the annual program solicitation will so indicate, and principal investigators may include attendance costs in their proposed budgets.

The Director or Administrator may, with respect to any grant or to any class of awards, impose additional conditions prior to or at the time of any award when, in the Director's or Administrator's judgment, such conditions are necessary to ensure or protect advancement of the approved project, the interests of the public, or the conservation of grant funds.

Subpart B—Scientific Peer Review of Research Grant Applications

§ 3415.10 Establishment and operation of peer review groups.

Subject to § 3415.5, the Director or Administrator shall adopt procedures for the conduct of peer reviews and the formulation of recommendations under § 3415.14.

§ 3415.11 Composition of peer review groups.

(a) Peer review group members and *ad hoc* reviewers will be selected based

upon their training and experience in relevant scientific or technical fields, taking into account the following factors:

(1) The level of formal scientific or technical education by the individual and the extent to which an individual is engaged in relevant research activities;

(2) The need to include as peer reviewers experts from various areas of specialization within relevant scientific or technical fields;

(3) The need to include as peer reviewers experts from a variety of organizational types (e.g., universities, Federal laboratories, industry, private consultant(s), Federal and State regulatory agencies, environmental organizations) and geographic locations; and

(4) The need to maintain a balanced composition of peer review groups related to minority and female representation and an equitable age distribution.

(b) [Reserved]

§ 3415.12 Conflicts of interest.

Members of peer review groups covered by this part are subject to relevant provisions contained in title 18 of the United States Code relating to criminal activity, Departmental regulations governing employee responsibilities and conduct (part O of this title), and Executive Order No. 11222, as amended.

§ 3415.13 Availability of information.

Information regarding the peer review process will be made available to the extent permitted under the Freedom of Information Act (5 U.S.C. 552), the Privacy Act (5 U.S.C. 552a.), and implementing Departmental regulations (part 1 of this title).

§ 3415.14 Proposal review.

(a) All grant applications will be acknowledged. Prior to technical examination, a preliminary review will be made for responsiveness to the program solicitation (e.g., relationship of application to announced program area). Proposals that do not fall within the guidelines as stated in the program solicitation will be eliminated from competition and will be returned to the applicant.

(b) All applications will be carefully reviewed by the Director or Administrator, qualified officers or employees of the Department, the respective peer review group, and *ad hoc* reviewers, as required. Written comments will be solicited from *ad hoc* reviewers when required, and individual written comments and in-depth discussions will be provided by peer review group members prior to recommending applications for funding. Applications will be ranked and support levels recommended within the limitation of total available funding for each research program area as announced in the program solicitation.

(c) No awarding official will make a grant based upon an application covered by this part unless the application has been reviewed in accordance with the provisions of this part and unless said reviewers have made recommendations concerning the scientific merit and relevance to the program of such application.

(d) Except to the extent otherwise provided by law, such recommendations are advisory only and are not binding on program officers or on the awarding officials of NIFA and ARS.

§ 3415.15 Evaluation factors.

In carrying out its review under § 3415.14, the peer review group will take into account the following factors unless, pursuant to § 3415.5(a), different evaluation criteria are specified in the annual program solicitation:

(a) Scientific merit of the proposal.

(1) Conceptual adequacy of hypothesis;

(2) Clarity and delineation of objectives;

(3) Adequacy of the description of the undertaking and suitability and feasibility of methodology;

(4) Demonstration of feasibility through preliminary data;

(5) Probability of success of project;

(6) Novelty, uniqueness and originality; and

(7) Appropriateness to regulation of biotechnology and risk assessment.

(b) Qualifications of proposed project personnel and adequacy of facilities.

(1) Training and demonstrated awareness of previous and alternative approaches to the problem identified in the proposal, and performance record

and/or potential for future accomplishments;

(2) Time allocated for systematic attainment of objectives;

(3) Institutional experience and competence in subject area; and

(4) Adequacy of available or obtainable support personnel, facilities, and instrumentation.

(c) Relevance of project to solving biotechnology regulatory uncertainty for United States agriculture.

(1) Scientific contribution of research in leading to important discoveries or significant breakthroughs in announced program areas; and

(2) Relevance of the risk assessment research to agriculture and environmental regulations.

PART 3418—STAKEHOLDER INPUT REQUIREMENTS FOR RECIPIENTS OF AGRICULTURAL RESEARCH, EDUCATION, AND EXTENSION FORMULA FUNDS

Sec.
3418.1 Definitions.
3418.2 Scope and purpose.
3418.3 Applicability.
3418.4 Reporting requirement.
3418.5 Failure to comply and report.
3418.6 Prohibition.

AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 7612(c)(2).

SOURCE: 65 FR 5998, Feb. 8, 2000, unless otherwise noted.

§ 3418.1 Definitions.

As used in this part:

1862 institution means a college or university eligible to receive funds under the Act of July 2, 1862 (7 U.S.C. 301, *et seq.*).

1890 institution means a college or university eligible to receive funds under the Act of August 30, 1890 (7 U.S.C. 321, et seq.), including Tuskegee University.

1994 institution means an institution as defined in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note).

Formula funds means agricultural research funds provided to 1862 institutions and agricultural experiment stations under the Hatch Act of 1887 (7 U.S.C. 361a, et seq.); extension funds provided to 1862 institutions under sections 3(b) and 3(c) of the Smith-Lever Act (7 U.S.C. 343(b) and (c)) and section 208(c) of the District of Columbia Public Postsecondary Education Reorganization Act, Pub. L. 93–471; agricultural extension and research funds provided to 1890 institutions under sections 1444 and 1445 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA)(7 U.S.C. 3221 and 3222); education formula funds provided to 1994 institutions under section 534(a) of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note); research funds provided to forestry schools under the McIntire-Stennis Act of 1962 (16 U.S.C. 582a, et seq.); and animal health and disease research funds provided to veterinary schools and agricultural experiment stations under section 1433 of NARETPA (7 U.S.C. 3195).

Recipient institution means any 1862 institution, 1890 institution, 1994 institution, or any other institution that receives formula funds from the Department of Agriculture.

Seek stakeholder input means an open, fair, and accessible process by which individuals, groups, and organizations may have a voice, and one that treats all with dignity and respect.

Stakeholder means any person who has the opportunity to use or conduct agricultural research, extension, or education activities of recipient institutions.

§ 3418.2 Scope and Purpose.

Section 102(c) of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7612(c)) requires land-grant institutions, as a condition of receipt of formula funds, to solicit and consider input and recommendations from stakeholders concerning the use of formula funds. This regulation implements this requirement consistently for all recipient institutions that receive formula funds.

§ 3418.3 Applicability.

To obtain formula funds after September 30, 1999, each recipient institution shall establish and implement a process for obtaining stakeholder input on the uses of formula funds in accordance with this part.

§ 3418.4 Reporting requirement.

Each recipient institution shall report to the Department of Agriculture by October 1 of each fiscal year, the following information related to stakeholder input and recommendations:

(a) Actions taken to seek stakeholder input that encourages their participation;

(b) A brief statement of the process used by the recipient institution to identify individuals and groups who are stakeholders and to collect input from them; and

(c) A statement of how collected input was considered.

§ 3418.5 Failure to comply and report.

Formula funds may be withheld and redistributed if a recipient institution fails to either comply with § 3418.3 or report under § 3418.4.

§ 3418.6 Prohibition.

A recipient institution shall not require input from stakeholders as a condition of receiving the benefits of, or participating in, the agricultural research, education, or extension programs of the recipient institution.

PART 3419—MATCHING FUNDS REQUIREMENT FOR AGRICULTURAL RESEARCH AND EXTENSION FORMULA FUNDS AT 1890 LAND-GRANT INSTITUTIONS, INCLUDING TUSKEGEE UNIVERSITY, AND AT 1862 LAND-GRANT INSTITUTIONS IN INSULAR AREAS

Sec.

3419.1 Definitions.
3419.2 Matching funds.
3419.3 Determination of non-Federal sources of funds.
3419.4 Limited waiver authority.
3419.5 Certification of matching funds.
3419.6 Use of matching funds.
3419.7 Redistribution of funds.

AUTHORITY: 5 U.S.C. 301, 7 U.S.C. 3222d; Sec. 753, Pub. L. No. 105–277, 112 Stat. 2681–33.

SOURCE: 65 FR 21631, Apr. 21, 2000, unless otherwise noted.

§ 3419.1 Definitions.

As used in this part:

Eligible institution means a college or university eligible to receive funds under the Act of August 30, 1890 (7 U.S.C. 321 *et seq.*) (commonly known as the Second Morrill Act), including Tuskegee University, or a college or university designated under the Act of July 2, 1862 (7 U.S.C. 301, *et seq.*) (commonly known as the First Morrill Act) and located in the Commonwealth of Puerto Rico and the insular areas of American Samoa, Guam, Micronesia, Northern Marianas, and the Virgin Islands.

Formula funds means agricultural research funds provided to the eligible institutions under section 1445 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA), as amended, or under section 3 of the Hatch Act of 1887, 7 U.S.C. 361c, and agricultural extension funds provided to the eligible institutions under section 1444 of NARETPA or under sections 3(b) and (c) of the Smith-Lever Act, 7 U.S.C. 343(b) and (c).

Matching funds means funds from non-Federal sources made available by the State to the eligible institutions:

(a) For programs or activities that fall within the purposes of agricultural research and cooperative extension under sections 1444 and 1445 of NARETPA, the Hatch Act of 1887, and the Smith-Lever Act; or

(b) For qualifying educational activities. Matching funds means cash contributions and excludes in-kind matching contributions.

Non-Federal sources means funds made available by the State to the eligible institution either through direct appropriation or under any authority (other than authority to charge tuition and fees paid by students) provided by a State to an eligible institution to raise revenue, such as gift acceptance authority or user fees.

Qualifying educational activities means programs that address food and agricultural sciences components of an eligible institution.

Secretary means the Secretary of Agriculture and any other officer or employee of the Department of Agriculture to whom the authority involved may be delegated.

State means the government of any one of the fifty States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of Northern Marianas, the Virgin Islands of the United States, the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia.

§ 3419.2 Matching funds.

The distribution of formula funds shall be subject to the following matching requirements:

(a) For fiscal year 2000, matching funds shall equal not less than 30 percent of the formula funds to be distributed to the eligible institution;

(b) For fiscal year 2001, matching funds shall equal not less than 45 percent of the formula funds to be distributed to the eligible institution; and

(c) For fiscal year 2002 and each fiscal year thereafter, the matching funds shall equal not less than 50 percent of the formula funds to be distributed to the eligible institution.

§ 3419.3 Determination of non-Federal sources of funds.

Each eligible institution shall submit by September 30, 1999, a report describing for fiscal year 1999:

(a) The sources of non-Federal funds made available to the eligible institutions for agricultural research, extension, and qualified educational activity to meet the matching requirements of section 1449 of NARETPA, as amended; and

(b) The amount of funds generally available from each source. This report for the fiscal year ending September 30, 1999, may also include a request for a waiver of the matching funds requirement for fiscal year 2000.

§ 3419.4 Limited waiver authority.

The Secretary may waive the matching funds requirement for fiscal year 2000 for an eligible institution of a State if the Secretary determines that, based on the report received under § 3419.3, the State will be unlikely to satisfy the matching requirement. The criteria to waive the match in fiscal year 2000 may include:

(a) Natural disaster, flood, fire, tornado, hurricane, or drought;

(b) State and/or institution facing a financial crisis; or

(c) Demonstration of a good faith effort to obtain funds. Approval or disapproval of the request for a waiver will be based on the report submitted under § 3419.3. The Secretary may not waive the matching requirement for any fiscal year other than fiscal year 2000.

§ 3419.5 Certification of matching funds.

Prior to the distribution of formula funds each fiscal year, each eligible institution must certify as to the availability of matching funds. Eligible institutions may revise their certification of matching funds through July 1 of the fiscal year in which funds are appropriated.

§ 3419.6 Use of matching funds.

The required matching funds for the formula programs shall be used by an eligible institution for agricultural research and extension activities that have been approved in the plan of work required under sections 1444(d) and 1445(c) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, section 7 of the Hatch Act of 1887, section 4 of the Smith-Lever Act, or for approved qualifying education activities.

§ 3419.7 Redistribution of funds.

All formula funds not matched and reported under § 3419.5 by July 1 of each fiscal year will be reapportioned to the other eligible institutions who have satisfied their current fiscal year requirement for matching funds for the formula funds. Unmatched research and extension funds will be reapportioned in accordance with the research and extension statutory distribution formulas applicable to the 1890 and 1862 land-grant institutions, respectively. Any redistribution of funds shall be subject to the same matching requirement under § 3419.2.

PART 3430—COMPETITIVE AND NONCOMPETITIVE NON-FORMULA FEDERAL ASSISTANCE PROGRAMS—GENERAL AWARD ADMINISTRATIVE PROVISIONS

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3430.2 Definitions.
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Subpart A—General Information

§ 3430.1 Applicability of regulations.

(a) *General*. This part provides agency specific regulations regarding the application for, and evaluation, award, and post-award administration of, National Institute of Food and Agriculture (NIFA) awards, and is supplementary to the USDA uniform assistance regulations at 7 CFR parts 3016 (State, local, and tribal governments), 3019 (institutions of higher education, hospitals, and nonprofits), and 3015 (all others), as applicable. These regulations apply to the following types of Federal assistance awards: Grants and cooperative agreements.

(b) *Competitive programs*. This part applies to all agricultural research, education, and extension competitive and related programs for which NIFA has administrative or other authority, as well as any other Federal assistance program delegated to the NIFA Director . In cases where regulations of this part conflict with existing regulations of NIFA in Title 7 (*i.e.*, 7 CFR parts 3400 through 3499) of the Code of Federal Regulations, regulations of this part shall supersede. This part does not apply to the Small Business Innovation Research (SBIR) Program (7 CFR part 3403) and the Veterinary Medicine Loan Repayment Program (VMLRP) authorized under section 1415A of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA) (7 U.S.C. 3151a).

(c) *Noncompetitive programs*. Subparts A, B, D, and E, as well as § 3430.35 of subpart C, apply to all noncompetitive agricultural research, education, and extension programs administered by NIFA, as well as any other Federal assistance program delegated to the NIFA Director.

(d) *Federal assistance programs administered on behalf of other agencies*. Subparts A through E, as appropriate, apply to competitive and noncompetitive grants and cooperative agreements administered on behalf of other agencies of the Federal Government. Requirements specific to these Federal assistance programs will be included in the program solicitations or requests for applications (RFAs).

(e) *Federal assistance programs administered jointly with other agencies*. Subparts A through E, as appropriate, apply to competitive and noncompetitive grants and cooperative agreements administered jointly with other agencies of the Federal Government. Requirements specific to these Federal assistance programs will be included in

the appropriate program solicitations or RFAs published by both or either agency.

(f) *Formula fund grants programs*. This part does not apply to any of the formula grant programs administered by NIFA. Formula funds are the research funds provided to 1862 Land-Grant Institutions and agricultural experiment stations under the Hatch Act of 1887 (7 U.S.C. 361a, *et seq.*); extension funds provided to 1862 Land-Grant Institutions under sections 3(b) and 3(c) of the Smith-Lever Act (7 U.S.C. 343(b) and (c)) and section 208(c) of the District of Columbia Public Postsecondary Education Reorganization Act, Public Law 93–471; agricultural extension and research funds provided to 1890 Land-Grant Institutions under sections 1444 and 1445 of NARETPA (7 U.S.C. 3221 and 3222); expanded food and nutrition education program funds authorized under section 3(d) of the Smith-Lever Act (7 U.S.C. 343(d)) to the 1862 Land-Grant Institutions and the 1890 Land-Grant Institutions; extension funds under the Renewable Resources Extension Act of 1978 (16 U.S.C. 1671, *et seq.*) for the 1862 Land-Grant institutions and the 1890 Land-Grant Institutions; research funds provided to the 1862 Land-Grant Institutions, 1890 Land-Grant Institutions, and forestry schools under the McIntire-Stennis Cooperative Forestry Act (16 U.S.C. 582a, *et seq.*); and animal health and disease research funds provided to veterinary schools and agricultural experiment stations under section 1433 of NARETPA (7 U.S.C. 3195).

§ 3430.2 Definitions.

As used in this part:

1862 Land-Grant Institution means an institution eligible to receive funds under the Act of July 2, 1862, as amended (7 U.S.C. 301, *et seq.*). Unless otherwise stated for a specific program, this term includes a research foundation maintained by such an institution.

1890 Land-Grant Institution means one of those institutions eligible to receive funds under the Act of August 30, 1890, as amended (7 U.S.C. 321, *et seq.*), including Tuskegee University and West Virginia State University. Unless otherwise stated for a specific program, this term includes a research foundation maintained by such an institution.

1994 Land-Grant Institution means one of those institutions as defined in section 532 of the Equity in Educational Land-Grant Status Act of 1994, as amended (7 U.S.C. 301 note). These institutions are commonly referred to as Tribal Colleges or Universities.

Advisory Board means the National Agricultural Research, Extension, Education, and Economics Advisory Board (as established under section 1408 of NARETPA (7 U.S.C. 3123).

Agricultural research means research in the food and agricultural sciences.

Applied research means research that includes expansion of the findings of fundamental research to uncover practical ways in which new knowledge can be advanced to benefit individuals and society.

Authorized Departmental Officer or *ADO* means the Secretary or any employee of the Department with delegated authority to issue or modify award instruments on behalf of the Secretary.

Authorized Representative or *AR* means the President or Chief Executive Officer of the applicant organization or the official, designated by the President or Chief Executive Officer of the applicant organization, who has the authority to commit the resources of the organization to the project.

Award means financial assistance that provides support or stimulation to accomplish a public purpose. Awards may be grants or cooperative agreements.

Budget period means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

Cash contributions means the recipient's cash outlay, including the outlay of money contributed to the recipient by non-Federal third parties.

College or *university* means, unless defined in a separate subpart, an educational institution in any State which:

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which a bachelor's degree or any other higher degree is awarded;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association. Unless otherwise stated for a specific program, this term includes a research foundation maintained by such an institution.

Cooperative agreement means the award by the Authorized Departmental Officer of funds to an eligible awardee to assist in meeting the costs of conducting for the benefit of the public, an identified project which is intended and designed to accomplish the purpose of the program as identified in the program solicitation or RFA, and where substantial involvement is expected between NIFA and the awardee when carrying out the activity contemplated in the agreement.

Department means the United States Department of Agriculture.

Director means the Director of NIFA and any other officer or employee of NIFA to whom the authority involved is delegated.

Education activity or *teaching activity* means formal classroom instruction, laboratory instruction, and practicum experience in the food and agricultural sciences and other related matters such as faculty development, student recruitment and services, curriculum development, instructional materials and equipment, and innovative teaching methodologies.

Established and demonstrated capacity means that an organization has met the following criteria:

(1) Conducts any systematic study directed toward new or fuller knowledge and understanding of the subject studied; or,

(2) Systematically relates or applies the findings of research or scientific experimentation to the application of new approaches to problem solving, technologies, or management practices; and

(3) Has facilities, qualified personnel, independent funding, and prior projects and accomplishments in research or technology transfer.

Extension means informal education programs conducted in the States in cooperation with the Department.

Extension activity means an act or process that delivers science-based knowledge and informal educational programs to people, enabling them to make practical decisions.

Food and agricultural sciences means basic, applied, and developmental research, extension, and teaching activities in food and fiber, agricultural, renewable energy and natural resources, forestry, and physical and social sciences, including activities relating to the following:

(1) Animal health, production, and well-being.

(2) Plant health and production.

(3) Animal and plant germ plasm collection and preservation.

(4) Aquaculture.

(5) Food safety.

(6) Soil, water, and related resource conservation and improvement.

(7) Forestry, horticulture, and range management.

(8) Nutritional sciences and promotion.

(9) Farm enhancement, including financial management, input efficiency, and profitability.

(10) Home economics.

(11) Rural human ecology.

(12) Youth development and agricultural education, including 4–H clubs.

(13) Expansion of domestic and international markets for agricultural commodities and products, including agricultural trade barrier identification and analysis.

(14) Information management and technology transfer related to agriculture.

(15) Biotechnology related to agriculture.

(16) The processing, distributing, marketing, and utilization of food and agricultural products.

Fundamental research means research that increases knowledge or understanding of the fundamental aspects of phenomena and has the potential for broad application, and has an effect on agriculture, food, nutrition, or the environment.

Graduate degree means a Master's or doctoral degree.

Grant means the award by the Authorized Departmental Officer of funds to an eligible grantee to assist in meeting the costs of conducting for the benefit of the public, an identified project which is intended and designed to accomplish the purpose of the program as identified in the program solicitation or RFA.

Grantee means the organization designated in the grant award document as the responsible legal entity to which a grant is awarded.

Insular area means the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, and the Virgin Islands of the United States.

Integrated project means a project incorporating two or three components of the agricultural knowledge system (research, education, and extension) around a problem area or activity.

Land-grant Institutions means the 1862 Land-Grant Institutions, 1890 Land-Grant Institutions, and 1994 Land-Grant Institutions.

Matching or cost sharing means that portion of allowable project or program costs not borne by the Federal Government, including the value of in-kind contributions.

Merit review means an evaluation of a proposed project or elements of a proposed program whereby the technical quality and relevance to regional or national goals are assessed.

Merit reviewers means peers and other individuals with expertise appropriate to conduct merit review of a proposed project.

Methodology means the project approach to be followed.

Mission-linked research means research on specifically identified agricultural problems which, through a continuum of efforts, provides information and technology that may be transferred to users and may relate to a product, practice, or process.

National laboratories include Federal laboratories that are government-owned contractor-operated or government-owned government-operated.

Non-citizen national of the United States means the award by the Authorized Departmental Officer of funds to an eligible awardee to assist in meeting the costs of conducting for the benefit of the public, an identified project which is intended and designed to accomplish the purpose of the program as identified in the program solicitation or RFA, and where substantial involvement is expected between NIFA and the awardee when carrying out the activity contemplated in the agreement.

Peer reviewers means experts or consultants qualified by training and experience to give expert advice on the scientific and technical merit of applications or the relevance of those applications to one or more of the application evaluation criteria. Peer reviewers may be adhoc or convened as a panel.

Prior approval means written approval by an Authorized Departmental Officer evidencing prior consent.

Private research organization means any non-governmental corporation, partnership, proprietorship, trust, or other organization.

Private sector means all non-public entities, including for-profit and non-profit commercial and non-commercial entities, and including private or independent educational associations.

Program announcement (PA) means a detailed description of the RFA without the associated application package(s). NIFA will not solicit or accept applications in response to a PA.

Program Officer means a NIFA individual (often referred to as a National Program Leader) who is responsible for the technical oversight of the award on behalf of the Department.

Project means the particular activity within the scope of the program supported by an award.

Project Director or *PD* means the single individual designated by the awardee in the application and approved by the Authorized Departmental Officer who is responsible for the direction and management of the project, also known as a Principal Investigator (PI) for research activities.

Project period means the total length of time, as stated in the award document and modifications thereto, if any, during which Federal sponsorship begins and ends.

Research means any systematic study directed toward new or fuller knowledge and understanding of the subject studied.

Scientific peer review means an evaluation of the technical quality of a proposed project and its relevance to regional or national goals, performed by experts with the scientific knowledge and technical skills to conduct the proposed research work.

Secretary means the Secretary of Agriculture and any other officer or employee of the Department to whom the authority involved is delegated.

State means any one of the fifty States, the District of Columbia, and the insular areas.

Third party in-kind contributions means the value of non-cash contributions of property or services provided by non-Federal third parties, including real property, equipment, supplies and other expendable property, directly benefiting and specifically identifiable to a funded project or program.

Under Secretary means the Under Secretary for Research, Education, and Economics.

United States means the several States, the District of Columbia, and the insular areas.

Units of State government means all State institutions, including the formal divisions of State government (*i.e.*, the official State agencies such as departments of transportation and education), local government agencies (e.g., a county human services office), and including State educational institutions (e.g., public colleges and universities).

[74 FR 45740, Sept. 4, 2009, as amended at 76 FR 4813, Jan. 27, 2011]

§ 3430.3 Deviations.

Any request by the applicant or awardee for a waiver of or deviation from any provision of this part shall be submitted to the ADO identified in the agency specific requirements. NIFA shall review the request and notify the applicant/awardee, within 30 calendar days from the date of receipt of the deviation request, whether the request to deviate has been approved. If the deviation request is still under consideration at the end of 30 calendar days, NIFA shall inform the applicant/awardee in writing of the date when the applicant/awardee may expect the decision.

§ 3430.4 Other applicable statutes and regulations.

Several Federal statutes and regulations apply to Federal assistance applications considered for review and to project grants and cooperative agreements awarded under NIFA Federal assistance programs. These include, but are not limited to:

7 CFR Part 1, subpart A—USDA implementation of the Freedom of Information Act.

7 CFR Part 3—USDA implementation of OMB Circular No. A–129, regarding debt management.

7 CFR Part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR Part 331 and 9 CFR Part 121—USDA implementation of the Agricultural Bioterrorism Protection Act of 2002.

7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (*i.e.*, OMB Circular Nos. A–21, A–87, and A–122, now relocated at 2 CFR Parts 220, 225, and 230) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR Part 3016—USDA implementation of Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

7 CFR Part 3017—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement).

7 CFR Part 3018—USDA implementation of Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans.

7 CFR Part 3019—USDA implementation of OMB Circular No. A–110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations (now relocated at 2 CFR part 215).

7 CFR Part 3021—USDA implementation of Governmentwide Requirements for Drug-Free Workplace (Financial Assistance).

7 CFR Part 3052—USDA implementation of OMB Circular No. A–133, Audits of States, Local Governments, and Non-Profit Organizations.

7 CFR Part 3407—NIFA procedures to implement the National Environmental Policy Act of 1969, as amended.

29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and 7 CFR Part 15b (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, promoting the utilization of inventions arising from federally supported research or development; encouraging maximum participation of small business firms in federally supported research and development efforts; and promoting collaboration between commercial concerns and nonprofit organizations, including universities, while ensuring that the Government obtains sufficient rights in federally supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of inventions (implementing regulations are contained in 37 CFR Part 401).

Subpart B—Pre-award: Solicitation and Application

§ 3430.11 Competition.

(a) *Standards for competition*. Except as provided in paragraph (b) of this section, NIFA will enter into grants and cooperative agreements, unless restricted by statute, only after competition.

(b) *Exception*. The NIFA ADO and the designated Agency approving official may make a determination in writing that competition is not deemed appropriate for a particular transaction. Such determination shall be limited to transactions where it can be adequately justified that a noncompetitive award is in the best interest of the Federal Government and necessary to the goals of the program.

§ 3430.12 Requests for applications.

(a) *General*. For each competitive and noncompetitive non-formula program, NIFA will prepare a program solicitation (also called a request for applications (RFA)), in accordance with the Office of Management and Budget (OMB) policy directive, 68 FR 37370–37379 (June 23, 2003), establishing a standard format for Federal agency announcements (*i.e.*, program solicitations or RFAs) of funding opportunities under programs that award discretionary grants or cooperative agreements. This policy directive requires the content of the RFA to be organized in a sequential manner beginning with overview information followed by the full text of the announcement and will apply unless superseded by statute or another OMB policy directive. The RFA may include all or a portion of the following items:

(1) Contact information.

(2) Directions for interested stakeholders or beneficiaries to submit written comments in a published program solicitation or RFA.

(3) Catalog of Federal Domestic Assistance (CFDA) number.

(4) Legislative authority and background information.

(5) Purpose, priorities, and fund availability.

(6) Program-specific eligibility requirements.

(7) Program-specific restrictions on the use of funds, if Applicable.

(8) Matching requirements, if applicable.

(9) Acceptable types of applications.

(10) Types of projects to be given priority consideration, including maximum anticipated awards and maximum project lengths, if applicable.

(11) Program areas, if applicable.

(12) Funding restrictions, if applicable.

(13) Directions for obtaining additional requests for applications and application forms.

(14) Information about how to obtain application forms and the instructions for completing such forms.

(15) Instructions and requirements for submitting applications, including submission deadline(s).

(16) Explanation of the application evaluation Process.

(17) Specific evaluation criteria used in the review Process.

(18) Type of Federal assistance awards (*i.e.*, grants and/or cooperative agreements).

(b) *RFA variations.* Where program-specific requirements differ from the requirements established in this part, program solicitations will also address any such variation(s). Variations may occur in the following:

(1) Award management guidelines.

(2) Restrictions on the delegation of fiscal responsibility.

(3) Required approval for changes to project plans.

(4) Expected program outputs and reporting requirements, if applicable.

(5) Applicable Federal statutes and regulations.

(6) Confidential aspects of applications and awards, if applicable.

(7) Regulatory information.

(8) Definitions.

(9) Minimum and maximum budget requests, and whether applications outside of these limits will be returned without further review.

(c) *Program announcements.* Occasionally, NIFA will issue a program announcement (PA) to alert potential applicants and the public about new and ongoing funding opportunities. These PAs may provide tentative due dates and are released without associated application packages. Hence, no applications are solicited under a PA. PAs are announced in the FEDERAL REGISTER or on the NIFA Web site.

§ 3430.13 Letter of intent to submit an application.

(a) *General.* NIFA may request or require that prospective applicants notify program staff of their intent to submit an application, identified as ''letter of intent''. If applicable, the request or requirement will be included in the RFA, along with directions for the preparation and submission of the letter of intent, the type of letter of intent, and any relevant deadlines. There are two types of letters of intent: optional and required.

(b) *Optional letter of intent.* Entities interested in submitting an application for a NIFA award should complete and submit a ''Letter of Intent to Submit an Application'' by the due date specified in the RFA. This does not obligate the applicant in any way, but will provide useful information to NIFA in preparing for application review. Applicants that do not submit a letter of intent by the specified due date are still allowed to submit an application by the application due date specified in the RFA, unless otherwise specified in the RFA.

(c) *Required letter of intent.* Certain programs may require that the prospective applicants submit a letter of intent for specific programs. This type of letter is evaluated by the program staff for suitability to the program and in regard to program priorities, needs, and scope. Invitations to submit a full application will be issued by the Program Officer or his or her representative. For programs requiring a letter of intent, applications submitted without prior approval of the letter of intent by the program staff will be returned without review. Programs requiring a specific letter of intent will be specified in the RFA.

§ 3430.14 Types of applications; types of award instruments.

(a) *Types of applications.* The type of application acceptable may vary by funding opportunity. The RFA will stipulate the type of application that may be submitted to NIFA in response to the funding opportunity. Applicants may submit the following types of applications as specified in the RFA.

(1) *New.* An application that is being submitted to the program for the first time.

(2) *Resubmission.* This is a project application that has been submitted for consideration under the same program previously but has not been approved for an award under the program. For competitive programs, this type of application is evaluated in competition with other pending applications in the area to which it is assigned. Resubmissions are reviewed according to the same evaluation criteria as new applications. In addition, applicants must respond to the previous panel review summaries, unless waived by NIFA.

(3) *Renewal.* An application requesting additional funding for a period subsequent to that provided by a current

award. For competitive programs, a renewal application competes with all other applications. Renewal applications must be developed as fully as though the applicant is applying for the first time. Renewal applicants also must have filed a progress report via Current Research Information System (CRIS), unless waived by NIFA.

(4) *Continuation*. A noncompeting application for an additional funding/budget period within a previously approved project.

(5) *Revision*. An application that proposes a change in the Federal Government's financial obligations or contingent liability from an existing obligation; or, any other change in the terms and conditions of the existing award.

(6) *Resubmitted renewal*. This is a project application that has been submitted for consideration under the same program previously. This type of application has also been submitted for renewal under the same program but was not approved. For competitive programs, this type of application is evaluated in competition with other pending applications in the area to which it is assigned. Resubmitted renewal applications are reviewed according to the same evaluation criteria as new applications. Applicants must respond to the previous panel review summaries and file a progress report via CRIS, unless waived by NIFA.

(b) *Types of award instruments*. The following is a list of corresponding categories of award instruments issued by NIFA.

(1) *Standard*. This is an award instrument by which NIFA agrees to support a specified level of effort for a predetermined project period without the announced intention of providing additional support at a future date.

(2) *Renewal*. This is an award instrument by which NIFA agrees to provide additional funding under a standard award as specified in paragraph (b)(1) of this section for a project period beyond that approved in an original or amended award, provided that the cumulative period does not exceed any statutory time limitation of the award.

(3) *Continuation*. This is an award instrument by which NIFA agrees to support a specified level of effort for a predetermined period of time with a statement of intention to provide additional support at a future date, provided that performance has been satisfactory, appropriations are available for this purpose, and continued support would be in the best interest of the Federal Government and the public.

(4) *Supplemental*. This is an award instrument by which NIFA agrees to provide small amounts of additional funding under a standard, renewal, or continuation award as specified in paragraphs (b)(1), (b)(2), and (b)(3) of this section and may involve a short-term (usually six months or less) extension of the project period beyond that approved in an original or amended award, but in no case may the cumulative period of the project, including short term extensions, exceed any statutory time limitation of the award.

(c) *Obligation of the Federal Government*. Neither the acceptance of any application nor the award of any project shall commit or obligate the United States in any way to make any renewal, supplemental, continuation, or other award with respect to any approved application or portion of an approved application.

§ 3430.15 Stakeholder input.

Section 103(c)(2) of the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA) (7 U.S.C. 7613(c)(2)) requires the Secretary to solicit and consider input on each program RFA from persons who conduct agricultural research, education, and extension for use in formulating future RFAs for competitive programs. NIFA will provide instructions for submission of stakeholder input in the RFA. NIFA will consider any comments received within the specified timeframe in the development of the future RFAs for the program.

§ 3430.16 Eligibility requirements.

(a) *General*. Program-specific eligibility requirements appear in the subpart applicable to each program and in the RFAs.

(b) *Foreign entities*—(1) *Awards to institutions*. Unless specifically allowed, foreign commercial and non-profit institutions are not considered eligible to apply for and receive NIFA awards.

(2) *Awards to individuals.* Unless otherwise specified, only United States citizens, non-citizen nationals of the United States, and lawful permanent residents of the United States are eligible to apply for and receive NIFA awards.

(c) *Responsibility determination.* In addition to program-specific eligibility requirements, awards will be made only to responsible applicants. Specific management information relating to an applicant shall be submitted on a one-time basis, with updates on an as-needed basis, as part of the responsibility determination prior to an award being made under a specific NIFA program, if such information has not been provided previously under this or another NIFA program. NIFA will provide copies of forms recommended for use in fulfilling these requirements as part of the pre-award process. Although an applicant may be eligible based on its status as one of these entities, there are factors that may exclude an applicant from receiving Federal financial and nonfinancial assistance and benefits under a NIFA program (e.g., debarment or suspension of an individual involved or a determination that an applicant is not responsible based on submitted organizational management information).

§ 3430.17 Content of an application.

The RFA provides instructions on how to access a funding opportunity. The funding opportunity contains the application package, which includes the forms necessary for completion of an application in response to the RFA, as well as the application instructions. The application instructions document, ''NIFA Grants.gov Application Guide: A Guide for Preparation and Submission of NIFA Applications via Grants.gov,'' is intended to assist applicants in the preparation and submission of applications to NIFA. It is also the primary document for use in the preparation of NIFA applications via Grants.gov.

§ 3430.18 Submission of an application.

(a) *When to submit.* The RFA will provide deadlines for the submission of letters of intent, if requested and required, and applications. NIFA may issue separate RFAs and/or establish separate deadlines for different types of applications, different award instruments, or different topics or phases of the Federal assistance programs. If applications are not received by applicable deadlines, they will not be considered for funding. Exceptions will be considered only when extenuating circumstances exist, as determined by NIFA, and justification and supporting documentation are provided to NIFA.

(b) *What to submit.* The contents of the applicable application package, as well as any other information, are to be submitted by the due date.

(c) *Where to submit.* The RFA will provide addresses for submission of letters of intent, if requested or required, and applications. It also will indicate permissible methods of submission (*i.e.*, electronic, e-mail, hand-delivery, U.S. Postal Service, courier). Conformance with preparation and submission instructions is required and will be strictly enforced unless a deviation had been approved. NIFA may establish additional requirements. NIFA may return without review applications that are not consistent with the RFA instructions.

§ 3430.19 Resubmission of an application.

(a) *Previously unfunded applications.* (1) Applications that are resubmitted to a program, after being previously submitted but not funded by that program, must include the following information:

(i) The NIFA-assigned proposal number of the previously submitted application.

(ii) Summary of the previous reviewers' comments.

(iii) Explanation of how the previous reviewers' comments or previous panel summary have been addressed in the current application.

(2) Resubmitting an application that has been revised based on previous reviewers' critiques does not guarantee the application will be recommended for funding.

(b) *Previously funded applications.* (1) NIFA competitive programs are generally not designed to support multiple Federal assistance awards activities

that are essentially repetitive in nature. PDs who have had their projects funded previously are discouraged from resubmitting relatively identical applications for further funding. Applications that are sequential continuations or new stages of previously funded projects must compete with first-time applications, and should thoroughly demonstrate how the proposed project expands substantially on previously funded efforts and promotes innovation and creativity beyond the scope of the previously funded project.

(2) An application may be submitted only once to NIFA. The submission of duplicative or substantially similar applications concurrently for review by more than one program will result in the exclusion of the redundant applications from NIFA consideration.

§ 3430.20 Acknowledgment of an application.

The receipt of all letters of intent and applications will be acknowledged by NIFA. Applicants who do not receive an acknowledgement within a certain number of days (as established in the RFA, e.g., 15 and 30 days) of the submission deadline should contact the program contact. Once the application has been assigned a proposal number by NIFA, that number should be cited on all future correspondence.

§ 3430.21 Confidentiality of applications and awards.

(a) *General*. Names of submitting institutions and individuals, as well as application contents and evaluations, will be kept confidential, except to those involved in the review process, to the extent permissible by law.

(b) *Identifying confidential and proprietary information in an application*. If an application contains proprietary information that constitutes a trade secret, proprietary commercial or financial information, confidential personal information, or data affecting the national security, it will be treated in confidence to the extent permitted by law, provided that the information is clearly marked by the proposer with the term ''confidential and proprietary information'' and that the following statement is included at the bottom of the project narrative or any other attachment included in the application that contains such information: ''The following pages (specify) contain proprietary information which (name of proposing organization) requests not to be released to persons outside the Government, except for purposes of evaluation.''

(c) *Disposition of applications*. By law, the Department is required to make the final decisions as to whether the information is required to be kept in confidence. Information contained in unsuccessful applications will remain the property of the proposer. However, the Department will retain for three years one file copy of each application received; extra copies will be destroyed. Public release of information from any application submitted will be subject to existing legal requirements. Any application that is funded will be considered an integral part of the award and normally will be made available to the public upon request, except for designated proprietary information that is determined by the Department to be proprietary information.

(d) *Submission of proprietary information*. The inclusion of proprietary information is discouraged unless it is necessary for the proper evaluation of the application. If proprietary information is to be included, it should be limited, set apart from other text on a separate page, and keyed to the text by numbers. It should be confined to a few critical technical items that, if disclosed, could jeopardize the obtaining of foreign or domestic patents. Trade secrets, salaries, or other information that could jeopardize commercial competitiveness should be similarly keyed and presented on a separate page. Applications or reports that attempt to restrict dissemination of large amounts of information may be found unacceptable by the Department and constitute grounds for return of the application without further consideration. Without assuming any liability for inadvertent disclosure, the Department will limit dissemination of such information to its employees and, where necessary for the evaluation of the application, to outside reviewers on a confidential basis. An application may be withdrawn at any time prior to the final action thereon.

Subpart C—Pre-award: Application Review and Evaluation

§ 3430.31 Guiding principles.

The guiding principle for Federal assistance application review and evaluation is to ensure that each proposal is treated in a consistent and fair manner regardless of regional and institutional affiliation. After the evaluation process by the review panel, NIFA, through the program officer, ensures that applicants receive appropriate feedback and comments on their proposals, and processes the awards in as timely a manner as possible.

§ 3430.32 Preliminary application review.

Prior to technical examination, a preliminary review will be made of all applications for responsiveness to the administrative requirements set forth in the RFA. Applications that do not meet the administrative requirements may be eliminated from program competition. However, NIFA retains the right to conduct discussions with applicants to resolve technical and/or budget issues, as deemed necessary by NIFA.

§ 3430.33 Selection of reviewers.

(a) *Requirement.* NIFA is responsible for performing a review of applications submitted to NIFA competitive award programs in accordance with section 103(a) of AREERA (7 U.S.C. 7613(a)). Reviews are undertaken to ensure that projects supported by NIFA are of high quality and are consistent with the goals and requirements of the funding program. Applications submitted to NIFA undergo a programmatic evaluation to determine the worthiness of Federal support. The scientific peer review or merit review is performed by peer or merit reviewers and also may entail an assessment by Federal employees.

(b) *NIFA Peer Review System.* The NIFA Application Review Process is accomplished through the use of the NIFA Peer Review System (PRS), a Web-based system which allows reviewers and potential reviewers to update personal information and to complete and submit reviews electronically to NIFA.

(c) *Relevant training and experience.* Reviewers will be selected based upon training and experience in relevant scientific, extension, or education fields taking into account the following factors:

(1) Level of relevant formal scientific, technical education, and extension experience of the individual, as well as the extent to which an individual is engaged in relevant research, education, or extension activities.

(2) Need to include as reviewers experts from various areas of specialization within relevant scientific, education, and extension fields.

(3) Need to include as reviewers other experts (e.g., producers, range or forest managers/operators, and consumers) who can assess relevance of the applications to targeted audiences and to program needs.

(4) Need to include as reviewers experts from a variety of organizational types (e.g., colleges, universities, industry, State and Federal agencies, private profit and nonprofit organizations) and geographic locations.

(5) Need to maintain a balanced composition of reviewers with regard to minority and female representation and an equitable age distribution.

(6) Need to include reviewers who can judge the effective usefulness to producers and the general public of each application.

(d) *Confidentiality.* The identities of reviewers will remain confidential to the maximum extent possible. Therefore, the names of reviewers will not be released to applicants. If it is possible to reveal the names of reviewers in such a way that they cannot be identified with the review of any particular application, this will be done at the end of the fiscal year or as requested. Names of submitting institutions and individuals, as well as application content and peer evaluations, will be kept confidential, except to those involved in the review process, to the extent permitted by law. Reviewers are expected to be in compliance with NIFA Confidentiality Guidelines. Reviewers provide this assurance through PRS.

(e) *Conflicts of interest.* During the evaluation process, extreme care will be taken to prevent any actual or perceived conflicts of interest that may

impact review or evaluation. For the purpose of determining conflicts of interest, the academic and administrative autonomy of an institution shall be determined. Reviewers are expected to be in compliance with NIFA Conflict-of-Interest Guidelines. Reviewers provide this assurance through PRS.

§ 3430.34 Evaluation criteria.

(a) *General.* To ensure any project receiving funds from NIFA is consistent with the broad goals of the funding program, the content of each proposal/application submitted to NIFA will be evaluated based on a pre-determined set of review criteria. It is the responsibility of the Program Officer to develop, adopt, adapt, or otherwise establish the criteria by which proposals are to be evaluated. It may be appropriate for the Program Officer to involve other scientists or stakeholders in the development of criteria, or to extract criteria from legislative authority or appropriations language. The review criteria are described in the RFA and shall not include criteria concerning any cost sharing or matching requirements per section 103(a)(3) of AREERA (7 U.S.C. 7613(a)(3)).

(b) *Guidance for reviewers.* In order that all potential applicants for a program have similar opportunities to compete for funds, all reviewers will receive from the Program Officer a description of the review criteria. Reviewers are instructed to use those same evaluation criteria, and only those criteria, to judge the merit of the proposals they review.

§ 3430.35 Review of noncompetitive applications.

(a) *General.* Some projects are directed by either authorizing legislation and/or appropriations to specifically support a designated institution or set of institutions for particular research, education, or extension topics of importance to the nation, a State, or a region. Although these projects may be awarded noncompetitively, these projects or activities are subject to the same application process, award terms and conditions, Federal assistance laws and regulations, reporting and monitoring requirements, and post-award administration and closeout policies and procedures as competitive Federal assistance programs. The only difference is these applications are not subject to a competitive peer or merit review process at the Agency level.

(b) *Requirements.* All noncompetitive applications recommended for funding are required to be reviewed by the program officer and, as required, other Departmental and NIFA officials; and the review documented by the NIFA program officer. For awards recommended for funding at or greater than $10,000, an independent review and a unit review by program officials are required.

§ 3430.36 Procedures to minimize or eliminate duplication of effort.

NIFA may implement appropriate business processes to minimize or eliminate the awarding of NIFA Federal assistance that unnecessarily duplicates activities already being sponsored under other awards, including awards made by other Federal agencies. Business processes may include the review of the Current and Pending Support Form; documented CRIS searches prior to award; the conduct of PD workshops, conferences, meetings, and symposia; and agency participation in Federal Government-wide and other committees, taskforces, or groups that seek to solve problems related to agricultural research, education, and extension and other activities delegated to the NIFA Director.

§ 3430.37 Feedback to applicants.

Copies of individual reviews and/or summary reviews, not including the identity of reviewers, will be sent to the applicant PDs after the review process has been completed.

Subpart D—Award

§ 3430.41 Administration.

(a) *General.* Within the limit of funds available for such purpose, the NIFA ADO shall make Federal assistance awards to those responsible, eligible applicants whose applications are judged most meritorious under the procedures set forth in the RFA. The date specified by the NIFA ADO as the effective date of the award shall be no later

than September 30th of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. It should be noted that the project need not be initiated on the award effective date, but as soon thereafter as practical so that project goals may be attained within the funded project period. All funds awarded by NIFA shall be expended solely for the purpose for which the funds are awarded in accordance with the approved application and budget, the regulations, the terms and conditions of the award, the applicable Federal cost principles, and the Department's assistance regulations (e.g., parts 3015, 3016, and 3019 of 7 CFR).

(b) *Notice of Award*. The notice of award document (*i.e.*, Form NIFA–2009, Award Face Sheet) will provide pertinent instructions and information including, at a minimum, the following:

(1) Legal name and address of performing organization or institution to whom the Director has awarded a grant or cooperative agreement.

(2) Title of project.

(3) Name(s) and institution(s) of Project Director(s).

(4) Identifying award number assigned by NIFA or the Department.

(5) Project period.

(6) Total amount of NIFA financial assistance approved.

(7) Legal authority(ies) under which the grant or cooperative agreement is awarded.

(8) Appropriate CFDA number.

(9) Approved budget plan (that may be referenced).

(10) Other information or provisions (including the Terms and Conditions) deemed necessary by NIFA to carry out its respective awarding activities or to accomplish the purpose of a particular grant or cooperative agreement.

§ 3430.42 Special award conditions.

(a) *General*. NIFA may, with respect to any award, impose additional conditions prior to or at the time of any award when, in the judgment of NIFA, such conditions are necessary to ensure or protect advancement of the approved project, the interests of the public, or the conservation of grant or cooperative agreement funds. NIFA may impose additional requirements if an applicant or recipient has a history of poor performance; is not financially stable; has a management system that does not meet prescribed standards; has not complied with the terms and conditions of a previous award; or is not otherwise responsible.

(b) *Notification of additional requirements*. When NIFA imposes additional requirements, NIFA will notify the recipient in writing as to the following: The nature of the additional requirements; the reason why the additional requirements are being imposed; the nature of the corrective actions needed; the time allowed for completing the corrective actions; and the method for requesting reconsideration of the additional requirements imposed.

(c) *Form NIFA–2009, Award Face Sheet*. These special award conditions, as applicable, will be added as a special provision to the award terms and conditions and identified on the Form NIFA–2009, Award Face Sheet, for the award.

(d) *Removal of additional requirements*. NIFA will promptly remove any additional requirements once the conditions that prompted them have been corrected.

Subpart E—Post-Award and Closeout

§ 3430.51 Payment.

(a) *General*. All payments will be made in advance unless a deviation is accepted (see § 3430.3) or as specified in paragraph (b) of this section. All payments to the awardee shall be made via the U.S. Department of Health and Human Services' Payment Management System (DHHS–PMS), U.S. Department of the Treasury's Automated Standard Application for Payments (ASAP) system, or another electronic funds transfer (EFT) method, except for awards to other Federal agencies. Awardees are expected to request funds via DHHS–PMS, ASAP, or other electronic payment system for reimbursement basis in a timely manner.

(b) *Reimbursement method*. NIFA shall use the reimbursement method if it determines that advance payment is not feasible and that the awardee does not maintain or demonstrate the willingness to maintain written procedures

that minimize the time elapsing between the transfer of funds and disbursement by the awardee, and financial management systems that meet the standards for fund control and accountability.

§ 3430.52 Cost sharing and matching.

(a) *General.* Awardees may be required to match the Federal funds received under a NIFA award. The required percentage of matching, type of matching (e.g., cash and/or in-kind contributions), sources of match (e.g., non-Federal), and whether NIFA has any authority to waive the match will be specified in the subpart applicable to the specific Federal assistance program, as well as in the RFA.

(b) *Indirect Costs as in-kind matching contributions.* Indirect costs may be claimed under the Federal portion of the award budget or, alternatively, indirect costs may be claimed as a matching contribution (if no indirect costs are requested under the Federal portion of the award budget). However, unless explicitly authorized in the RFA, indirect costs may not be claimed on both the Federal portion of the award budget and as a matching contribution, unless the total claimed on both the Federal portion of the award budget and as a matching contribution does not exceed the maximum allowed indirect costs or the institution's negotiated indirect cost rate, whichever is less. An awardee may split the allocation between the Federal and non-Federal portions of the budget only if the total amount of indirect costs charged to the project does not exceed the maximum allowed indirect costs or the institution's negotiated indirect cost rate, whichever is less. For example, if an awardee's indirect costs are capped at 22 percent pursuant to section 1462(a) of NARETPA (7 U.S.C. 3310(a)), the awardee may request 11 percent of the indirect costs on both the Federal portion of the award and as a matching contribution. Or, the awardee may request any similar percentage that, when combined, does not exceed the maximum indirect cost rate of 22 percent.

§ 3430.53 Program income.

(a) *General.* NIFA shall apply the standards set forth in this subpart in requiring awardee organizations to account for program income related to projects financed in whole or in part with Federal funds.

(b) *Addition method.* Unless otherwise provided in the authorizing statute, in accordance with the terms and conditions of the award, program income earned during the project period shall be retained by the awardee and shall be added to funds committed to the project by NIFA and the awardee and used to further eligible project or program objectives. Any specific program deviations will be identified in the individual subparts.

(c) *Award terms and conditions.* Unless the program regulations identified in the individual subpart provide otherwise, awardees shall follow the terms and conditions of the award.

§ 3430.54 Indirect costs.

Indirect cost rates for grants and cooperative agreements shall be determined in accordance with the applicable assistance regulations and cost principles, unless superseded by another authority. Use of indirect costs as in-kind matching contributions is subject to § 3430.52(b).

§ 3430.55 Technical reporting.

(a) *Requirement.* All projects supported with Federal funds under this part must be documented in the Current Research Information System (CRIS).

(b) *Initial Documentation in the CRIS Database.* Information collected in the ''Work Unit Description'' (Form AD–416) and ''Work Unit Classification'' (Form AD–417) is required upon project initiation for all new awards in CRIS (*i.e.*, prior to award).

(c) *Annual CRIS Reports.* Unless stated differently in the award terms and conditions, an annual ''Accomplishments Report'' (Form AD–421) is due 90 calendar days after the award's anniversary date (*i.e.*, one year following the month and day on which the project period begins and each year thereafter up until a final report is required). An annual report covers a one-year period. In addition to the Form

AD–421, the following information, when applicable, must be submitted to the programmatic contact person identified in block 14 of the Award Face Sheet (Form NIFA–2009): a comparison of actual accomplishments with the goals established for the reporting period (where the output of the project can be expressed readily in numbers, a computation of the cost per unit of output should be considered if the information is considered useful); the reasons for slippage if established goals were not met; and additional pertinent information including, when appropriate, analysis and explanation of cost overruns or unexpectedly high unit costs. The annual report of ''Funding and Staff Support'' (Form AD–419) is due February 1 of the year subsequent to the Federal fiscal year being reported.

(d) *CRIS Final Report*. The CRIS final report, ''Accomplishments Report'' (Form AD–421), covers the entire period of performance of the award. The report should encompass progress made during the entire timeframe of the project instead of covering accomplishments made only during the final reporting segment of the project. In addition to providing the information required under paragraph (c) of this section, the final report must include the following when applicable: a disclosure of any inventions not previously reported that were conceived or first actually reduced to practice during the performance of the work under the award; a written statement on whether or not the awardee elects (or plans to elect) to obtain patent(s) on any such invention; and an identification of equipment purchased with any Federal funds under the award and any subsequent use of such equipment.

(e) *CRIS Web Site Via Internet*. The CRIS database is available to the public on the worldwide web. CRIS project information is available via the Internet CRIS Web site at *http://cris.nifa.usda.gov*. To submit forms electronically, the CRIS forms Web site can be accessed through the CRIS Web site or accessed directly at *http://cwf.uvm.edu/cris*.

(f) *Additional reporting requirements*. Awardees may be required to submit other technical reports or submit the CRIS reports more frequently than annually. Additional requirements for a specific Federal assistance program are described in the applicable subpart after subpart E and are identified in the RFA. The Award Face Sheet (Form NIFA–2009) also will specify these additional reporting requirements as a special provision to the award terms and conditions.

§ 3430.56 Financial reporting.

(a) *SF–269, Financial Status Report*. Unless stated differently in the award terms and conditions, a final SF–269, Financial Status Report, is due 90 days after the expiration of the award and should be submitted to the Awards Management Branch (AMB) at Awards Management Branch; Office of Extramural Programs, NIFA; U.S. Department of Agriculture; STOP 2271; 1400 Independence Avenue, SW.; Washington, DC 20250–2271. The awardee shall report program outlays and program income on the same accounting basis (*i.e.*, cash or accrual) that it uses in its normal accounting system. When submitting a final SF–269, Financial Status Report, the total matching contribution, if required, should be shown in the report. The final SF–269 must not show any unliquidated obligations. If the awardee still has valid obligations that remain unpaid when the report is due, it shall request an extension of time for submitting the report pursuant to paragraph (c) of this section; submit a provisional report (showing the unliquidated obligations) by the due date; and submit a final report when all obligations have been liquidated, but no later than the approved extension date. SF–269, Financial Status Reports, must be submitted by all awardees, including Federal agencies and national laboratories.

(b) *Awards with Required Matching*. For awards requiring a matching contribution, an annual SF–269, Financial Status Report, is required and this requirement will be indicated on the Award Face Sheet, Form –2009, in which case it must be submitted no later than 45 days following the end of the budget or reporting period.

(c) *Requests for an extension to submit a final SF–269, Financial Status Report*—(1) *Before the due date*. Awardees may

request, prior to the end of the 90-day period following the award expiration date, an extension to submit a final SF–269, Financial Status Report. This request should include a provisional report pursuant to paragraph (a) of this section, as well as an anticipated submission date and a justification for the late submission. Subject to § 3430.63 or other statutory or agency policy limitations, funds will remain available for drawdown during this period.

(2) *After the due date.* Requests are considered late when they are submitted after the 90-day period following the award expiration date. Requests to submit a final SF–269, Financial Status Report, will only be considered, up to 30 days after the due date, in extenuating circumstances. This request should include a provisional report pursuant to paragraph (a) of this section, as well as an anticipated submission date, a justification for the late submission, and a justification for the extenuating circumstances. However, such requests are subject to § 3430.63 or any other statutory or agency policy limitations. If an awardee needs to request additional funds, procedures in paragraph (d) of this section apply.

(d) *Overdue SF–269, Financial Status Reports.* Awardees with overdue SF–269, Financial Status Reports, or other required financial reports (as identified in the award terms and conditions), will have their applicable balances at DHHS–PMS, ASAP, or other electronic payment system restricted or placed on ''manual review,'' which restricts the awardee's ability to draw funds, thus requiring prior approval from NIFA. If any remaining available balances are needed by the awardee (beyond the 90-day period following the award expiration date) and the awardee has not requested an extension to submit a final SF–269, Financial Status Report, the awardee will be required to contact AMB to request permission to draw any additional funds and will be required to provide justification and documentation to support the draw. Awardees also will need to comply with procedures in paragraph (c) of this section. AMB will approve these draw requests only in extenuating circumstances, as determined by NIFA.

(e) *SF–272, Federal Cash Transactions Report.* Awardees receiving electronic payments through DHHS–PMS are required to submit their SF–272, Federal Cash Transactions Report, via the DHHS–PMS by the specified dates. Failure to submit this quarterly report by the due date may result in funds being restricted by DHHS–PMS. Awardees not receiving payments through DHHS–PMS may be exempt from this reporting requirement.

(f) *Additional reporting requirements.* NIFA may require additional financial reporting requirements as follows: NIFA may require forecasts of Federal cash requirements in the ''Remarks'' section of the report; and when practical and deemed necessary, NIFA may require awardees to report in the ''Remarks'' section the amount of cash advances received in excess of three days (*i.e.*, short narrative with explanations of actions taken to reduce the excess balances). When NIFA needs additional information or more frequent reports, a special provision will be added to the award terms and conditions and identified on the Form NIFA–2009, Award Face Sheet. Should NIFA determine that an awardee's accounting system is inadequate, additional pertinent information to further monitor awards may be requested from the awardee until such time as the system is brought up to standard, as determined by NIFA. This additional reporting requirement will be required via a special provision to the award terms and conditions and identified on the Form –2009, Award Face Sheet.

§ 3430.57 Project meetings.

In addition to reviewing (and monitoring the status of) progress and final technical reports and financial reports, NIFA Program Officers may use regular and periodic conference calls to monitor the awardee's performance as well as PD conferences, workshops, meetings, and symposia to not only monitor the awards, but to facilitate communication and the sharing of project results. These opportunities also serve to eliminate or minimize NIFA funding unneeded duplicative project activities. Required attendance at these conference calls, conferences, workshops, meetings, and symposia

will be identified in the RFA and the awardee should develop a proposal accordingly.

§ 3430.58 Prior approvals.

(a) *Subcontracts.* No more than 50 percent of the award may be subcontracted to other parties without prior written approval of the ADO except contracts to other Federal agencies. Any subcontract awarded to a Federal agency under an award must have prior written approval of the ADO. To request approval, a justification for the proposed subcontractual arrangements, a performance statement, and a detailed budget for the subcontract must be submitted to the ADO.

(b) *No-cost extensions of time*—(1) *General.* Awardees may initiate a one-time no-cost extension of the expiration date of the award of up to 12 months unless one or more of the following conditions apply: the terms and conditions of the award prohibit the extension; the extension requires additional Federal funds; and the extension involves any change in the approved objectives or scope of the project. For the first no-cost extension, the awardee must notify NIFA in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award.

(2) *Additional requests for no-cost extensions of time before expiration date.* When more than one no-cost extension of time or an extension of more than 12 months is required, the extension(s) must be approved in writing by the ADO. The awardee should prepare and submit a written request (which must be received no later than 10 days prior to the expiration date of the award) to the ADO. The request must contain, at a minimum, the following information: the length of the additional time required to complete the project objectives and a justification for the extension; a summary of the progress to date; an estimate of the funds expected to remain unobligated on the scheduled expiration date; a projected timetable to complete the portion(s) of the project for which the extension is being requested; and signature of the AR and the PD.

(3) *Requests for no-cost extensions of time after expiration date.* NIFA may consider and approve requests for no-cost extensions of time up to 120 days following the expiration of the award. These will be approved only for extenuating circumstances, as determined by NIFA. The awardee's AR must submit the requirements identified under paragraph (b)(2) of this section as well as an ''extenuating circumstance'' justification and a description of the actions taken by the awardee to minimize these requests in the future.

(4) *Other requirements.* No-cost extensions of time may not be exercised merely for the purpose of using unobligated balances. All extensions are subject to any statutory term limitations as well as any expiring appropriation limitations under § 3430.63.

§ 3430.59 Review of disallowed costs.

(a) *Notice.* If the NIFA Office of Extramural Programs (OEP) determines that there is a basis for disallowing a cost, NIFA OEP shall provide the awardee written notice of its intent to disallow the cost. The written notice shall state the amount of the cost and the factual and legal basis for disallowing it.

(b) *Awardee response.* Within 60 days of receiving written notice of NIFA OEP's intent to disallow the cost, the awardee may respond with written evidence and arguments to show the cost is allowable, or that , for equitable, practical, or other reasons, shall not recover all or part of the amount, or that the recovery should be made in installments. The 60-day time period may be extended for an additional 30 days upon written request by the awardee; however, such request for an extension of time must be made before the expiration of the 60-day time period specified in this paragraph. An extension of time will be granted only in extenuating circumstances.

(c) *Decision.* Within 60 days of receiving the awardee's written response to the notice of intent to disallow the cost, NIFA OEP shall issue a management decision stating whether or not the cost has been disallowed, the reasons for the decision, and the method of appeal that has been provided under this section. If the awardee does not respond to the written notice under paragraph (a) of this section within the

time frame specified in paragraph (b) of this section, NIFA OEP shall issue a management decision on the basis of the information available to it. The management decision shall constitute the final action with respect to whether the cost is allowed or disallowed. In the case of a questioned cost identified in the context of an audit subject to 7 CFR part 3052, the management decision will constitute the management decision under 7 CFR 3052.405(a).

(d) *Demand for payment.* If the management decision under paragraph (c) of this section constitutes a finding that the cost is disallowed and, therefore, that a debt is owed to the Government, NIFA OEP shall provide the required demand and notice pursuant to 7 CFR 3.11.

(e) *Review process.* Within 60 days of receiving the demand and notice referred to in paragraph (d) of this section, the awardee may submit a written request to the NIFA OEP Assistant Director for a review of the final management decision that the debt exists and the amount of the debt. Within 60 days of receiving the written request for a review, the NIFA OEP Deputy Administrator (or other senior NIFA official designated by the NIFA OEP Assistant Director) will issue a final decision regarding the debt. Review by the NIFA OEP Assistant Director or designee constitutes, and will be in accordance with, the administrative review procedures provided for debts under 7 CFR part 3, subpart F.

§ 3430.60 Suspension, termination, and withholding of support.

(a) *General.* If an awardee has failed to materially comply with the terms and conditions of the award, NIFA may take certain enforcement actions, including, but not limited to, suspending the award pending corrective action, terminating the award for cause, and withholding of support.

(b) *Suspension.* NIFA generally will suspend (rather than immediately terminate) an award to allow the awardee an opportunity to take appropriate corrective action before NIFA makes a termination decision. NIFA may decide to terminate the award if the awardee does not take appropriate corrective action during the period of suspension. NIFA may terminate, without first suspending, the award if the deficiency is so serious as to warrant immediate termination. Termination for cause may be appealed under the NIFA award appeals procedures specified in § 3430.62.

(c) *Termination.* An award also may be terminated, partially or wholly, by the awardee or by NIFA with the consent of the awardee. If the awardee decides to terminate a portion of the award, NIFA may determine that the remaining portion of the award will not accomplish the purposes for which the award was originally made. In any such case, NIFA will advise the awardee of the possibility of termination of the entire award and allow the awardee to withdraw its termination request. If the awardee does not withdraw its request for partial termination, NIFA may initiate procedures to terminate the entire award for cause.

(d) *Withholding of support.* Withholding of support is a decision not to make a non-competing continuation award within the current competitive segment. Support may be withheld for one or more of the following reasons: Adequate Federal funds are not available to support the project; an awardee failed to show satisfactory progress in achieving the objectives of the project; an awardee failed to meet the terms and conditions of a previous award; or for whatever reason, continued funding would not be in the best interests of the Federal Government. If a non-competing continuation award is denied (withheld) because the awardee failed to comply with the terms and conditions of a previous award, the awardee may appeal that determination under § 3430.62.

§ 3430.61 Debt collection.

The collection of debts owed to NIFA by awardees, including those resulting from cost disallowances, recovery of funds, unobligated balances, or other circumstances, are subject to the Department's debt collection procedures as set forth in 7 CFR part 3, and, with respect to cost disallowances, § 3430.59.

§ 3430.62 Award appeals procedures.

(a) *General.* NIFA permits awardees to appeal certain post-award adverse administrative decisions made by

NIFA. These include: termination, in whole or in part, of an award for failure of the awardee to carry out its approved project in accordance with the applicable law and the terms and conditions of award or for failure of the awardee otherwise to comply with any law, regulation, assurance, term, or condition applicable to the award; denial (withholding) of a non-competing continuation award for failure to comply with the terms of a previous award; and determination that an award is void (*i.e.*, a decision that an award is invalid because it was not authorized by statute or regulation or because it was fraudulently obtained). Appeals of determinations regarding the allowability of costs are subject to the procedures in § 3430.59.

(b) *Appeal Procedures*. The formal notification of an adverse determination will contain a statement of the awardee's appeal rights. As the first level in appealing an adverse determination, the awardee must submit a request for review to the NIFA official specified in the notification, detailing the nature of the disagreement with the adverse determination and providing supporting documents in accordance with the procedures contained in the notification. The awardee's request to NIFA for review must be received within 60 days after receipt of the written notification of the adverse determination; however, an extension may be granted if the awardee can show good cause why an extension is warranted.

(c) *Decision*. If the NIFA decision on the appeal is adverse to the awardee or if an awardee's request for review is rejected, the awardee then has the option of submitting a request to the NIFA OEP Assistant Director for further review. The decision of the NIFA OEP Assistant Director is considered final.

§ 3430.63 Expiring appropriations.

(a) *NIFA awards supported with agency appropriations*. Most NIFA awards are supported with annual appropriations. On September 30th of the 5th fiscal year after the period of availability for obligation ends, the funds for these appropriations accounts expire per 31 U.S.C. 1552 and the account is closed, unless otherwise specified by law. Funds that have not been drawn through DHHS–PMS, ASAP, or other electronic payment system by the awardee or disbursed through any other system or method by August 31st of that fiscal year are subject to be returned to the U.S. Department of the Treasury after that date. The August 31st requirement also applies to awards with a 90-day period concluding on a date after August 31st of that fifth year. Appropriations cannot be restored after expiration of the accounts. More specific instructions are provided in the NIFA award terms and conditions.

(b) *NIFA awards supported with funds from other Federal agencies (reimbursable funds)*. NIFA may require that all draws and reimbursements for awards supported with reimbursable funds (from other Federal agencies) be completed prior to June 30th of the 5th fiscal year after the period of availability for obligation ends to allow for the proper billing, collection, and close-out of the associated interagency agreement before the appropriations expire. The June 30th requirement also applies to awards with a 90-day period concluding on a date after June 30th of that fifth year. Appropriations cannot be restored after expiration of the accounts. More specific instructions are provided in the NIFA award terms and conditions.

Subpart F—Specialty Crop Research Initiative

§ 3430.200 Applicability of regulations.

The regulations in this subpart apply to the program authorized under section 412 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7632).

§ 3430.201 Purpose.

(a) *Focus areas*. The purpose of this program is to address the critical needs of the specialty crop industry by developing and disseminating science-based tools to address needs of specific crops and their regions, including the following five focus areas:

(1) Research in plant breeding, genetics, and genomics to improve crop characteristics, such as—

(i) Product, taste, quality, and appearance;

(ii) Environmental responses and tolerances;

(iii) Nutrient management, including plant nutrient uptake efficiency;

(iv) Pest and disease management, including resistance to pests and diseases resulting in reduced application management strategies; and

(v) Enhanced phytonutrient content.

(2) Efforts to identify and address threats from pests and diseases, including threats to specialty crop pollinators.

(3) Efforts to improve production efficiency, productivity, and profitability over the long term (including specialty crop policy and marketing).

(4) New innovations and technology, including improved mechanization and technologies that delay or inhibit ripening.

(5) Methods to prevent, detect, monitor, control, and respond to potential food safety hazards in the production and processing of specialty crops, including fresh produce.

(b) *Other*. NIFA will award research and extension, including integrated, grants to eligible institutions listed in § 3430.203. In addition to the focus areas identified in this section, NIFA may include additional activities or focus areas that will further address the critical needs of the specialty crop industry. Some of these activities or focus areas may be identified by stakeholder groups or by NIFA in response to emerging critical needs of the specialty crop industry.

§ 3430.202 Definitions.

The definitions applicable to the program under this subpart include:

Integrated project means a project that incorporates the research and extension components of the agricultural knowledge system around a problem area or activity.

Specialty crop means fruits and vegetables, tree nuts, dried fruits, and horticulture and nursery crops (including floriculture).

Trans-disciplinary means a multi-discipline approach that brings biological and physical scientists together with economists and social scientists to address challenges in a holistic manner.

§ 3430.203 Eligibility.

Eligible applicants for the grant program implemented under this subpart include: Federal agencies, national laboratories; colleges and universities (offering associate's or higher degrees); research institutions and organizations; private organizations or corporations; State agricultural experiment stations; individuals; and groups consisting of 2 or more entities identified in this sentence.

§ 3430.204 Project types and priorities.

For each RFA, NIFA may develop and include the appropriate project types and focus areas (in addition to the five focus areas identified in § 3430.201) based on the critical needs of the specialty crop industry as identified through stakeholder input and deemed appropriate by NIFA. Of the funds made available each fiscal year, not less than 10 percent of these funds shall be allocated for each of the five focus areas identified in § 3430.201. In making awards for this program, NIFA will give higher priority to projects that are multistate, multi-institutional, and multidisciplinary; and include explicit mechanisms to communicate the results to producers and the public.

§ 3430.205 Funding restrictions.

(a) *Prohibition against construction*. Funds made available under this subpart shall not be used for the construction of a new building or facility or the acquisition, expansion, remodeling, or alteration of an existing facility (including site grading and improvement, and architect fees).

(b) *Indirect costs*. Subject to § 3430.54, indirect costs are allowable.

§ 3430.206 Matching requirements.

(a) *Requirement*. Grantees are required to provide funds or in-kind support from non-Federal sources in an amount that is at least equal to the amount provided by the Federal government. The matching contribution must be provided from non-Federal sources except when authorized by statute. The matching requirements under this subpart cannot be waived.

(b) *Indirect costs*. Use of indirect costs as in-kind matching contributions is subject to § 3430.52.

§ 3430.207 Other considerations.

The term of a grant under this subpart shall not exceed 10 years.

Subpart G—Agriculture and Food Research Initiative

SOURCE: 75 FR 54761, Sept. 9, 2010, unless otherwise noted.

§ 3430.300 Applicability of regulations.

The regulations in this subpart apply to the Agriculture and Food Research Initiative (AFRI) authorized under section 2(b) of the Competitive, Special, and Facilities Research Grant Act (7 U.S.C. 450i(b)).

§ 3430.301 Purpose.

The purpose of this program is to make competitive grants for fundamental and applied research, extension, and education to address food and agricultural sciences, as defined under section 1404 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3103).

§ 3430.302 Definitions.

The definitions applicable to the competitive grant programs under this subpart include:

Food and Agricultural Science Enhancement (FASE) awards means funding awarded to eligible applicants to strengthen science capabilities of Project Directors, to help institutions develop competitive scientific programs, and to attract new scientists into careers in high-priority areas of National need in agriculture, food, and environmental sciences. FASE awards may apply to any of the three agricultural knowledge components (*i.e.*, research, education, and extension). FASE awards include Pre- and Postdoctoral Fellowships, New Investigator grants, and Strengthening grants.

Limited institutional success means institutions that are not among the most successful universities and colleges for receiving Federal funds for science and engineering research. A list of successful institutions will be provided in the RFA.

Minority means Alaskan Native, American Indian, AsianAmerican, African-American, Hispanic American, Native Hawaiian, or Pacific Islander. The Secretary will determine on a case-by-case basis whether additional groups qualify under this definition, either at the Secretary's initiative, or in response to a written request with supporting explanation.

Minority-serving institution means an accredited academic institution whose enrollment of a single minority or a combination of minorities exceeds fifty percent of the total enrollment, including graduate and undergraduate and full- and part-time students. An institution in this instance is an organization that is independently accredited as determined by reference to the current version of the *Higher Education Directory*, published by Higher Education Publications, Inc., 6400 Arlington Boulevard, Suite 648, Falls Church, Virginia 22042.

Multidisciplinary project means a project on which investigators from two or more disciplines collaborate to address a common problem. These collaborations, where appropriate, may integrate the biological, physical, chemical, or social sciences.

Small and mid-sized institutions means academic institutions with a current total enrollment of 17,500 or less, including graduate and undergraduate as well as full- and part-time students. An institution, in this instance, is an organization that possesses a significant degree of autonomy. Significant degree of autonomy is defined by being independently accredited as determined by reference to the current version of the *Higher Education Directory*, published by Higher Education Publications, Inc., 6400 Arlington Boulevard, Suite 648, Falls Church, Virginia 22042 (703–532–2300).

Strengthening grants means funds awarded to institutions eligible for FASE grants to enhance institutional capacity, with the goal of leading to future funding in the project area, as well as strengthening the competitiveness of the investigator's research, education, and/or extension activities.

Strengthening grants consist of standard and Coordinated Agricultural Project (CAP) grant types as well as seed grants, equipment grants, and sabbatical grants.

USDA EPSCoR States (Experimental Program for Stimulating Competitive Research) means States which have been less successful in receiving funding from AFRI, or its predecessor, the National Research Initiative (NRI), having a funding level no higher than the 38th percentile of all States based on a 3-year rolling average of AFRI and/or NRI funding levels, excluding FASE Strengthening funds granted to EPSCoR States, and small, mid-sized, and minority-serving degree-granting institutions. The most recent list of USDA EPSCoR States will be provided in the RFA.

§ 3430.303 Eligibility.

(a) *General.* Unless otherwise specified in the RFA or this subpart, eligible applicants for the grant program implemented under this subpart include:

(1) State agricultural experiment stations;

(2) Colleges and universities (including junior colleges offering an associate's degree);

(3) University research foundations;

(4) Other research institutions and organizations;

(5) Federal agencies;

(6) National laboratories;

(7) Private organizations or corporations;

(8) Individuals; and

(9) Any group consisting of 2 or more entities identified in paragraphs (a)(1) through (8) of this section.

(b) *Integrated projects.* Eligible entities for the integrated component under this subpart include:

(1) Colleges and universities;

(2) 1994 Institutions; and

(3) Hispanic-serving agricultural colleges and universities (as defined in section 1404 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3103).

(c) *FASE Grants.*

(1) *New investigator awards.* To be eligible to apply, a new investigator must be in the beginning of his/her career, without an extensive publication record, and must have less than 5 years of postgraduate, career-track experience. To be eligible to receive a grant, the new investigator may not have received competitively awarded Federal funds, with the exception of pre- or postdoctoral awards or NRI/AFRI Seed Grants. The AFRI RFA will contain specific instructions for New Investigator Grant eligibility, restrictions, and application preparation.

(2) *Pre- and postdoctoral fellowships.* The following eligibility requirements apply to applicants for pre- and postdoctoral fellowships.

(i) The doctoral degree of the applicant must be received not earlier than January 1 of the calendar year three years prior to the submission of the proposal and not later than nine months after the proposal due date; and

(ii) For pre-doctoral applications, the applicant must have advanced to candidacy by the application deadline.

(3) *Strengthening grants.* Eligibility for all strengthening categories includes:

(i) Small and mid-sized academic institutions that have had limited institutional success;

(ii) Degree-granting institutions and State agricultural experiment stations (SAES) in USDA Experimental Program for Stimulating Competitive Research (EPSCoR) states; and

(iii) Minority-serving institutions with limited institutional success.

§ 3430.304 Project Types and priorities.

For each RFA, NIFA may develop and include the appropriate types of projects and focus areas to address the needs of scientists and educators in advanced or early stages of their careers and the differences in institutional capabilities. Types of projects will be revisited periodically based on stakeholder input and as deemed appropriate by NIFA. Types of projects under AFRI include, but are not limited to, the following.

(a) *Project Types.*

(1) *Research projects.* Single-function fundamental and applied Research Projects are conducted by individual investigators, co-investigators within the same discipline, or multidisciplinary teams.

(2) *Education projects.* Single-function Education Projects provide funding to conduct classroom instruction, laboratory instruction, and practicum experience in the food and agricultural sciences and other related educational matters. Projects may include faculty development, student recruitment and services, curriculum development, instructional materials and equipment, and innovative teaching methods.

(3) *Extension Projects.* Single-function Extension Projects provide funding for programs and activities that deliver science-based knowledge and informal educational programs to people, enabling them to make practical decisions.

(4) *Integrated Projects.* Multifunction Integrated Projects bring together at least two of the three components of the agricultural knowledge system (*i.e.*, research, education, and extension) around a problem or issue. The functions addressed in the project should be interwoven throughout the life of the project and act to complement and reinforce one another. The proposed research component of an Integrated Project should address knowledge gaps that are critical to the development of practices and programs to address the stated problem. The proposed education component of an Integrated Project should strengthen institutional capacities and result in curricula and related products that will be sustained beyond the life of the project. The proposed extension component of an Integrated Project should lead to measurable, documented changes in learning, actions, or conditions in an identified audience or stakeholder group. Appropriate project activities will be discussed in the RFA.

(b) *Grant Types.*

(1) *Standard Grants.* Standard Grants support targeted, original scientific Research, Education, Extension, or Integrated Projects.

(2) *Coordinated Agricultural Project (CAP) Grants.* A CAP is a type of Research, Education, Extension, or Integrated Project that supports large-scale multi-million dollar projects that promote collaboration, open communication, and the exchange of information; reduce duplication of effort; and coordinate activities among individuals, institutions, States, and regions. Integrated CAP grants address problems through multi-function projects that incorporate at least two of the three components of the agricultural knowledge system (*i.e.*, research, extension and education). Please note that there occasionally may be programs in which an Integrated CAP Grant is required to address all three components of the agricultural knowledge system. In a CAP, participants serve as a team that conducts targeted research, education and/or extension in response to emerging or priority area(s) of national need. A CAP contains the needed science-based expertise in research, education, and/or extension, as well as expertise from principle stakeholders and partners, to accomplish project goals and objectives.

(3) *Planning/Coordination Grants.* Planning/Coordination Grants provide assistance to applicants in the development of quality future CAP applications. Applications must articulate benefits accrued from formal planning activities and provide evidence of a high likelihood that quality future applications will be submitted. These activities can take the form of workshops or symposia that bring together biological, physical, and social scientists and others as appropriate, including end-users and technology providers, to identify research, education, and/or extension needs, foster collaboration, and create networking opportunities. These events and the information they generate should be used to build teams that can develop applications to address priorities identified in the RFA.

(4) *Conference grants.* AFRI provides partial or total funding for a limited number of scientific meetings that bring together scientists to identify research, education, or extension needs within the scope of AFRI.

(5) *FASE Grants.*

(i) *General.* FASE Grants are designed to help institutions develop competitive Research, Education, Extension, and Integrated Projects and to attract new scientists into careers in high-priority areas in agriculture, food, and environmental sciences. The FASE

grants provide funding for new investigators, pre- and postdoctoral fellowships, and strengthening grants. FASE grants will be awarded as follows:

(A) To an institution to allow for the improvement of the research, development, technology transfer, education, and extension capacity of the institution through the acquisition of special research equipment and the improvement of agricultural research, education, and extension;

(B) To single investigators or co-investigators who are beginning research, education, or extension careers and do not have an extensive publication record;

(C) To ensure that the faculty of small, mid-sized, and minority-serving institutions who have not previously been successful in obtaining competitive grants under this subsection receive a portion of the grants; and

(D) To improve research, extension, and education capabilities in USDA EPSCoR States, as defined in § 3430.302.

(ii) *Types of FASE Grants.*

(A) *New Investigator Grant.* These awards support Project Directors who meet the eligibility criteria of § 3430.303.

(B) *Pre- and Postdoctoral Fellowship Grants.* Doctoral candidates and individuals who recently have received or will soon receive their doctoral degree, and meet the eligibility criteria of § 3430.303, may submit proposals for pre- and postdoctoral fellowships.

(C) *Strengthening Grants.* Strengthening awards consist of the following four types of grants.

(*1*) *Strengthening Standard and CAP Grant.* These grants provide funding to eligible entities, as defined in § 3430.303, who submitted meritorious Standard Grant or CAP Grant applications that were highly ranked but were below the funding line.

(*2*) *Equipment Grant.* These grants provide funding for the purchase of one major piece of equipment. The amount requested shall not exceed 50 percent of the cost of the equipment. Unless eligible for a waiver (as described in § 3430.306(b)(2)), the Project Director is responsible for securing the required non-Federal funds. No installation, maintenance, warranty, or insurance expenses may be paid from these awards, nor may these costs be part of the matching funds.

(*3*) *Seed Grant.* A Seed grant is intended to provide funds to enable investigators to collect preliminary data in preparation for applying for a Standard Research, Standard Education, Standard Extension, or Integrated Grant. The grants are not intended to fund stand-alone projects, but rather projects that will lead to further work applicable to one of the priority areas in AFRI.

(*4*) *Sabbatical grants.* A Sabbatical grant is intended to provide an opportunity for faculty to enhance their capabilities through sabbatical leaves.

§ 3430.305 Funding restrictions.

(a) *Construction.* Funds made available under this subpart shall not be used for the construction of a new building or facility or the acquisition, expansion, remodeling, or alteration of an existing facility (including site grading and improvement, and architect fees).

(b) *Indirect costs.* Subject to § 3430.54, indirect costs are allowable. However, indirect costs are not allowed on pre- and postdoctoral grants, equipment grants, or conference grants.

§ 3430.306 Matching requirements.

(a) *General.* Matching funds are not required as a condition of receiving grants under this subpart except as provided in paragraphs (c) and (d) of this section.

(b) *Indirect costs.* Use of indirect costs as in-kind matching contributions is subject to § 3430.52(b).

(c) *Equipment grants.*

(1) Except as provided in paragraph (c)(2) of this section, the amount of an equipment grant may not exceed 50 percent of the cost of the special research equipment or other equipment acquired using funds from the grant.

(2) *Waiver.* The Secretary may waive all or part of the matching requirement under paragraph (c)(1) of this section in the case of a college, university, or research foundation maintained by a college or university that ranks in the lowest ⅓ of such colleges, universities, and research foundations on the basis of Federal research funds received, if the equipment to be acquired using

funds from the grant costs not more than $25,000, and has multiple uses within a single project or is usable in more than 1 project.

(d) *Applied research grants.* As a condition of making a grant for applied research, the Secretary shall require the funding of the grant to be matched with equal matching funds from a non-Federal source if the grant is for applied research that is:

(1) Commodity-specific; and

(2) Not of national scope.

§ 3430.307 Coordination and stakeholder input requirements.

(a) *Stakeholder input.* In making grants under this Part, NIFA shall solicit and consider input from persons who conduct or use agricultural research, extension, or education in accordance with section 102(b) of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7612(b)).

(b) *Allocation of funds to high-priority research.* To the maximum extent practicable, the Secretary, in coordination with the Under Secretary, shall allocate grants under this subpart to high-priority research as defined in section 1672 of Food, Agriculture, Conservation, and Trade Act of 1990, 7 U.S.C. 5925. NIFA shall take into consideration, when available, the determinations made by the Advisory Board.

§ 3430.308 Duration of awards.

The Secretary may set award limits up to 10 years based on priorities and stakeholder input, subject to other statutory limitations. The duration of individual awards may vary as specified in the RFA and is subject to the availability of appropriations.

§ 3430.309 Priority areas.

NIFA will award competitive grants in the following areas:

(a) Plant health and production and plant products. Plant systems, including:

(1) Plant genome structure and function;

(2) Molecular and cellular genetics and plant biotechnology;

(3) Conventional breeding, including cultivar and breed development, selection theory, applied quantitative genetics, breeding for improved food quality, breeding for improved local adaptation to biotic stress and abiotic stress, and participatory breeding;

(4) Plant-pest interactions and biocontrol systems;

(5) Crop plant response to environmental stresses;

(6) Unproved nutrient qualities of plant products; and

(7) New food and industrial uses of plant products.

(b) Animal health and production and animal products. Animal systems, including:

(1) Aquaculture;

(2) Cellular and molecular basis of animal reproduction, growth, disease, and health;

(3) Animal biotechnology;

(4) Conventional breeding, including breed development, selection theory, applied quantitative genetics, breeding for improved food quality, breeding for improved local adaptation to biotic stress and abiotic stress, and participatory breeding;

(5) Identification of genes responsible for improved production traits and resistance to disease;

(6) Improved nutritional performance of animals;

(7) Improved nutrient qualities of animal products and uses; and

(8) The development of new and improved animal husbandry and production systems that take into account production efficiency, animal well-being, and animal systems applicable to aquaculture.

(c) Food safety, nutrition, and health. Nutrition, food safety and quality, and health, including:

(1) Microbial contaminants and pesticides residue relating to human health;

(2) Links between diet and health;

(3) Bioavailability of nutrients;

(4) Postharvest physiology and practices; and

(5) Improved processing technologies.

(d) Renewable energy, natural resources, and environment. Natural resources and the environment, including:

(1) Fundamental structures and functions of ecosystems;

(2) Biological and physical bases of sustainable production systems;

(3) Minimizing soil and water losses and sustaining surface water and ground water quality;

(4) Global climate effects on agriculture;

(5) Forestry; and

(6) Biological diversity.

(e) Agriculture systems and technology. Engineering, products, and processes, including:

(1) New uses and new products from traditional and nontraditional crops, animals, byproducts, and natural resources;

(2) Robotics, energy efficiency, computing, and expert systems;

(3) New hazard and risk assessment and mitigation measures; and

(4) Water quality and management.

(f) Agriculture economics and rural communities. Markets, trade, and policy, including:

(1) Strategies for entering into and being competitive in domestic and overseas markets;

(2) Farm efficiency and profitability, including the viability and competitiveness of small and medium-sized dairy, livestock, crop and other commodity operations;

(3) New decision tools for farm and market systems;

(4) Choices and applications of technology;

(5) Technology assessment; and

(6) New approaches to rural development, including rural entrepreneurship.

§ 3430.310 Allocation of AFRI funds.

(a) *General*. The Secretary shall decide the allocation of funds among research, education, extension, and integrated multifunctional projects in an appropriate manner and in accordance with the allocation restrictions found in this section.

(b) *Integrated programs*. Not less than 30 percent of funds allocated to AFRI each fiscal year shall be used to fund integrated programs.

(c) *FASE awards*.

(1) Each fiscal year, a percentage of AFRI funding (no less than 10 percent of the available funding) will be awarded as FASE awards. This percentage requirement may be adjusted by the Secretary based upon priorities and stakeholder input.

(2) The Secretary shall use not less than 25 percent of the funds made available for FASE grants to provide fellowships to outstanding pre- and postdoctoral students for research in the agricultural sciences.

(d) *Rapid Response Food and Agricultural Science for Emergency Issues Awards*. The Secretary may allocate some funding to address emergency issues in the food and agricultural sciences as determined by the Secretary. Letters of intent and applications may be requested, as appropriate. Although the solicitation and award processes may be expedited for these awards, NIFA will adhere to AFRI peer review and competitive requirements of this subpart.

§ 3430.311 Allocation of research funds.

(a) *Fundamental research*. Of the amount allocated by the Director for research, not less than 60 percent shall be used to make grants for fundamental research (as defined in subsection (f)(1) of section 251 of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6971)).

(1) *Research by multidisciplinary teams*. Of the amount allocated by the Director for fundamental research under this paragraph (a), not less than 30 percent shall be made available to make grants for research to be conducted by multidisciplinary teams.

(2) *Equipment grants*. Of the amount allocated by the Director for fundamental research under this paragraph (a) not more than 2 percent shall be used for equipment grants.

(b) *Applied research*. Of the amount allocated by the Director for research, not less than 40 percent shall be made available to make grants for applied research.

§ 3430.312 Emphasis on sustainable agriculture.

NIFA shall ensure that grants made under this subpart are, where appropriate, consistent with the development of systems of sustainable agriculture as defined in section 1404 of NARETPA.

Subpart H—Organic Agriculture Research and Extension Initiative

SOURCE: 75 FR 54761, Sept. 9, 2010, unless otherwise noted.

§ 3430.400 Applicability of regulations.

The regulations in this subpart apply to the program authorized under section 1672B of the Food, Agriculture, Conservation, and Trade Act of 1990 (FACT Act), as amended by the Food, Conservation, and Energy Act of 2008 (FCEA), Public Law 110–246 (7 U.S.C. 5925b).

§ 3430.401 Purpose.

(a) The purpose of this program is to make competitive grants, in consultation with the Advisory Board, to support research and extension activities regarding organically grown and processed agricultural commodities.

(b) Grants may be made for the following purposes:

(1) Facilitating the development of organic agriculture production, breeding, and processing methods;

(2) Evaluating the potential economic benefits to producers and processors who use organic methods;

(3) Exploring international trade opportunities for organically grown and processed agricultural commodities;

(4) Determining desirable traits for organic commodities;

(5) Identifying marketing and policy constraints on the expansion of organic agriculture;

(6) Conducting advanced on-farm research and development that emphasizes observation of, experimentation with, and innovation for working organic farms, including research relating to production and marketing and to socioeconomic conditions;

(7) Examining optimal conservation and environmental outcomes relating to organically produced agricultural products; and

(8) Developing new and improved seed varieties that are particularly suited for organic agriculture.

§ 3430.402 Definitions.

The definitions applicable to the competitive grant programs under this subpart include:

Integrated project means a project that incorporates the research and extension components of the agricultural knowledge system around a problem or activity.

§ 3430.403 Eligibility.

Unless otherwise specified in the RFA, eligible applicants for the grant program implemented under this subpart include:

(a) State agricultural experiment stations;

(b) Colleges and universities (including junior colleges offering an associate's degree);

(c) University research foundations;

(d) Other research institutions and organizations;

(e) Federal agencies;

(f) National laboratories;

(g) Private organizations or corporations;

(h) Individuals; and

(i) Any group consisting of 2 or more entities identified in paragraphs (a) through (i) of this section.

§ 3430.404 Project types and priorities.

For each RFA, NIFA may develop and include the appropriate project types and priority areas based on stakeholder input and as deemed appropriate by NIFA. Duration and amount of grants may vary depending on the type of project.

§ 3430.405 Funding restrictions.

(a) *Construction.* Funds made available for grants under this subsection shall not be used for the construction of a new building or facility or the acquisition, expansion, remodeling, or alteration of an existing building or facility (including site grading and improvement, and architect fees).

(b) *Indirect costs.* Subject to § 3430.54, indirect costs are allowable.

(c) *Start-up businesses.* NIFA does not fund start-up businesses under this subpart.

§ 3430.406 Matching requirements.

(a) *In general.* NIFA requires the recipient of a grant under this section to provide funds or in-kind support from non-Federal sources in an amount at least equal to the amount provided by the Federal Government.

(b) *Indirect costs*. Use of indirect costs as in-kind matching contributions is subject to § 3430.52(b).

(c) *Waiver authority*. NIFA may waive the matching requirement specified in paragraph (a) of this section with respect to a grant if NIFA determines that:

(1) The results of the project, while of particular benefit to a specific agricultural commodity, are likely to be applicable to agricultural commodities generally; or

(2) When all three of the following conditions are present:

(i) The project involves a minor commodity,

(ii) The project deals with scientifically important research, and

(iii) The grant recipient is unable to satisfy the matching funds requirement.

§ 3430.407 Program requirements.

Following the completion of a peer review process for grant proposals received under this subpart, the Director may provide a priority for those proposals, found in the peer review process to be scientifically meritorious, that involve the cooperation of multiple entities.

Subpart I—Integrated Research, Education, and Extension Competitive Grants Program

SOURCE: 75 FR 54761, Sept. 9, 2010, unless otherwise noted.

§ 3430.500 Applicability of regulations.

The regulations in this subpart apply to the program authorized under section 406 of the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA), 7 U.S.C. 7626, as amended by the Food, Conservation, and Energy Act of 2008 (FCEA), Public Law 110–246.

§ 3430.501 Purpose.

The purpose of this subpart is to make competitive grants for integrated, multifunctional agricultural research, extension, and education activities.

§ 3430.502 Definitions.

The definitions applicable to the competitive grant programs under this subpart include:

Integrated program means a program that brings the three agricultural knowledge components (*i.e.*, research, extension, and education) together around a problem or activity through the award of integrated projects and single component projects.

Integrated project means a project that brings at least two out of three agricultural knowledge components (*i.e.*, research, extension, and education) together around a problem or activity.

§ 3430.503 Eligibility.

The following entities are eligible to apply for and receive a grant under this subpart:

(a) Colleges and universities;

(b) 1994 Institutions; and

(c) Hispanic-serving agricultural colleges and universities (as defined in section 1404 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3103), and in the RFA).

§ 3430.504 Project types and priorities.

For each RFA, NIFA may develop and include the appropriate project types and priority areas based on stakeholder input and as deemed appropriate by NIFA, in consultation with the Advisory Board, and that involve integrated research, extension, and education activities. Duration and amount of grants may vary depending on the type of project.

§ 3430.505 Funding restrictions.

(a) *Construction*. Funds made available for grants under this subsection shall not be used for the construction of a new building or facility or the acquisition, expansion, remodeling, or alteration of an existing building or facility (including site grading and improvement, and architect fees).

(b) *Indirect Costs*. Subject to § 3430.54, indirect costs are allowable.

§ 3430.506 Matching requirements.

(a) *General requirement*. If a grant under this subpart provides a particular benefit to a specific agricultural commodity, the recipient of the grant is required to provide funds or in-kind support to match the amount of funds provided by NIFA.

(b) *Indirect costs*. Use of indirect costs as in-kind matching contributions is subject to § 3430.52(b).

(c) *Waiver authority*. NIFA may waive the matching requirement specified in paragraph (a) of this section with respect to a grant if NIFA determines that:

(1) The results of the project, while of particular benefit to a specific agricultural commodity, are likely to be applicable to agricultural commodities generally; or

(2) When all three of the following conditions are present:

(i) The project involves a minor commodity,

(ii) The project deals with scientifically important research, and

(iii) The grant recipient is unable to satisfy the matching funds requirement.

§ 3430.507 Program requirements.

(a) *General*. Grants under this subpart shall address priorities in the United States agriculture that involve integrated research, extension, and education activities as determined by the Secretary through Agency stakeholder input processes and in consultation with the Advisory Board.

(b) *Duration of awards*. The term of a grant under this subpart may not exceed 5 years.

Subpart J—Beginning Farmer and Rancher Development Program

SOURCE: 74 FR 45970, Sept. 4, 2009, unless otherwise noted.

§ 3430.600 Applicability of regulations.

The regulations in this subpart apply to the program authorized under section 7405 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 3319f).

§ 3430.601 Purpose.

The purpose of the Beginning Farmer and Rancher Development Program (BFRDP) is to establish a beginning farmer and rancher development program that provides local and regional training, education, outreach, and technical assistance initiatives for beginning farmers and ranchers.

§ 3430.602 Definitions.

The definitions applicable to the program under this subpart include:

Beginning farmer or rancher means a person that has not operated a farm or ranch or has operated a farm or ranch for not more than 10 years, and meets such other criteria as the Secretary may establish.

Clearinghouse means an online repository that will make available to beginning farmers or ranchers education curricula and training materials and programs, and which may include online courses for direct use by beginning farmers or ranchers.

Limited resource beginning farmers or ranchers means beginning farmers or ranchers who have: (1) direct or indirect gross farm sales not more than the sales amount established by the USDA Natural Resources Conservation Service (NRCS) in each of the previous two years (in current dollars, adjusted for inflation each year, based on the October 2002 Prices Paid by Farmer Index compiled and updated annually by the USDA National Agricultural Statistics Service (NASS), and (2) a total household income at or below the National Poverty Level for a family of four or less than 50 percent of county median household income in each of the previous 2 years as determined by the U.S. Department of Health and Human Services (DHHS), using the Census Poverty Data.

Outcome-based reporting means reporting that includes an outcome statement with performance targets, necessary milestones, beneficiary engagement, key individuals, and verification.

[74 FR 45970, Sept. 4, 2009, as amended at 76 FR 35323, June 17, 2011]

§ 3430.603 Eligibility.

To be eligible to receive an award under this subpart, the recipient shall be a collaborative State, tribal, local, or regionally-based network or partnership of public or private entities, including:

(a) A State cooperative extension service;

(b) A Federal, State, or tribal agency;

(c) A community-based and nongovernmental organization;

(d) A college or university (including a junior college offering an associate's degree) or foundation maintained by a college or university;

(e) A private for-profit organization; or

(f) Any other appropriate partner, as determined by the Secretary.

§ 3430.604 Project types and priorities.

(a) *Standard BFRDP projects.* For standard BFRDP projects, competitive grants will be awarded to support programs and services, as appropriate, relating to the following focus areas and activities:

(1) Mentoring, apprenticeships, and internships.

(2) Resources and referral.

(3) Assisting beginning farmers or ranchers in acquiring land from retiring farmers and ranchers.

(4) Innovative farm and ranch transfer strategies.

(5) Entrepreneurship and business training.

(6) Model land leasing contracts.

(7) Financial management training.

(8) Whole farm planning.

(9) New and emerging issues, facing farmers and ranchers, including climate change and changing world markets.

(10) Conservation assistance.

(11) Risk management education.

(12) Diversification and marketing strategies.

(13) Curriculum development.

(14) Understanding the impact of concentration and globalization.

(15) Basic livestock and crop farming practices, forestry and range management.

(16) Acquisition and management of agricultural credit.

(17) Environmental compliance.

(18) Information processing.

(19) Tax management, including record keeping and tax form preparation.

(20) Basic agricultural law.

(21) Other similar subject areas of use to beginning farmers or ranchers.

NIFA may include additional activities or focus areas that further address the critical needs of beginning farmers and ranchers as defined in this subpart. Some of these activities or focus areas may be identified by stakeholder groups or by NIFA in response to emerging critical needs of the Nation's farmers and ranchers.

(b) *Other BFRDP Projects.* In addition to the competitive grants made under paragraph (a) of this section, competitive awards (grants or cooperative agreements) will be made:

(1) to establish beginner farmer and rancher educational enhancement projects that develop curricula and conduct educational programs and workshops for beginning farmers or ranchers in diverse geographical areas of the Unites States; and

(2) to establish and maintain an online clearinghouse.

[74 FR 45970, Sept. 4, 2009, as amended at 76 FR 35323, June 17, 2011]

§ 3430.605 Funding restrictions.

(a) *Facility costs.* Funds made available under this subpart shall not be used for the planning, repair, rehabilitation, acquisition, or construction of a building or facility.

(b) *Indirect costs.* Subject to § 3430.5460, indirect costs are allowable.

(c) *Participation by other farmers and ranchers.* Projects may allow farmers and ranchers who are not beginning farmers and ranchers to participate in the programs funded under this subpart if their participation is appropriate and will not detract from the primary purpose of educating beginning farmers and ranchers as defined under this subpart.

§ 3430.606 Matching requirements.

(a) *Requirement.* Awardees are required to provide a match in the form of cash or in-kind contributions in an amount at least equal to 25 percent of the Federal funds provided by the award. The matching funds must be from non-Federal sources except when

authorized by statute. The matching requirements under this subpart cannot be waived.

(b) *Indirect costs*. Use of indirect costs as in-kind matching contributions is subject to § 3430.52.

§ 3430.607 Stakeholder input.

NIFA shall seek and obtain stakeholder input through a variety of forums (e.g., public meetings, request for input and/or via Web site), as well as through a notice in the FEDERAL REGISTER, from the following entities:

(a) Beginning farmers and ranchers.

(b) National, State, tribal, and local organizations, community-based organizations, and other persons with expertise in operating beginning farmer and rancher programs.

(c) The Advisory Committee on Beginning Farmers and Ranchers established under section 5 of the Agricultural Credit Improvement Act of 1992 (7 U.S.C. 1929 note; Pub. L. 102–554).

§ 3430.608 Review criteria.

(a) *Evaluation criteria*. NIFA shall evaluate project proposals according to the following factors:

(1) Relevancy.

(2) Technical merit.

(3) Achievability.

(4) The expertise and track record of one or more applicants.

(5) The adequacy of plans for the participatory evaluation process, outcome-based reporting, and the communication of findings and results beyond the immediate target audience.

(6) Other appropriate factors, as determined by the Secretary.

(b) *Partnership and collaboration*. In making awards under this subpart, NIFA shall give priority to partnerships and collaborations that are led by or include nongovernmental and community-based organizations with expertise in new agricultural producer training and outreach.

(c) *Regional balance*. In making awards under this subpart, NIFA shall, to the maximum extent practicable, ensure geographical diversity.

§ 3430.609 Other considerations.

(a) *Set aside*. Each fiscal year, NIFA shall set aside at least 25 percent of the funds used to support the standard BFRDP projects under this subpart to support programs and services that address the needs of the following groups:

(1) Limited resource beginning farmers or ranchers (as defined in § 3430.602).

(2) Socially disadvantaged beginning farmers or ranchers (as defined in section 355(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2003(e)).

(3) Farm workers (including immigrant farm workers) desiring to become farmers or ranchers.

(b) *Consecutive awards*. An eligible recipient may receive a consecutive grant for a standard BFRDP project under this subpart.

(c) *Duration of awards*. The term of a grant for a standard BFRDP project and an award for an educational enhancement team project under this subpart shall not exceed 3 years. Awards for all other projects under this subpart shall not exceed 5 years. No-cost extensions of time beyond the maximum award terms will not be considered or granted.

(d) *Amount of grants*. A grant for a standard BFRDP project and an award for an educational enhancement team project under this subpart shall not be in an amount that is more than $250,000 for each year.

[74 FR 45970, Sept. 4, 2009, as amended at 76 FR 35323, June 17, 2011]

Subpart K—Biomass Research and Development Initiative

SOURCE: 75 FR 33498, June 14, 2010, unless otherwise noted.

§ 3430.700 Applicability of regulations.

The regulations in this subpart apply to the Federal assistance awards made under the program authorized under section 9008 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8108), as amended by section 9001 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246).

[76 FR 38549, July 1, 2011]

§ 3430.701 Purpose.

In carrying out the program, NIFA, in cooperation with the Department of

Energy, is authorized to make competitive awards under section 9008(e) of FSRIA (7 U.S.C. 8108(e)) to develop:

(a) Technologies and processes necessary for abundant commercial production of biofuels at prices competitive with fossil fuels;

(b) High-value biobased products—

(1) To enhance the economic viability of biofuels and power,

(2) To serve as substitutes for petroleum-based feedstocks and products, and

(3) To enhance the value of coproducts produced using the technologies and processes; and

(c) A diversity of economically and environmentally sustainable domestic sources of renewable biomass for conversion to biofuels, bioenergy, and biobased products.

[75 FR 33498, June 14, 2010, as amended at 76 FR 38549, July 1, 2011]

§ 3430.702 Definitions.

The definitions specific to BRDI are from the authorizing legislation, the National Program Leadership of NIFA, and the Department of Energy. The definitions applicable to the program under this subpart include:

Advanced Biofuel means fuel derived from renewable biomass other than corn kernel starch, including:

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

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

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

(4) Diesel-equivalent fuel derived from renewable biomass, including algael oils, oil seed crops, re-claimed vegetable oils and animal fat;

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

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

(7) Other fuel derived from cellulosic biomass.

Advisory Committee means the Biomass Research and Development Technical Advisory Committee established by section 9008(d) of FSRIA (7 U.S.C. 8108(d)).

Biobased Product means:

(1) An industrial product (including chemicals, materials, and polymers) produced from biomass; or

(2) A commercial or industrial product (including animal feed and electric power) derived in connection with the conversion of biomass to fuel.

Bioenergy means power generated in the form of electricity or heat using biomass as a feedstock.

Biofuel means a fuel derived from renewable biomass.

Biomass Conversion Facility means a facility that converts or proposes to convert renewable biomass into:

(1) Heat;

(2) Power;

(3) Biobased products; or

(4) Advanced biofuels.

Biorefinery means a facility (including equipment and processes) that—

(1) Converts renewable biomass into biofuels and biobased products; and

(2) May produce electricity.

Board means the Biomass Research and Development Board established by section 9008(c) of the FSRIA of 2002 (7 U.S.C. 8108(c)).

BRDI means the Biomass Research and Development Initiative.

Cellulosic Biofuel means renewable fuel derived from any cellulose, hemicellulose, or lignin that is derived from renewable biomass and that has lifecycle greenhouse gas emissions, as determined by the Administrator of the Environmental Protection Agency, that are at least 60 percent less than the baseline lifecycle greenhouse gas emissions.

Demonstration means demonstration of technology in a pilot plant or semi-works scale facility, including a plant or facility located on a farm. A biorefinery demonstration is a system capable of processing a minimum of 50 tons/day of biomass feedstock.

DOE means the Department of Energy.

Institutions of higher education has the meaning given the term in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002(a)).

Intermediate Ingredient or Feedstock means a material or compound made in

whole or in significant part from biological products, including renewable agricultural materials (including plant, animal, and marine materials) or forestry materials, that are subsequently used to make a more complex compound or product.

Life cycle assessment means the comprehensive examination of a product's environmental and economic aspects and potential impacts throughout its lifetime, including raw material extraction, transportation, manufacturing, use, and disposal.

Life cycle cost means the amortized annual cost of a product, including capital costs, installation costs, operating costs, maintenance costs, and disposal costs discounted over the lifetime of the product.

Pilot Plant is an integrated chemical processing system that includes the processing units necessary to convert biomass feedstock into biofuels/bioenergy/biobased products at a minimum feed rate of 1 ton/day of biomass feedstock.

Private sector entities include companies, corporations, farms, ranches, cooperatives, and others that compete in the marketplace.

Recovered materials means waste materials and by-products that have been recovered or diverted from solid waste, but such term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process (42 U.S.C. 6903 (19)).

Recycling means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of new products other than fuel for producing heat or power by combustion.

Renewable Biomass means:

(1) Materials, pre-commercial thinnings, or invasive species from National Forest System land (as defined in section 11(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1609(a)) and public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)) that—

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

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

(iii) Are harvested in accordance with applicable law and land management plans; and the requirements for—

(A) Old-growth maintenance, restoration, and management direction of paragraphs (2), (3), and (4) of subsection (e) of section 102 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6512); and

(B) 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 and yard waste.

Research and development (R&D) projects means a research project only, a development project only, or a combination of research and development project; however, an R&D project may not be submitted including a demonstration project or vice versa.

Semi-works is a combination of chemical processing units that constitute a subset of the fully integrated system and are used to develop process flow diagrams and mass and energy balances for the purposes of scaling up to a demonstration scale facility.

Transportation fuel means fuel for use in motor vehicles, motor vehicle engines, non-road vehicles, or non-road engines (except for ocean-going vessels).

[75 FR 33498, June 14, 2010, as amended at 76 FR 38549, July 1, 2011]

§ 3430.703 Eligibility.

To be eligible to receive an award under this subpart, the recipient shall be—

(a) An institution of higher education (as defined in § 3430.702);

(b) A National Laboratory;

(c) A Federal research agency;

(d) A State research agency;

(e) A private sector entity (as defined in § 3430.702 of this part);

(f) A nonprofit organization; or

(g) A consortium of two or more entities listed in paragraphs (a) through (f) of this section.

§ 3430.704 Project types and priorities.

(a) *Technical Topic Areas*. Biomass Research and Development Initiative (BRDI) awards shall be directed (in consultation with the Biomass Research and Development Board, the Administrator of the Environmental Protection Agency and heads of other appropriate departments and agencies) in the following three primary technical topic areas:

(1) *Feedstocks Development*. Research, development, and demonstration activities regarding feedstocks and feedstock logistics (including the harvest, handling, transport, preprocessing, and storage) relevant to production of raw materials for conversion to biofuels and biobased products.

(2) *Biofuels and Biobased Products Development*. Research, development, and demonstration activities to support—

(i) The development of diverse cost-effective technologies for the use of cellulosic biomass in the production of biofuels and biobased products; and

(ii) Product diversification through technologies relevant to production of a range of biobased products (including chemicals, animal feeds, and cogenerated power) that potentially can increase the feasibility of fuel production in a biorefinery.

(3) *Biofuels Development Analysis*—(i) *Strategic Guidance*. The development of analysis that provides strategic guidance for the application of renewable biomass technologies to improve sustainability and environmental quality, cost effectiveness, security, and rural economic development.

(ii) *Energy and Environmental Impact*. Development of systematic evaluations of the impact of expanded biofuel production on the environment (including forest land) and on the food supply for humans and animals, including the improvement and development of tools for life cycle analysis of current and potential biofuels.

(iii) *Assessment of Federal Land*. Assessments of the potential of Federal land resources to increase the production of feedstocks for biofuels and biobased products, consistent with the integrity of soil and water resources and with other environmental considerations.

(b) *Additional considerations*. Within the technical topic areas described in paragraph (a) of this section, NIFA, in cooperation with DOE, shall support research and development to—

(1) Create continuously expanding opportunities for participants in existing biofuels production by seeking synergies and continuity with current technologies and practices;

(2) Maximize the environmental, economic, and social benefits of production of biofuels and derived biobased products on a large scale; and

(3) Facilitate small-scale production and local and on-farm use of biofuels, including the development of smallscale gasification technologies for production of biofuel from cellulosic feedstocks.

[75 FR 33498, June 14, 2010, as amended at 76 FR 38549, July 1, 2011]

§ 3430.705 Funding restrictions.

(a) *Facility costs*. Funds made available under this subpart shall not be used for the construction of a new building or facility or the acquisition, expansion, remodeling, or alteration of an existing building or facility (including site grading and improvement, and architect fees).

(b) *Indirect costs*. Subject to § 3430.54, indirect costs are allowable for Federal assistance awards made by NIFA.

(c) *Minimum allocations*. After consultation with the Board, NIFA in cooperation with DOE, shall require that each of the three technical topic areas described in § 3430.704(a) receives not less than 15 percent of funds made available to carry out BRDI.

[76 FR 38549, July 1, 2011]

§ 3430.706 Matching requirements.

(a) *Requirement for Research and/or Development Projects.* The non-Federal share of the cost of a research or development project under BRDI shall be not less than 20 percent. NIFA may reduce the non-Federal share of a research or development project if the reduction is determined to be necessary and appropriate.

(b) *Requirement for Demonstration and Commercial Projects.* The non-Federal share of the cost of a demonstration or commercial project under BRDI shall be not less than 50 percent.

(c) *Indirect costs.* Use of indirect costs as in-kind matching contributions is subject to § 3430.52 of this part.

[75 FR 33498, June 14, 2010, as amended at 76 FR 38549, July 1, 2011]

§ 3430.707 Administrative duties.

(a) After consultation with the Board, NIFA, in cooperation with DOE, shall:

(1) Publish annually one or more joint requests for proposals for Federal assistance under BRDI; and

(2) Require that Federal assistance under BRDI be awarded based on a scientific peer review by an independent panel of scientific and technical peers.

(b) NIFA, in cooperation with DOE, shall ensure that applicable research results and technologies from the BRDI are:

(1) Adapted, made available, and disseminated, as appropriate; and

(2) Included in the best practices database established under section 1672C(e) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 5925e(e)).

[75 FR 33498, June 14, 2010, as amended at 76 FR 38549, July 1, 2011]

§ 3430.708 Review criteria.

(a) *General.* BRDI peer reviews of applications are conducted in accordance with requirements found in section 9008 of FSRIA (7 U.S.C. 8108); section 103 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7613); and regulations found in title 7 of the Code of Federal Regulations, sections 3430.31 through 3430.37.

(b) *Additional Considerations.* Special consideration will be given to applications that—

(1) Involve a consortium of experts from multiple institutions;

(2) Encourage the integration of disciplines and application of the best technical resources; and

(3) Increase the geographic diversity of demonstration projects.

[75 FR 33498, June 14, 2010, as amended at 76 FR 38549, July 1, 2011]

§ 3430.709 Duration of awards.

The term of a Federal assistance award made for a BRDI project shall not exceed 5 years. No-cost extensions of time beyond the maximum award terms will not be considered or granted.

Subpart L [Reserved]

Subpart M—New Era Rural Technology Competitive Grants Program

SOURCE: 74 FR 45973, Sept. 4, 2009, unless otherwise noted.

§ 3430.900 Applicability of regulations.

The regulations in this subpart apply to the program authorized under section 1473E of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3319e), as amended.

§ 3430.901 Purpose.

The purpose of this program is to make grants available for technology development, applied research, and training, with a focus on rural communities, to aid in the development of workforces for bioenergy, pulp and paper manufacturing, and agriculture-based renewable energy workforce.

§ 3430.902 Definitions.

The definitions applicable to the program under this subpart include:

Advanced Technological Center refers to a post-secondary, degree-granting institution that provides students with technology-based education and training, preparing them to work as technicians or at the semi-professional level,

and aiding in the development of an agriculture-based renewable energy workforce. For this program, such Centers must be located within a rural area.

Bioenergy means biomass used in the production of energy (electricity; liquid, solid, and gaseous fuels; and heat).

Biomass means any organic matter that is available on a renewable or recurring basis, including agricultural crops and trees, wood and wood wastes and residues, plants (including aquatic plants), grasses, residues, fibers, and animal wastes, municipal wastes, and other waste materials.

Community College means

(1) An institution of higher education that:

(i) Admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution;

(ii) Does not provide an educational program for which the institution awards a bachelor's degree (or an equivalent degree); and

(iii) (A) Provides an educational program of not less than 2 years in duration that is acceptable for full credit toward such a degree; or

(B) Offers a 2-year program in engineering, mathematics, or the physical or biological sciences, designed to prepare a student to work as a technician or at the semi-professional level in engineering, scientific, or other technological fields requiring the understanding and application of basic engineering, scientific, or mathematical principles of knowledge (20 U.S.C. 1101a(a)(6)).

(2) For this grants program, such Community Colleges must be located within a *rural area*.

Conference/Planning Grants means the limited number of RTP grants that will fund strategic planning meetings necessary to establish and organize proposed technology development, applied research and/or training projects.

Eligible institution/organization means a *community college*, or an *advanced technological center*, that meets eligibility criteria of this program, and is located in a *rural area*.

Eligible participant means an individual who is a *citizen or non-citizen national of the United States*, as defined in 7 CFR 3430.2, or lawful permanent resident of the United States.

Fiscal agent means a third party designated by an authorized representative of an eligible institution/organization which would receive and assume financial stewardship of Federal grant funds and perform other activities as specified in the agreement between it and the eligible institution/organization.

Joint project proposal means

(1) An application for a project:

(i) Which will involve the applicant institution/organization working in cooperation with one or more other entities not legally affiliated with the applicant institution/organization, including other schools, colleges, universities, community colleges, units of State government, private sector organizations, or a consortium of institutions; and

(ii) Where the applicant institution/organization and each cooperating entity will assume a significant role in the conduct of the proposed project.

(2) To demonstrate a substantial involvement with the project, the applicant institution/organization submitting a joint project proposal must retain at least 30 percent but not more than 70 percent of the awarded funds, and no cooperating entity may receive less than 10 percent of awarded funds. Only the applicant institution/organization must meet the definition of an eligible institution/organization as specified in this RFA; other entities participating in a joint project proposal are not required to meet the definition of an eligible institution/organization.

Outcomes means specific, measurable project results and benefits that, when assessed and reported, indicate the project's *plan of operation* has been achieved.

Plan of Operation means a detailed, step-by-step description of how the applicant intends to accomplish the project's *outcomes*. At a minimum, the plan should include a timetable indicating how outcomes are achieved, a description of resources to be used or

acquired, and the responsibilities expected of all project personnel.

Regular project proposal means an application for a project:

(1) Where the applicant institution/organization will be the sole entity involved in the execution of the project; or

(2) Which will involve the applicant institution/organization and one or more other entities, but where the involvement of the other entity(ies) does not meet the requirements for a joint proposal as defined in this section.

Rural Area means any area other than a city or town that has a population of 50,000 inhabitants and the urbanized area contiguous and adjacent to such a city or town.

Technology Development means the practical application of knowledge to address specific State, regional, or community opportunities in the bioenergy, pulp and paper manufacturing, or agriculture-based renewable energy occupations. NOTE: In general, technology is more than the development of a single product, but is instead a system of related products, procedures and services to ensure a systems approach to address a specific issue.

Training means the planned and systematic acquisition of practical knowledge, skills or competencies required for a trade, occupation or profession delivered by formal classroom instruction, laboratory instruction, or practicum experience.

[74 FR 45973, Sept. 4, 2009, as amended at 75 FR 59060, Sept. 27, 2010]

§ 3430.903 Eligibility.

Applications may be submitted by either:

(a) Public or private nonprofit community colleges, or

(b) Advanced technological centers, *either of which must:*

(1) Be located in a *rural area* (*see* definition in § 3430.902);

(2) Have been in existence as of June 18, 2008;

(3) Participate in agricultural or bioenergy research and applied research;

(4) Have a proven record of development and implementation of programs to meet the needs of students, educators, and business and industry to supply the agriculture-based, renewable energy or pulp and paper manufacturing fields with certified technicians, as determined by the Secretary; and

(5) Have the ability to leverage existing partnerships and occupational outreach and training programs for secondary schools, 4-year institutions, and relevant nonprofit organizations.

§ 3430.904 Project types and priorities.

For each RFA, NIFA may develop and include the appropriate project types and focus areas based on the critical needs identified through stakeholder input and deemed appropriate by NIFA.

(a) In addition, priority in funding shall be given to eligible entities working in partnerships to:

(1) Improve information-sharing capacity;

(2) Maximize the ability to meet the requirements of the RFA; and

(3) To address the following two RTP goals:

(i) To increase the number of students encouraged to pursue and complete a 2-year postsecondary degree, or a certificate of completion, within an occupational focus of this grant program; and

(ii) To assist rural communities by helping students achieve their career goals to develop a viable workforce for bioenergy, pulp and paper manufacturing, or agriculture-based renewable energy.

(b) Applicants may submit applications for one of the three project types:

(1) Regular project proposal (the applicant executes the project without the requirement of sharing grant funds with other project partners);

(2) Joint project proposal (the applicant executes the project with assistance from at least one additional partner and must share grant funds with the additional partner(s)); and

(3) Conference/planning grant to facilitate strategic planning session(s).

§ 3430.905 Funding restrictions.

(a) *Prohibition against construction.* Grant funds awarded under this authority may not be used for the renovation

or refurbishment of research, education, or extension space; the purchase or installation of fixed equipment in such space; or the planning, repair, rehabilitation, acquisition, or construction of buildings or facilities.

(b) *Prohibition on tuition remission.* Tuition remission (e.g., scholarships, fellowships) is not allowed.

(c) *Indirect costs.* Subject to § 3430.54, indirect costs are allowable with the exception of indirect costs for Conference/Planning grants, which are not allowed.

§ 3430.906 Matching requirements.

There are no matching requirements for grants under this subpart.

§ 3430.907 Stakeholder input.

NIFA shall seek and obtain stakeholder input through a variety of forums (e.g., public meetings, requests for input and/or Web site), as well as through a notice in the FEDERAL REGISTER, from the following entities:

(a) Community college(s).

(b) Advanced technological center(s), located in rural area, for technology development, applied research, and/or training.

§ 3430.908 Review criteria.

Evaluation criteria. NIFA shall evaluate project proposals according to the following factors:

(a) Potential for Advancing Quality of Technology Development, Applied Research, and/or Training/Significance of the Program.

(b) Proposed Approach and Cooperative Linkages.

(c) Institution Organization Capability and Capacity Building.

(d) Key Personnel.

(e) Budget and Cost-Effectiveness.

§ 3430.909 Other considerations.

(a) *Amount of grants.* An applicant for a regular project proposal (single institution/organization) under this subpart may request up to $125,000 (total project, not per year). An applicant for a joint project proposal (applicant plus one or more partners) under this subpart may request up to $300,000 (total project, not per year). A conference/planning grant applicant may request up to $10,000 (total project/not per year).

(b) *Duration of grants.* The term of a grant for a standard RTP project under this subpart shall not exceed 5 years. No-cost extensions of time beyond the maximum award terms will not be considered or granted.

Subpart N [Reserved]

Subpart O—Sun Grant Program

SOURCE: 75 FR 70580, Nov. 18, 2010, unless otherwise noted.

§ 3430.1000 Applicability of regulations.

The regulations in this subpart apply to the Federal assistance awards made under the program authorized under section 7526 of the Food, Conservation, and Energy Act of 2008 (FCEA), Pub. L. 110–246 (7 U.S.C. 8114).

§ 3430.1001 Purpose.

In carrying out the program, NIFA is authorized to make awards under section 7526 of the FCEA to eligible entities (as designated in section 7526(b)(1)(A)–(F) of the FCEA) to fund subgrants and activities that:

(a) Enhance national energy security through the development, distribution, and implementation of biobased energy technologies;

(b) Promote diversification in, and the environmental sustainability of, agricultural production in the United States through biobased energy and product technologies;

(c) Promote economic diversification in rural areas of the United States through biobased energy and product technologies; and

(d) Enhance the efficiency of bioenergy and biomass research and development programs through improved coordination and collaboration among the Department, the Department of Energy, and land-grant colleges and universities.

§ 3430.1002 Definitions.

The definitions specific to the Sun Grant Program are from the authorizing legislation, the National Program

Leadership of NIFA, and the Department of Energy. The definitions applicable to the program under this subpart include:

Biobased product means:

(1) An industrial product (including chemicals, materials, and polymers) produced from biomass; or

(2) A commercial or industrial product (including animal feed and electric power) derived in connection with the conversion of biomass to fuel.

Bioenergy means power generated in the form of electricity or heat using biomass as a feedstock.

Center means a Sun Grant Center identified in § 3430.1003(a)(1) through (5).

Gasification means a process that converts carbonaceous materials, such as biomass, into carbon monoxide and hydrogen by reacting the raw material, high temperatures with a controlled amount of oxygen and/or steam.

Subcenter means the Sun Grant Subcenter identified in § 3430.1003(a)(6).

Technology development means the process of research and development of technology.

Technology implementation means the introduction of new technologies to either an existing organization, or to a larger community, such as a type of business.

§ 3430.1003 Eligibility.

(a) *Sun Grant Centers and Subcenter.* NIFA will use amounts appropriated for the Sun Grant Program to provide grants to the following five Centers and one Subcenter:

(1) A North-Central Center at South Dakota State University for the region composed of the States of Illinois, Indiana, Iowa, Minnesota, Montana, Nebraska, North Dakota, South Dakota, Wisconsin, and Wyoming;

(2) A Southeastern Center at the University of Tennessee at Knoxville for the region composed of the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia, the Commonwealth of Puerto Rico, and the United States Virgin Islands;

(3) A South-Central Center at Oklahoma State University for the region composed of the States of Arkansas, Colorado, Kansas, Louisiana, Missouri, New Mexico, Oklahoma, and Texas;

(4) A Northeastern Center at Cornell University for the region composed of the States of Connecticut, Delaware, Massachusetts, Maryland, Maine, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, and West Virginia;

(5) A Western Center at Oregon State University for the region composed of the States of Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Utah, and Washington, and insular areas (other than the Commonwealth of Puerto Rico and the United States Virgin Islands); and

(6) A Western Insular Pacific Subcenter at the University of Hawaii (that receives Federal funds through the Western Center rather than directly from NIFA, in accordance with § 3430.1004(b)) for the region of Alaska, Hawaii, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

(b) *Subawardees of the Centers and Subcenter.* To be eligible for a subaward from a Center or Subcenter pursuant to § 3430.1004(a)(1), an applicant:

(1) Must be located in the region covered by the applicable Center or Subcenter; and

(2) Must be one of the following:

(i) State agricultural experiment station;

(ii) College or university;

(iii) University research foundation;

(iv) Other research institution or organization;

(v) Federal agency;

(vi) National laboratory;

(vii) Private organization or corporation;

(viii) Individual; or

(ix) Any group consisting of 2 or more entities described in paragraphs (b)(2)(i) through (viii) of this section.

(c) *Ineligibility.* A Center or Subcenter will be ineligible for funding under the Sun Grant Program if NIFA determines on the basis of an audit or a review of a report submitted under § 3430.1009 that the Center or Subcenter has not complied with the requirements of section 7526 of the FCEA (7 U.S.C. 8114). A Center or Subcenter determined to be ineligible pursuant to

this paragraph will remain ineligible for such period of time as deemed appropriate by NIFA. This ineligibility requirement is in addition to the enforcement actions that NIFA may take pursuant to § 3430.60.

§ 3430.1004 Project types and priorities.

(a) *Project types.* The Sun Grant Program provides funds for two distinct project types. Subject to paragraph (b), of the funds provided by NIFA to the Centers and Subcenter, the required use of funds by each of the Centers and the Subcenter is as follows:

(1) *Regional competitive research, extension, and education grant programs.* Seventy-five percent must be used for regional competitively awarded research, extension, and education subgrants to eligible entities (described in § 3430.1003(b)) to conduct, in a manner consistent with the purposes described in § 3430.1001, multi-institutional and multistate research, extension, and education programs on technology development and multi-institutional and multistate integrated research, extension, and education programs on technology implementation. Regional competitive grants programs will target specific elements of the purposes described in § 3430.1001, implementing national priorities in the context of regional scale biogeographic and climatic conditions.

(i) *Requests for applications.* The Centers and Subcenter must develop regional requests for applications (RFAs) utilizing guidance from regional advisory panels created and administered by the Centers and Subcenter for purposes of addressing region-specific issues, and which include representation from academia, the national laboratories, Federal and State agencies, the private sector, and public interest groups. Advisory panel members will have appropriate expertise and experience in the areas of biomass and bioenergy.

(ii) *Peer review of proposals.* Each region will announce RFAs and solicit proposals. These proposals must be peer reviewed by panels in a manner similar to the system of peer review required by section 103 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7613), and may include representation from Federal and State laboratories, the national laboratories, and private and public interest groups, as appropriate. The Centers and Subcenter may use implementing regulations found in §§ 3430.31 through 3430.37 as a guideline for appropriate peer review standards. Additional guidance may be provided by NIFA. To ensure consistency across the regions, prior to announcing the regional RFAs that will be used to solicit proposals, the Centers and Subcenter must provide NIFA the RFAs for approval by the designated NIFA program contact, as identified in the NIFA program solicitation. The Centers and Subcenter shall award subgrants on the basis of merit, quality, and relevance to advancing the purposes of the Sun Grant Program.

(2) *Research, extension, and education activities conducted at the Centers and Subcenter.* Except for funds available for administrative expenses as provided in § 3430.1005(b), the remainder of the funds must be used for multi-institutional and multistate research, extension, and education programs on technology development and multi-institutional and multistate integrated research, extension, and education programs on technology implementation, in a manner consistent with the purposes described in § 3430.1001.

(b) *Special provisions for the Western Center and Western Insular Pacific Subcenter.* Funds provided by NIFA to the Western Insular Pacific Subcenter shall come from an allocation of a portion of the funds received by the Western Center, as directed by NIFA in the program solicitation, rather than directly from NIFA. For the Center, the phrase ''funds provided by NIFA'' in paragraph (a) of this section refers to those funds provided by NIFA for the Sun Grant Program that are not allocated to the Subcenter. For the Subcenter, the phrase ''funds provided by NIFA'' in paragraph (a) of this section refers to those funds that are allocated to the Subcenter.

(c) *Priorities.* For the regional competitive grants program under paragraph (a)(1) of this section, the Centers and Subcenter shall use the plan approved by NIFA under § 3430.1007 in

making subawards and shall give a higher priority to proposals that are consistent with the plan.

§ 3430.1005 Funding restrictions.

(a) *Facility costs.* Funds made available under the Sun Grant Program shall not be used for the construction of a new building or facility or the acquisition, expansion, remodeling, or alteration of an existing building or facility (including site grading and improvement, and architect fees).

(b) *Indirect cost provisions for regional competitive research, extension, and education grant programs.* Funds provided by NIFA to the Centers and Subcenter for the regional competitive grants program under § 3430.1004(a)(1) may not be used for the indirect costs of awarding the competitive grants. However, up to 4 percent of the total funds provided by NIFA to each of the five Centers and the Subcenter under § 3430.1004 for the Sun Grant Program may be budgeted for administrative costs incurred in awarding the competitive grants.

(c) *Indirect cost provisions for research, extension, and education activities conducted at the Centers and Subcenter.* Subject to § 3430.54, indirect costs are allowable for the funds provided by NIFA to the Centers and the Subcenter for the research, extension, and education programs under § 3430.1004(a)(2).

(d) *Required allocations.* Each Center and Subcenter must fund subgrants in a proportion that is a minimum 30 percent for conducting multi-institutional and multistate research, extension, and education programs on technology development; and a minimum 30 percent for conducting integrated multi-institutional and multistate research, extension, and education programs on technology implementation. Each Sun Grant Center must clearly demonstrate a common procedure for ensuring the required allocations are met, and for maintaining documentation of these required percentages for audit purposes.

§ 3430.1006 Matching requirements.

(a) *Matching provisions for the Centers and Subcenter.* The Centers and the Subcenter are not required to match Federal funds.

(b) *Matching provisions for subawards.* For subawards made by the Centers or Subcenter through the competitive grants process, not less than 20 percent of the cost of an activity must be matched with funds, including in-kind contributions, from a non-Federal source, by the subawardee.

(1) *Exception for fundamental research.* This matching requirement does not apply to fundamental research (as defined in § 3430.2).

(2) *Special matching provisions for applied research.* With prior approval by the NIFA authorized departmental officer (ADO), the Center or Subcenter may reduce or eliminate the matching requirement for applied research (as defined in § 3430.2) if the Center or Subcenter determines that the reduction is necessary and appropriate pursuant to guidance issued by NIFA.

§ 3430.1007 Planning activities.

(a) *Required plan.* The Centers and Subcenter shall jointly develop and submit to NIFA for approval a plan for addressing the bioenergy, biomass, and gasification research priorities of the Department and the Department of Energy at the State and regional levels. To comply with this requirement, NIFA requires that the proposals from each of the five Centers be of similar format and subject matter and complementary to comprise a national program for purposes of serving as the actual ''plan.'' Each proposal will present a plan that includes a description of what will be done in common and collectively by the Centers and Subcenter, what each will do as a Center and Subcenter, and how each Center and Subcenter will implement its regional competitive grants program. Proposals submitted to the Sun Grant Program must be sufficiently detailed and of high enough quality and demonstrate adequate evidence of collaboration to meet this requirement. Funds available for administrative costs (see § 3430.1005(b)) may be used to meet this requirement.

(b) Gasification. With respect to gasification research activities, the Centers and Subcenter shall coordinate planning with land-grant colleges and universities in their respective regions

that have ongoing research activities in that area.

§ 3430.1008 Sun Grant Information Analysis Center.

The Centers and Subcenter shall maintain, at the North-Central Center, a Sun Grant Information Analysis Center to provide the Centers and Subcenter with analysis and data management support. Each Center and Subcenter shall allocate a portion of the funds available for administrative or indirect costs under § 3430.1005 to maintain the Sun Grant Information Analysis Center.

§ 3430.1009 Administrative duties.

In addition to other reporting requirements agreed to in the terms and conditions of each award, not later than 90 days after the end of each Federal fiscal year, each Center and Subcenter shall submit to NIFA a report that describes the policies, priorities, and operations of the program carried out by the Center or Subcenter during the fiscal year, including the results of all peer and merit review procedures conducted as part of administering the regional competitive research, extension, and educational grant programs; and a description of progress made in facilitating the plan described in § 3430.1007.

§ 3430.1010 Review criteria.

Panel reviewers conducting merit reviews on proposals submitted by the Centers will be instructed to ensure that proposals adequately address the plan developed in accordance with § 3430.1007 for consideration of the relevance and merit of proposals.

§ 3430.1011 Duration of awards.

The term of a Federal assistance award made under the Sun Grant Program shall not exceed 5 years. No-cost extensions of time beyond the maximum award terms will not be considered or granted.

PART 3431—VETERINARY MEDICINE LOAN REPAYMENT PROGRAM

Subpart A—Designation of Veterinarian Shortage Situations

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Subpart A—Designation of Veterinarian Shortage Situations

§ 3431.1 Applicability of regulations.

This part establishes the process and procedures for designating veterinarian shortage situations as well as the administrative provisions for the Veterinary Medicine Loan Repayment Program (VMLRP) authorized by the National Veterinary Medical Service Act (NVMSA), 7 U.S.C. 3151a.

§ 3431.2 Purpose.

The Secretary will follow the processes and procedures established in

subpart A of this part to designate veterinarian shortage situations for the VMLRP. Applications for the VMLRP will be accepted from eligible veterinarians who agree to serve in one of the designated shortage situations in exchange for the repayment of an amount of the principal and interest of the veterinarian's qualifying educational loans. The administrative provisions for the VMLRP, including the application process, are established in subpart B of this part.

§ 3431.3 Definitions and acronyms.

(a) *General definitions*. As used in this part:

Act means the National Veterinary Medical Service Act, as amended.

Agency or NIFA means the National Institute of Food and Agriculture.

Department means the United States Department of Agriculture.

Food animal means the following species: Bovine, porcine, ovine/camelid, cervid, poultry, caprine, and any other species as determined by the Secretary.

Food supply veterinary medicine means all aspects of veterinary medicine's involvement in food supply systems, from traditional agricultural production to consumption.

Insular area means the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, and the Virgin Islands of the United States.

NVMSA means the National Veterinary Medicine Service Act.

Practice of food supply veterinary medicine includes corporate/private practices devoted to food animal medicine, mixed animal medicine located in a rural area (at least 30 percent of practice devoted to food animal medicine), food safety, epidemiology, public health, animal health, and other public and private practices that contribute to the production of a safe and wholesome food supply.

Practice of veterinary medicine means to diagnose, treat, correct, change, alleviate, or prevent animal disease, illness, pain, deformity, defect, injury, or other physical, dental, or mental conditions by any method or mode; including:

(1) The prescription, dispensing, administration, or application of any drug, medicine, biologic, apparatus, anesthetic, or other therapeutic or diagnostic substance or medical or surgical technique, or

(2) The use of complementary, alternative, and integrative therapies, or

(3) The use of any manual or mechanical procedure for reproductive management, or

(4) The rendering of advice or recommendation by any means including telephonic and other electronic communications with regard to any of paragraphs (1), (2), (3), or (4) of this definition.

Rural area means any area other than a city or town that has a population of 50,000 inhabitants and the urbanized area contiguous and adjacent to such a city or town.

Secretary means the Secretary of Agriculture and any other officer or employee of the Department to whom the authority involved has been delegated.

Service area means geographic area in which the veterinarian will be providing veterinary medical services.

State means any one of the fifty States, the District of Columbia, and the insular areas of the United States.

State animal health official or SAHO means the State veterinarian, or equivalent, who will be responsible for nominating and certifying veterinarian shortage situations within the State.

Veterinarian means a person who has received a professional veterinary medicine degree from a college of veterinary medicine accredited by the AVMA Council on Education.

Veterinarian shortage situation means any of the following situations in which the Secretary, in accordance with the process in subpart A of this part, determines has a shortage of veterinarians:

(1) Geographical areas that the Secretary determines have a shortage of food supply veterinarians; and

(2) Areas of veterinary practice that the Secretary determines have a shortage of food supply veterinarians, such as food animal medicine, public health, animal health, epidemiology, and food safety.

Veterinary medicine means all branches and specialties included within the practice of veterinary medicine.

Veterinary Medicine Loan Repayment Program or VMLRP means the Veterinary Medicine Loan Repayment Program authorized by the National Veterinary Medical Service Act.

(b) *Definitions applicable to Subpart B.*

Applicant means an individual who applies to and meets the eligibility criteria for the VMLRP.

Breach of agreement results when a participant fails to complete the service agreement obligation required under the terms and conditions of the agreement and will be subject to assessment of monetary damages and penalties as determined in the service agreement, unless a waiver has been granted or an exception applies.

Current payment status means that a qualified educational loan is not past due in its payment schedule as determined by the lending institution.

Debt threshold means the minimum amount of qualified student debt an individual must have, on their program eligibility date, in order to be eligible for program benefits, as determined by the Secretary.

Program eligibility date means the date on which an individual's VMLRP agreement is executed by the Secretary.

Program participant means an individual whose application to the VMLRP has been approved and whose service agreement has been accepted and signed by the Secretary.

Qualifying educational expenses means the costs of attendance of the applicant at a college of veterinary medicine accredited by the AVMA Council on Education, exclusive of the tuition and reasonable living expenses. Educational expenses may include fees, books, laboratory expenses and materials, as required by an accredited college or school of veterinary medicine as part of a Doctor of Veterinary Medicine degree program, or the equivalent. The program participant must submit sufficient documentation, as required by the Secretary, to substantiate the school requirement for the educational expenses incurred by the program participant.

Qualifying educational loans means loans that are issued by any Federal, State, or local government entity, accredited academic institution(s), and/or commercial lender(s) that are subject to examination and supervision in their capacity as lending institutions by an agency of the United States or the State in which the lender has its principal place of business. Loans must have been made for one or more of the following: School tuition, other qualifying educational expenses, or reasonable living expenses relating to the obtainment of a degree of Doctor of Veterinary Medicine from a college or school of veterinary medicine accredited by the AVMA Council on Education. Such loans must have documentation which is contemporaneous with the training received in a college or school of veterinary medicine. If qualifying educational loans are refinanced, the original documentation of the loan(s) will be required to be submitted to the Secretary to establish the contemporaneous nature of such loans.

Reasonable living expenses means the ordinary living costs incurred by the program participant while attending the college of veterinary medicine, exclusive of tuition and educational expenses. Reasonable living expenses must be incurred during the period of attendance and may include food and lodging expenses, insurance, commuting and transportation costs. Reasonable living expenses must be equal to or less than the sum of the school's estimated standard student budgets for living expenses for the degree of veterinary medicine for the year(s) during which the program participant was enrolled in the school. However, if the school attended by the program participant did not have a standard student budget or if a program participant requests repayment for living expenses which are in excess of the standard student budgets described in the preceding sentence, the program participant must submit documentation, as required by the Secretary, to substantiate the reasonableness of living expenses incurred. To the extent that the Secretary determines, upon review of the program participant's documentation, that all or a portion of the living

expenses are reasonable, these expenses will qualify for repayment.

Service agreement means the agreement, which is signed by an applicant and the Secretary for the VMLRP wherein the applicant agrees to accept repayment of qualifying educational loans and to serve in accordance with the provisions of NVMSA for a prescribed period of obligated service.

Termination means a waiver of the service obligation granted by the Secretary when compliance by the participant is impossible, would involve extreme hardship, or where enforcement with respect to the individual would be unconscionable (*see* breach of agreement).

Withdrawal means a request by a participant for withdrawal from participation in the VMLRP after signing the service agreement, but prior to VMLRP making the first quarterly payment on behalf of the participant. A withdrawal is without penalty to the participant and without obligation to the Program.

§ 3431.4 Solicitation of stakeholder input.

The Secretary will solicit stakeholder input on the process and procedures used to designate veterinarian shortage situations prior to the publication of the solicitation for nomination of veterinarian shortage situations. A notice may be published in the FEDERAL REGISTER, on the Agency's Web site, or other appropriate format or forum. This request for stakeholder input may include the solicitation of input on the administration of VMLRP and its impact on meeting critical veterinarian shortage situations. All comments will be made available and accessible to the public.

§ 3431.5 Solicitation of veterinarian shortage situations.

(a) *General*. The Secretary will follow the procedures described in this part to solicit veterinarian shortage situations as the term is defined in § 3431.3.

(b) *Solicitation*. The Secretary will publish a solicitation for nomination of veterinarian shortage situations in the FEDERAL REGISTER, on the Agency's Web site, or other appropriate format or forum.

(c) *Frequency*. Contingent on the availability of funds, the Secretary will normally publish a solicitation on an annual basis. However, the Secretary reserves the right to solicit veterinarian shortage situations every two or three years, as appropriate.

(d) *Content*. The solicitation will describe the nomination process, the review criteria and process, and include the form used to submit a nomination. The solicitation may specify the maximum number of nominations that may be submitted by each State animal health official.

(e) *Nominations*. Nominations shall identify the veterinarian shortage situation and address the criteria in the nomination form which may include the objectives of the position, the activities of the position, and the risk posed if the position is not secured.

(f) *Nominating Official*. The State animal health official in each State is the person responsible for submitting and certifying veterinarian shortage situations within the State to NIFA officials. It is strongly recommended that the State animal health official of each State involve the leading health animal experts in the State in the nomination process.

§ 3431.6 Review of nominations.

(a) *Peer panel*. State shortage situations nominations will be evaluated by a peer panel of experts in animal health convened by the Secretary. The panel will evaluate nominations according to the criteria identified in the solicitation. The panel will consider the objectives and activities of the veterinarian position in the veterinary service shortage situation and the risks associated with not securing or retaining the position and make a recommendation regarding each nomination.

(b) *Agency review*. The Secretary will evaluate the recommendations of the peer panel and designate shortage situations for the VMLRP.

§ 3431.7 Notification and use of designated veterinarian shortage situations.

The Secretary will publish the designated veterinarian shortage situations on the Agency's Web site and will

use the designated veterinarian shortage situations to solicit VMLRP loan repayment applications from individual veterinarians in accordance with subpart B of this part.

Subpart B—Administration of the Veterinary Medicine Loan Repayment Program

§ 3431.8 Purpose and scope.

(a) *Purpose*. The regulations of this subpart apply to the award of veterinary medicine loan repayments under the Veterinary Medicine Loan Repayment Program (VMLRP) authorized by the National Veterinary Medicine Service Act, 7 U.S.C. 3151a.

(b) *Scope*. Under the VMLRP, the Secretary enters into service agreements with veterinarians to pay principal and interest on education loans of veterinarians who agree to work in veterinary shortage situations for a prescribed period of time. In addition, program participants may enter into an agreement to provide services to the Federal government in emergency situations in exchange for salary, travel, per diem expenses, and additional amounts of loan repayment assistance. The purpose of the program is to assure an adequate supply of trained food animal veterinarians in shortage situations and provide USDA with a pool of veterinary specialists to assist in the control and eradication of animal disease outbreaks.

§ 3431.9 Eligibility to apply.

(a) *General*. To be eligible to apply to the VMLRP an applicant must:

(1) Have a degree of Doctor of Veterinary Medicine (DVM), or the equivalent, from a college of veterinary medicine accredited by the AVMA Council on Education;

(2) Have qualifying educational loan debt as defined in § 3431.3;

(3) Secure an offer of employment or establish and/or maintain a practice in a veterinary shortage situation, as determined by the Secretary in accordance with the procedures in subpart A of this part, within the time period specified in the VMLRP service agreement offer; and

(4) Provide certifications and verifications in accordance with § 3431.16.

(b) *Non-eligibility*. The following individuals are ineligible to apply to the VMLRP:

(1) An individual who owes an obligation for veterinary service to the Federal government, a State, or other entity under an agreement with such Federal, State, or other entity are ineligible for the VMLRP unless such obligation will be completely satisfied prior to the beginning of service under the VMLRP;

(2) An individual who has a Federal judgment lien against his/her property arising from Federal debt; and

(3) An individual who has total qualified debt that does not meet the debt threshold.

§ 3431.10 Eligibility to participate.

To be eligible to participate in the VMLRP, a participant must meet the following criteria:

(a) Meet the eligibility criteria of § 3431.9 for applying to the VMLRP;

(b) Be selected for participation by the Secretary pursuant to § 3431.12.

(c) Comply with all State and local regulations (including appropriate licensure where required) in the jurisdiction in which he or she proposes to practice;

(d) Be a citizen, national, or permanent resident of the United States;

(e) Sign a service agreement to provide veterinary services in one of the veterinarian shortage situations; and

(f) Comply with the terms and conditions of the Service Agreement.

§ 3431.11 Application.

Individuals who meet the eligibility criteria of § 3431.9 may submit an online program application or any other application process provided by the Secretary.

§ 3431.12 Selection of applicants.

(a) *Review of applications*. Upon receipt, applications for the VMLRP will be reviewed for eligibility and completeness by the appropriate staff as determined by the Secretary. Incomplete or ineligible applications will not be processed or reviewed.

(b) *Peer review.* (1) Applications for the VMLRP that are deemed eligible and complete will be referred to the VMLRP peer panel for peer review. In evaluating the application, reviewers are directed to consider the following components, as well as any other criteria identified in the RFA, and how they relate to the likelihood that the applicant will meet the terms and conditions of the VMLRP agreement, continue to serve in a veterinary shortage situation, or pursue a career in food supply veterinary medicine:

(i) Major or emphasis area(s) during formal post-secondary training (e.g., bachelors degree major, minor);

(ii) Major or emphasis area(s) during formal training for DVM/VMD degree;

(iii) Specialty training area/discipline (e.g., board certification or graduate degree);

(iv) Non-degree/non-board certification training or certifications (e.g., animal agrosecurity coursework and certifications);

(v) Applicant's personal statement;

(vi) Awards;

(vii) Letters or recommendation, if applicable; and

(viii) Other documentation or criteria, as specified in the RFA.

(2) Applicants will then be ranked based on their qualifications relative to the attributes of the shortage situation applied for.

§ 3431.13 Terms of loan repayment and length of service requirements.

(a) *Loan repayment.* For each year of obligated service in a veterinary shortage situation, as determined by the Secretary, with a minimum of 3 years (and maximum of 4 years) of obligated service, the Secretary may pay:

(1) An amount not exceeding $25,000 per year of a program participant's qualifying loans; and

(2) An additional amount not exceeding $5,000 per year of a program participant's qualifying loans, if the program participant has already been selected for participation in the VMLRP and agrees to enter into a one-year agreement for each year of service to provide up to 60 days of obligated service to the Federal government in animal health emergency situations, as determined by the Secretary, provided the shortage situation in which the participant has agreed to serve has been designated as suitable for the Federal obligated service.

(b) To maximize the number of agreements and to encourage qualified veterinarians to participate in the VMLRP, the Secretary may establish a loan repayment cap that differs from the cap established under paragraph (a)(1) and (a)(2) of this section when it is in the best interest of VMLRP. This will be identified in the RFA.

(c) The Secretary will determine the debt threshold in the RFA.

(d) Loan repayments will be made directly to the loan provider on a quarterly basis, starting with the end of the first quarter after the program eligibility date of the service agreement. Tax payments equal to 39 percent of the loan repayments will be credited directly to the participant's IRS (Federal tax) account simultaneously with each loan repayment.

(e) Once a service agreement has been signed by both parties, the Secretary will obligate such funds as will be necessary to ensure that sufficient funds will be available to make loan repayments and tax payments, as specified in the service agreement, for the duration of the period of obligated service. Reimbursements for tax liabilities in excess of the amount provided (not to exceed 39 percent of the amount of loan repayment or any other cap established by the Secretary) will be subject to the availability of funds. These additional tax payments, if available to the VMLRP participants, will be identified in the RFA and in the participant service agreement.

(f) Participants are required to keep payments current on all qualifying VMLRP loans.

(g) *Travel expenditures.* The VMLRP will not reimburse a program participant for expenses associated with traveling from the program participant's residence to the prospective practice site for the purpose of evaluating such site or the expenses of relocating from the program participant's temporary or permanent residence to a practice site.

§ 3431.14 Priority.

Pursuant to NVMSA, the Secretary will give priority to agreements with veterinarians for the practice of food animal medicine in veterinarian shortage situations, as determined by the Secretary. The Secretary may establish additional criteria in the RFA for assigning priority levels to veterinarian shortage situations nominated for award.

§ 3431.15 Qualifying loans.

(a) *General.* Loan repayments provided under the VMLRP may consist of payments on behalf of participating individuals of the principal and interest on qualifying educational loans received by the individual for attendance of the individual at an accredited college of veterinary medicine resulting in a degree of Doctor of Veterinary Medicine, or the equivalent, which loans were made for one or more of the following:

(1) Tuition expenses;

(2) All other reasonable educational expenses, as defined in this part and as determined by the Secretary; and

(3) Reasonable living expenses, as defined in this part and as determined by the Secretary.

(b) *Non-eligible loans.* The following loans are ineligible for repayment under the VMLRP:

(1) Loans not obtained from a bank, credit union, savings and loan association, not-for-profit organization, insurance company, school, and other financial or credit institution which is subject to examination and supervision in its capacity as lending institution by an agency of the United States or of the State in which the lender has its principal place of business;

(2) Loans for which supporting documentation is not available;

(3) Loans that have been consolidated with loans of other individuals, such as spouses or children;

(4) Loans or portions of loans obtained for educational or living expenses which exceed the standard of reasonableness as determined by the participant's standard school budget for the year in which the loan was made, and are not determined by the Secretary, to be reasonable based on additional documentation provided by the individual;

(5) Loans, financial debts, or service obligations incurred under another loan repayment or scholarship program, or similar programs, which provide loans, scholarships, loan repayments, or other awards in exchange for a future service obligation;

(6) Non-educational loans, including home equity loans; and

(7) Any loan in default, delinquent, or not in a current payment status.

§ 3431.16 Certifications and verifications.

(a) The application for the loan repayment program shall include a personal statement describing how the applicant would meet the requirements of:

(1) The veterinary service shortage situations as defined in the RFA;

(2) The eligibility criteria for application of section § 3431.9 of this part; and

(3) The selection priority of § 3431.14 of this part.

(b) The applicant shall provide sufficient documentation to establish that the applicant has qualifying loans as described in § 3431.15 of this part.

(c) The applicant shall provide sufficient documentation to establish that the applicant has the capacity to secure an offer of employment or establish and/or maintain a veterinary practice in a veterinary service shortage situation as defined in subpart A of this part.

(d) The applicant shall provide, if applicable, sufficient documentation to establish that the applicant is licensed to practice veterinary medicine in the jurisdiction in which the applicant has an offer of employment.

(e) The applicant shall provide, if applicable, the required documentation to establish whether the applicant receives payments under any other Federal, State, institutional, or private loan repayment programs.

(f) The applicant shall provide the required documentation to show that he/she has completed, or is in the process of completing, the National Veterinary Accreditation Program (NVAP) if national accreditation is required for the veterinary shortage position for which

the applicant has an offer of employment.

(g) The applicant shall provide authorization to the appropriate staff as designated by the Secretary to obtain a copy of the participant's credit report.

§ 3431.17 VMLRP service agreement offer.

The Secretary will make an offer to successful applicants to enter into an agreement with the Secretary to provide veterinary services under the VMLRP. As part of the offer, successful VMLRP applicants will be provided a specific period of time, as defined in the RFA, to secure an offer of employment or establish and/or maintain a veterinary practice in a veterinary shortage situation.

§ 3431.18 Service agreement.

(a) The service agreement shall be signed by the program participant and the Secretary after acceptance of the terms and conditions of the loan repayment program by the program participant.

(b) The service agreement shall specify the period of obligated service.

(c) The service agreement shall specify the amount of loan repayment to be paid for each year of obligated service.

(d) The service agreement shall contain a provision defining when a breach of the agreement by the program participant has occurred.

(e) The service agreement shall provide remedies for the breach of a service agreement by a program participant, including repayment or partial repayment of financial assistance received, with interest.

(f) The service agreement shall include provisions addressing the granting of a waiver by the Secretary in case of hardship.

(g) Payments under the service agreement do not exempt a program participant from the responsibility and/or liability for any loan(s) for which he or she is obligated, as the Secretary is not obligated to the lender/note holder for its commitment to the program participant.

(h) During the term of the service agreement, the program participant shall agree that the Secretary or the designated VMLRP service provider is authorized to verify the status of each loan for which the Secretary will be reimbursing the participant.

(i) The service agreement shall contain certifications, as determined by the Secretary.

(j) The service agreement shall contain provisions addressing the income tax liability of the program participant and the availability of reimbursement of taxes incurred as a result of an individual's participation in the VMLRP.

(k) *Renewal.* The service agreement will indicate whether the existing service agreement may be renewed. However, renewal applications are subject to peer review and approval, acceptance is not guaranteed, and the position must still be considered a veterinarian shortage situation at the time of application for renewal. The Secretary may request additional documentation in connection with the review and approval of a renewal application. The Secretary reserves the right not to offer renewals. Any requests for renewal applications will be solicited via the RFA.

(l) The service agreement shall contain participant reporting requirements (e.g., quarterly, annual, and/or close-out) to allow for program monitoring and evaluation.

§ 3431.19 Payment and tax liability.

(a) *Loan repayment.* Loan repayments pursuant to a service agreement are made directly to a participant's lender(s) by the Secretary or the VMLRP service provider. If there is more than one outstanding qualified educational loan, the Secretary will repay the loans in the following order, unless the Secretary determines significant savings to the program would result from paying loans in a different order of priority:

(1) Loans guaranteed by the U.S. Department of Education;

(2) Loans made or guaranteed by a State;

(3) Loans made by a School; and

(4) Loans made by other entities, including commercial loans.

(b) *Tax Liability Payments.* Tax payments equal to 39 percent of the total loan repayment amount will be credited directly to the participant's IRS (Federal tax) account simultaneously

with each loan payment. The Secretary may make payments of an amount not to exceed 39 percent of the actual annual loan repayments made in a calendar year for all or part of the increased Federal, State, and local tax liability resulting from loan repayments received under the VMLRP. However, the Secretary may increase the cap, if appropriate. Supplementary payments for increased tax liability may be made for the actual amount of tax liability associated with the receipt of loan repayments under the VMLRP. Availability of these additional tax liability payments (*i.e.*, in excess of 39 percent or other approved cap) will be identified in the RFA and in the participant service agreement. Program participants wishing to receive tax liability payments will be required to submit their requests for such payments in a manner prescribed by the Secretary and must provide the Secretary with any documentation the Secretary determines is necessary to establish a program participant's increased tax liability. Tax liability payments in excess of 39 percent or other approved cap will be made on a reimbursement basis only.

(c) Under § 3431.19(a) and (b), the Secretary will make loan and tax liability payments to the extent appropriated funds are available for these purposes.

§ 3431.20 Administration.

The VMLRP will be administered by NIFA, Office of Extramural Programs (OEP). OEP may carry out this program directly or enter into agreements with another Federal agency or other service provider to assist in the administration of the VMLRP. However, the determination of the veterinarian shortage areas, peer review of individual VMLRP applications, and the overall VMLRP oversight and coordination will reside with the Secretary.

§ 3431.21 Breach.

(a) *General*. If a program participant fails to complete the period of obligated service incurred under the service agreement, including failing to comply with the applicable terms and conditions of a waiver granted by the Secretary, the program participant must pay to the United States an amount as determined in the service agreement. Payment of this amount shall be made within 90 days of the date that the program participant failed to complete the period of obligated service, as determined by the Secretary.

(b) *Exceptions*.

(1) A termination of service for reasons that are beyond the control of the program participant will not be considered a breach.

(2) A transfer of service from one shortage situation to another, if approved by the Secretary, will not be considered a breach.

(3) A call or order to active duty will not be considered a breach.

(c) The Secretary may renegotiate the terms of a participant's service agreement in the event of a transfer, termination or call to active duty pursuant to paragraph (b) of this section.

(d) *Amount of repayment*. The service agreement shall provide the method for the calculation of the amount owed by a program participant who has breached a service agreement.

(e) *Debt Collection*. Individuals in breach of a service agreement entered into under this part are considered to owe a debt to the United States for the amount of repayment. Any such debt will be collected pursuant to the Department's Debt Management regulations at 7 CFR part 3.

§ 3431.22 Waiver.

(a) A program participant may seek a waiver or suspension of the service or payment obligations incurred under this part by written request to the Secretary setting forth the bases, circumstances, and causes which support the requested action.

(b) The Secretary may waive any service or payment obligation incurred by a program participant whenever compliance by the program participant is impossible or would involve extreme hardship to the program participant and if enforcement of the service or payment obligation would be against equity and good conscience.

(1) Compliance by a program participant with a service or repayment obligation will be considered impossible if the Secretary determines, on the basis

of information and documentation as may be required:

(i) That the program participant suffers from a physical or mental disability resulting in the permanent inability of the program participant to perform the service or other activities which would be necessary to comply with the obligation; or

(ii) That the employment of the program participant has been terminated involuntarily for reasons unrelated to job performance.

(2) In determining whether compliance by a program participant with the terms of a service or repayment obligation imposes an extreme hardship, the Secretary may, on the basis of information and documentation as may be required, take into consideration the nature of the participant's personal problems and the extent to which these affect the participant's ability to perform the obligation.

(c) All requests for waivers must be submitted to the Secretary in writing.

(d) A program participant who is granted a waiver in accordance with this section will be notified by the Secretary in writing.

(e) Any obligation of a program participant for service or payment will be canceled upon the death of the program participant.

§ 3431.23 Service to Federal government in emergency situations.

(a) The Secretary may enter into agreements of 1 year duration with veterinarians who have service agreements for such veterinarians to provide services to the Federal Government in emergency situations, as determined by the Secretary, under terms and conditions specified in the agreement.

(b) Pursuant to a service agreement under this section, the Secretary shall pay an amount, in addition to the amount paid, as determined by the Secretary and specified in the agreement, of the principal and interest of qualifying educational loans of the veterinarians. This amount will be provided in the RFA.

(c) Agreements entered into under this paragraph shall include the following:

(1) A veterinarian shall not be required to serve more than 60 working days per year of the agreement.

(2) A veterinarian who provides service pursuant to the agreement shall receive a salary commensurate with the duties and shall be reimbursed for travel and per diem expenses as appropriate for the duration of the service.

§ 3431.24 Reporting requirements, monitoring, and close-out.

VMLRP participants will be required to submit periodic reports per the terms and conditions of their service agreements. In addition, the Secretary is responsible for ensuring that a VMLRP participant is complying with the terms and conditions of their service agreement, including any additional reporting or close-out requirements.

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PART 3550—DIRECT SINGLE FAMILY HOUSING LOANS AND GRANTS

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Subpart A—General

§ 3550.1 Applicability.

This part sets forth policies for the direct single family housing loan programs operated by the Rural Housing Service (RHS) of the U.S. Department of Agriculture (USDA). It addresses the requirements of sections 502 and 504 of the Housing Act of 1949, as amended, and includes policies regarding both loan and grant origination and servicing. Procedures for implementing these regulations can be found in program handbooks, available in any Rural Development office. Any provision on the expenditure of funds under this part is contingent upon the availability of funds.

§ 3550.2 Purpose.

The purpose of the direct RHS single family housing loan programs is to provide low- and very low-income people who will live in rural areas with an opportunity to own adequate but modest, decent, safe, and sanitary dwellings and related facilities. The section 502 program offers persons who do not currently own adequate housing, and who cannot obtain other credit, the opportunity to acquire, build, rehabilitate, improve, or relocate dwellings in rural areas. The section 504 program offers loans to very low-income homeowners who cannot obtain other credit to repair or rehabilitate their properties. The section 504 program also offers grants to homeowners age 62 or older who cannot obtain a loan to correct health and safety hazards or to make the unit accessible to household members with disabilities.

§ 3550.3 Civil rights.

RHS will administer its programs fairly, and in accordance with both the letter and the spirit of all equal opportunity and fair housing legislation and applicable executive orders. Loans, grants, services, and benefits provided under this part shall not be denied to any person based on race, color, national origin, sex, religion, marital status, familial status, age, physical or mental disability, receipt of income from public assistance, or because the applicant has, in good faith, exercised any right under the Consumer Credit Protection Act (15 U.S.C. 1601 *et seq.*). All activities under this part shall be accomplished in accordance with the Fair Housing Act (42 U.S.C. 3601–3620), Executive Order 11246, and Executive Order 11063, as amended by Executive Order 12259, as applicable. The civil rights compliance requirements for RHS are in 7 CFR part 1901, subpart E.

§ 3550.4 Reviews and appeals.

Whenever RHS makes a decision that is adverse to a participant, RHS will provide the participant with written notice of such adverse decision and the participant's rights to a USDA National Appeals Division hearing in accordance with 7 CFR part 11. Any adverse decision, whether appealable or non-appealable may be reviewed by the next-level RHS supervisor.

§ 3550.5 Environmental requirements.

(a) *Policy*. RHS will consider environmental quality as equal with economic, social, and other relevant factors in program development and decision-making processes. RHS will take into account potential environmental impacts of proposed projects by working with RHS applicants, other federal agencies, Indian tribes, State and local governments, and interested citizens and organizations in order to formulate actions that advance the program's goals in a manner that will protect, enhance, and restore environmental quality.

(b) *Regulatory references*. Processing and servicing actions under this part will be done in accordance with the requirements provided in 7 CFR part 1940, subpart G which addresses environmental requirements and 7 CFR part 1924, subpart A, which addresses lead-based paint.

§ 3550.6 State law or State supplement.

State and local laws and regulations, and the laws of federally recognized Indian tribes, may affect RHS implementation of certain provisions of this regulation, for example, with respect to the treatment of liens, construction, or environmental policies. Supplemental guidance may be issued in the case of any conflict or significant differences.

§ 3550.7 Demonstration programs.

From time to time, RHS may authorize limited demonstration programs. The purpose of these demonstration programs is to test new approaches to offering housing under the statutory authority granted to the Secretary. Therefore, such demonstration programs may not be consistent with some of the provisions contained in this part. However, any program requirements that are statutory will remain in effect. Demonstration programs will be clearly identified as such.

§ 3550.8 Exception authority.

An RHS official may request, and the Administrator or designee may make, an exception to any requirement or provision of this part or address any omission of this part that is consistent with the applicable statute if the Administrator determines that application of the requirement or provision, or failure to take action in the case of an omission, would adversely affect the Government's interest.

§ 3550.9 Conflict of interest.

(a) *Objective*. It is the objective of RHS to maintain the highest standards of honesty, integrity, and impartiality by employees. To reduce the potential for employee conflict of interest, all processing, approval, servicing, or review activity will be conducted in accordance with 7 CFR part 1900, subpart D by RHS employees who:

(1) Are not themselves the applicant or borrower;

(2) Are not members of the family or close known relatives of the applicant or borrower;

(3) Do not have an immediate working relationship with the applicant or borrower, the employee related to the applicant or borrower, or the employee who would normally conduct the activity; or

(4) Do not have a business or close personal association with the applicant or borrower.

(b) *Applicant or borrower responsibility*. The applicant or borrower must disclose any known relationship or association with an RHS employee when such information is requested.

(c) *RHS employee responsibility*. An RHS employee must disclose any known relationship or association with a recipient, regardless of whether the relationship or association is known to others. RHS employees or members of their families may not purchase a Real Estate Owned (REO) property, security property from a borrower, or security property at a foreclosure sale. Loan closing agents who have been involved with a particular property, as well as members of their families, are also precluded from purchasing such properties.

[61 FR 59779, Nov. 22, 1996; 61 FR 65266, Dec. 11, 1996; 75 FR 59060, Sept. 27, 2010]

§ 3550.10 Definitions.

Acceleration. Demand for immediate repayment of the entire balance of a debt if the security instruments are breached.

Adjusted income. Used to determine whether an applicant is income-eligible. Adjusted income provides for deductions to account for varying household circumstances and expenses. See § 3550.54 for a complete description of adjusted income.

Adjustment. An agreement to release a debtor from liability generally upon receipt of an initial lump sum representing the maximum amount the debtor can afford to pay and periodic additional payments over a period of up to 5 years.

Amortized payment. Equal monthly payments under a fully amortized mortgage loan that provides for the scheduled payment of interest and principal over the term of the loan.

Applicant. An adult member of the household who will be responsible for repayment of the loan.

Assumption. The procedure whereby the transferee becomes liable for all or part of the debt of the transferor.

Borrower. A recipient who is indebted under the section 502 or 504 programs.

Cancellation. A decision to cease collection activities and release the debtor from personal liability for any remaining amounts owed.

Compromise. An agreement to release a debtor from liability upon receipt of a specified lump sum that is less than the total amount due.

Conditional commitment. A determination that a proposed dwelling will qualify as a program-eligible property. The conditional commitment does not reserve funds, nor does it ensure that a program-eligible applicant will be available to buy the dwelling.

Cosigner. An individual or an entity that joins in the execution of a promissory note to compensate for any deficiency in the applicant's repayment ability. The cosigner becomes jointly liable to comply with the terms of the promissory note in the event of the borrower's default, but is not entitled to any interest in the security or borrower rights.

Cross-collateralized loan. A situation in which a single property secures both RHS and Farm Service Agency loans.

Custodial property. Borrower-owned real property that serves as security for a loan that has been taken into possession by the Agency to protect the Government's interest.

Daily simple interest. A method of establishing borrower payments based on daily interest charged on the outstanding principal balance of the loan. Principal is reduced by the amount of payment in excess of the accrued interest.

Dealer-contractor. A person, firm, partnership, or corporation in the business of selling and servicing manufactured homes and developing sites for manufactured homes. A person, firm, partnership, or corporation not capable of providing the complete service is not eligible to be a dealer-contractor.

Debt instrument. A collective term encompassing obligating documents for a loan, including any applicable promissory note, assumption agreement, or grant agreement.

Deferred mortgage payments. A subsidy available to eligible, very low-income borrowers of up to 25 percent of their principal and interest payments at 1 percent for up to 15 years. The deferred amounts are subject to recapture on sale or nonoccupancy.

Deficient housing. A dwelling that lacks complete plumbing; lacks adequate heating; is dilapidated or structurally unsound; has an overcrowding situation that will be corrected with loan funds; or that is otherwise uninhabitable, unsafe, or poses a health or environmental threat to the occupant or others.

Elderly family. An elderly family consists of one of the following:

(1) A person who is the head, spouse, or sole member of a family and who is 62 years of age or older, or who is disabled, and is an applicant or borrower;

(2) Two or more persons who are living together, at least 1 of whom is age 62 or older, or disabled, and who is an applicant or borrower; or

(3) In the case of a family where the deceased borrower or spouse was at least 62 years old or disabled, the surviving household member shall continue to be classified as an elderly family for the purpose of determining adjusted income, even though the surviving members may not meet the definition of elderly family on their own, *provided:*

(i) They occupied the dwelling with the deceased family member at the time of the death;

(ii) If one of the surviving family members is the spouse of the deceased family member, the family shall be classified as an elderly family only until the remarriage of the surviving spouse; and

(iii) At the time of the death of the deceased family member, the dwelling was financed under title V of the Housing Act of 1949, as amended.

Escrow account. An account to which the borrower contributes monthly payments to cover the anticipated costs of real estate taxes, hazard and flood insurance premiums, and other related costs.

Existing dwelling or unit. A dwelling or unit that has either been previously owner-occupied or has been completed for more than 1 year as evidenced by an occupancy permit, certificate of occupancy or similar document issued by the local authority.

False information. Information that the recipient knew was incorrect or should have known was incorrect that was provided or omitted for the purposes of obtaining assistance for which the recipient was not eligible.

Full-time student. A person who carries at least the minimum number of credit hours considered to be full-time by college or vocational school in which the person is enrolled.

Hazard. A condition of the property that jeopardizes the health or safety of the occupants or members of the community, that does not make it unfit for habitation. (See also the definition of major hazard in this section.)

Household. All persons expected to be living in the dwelling, except for live-in aids, foster children, and foster adults.

Housing Act of 1949, as amended. The Act which provides the authority for the direct single family housing programs. It is codified at 42 U.S.C. 1471 *et seq*.

HUD. The U.S. Department of Housing and Urban Development.

Inaccurate information. Incorrect information inadvertently provided, used, or omitted without the intent to obtain benefits for which the recipient was not eligible.

Indian reservation. All land located within the limits of any Indian reservation under the jurisdiction of the United States notwithstanding the issuance of any patent and including rights-of-way running through the reservation; trust or restricted land located within the boundaries of a former reservation of a federally recognized Indian tribe in the State of Oklahoma; or all Indian allotments, the titles to which have not been extinguished, if such allotments are subject to the jurisdiction of a federally recognized Indian tribe.

Interest credit. A payment subsidy available to certain eligible section 502 borrowers that reduces the effective interest rate of a loan (see 3550.68(d)). Borrowers receiving interest credit will continue to receive it on all current and future loans for as long as they remain eligible for and continue to receive a subsidy. Borrowers who cease to be eligible for interest credit can never receive interest credit again, but may receive payment assistance if they again qualify for a payment subsidy.

Junior lien. A security instrument or a judgment against the security property to which the RHS debt instrument is superior.

Legal alien. For the purposes of this part, legal alien refers to any person lawfully admitted to the country who meets the criteria in section 214 of the Housing and Community Development Act of 1980, 42 U.S.C. 1436a.

Leveraged loan. An affordable housing product loan or grant to an Agency borrower property, closed simultaneously with an RHS loan. Affordable leveraged loans are characterized by long term (not less than 30 years), amortized payments with a note interest rate equal to or less than 3 percent .

Live-in aide. A person who lives with an elderly or disabled person and is essential to that person's care and well-being, not obligated for the person's support, and would not be living in the unit except to provide the support services.

Low income. An adjusted income that is greater than the HUD established very low-income limit, but that does not exceed the HUD established low-income limit (generally 80 percent of median income adjusted for household size) for the county or Metropolitan Statistical Area where the property is or will be located.

Major hazard. A condition so severe that it makes the property unfit for habitation. (See also the definition of hazard in this section.)

Manufactured home. A structure that is built to Federally Manufactured Home Construction and Safety Standard and RHS Thermal Performance Standards. It is transportable in 1 or more sections, which in the traveling mode is 10-body feet (3.048 meters) or more in width, and when erected on site is 400 or more square feet (37.16 square meters), and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities. It is designed and constructed for permanent occupancy by a single family and contains permanent eating, cooking, sleeping, and sanitary facilities. The plumbing, heating, and electrical systems are contained in the structure. A permanent foundation is required.

Market value. The value of the property as determined by a current appraisal, RHS may authorize the use of a Broker's Price Opinion or similar instrument to determine market value in limited servicing situations.

Mobile home. A manufactured unit often referred to as a ''trailer,'' designed to be used as a dwelling, but built prior to the enactment of the Housing and Community Development Act of 1980 (Pub. L. 96–399) enacted October 8, 1980.

Moderate income. An adjusted income that is greater than the low-income limit, but that does not exceed the HUD established low-income limit by more than $5,500.

Modest housing. A property that is considered modest for the area, with a market value that does not exceed the applicable maximum loan limit as established by RHS in accordance with § 3550.63. In addition, the property must not be designed for income producing activities nor have an in-ground swimming pool.

Modular or panelized home. Housing, constructed of one or more factory-built sections or panels, which, when completed, meets or exceeds the requirements of the recognized development standards (model building codes) for site built housing, and which is designed to be permanently connected to a site-built foundation.

Moratorium. A period of up to 2 years during which scheduled payments are not required, but are subject to repayment at a later date.

Mortgage. A form of security instrument or consensual lien on real property including a real estate mortgage or a deed of trust.

Net family assets. The value of assets available to a household that could be used towards housing costs. Net family assets are considered in the calculation of annual income and are used to determine whether the household must make additional cash contributions to improve or purchase the property.

Net recovery value. The market value of the security property minus anticipated expenses of liquidation, acquisition, and sale as determined by RHS.

New dwelling or unit. A dwelling that is to be constructed, or a dwelling that is less than 1 year old as evidenced by an occupancy permit, certificate of occupancy or similar document issued by the local authority and has never been occupied.

Nonprogram (NP) interest rate. The interest rate offered by RHS for loans made on NP terms.

NP property. Property that does not meet the program eligibility requirements outlined in §§ 3550.56 and 3550.57.

NP terms. Credit terms available from RHS when the applicant or property is not program-eligible.

Offset. Deductions to pay a debt owed to RHS from a borrower's retirement benefits, salary, income tax refund, or payments from other federal agencies to the borrower. Deductions from retirement benefits and salary generally apply only to current and former federal employees.

Participant. For the purpose of reviews and appeals, a participant is any individual or entity who has applied for, or whose right to participate in or receive a payment, loan, or other benefit is affected by an RHS decision.

Payment assistance. A payment subsidy available to eligible section 502 borrowers that reduces the effective interest rate of a loan (see § 3550.68(c)). Borrowers eligible for a payment subsidy receive payment assistance unless they are currently eligible for and receive interest credit. There are two methods of payment assistance. Payment assistance method 1 is found at 3550.68(c)(2). Payment assistance method 2 is found at 3550.68(c)(1).

Payment subsidy. A general term for subsidies which reduce the borrower's scheduled payment. It refers to either payment assistance or interest credit.

Person with disability. Any person who has a physical or mental impairment that substantially limits one or more major life activities, including functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working, has a record of such an impairment, or is regarded as having such an impairment.

PITI ratio. The amount paid by the borrower for principal, interest, taxes, and insurance (PITI), divided by repayment income.

Principal reduction attributed to subsidy (PRAS). Accelerated principal reduction that can occur when a borrower receives a reduced interest rate through a payment subsidy.

Prior lien. A security instrument or a judgment against the security property that is superior to the RHS debt instrument.

Program-eligible applicant. Any applicant meeting the eligibility requirements described in § 3550.53.

Program-eligible property. A property eligible to be financed under this part, as determined by the criteria listed in §§ 3550.56 through 3550.59.

Program terms. Credit terms that are available only to program-eligible applicants for program-eligible properties.

Property. The land, dwelling, and related facilities for which the applicant will use RHS assistance.

Protective advances. Costs incurred by the Agency to protect the security interest of the Government that are charged to the borrower's account.

Real estate taxes. Taxes and the annual portion of assessments estimated to be due and payable on the property, reduced by any available tax exemption.

Recapture amount. An amount of subsidy to be repaid by the borrower upon disposition or nonoccupancy of the property.

Recipient. Any applicant, borrower, or grant recipient who applies for or receives assistance under the section 502 or 504 programs.

REO. The acronym for ''Real Estate Owned.'' It refers to property for which RHS holds title.

Repayment income. Used to determine whether an applicant has the ability to make monthly loan payments. Repayment income includes amounts excluded for the purpose of determining adjusted income. See § 3550.54 for a complete description.

RHS. The Rural Housing Service of the U.S. Department of Agriculture, or its successor agency, formerly the Rural Housing and Community Development Service (RHCDS), a successor agency to the Farmers Home Administration (FmHA).

RHS employee. Any employee of RHS, or any employee of the Rural Development mission area who carries out grant or loan origination or servicing functions for the section 502 or 504 programs.

RHS interest rate. The unsubsidized interest rate offered by RHS for loans made on program terms.

Rural area. A rural area is:

(1) Open country which is not part of or associated with an urban area.

(2) Any town, village, city, or place, including the immediate adjacent densely settled area, which is not part of or associated with an urban area and which:

(i) Has a population not in excess of 10,000 if it is rural in character; or

(ii) Has a population in excess of 10,000 but not in excess of 20,000, is not contained within a Metropolitan Statistical Area, and has a serious lack of mortgage credit for low- and moderate-income households as determined by the Secretary of Agriculture and the Secretary of HUD.

(3) An area classified as a rural area prior to October 1, 1990, (even if within a Metropolitan Statistical Area), with a population exceeding 10,000, but not in excess of 25,000, which is rural in character, and has a serious lack of mortgage credit for low- and moderate-income families. This is effective through receipt of census data for the year 2010.

Rural Development. A mission area within USDA which includes RHS, Rural Utilities Service (RUS), and Rural Business-Cooperative Service (RBS).

Scheduled payment. The monthly or annual installment on a promissory note plus escrow (if required), as modified by any payment subsidy agreement, delinquency workout agreement, other documented agreements between RHS and the borrower, or protective advances.

Secured loan. A loan that is collateralized by property so that in the event of a default on the loan, the property may be sold to satisfy the debt.

Security property. All the property that serves as collateral for an RHS loan.

Subsidy. Interest credit, payment assistance, or deferred mortgage assistance received by a borrower under the section 502 or 504 programs.

Total debt ratio. The amount paid by the borrower for PITI and any recurring monthly debt, divided by repayment income.

Unauthorized assistance. Any loan, payment subsidy, deferred mortgage payment, or grant for which there was no regulatory authorization or for which the recipient was not eligible.

U.S. citizen. An individual who resides as a citizen in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Marianas, the Federated States of Micronesia, the Republic of Palau, or the Republic of the Marshall Islands.

USDA. The United States Department of Agriculture.

Unsecured loan. A loan evidenced only by the borrower's promissory note.

Value appreciation. The current market value of the property minus: the balance due prior lienholders, the unpaid balance of the RHS debt, unreimbursed closing costs (if any), principal reduction, the original equity (if any) of the borrower, and the value added by capital improvements.

Very low-income. An adjusted income that does not exceed the HUD- established very low-income limit (generally 50 percent of median income adjusted for household size) for the county or the Metropolitan Statistical Area where the property is or will be located.

Veterans preference. A preference extended to any person applying for a loan or grant under this part who served on active duty and has been discharged or released from the active forces on conditions other than dishonorable from the United States Army, Navy, Air Force, Marine Corps, or Coast Guard. The preference applies to the serviceperson, or the family of a deceased serviceperson who died in service before the termination of such war or such period or era. The applicable timeframes are:

(1) During the period of April 6, 1917, through March 31, 1921;

(2) During the period of December 7, 1941, through December 31, 1946;

(3) During the period of June 27, 1950, through January 31, 1955;

(4) For a period of more than 180 days, any part of which occurred after January 31, 1955, but on or before May 7, 1975; or

(5) During the period beginning August 2, 1990, and ending the date prescribed by Presidential Proclamation or law.

[61 FR 59779, Nov. 22, 1996; 61 FR 65266, Dec. 11, 1996, as amended at 67 FR 78329, Dec. 24, 2002; 70 FR 6552, Feb. 8, 2005; 72 FR 73255, Dec. 27, 2007; 73 FR 49592, Aug. 22, 2008]

§ 3550.11 State Director assessment of homeowner education.

(a) State Director's will make an assessment of the availability of certified homeowner education in their respective states and maintain an annually updated listing of providers and their reasonable costs.

(b) The order of preference for homeowner education formats is as follows:

(1) Classroom; one-on-one counseling; or interactive video conference.

(2) If none of the formats in paragraph (b)(1) of this section is reasonably available; as determined under § 3550.53(i), then the applicant may use interactive home-study or interactive telephone counseling of at least four hours duration.

(3) If none of the formats in paragraphs (b)(1) and (b)(2) of this section is reasonably available as determined under § 3550.53(i), then the applicant may use on-line counseling to meet the homeownership education requirement.

(c) Homeownership education must include a letter or certificate of completion and be provided by homeownership education counselors that are certified by any of the following:

(1) The Department of Housing and Urban Development (HUD);

(2) NeighborWorks America (NWA);

(3) The National Federation of Housing Counselors (NFHC);

(4) National American Indian Housing Council (NAIHC); or

(5) The State Housing Finance Agency or other qualified organization approved by the State Director.

(d) The provider will issue a letter or certificate of completion to document that the borrower has satisfactory knowledge of these minimum topics:

(1) Preparing for homeownership (evaluate readiness to go from rental to homeownership),

(2) Budgeting (pre and post-purchase),

(3) Credit counseling,

(4) Shopping for a home,

(5) Lender differences (predatory lending),

(6) Obtaining a mortgage (mortgage process, different types of mortgages),

(7) Loan closing (closing process, documentation, closing costs),

(8) Post-occupancy counseling (delinquency and foreclosure prevention),

(9) Life as a homeowner (homeowner warranties, maintenance and repairs),

(e) The provider may tailor the homeownership education training to the needs of the borrower to ensure satisfactory knowledge of the topics listed in paragraph (d) of this section.

[72 FR 5156, Feb. 5, 2007]

§§ 3550.12–3550.49 [Reserved]

§ 3550.50 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0172. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 3 hours per response, with an average of 1½ hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You are not required to respond to this collection of information unless it displays a currently valid OMB control number.

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 78329, Dec. 24, 2002]

Subpart B—Section 502 Origination

§ 3550.51 Program objectives.

Section 502 of the Housing Act of 1949, as amended authorizes the Rural Housing Service (RHS) to provide financing to help low- and very low-income persons who cannot obtain credit from other sources obtain adequate housing in rural areas. Resources for the section 502 program are limited, and therefore, applicants are required to use section 502 funds in conjunction with funding or financing from other sources, if feasible. Sections 3550.52 through 3550.73 set forth the requirements for originating loans on program terms. Section 3550.74 describes the differences for originating loans on non-program (NP) terms.

§ 3550.52 Loan purposes.

Section 502 funds may be used to buy, build, rehabilitate, improve, or relocate an eligible dwelling and provide related facilities for use by the borrower as a permanent residence. In limited circumstances section 502 funds may be used to refinance existing debt.

(a) *Purchases from existing RHS borrowers.* To purchase a property currently financed by an RHS loan, the new borrower must assume the existing RHS indebtedness. Section 502 funds may be used to provide additional financing or make repairs. Loan funds also may be used to permit a remaining borrower to purchase the equity of a departing co-borrower.

(b) *Refinancing non-RHS loans.* Debt from an existing non-RHS loan may be refinanced if the existing debt is secured by a lien against the property, RHS will have a first lien position on the security property after refinancing, and:

(1) In the case of loans for existing dwellings, if:

(i) Due to circumstances beyond the applicant's control, the applicant is in danger of losing the property, the debt is over $5,000, and the debt was incurred for eligible program purposes prior to loan application or was a protective advance made by the mortgagee for items covered by the loan to be refinanced, including accrued interest, insurance premiums, real estate tax advances, or preliminary foreclosure costs; or

(ii) If a loan of $5,000 or more is necessary for repairs to correct major deficiencies and make the dwelling decent, safe and sanitary and refinancing is necessary for the borrower to show repayment ability, regardless of the delinquency.

(2) In the case of loans for a building site without a dwelling, if:

(i) The debt to be refinanced was incurred for the sole purpose of purchasing the site;

(ii) The applicant is unable to acquire adequate housing without refinancing; and

(iii) The RHS loan will include funds to construct an appropriate dwelling on the site for the applicant's use.

(3) Debts incurred after the date of RHS loan application but before closing may be refinanced if the costs are incurred for eligible loan purposes and any construction work conforms to the standards specified in this part.

(c) *Refinancing RHS debt.* Under limited circumstances, an existing RHS loan may be refinanced in accordance with § 3550.204 to allow the borrower to receive payment assistance.

(d) *Eligible costs.* Improvements financed with loan funds must be on land which, after closing, is part of the security property. In addition to acquisition, construction, repairs, or the cost of relocating a dwelling, loan funds may be used to pay for:

(1) Reasonable expenses related to obtaining the loan, including legal, architectural and engineering, technical, title clearance, and loan closing fees; and appraisal, surveying, environmental, tax monitoring, and other technical services; and personal liability insurance fees for Mutual Self-Help borrowers.

(2) The cost of providing special design features or equipment when necessary because of a physical disability of the applicant or a member of the household.

(3) Reasonable connection fees, assessments, or the pro rata installment costs for utilities such as water, sewer, electricity, and gas for which the borrower is liable and which are not paid from other funds.

(4) Reasonable and customary lender charges and fees if the RHS loan is being made in combination with a leveraged loan.

(5) Real estate taxes that are due and payable on the property at the time of closing and for the establishment of escrow accounts for real estate taxes, hazard and flood insurance premiums, and related costs.

(6) Fees to public and private nonprofit organizations that are tax exempt under the Internal Revenue Code for the development and packaging of loan applications, except for loans related to the purchase of an RHS Real Estate Owned (REO) property.

(7) Purchasing and installing essential equipment in the dwelling, including ranges, refrigerators, washers or dryers, if these items are normally sold with dwellings in the area and if the purchase of these items is not the primary purpose of the loans.

(8) Purchasing and installing approved energy savings measures and approved furnaces and space heaters that use fuel that is commonly used, economical, and dependably available.

(9) Providing site preparation, including grading, foundation plantings, seeding or sodding, trees, walks, yard fences, and driveways to a building site.

(10) Reasonable fees for homeownership education as determined by the State Director under § 3550.11 of this subpart. Such fees may be added to the loan amount in excess of the area loan limit and appraised value of the house.

(e) *Loan restrictions.* Loan funds may not be used to:

(1) Purchase an existing manufactured home, or for any other purposes prohibited in § 3550.73(b).

(2) Purchase or improve income-producing land or buildings to be used principally for income-producing purposes.

(3) Pay fees, commissions, or charges to for-profit entities related to loan packaging or referral of prospective applicants to RHS.

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 78329, Dec. 24, 2002; 72 FR 5157, Feb. 5, 2007]

§ 3550.53 Eligibility requirements.

(a) *Income eligibility.* At the time of loan approval, the household's adjusted income must not exceed the applicable low-income limit for the area, and at closing, must not exceed the applicable moderate-income limit for the area (see § 3550.544).

(b) *Citizenship status.* The applicant must be a United States citizen or a noncitizen who qualifies as a legal alien as defined in § 3550.10.

(c) *Primary residence.* Applicants must agree to and have the ability to occupy the dwelling on a permanent basis.

(1) Because of the probability of transfer, loans will not be approved for military personnel on active duty unless the applicant will be discharged within a reasonable period of time.

(2) Because of the probability of moves after graduation, loans will not be approved for a full-time student unless the applicant intends to make the home a permanent residence and there are reasonable prospects that employment will be available in the area after graduation.

(3) If the home is being constructed or renovated an adult member of the household must be available to make inspections and authorize progress payments as the dwelling is being constructed.

(d) *Eligibility of current homeowners.* Current homeowners are not eligible for initial loans except as follows:

(1) Current homeowners may receive RHS loan funds to:

(i) Refinance an existing loan under the conditions outlined in § 3550.52(b);

(ii) Purchase a new dwelling if the current dwelling is deficient housing as defined in § 3550.10; or

(iii) Make necessary repairs to the property which is financed with an affordable non- RHS loan.

(2) Current homeowners with an RHS loan may receive a subsequent loan.

(e) *Legal capacity.* Applicants must have the legal capacity to incur the loan obligation, or have a court appointed guardian or conservator who is empowered to obligate the applicant in real estate matters.

(f) *Suspension or debarment.* Applications from applicants who have been suspended or debarred from participation in federal programs will be handled in accordance with 7 CFR part 3017.

(g) *Repayment ability.* Repayment ability means applicants must demonstrate adequate and dependably available income. The determination of income dependability will include consideration of the applicant's past history of annual income.

(1) A very low-income applicant is considered to have repayment ability when the monthly amount required for payment of principal, interest, taxes, and insurance (PITI) does not exceed 29 percent of the applicant's repayment income, and the monthly amount required to pay PITI plus recurring monthly debts does not exceed 41 percent of the applicant's repayment income.

(2) A low-income applicant is considered to have repayment ability when the monthly amount required for payment of PITI does not exceed 33 percent of the applicant's repayment income, and the monthly amount required to pay PITI plus recurring monthly debts does not exceed 41 percent of repayment income.

(3) Repayment ratios may exceed the percentages specified in paragraphs (g)(1) and (g)(2) of this section if the applicant has demonstrated an ability to meet higher debt obligations, or if RHS determines, based on other compensating factors, that the household has a higher repayment ability.

(4) If an applicant does not meet the repayment ability requirements, the applicant can have another party join the application as a cosigner.

(5) If an applicant does not meet the repayment ability requirements, the applicant can have other household members join the application.

(h) *Credit qualifications.* Applicants must be unable to secure the necessary credit from other sources on terms and conditions that the applicant could reasonably be expected to fulfill. Applicants must have a credit history that indicates reasonable ability and willingness to meet debt obligations. An applicant with an outstanding judgment obtained by the United States in a federal court, other than the United States Tax Court, is not eligible for a loan or grant from RHS.

(1) Indicators of unacceptable credit include:

(i) Payments on any account where the amount of the delinquency exceeded one installment for more than 30 days within the last 12 months.

(ii) Payments on any account which was delinquent for more than 30 days on two or more occasions within a 12-month period.

(iii) A foreclosure which has been completed within the last 36 months.

(iv) An outstanding Internal Revenue Service tax lien or any other outstanding tax liens with no satisfactory arrangement for payment.

(v) A court-created or court-affirmed obligation or judgment caused by nonpayment that is currently outstanding or has been outstanding within the last 12 months, except for those excluded in paragraph (i)(2) of this section.

(vi) Two or more rent payments paid 30 or more days late within the last 2 years. If the applicant has experienced no other credit problems in the past 2 years, only 1 year of rent history will be evaluated. Rent payment history requirements may be waived if the RHS loan will reduce shelter costs significantly and contribute to an improved repayment ability.

(vii) Outstanding collection accounts with a record of irregular payment with no satisfactory arrangements for repayment, or collection accounts that were paid in full within the last 6 months.

(viii) Non-agency debts written off within the last 36 months unless paid in full at least 12 months ago.

(ix) Agency debts that were debt settled within the last 36 months or are being considered for debt settlement.

(x) Delinquency on a federal debt.

(2) The following will not be considered indicators of unacceptable credit:

(i) A bankruptcy in which debts were discharged more than 36 months prior to the date of application or where an applicant successfully completed a bankruptcy debt restructuring plan and has demonstrated a willingness to meeting obligations when due for the 12 months prior to the date of application.

(ii) A judgment satisfied more than 12 months before the date of application.

(3) When an application is rejected because of unacceptable credit, the applicant will be informed of the reason and source of information.

(i) *Homeownership education.* Applicants who are first-time homebuyers must agree to provide documentation, in the form of a completion certificate or letter from the provider, that a homeownership education course from a certified provider under § 3550.11 has been successfully completed as defined by the provider prior to loan closing. Requests for exceptions to the homeowner education requirement will be reviewed and granted on an individual case-by-case basis. The State Director may grant an exception the homeownership education requirement for individuals in geographic areas within the State where the State Director verifies that certified homeownership education is not reasonably available in the local area in any of the formats listed in § 3550.11(b). Whether such homeownership education is reasonably available will be determined based on factors including, but not limited to: Distance, travel time, geographic obstacles, and cost. On a case-by-case basis, the State Director also may grant an exception, provided the applicant borrower documents a special need, such as a disability, that would unduly impede completing a homeownership course in a reasonably available format.

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 78330, Dec. 24, 2002; 72 FR 5157, Feb. 5, 2007]

§ 3550.54 Calculation of income and assets.

(a) *Repayment income.* Repayment income is the annual amount of income from all sources that are expected to be received by those household members who are parties to the promissory note, except for any student financial aid received by these household members for tuition, fees, books, equipment, materials, and transportation. Repayment income is used to determine the household's ability to repay a loan.

(b) *Annual income.* Annual income is the income of all household members from all sources except those listed in (b)(1) through (b)(12) of this section:

(1) Earned income of persons under the age of 18 unless they are a borrower or a spouse of a member of the household;

(2) Payments received for the care of foster children or foster adults;

(3) Amounts granted for or in reimbursement of the cost of medical expenses;

(4) Earnings of each full-time student 18 years of age or older, except the head of household or spouse, that are in excess of any amount determined

pursuant to section 501(b)(5) of the Housing Act of 1949, as amended;

(5) Temporary, nonrecurring, or sporadic income (including gifts);

(6) Lump sum additions to family assets such as inheritances; capital gains; insurance payments under health, accident, or worker's compensation policies; settlements for personal or property losses; and deferred periodic payments of supplemental security income and Social Security benefits received in a lump sum;

(7) Any earned income tax credit;

(8) Adoption assistance in excess of any amount determined pursuant to section 501(b)(5) of the Housing Act of 1949, as amended;

(9) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling;

(10) Amounts paid by a State agency to a family with a developmentally disabled family member living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home;

(11) The full amount of any student financial aid; and

(12) Any other revenue exempted by a Federal statute; a list of which is available from any Rural Development office.

(c) *Adjusted income*. Adjusted income is used to determine program eligibility for sections 502 and 504 and the amount of payment subsidy for which the household qualifies under section 502. Adjusted income is annual income as defined in paragraph (b) of this section less any of the following deductions for which the household is eligible.

(1) For each household member, except the head of household or spouse, who is under 18 years of age, 18 years of age or older with a disability, or a full-time student, the amount determined pursuant to section 501(b)(5) of the Housing Act of 1949, as amended.

(2) A deduction of reasonable expenses for the care of minor 12 years of age or under that:

(i) Enable a family member to work or to further a member's education;

(ii) Are not reimbursed or paid by another source; and

(iii) In the case of expenses to enable a family member to work do not exceed the amount of income earned by the family member enabled to work.

(3) Expenses related to the care of household members with disabilities that:

(i) Enable a family member to work;

(ii) Are not reimbursed from insurance or another source; and

(iii) Are in excess of three percent of the household's annual income.

(4) For any elderly family, a deduction in the amount determined pursuant to section 501(b)(5) of the Housing Act of 1949, as amended.

(5) For elderly households only, a deduction for household medical expenses that are not reimbursed from insurance or another source and which in combination with any expenses related to the care of household members with disabilities described in paragraph (c)(3) of this section, are in excess of three percent of the household's annual income.

(d) *Net family assets*. Income from net family assets must be included in the calculation of annual and repayment income. Net family assets also are considered in determining whether a down payment is required.

(1) Net family assets include the cash value of:

(i) Equity in real property, other than the dwelling or site;

(ii) Cash on hand and funds in savings or checking accounts;

(iii) Amounts in trust accounts that are available to the household;

(iv) Stocks, bonds, and other forms of capital investments including life insurance policies and retirement plans that are accessible to the applicant without retiring or terminating employment;

(v) Lump sum receipts such as lottery winnings, capital gains, inheritances;

(vi) Personal property held as an investment; and

(vii) Any value, in excess of the consideration received, for any business or household assets disposed for less than fair market value during the 2 years preceding the income determination. The value of assets disposed of for less than fair market value shall not be considered if they were disposed of as a

result of foreclosure or bankruptcy or a divorce or separation settlement.

(2) Net family assets do not include:

(i) Interest in American Indian trust land;

(ii) Cash on hand which will be used to reduce the amount of the loan;

(iii) The value of necessary items of personal property;

(iv) Assets that are part of the business, trade, or farming operation of any member of the household who is actively engaged in such operation;

(v) The value of an irrevocable trust fund or any other trust over which no member of the household has control.

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 78329, Dec. 24, 2002]

§ 3550.55 Applications.

(a) *Application submissions.* All persons applying for RHS loans must file a complete written application in a format specified by RHS. Applications will be accepted even when funds are not available.

(b) *Application processing.* (1) Incomplete applications will be returned to the applicant specifying in writing the additional information that is needed to make the application complete.

(2) An applicant may voluntarily withdraw an application at any time.

(3) RHS may periodically request in writing that applicants reconfirm their interest in obtaining a loan. RHS may withdraw the application of any applicant who does not respond within the specified timeframe.

(4) Applicants who are eligible will be notified in writing. If additional information becomes available that indicates that the original eligibility determination may have been incorrect, or that circumstances have changed, RHS may reconsider the application and the applicant may be required to submit additional information.

(5) Applicants who are ineligible will be notified in writing and provided with the specific reasons for the rejection.

(c) *Selection for processing.* When funding is not sufficient to serve all program-eligible applicants, applications will be selected for processing using the funding priorities specified in this paragraph. Within priority categories, applications will be processed in the order that the completed applications are received. In the case of applications with equivalent priority status that are received on the same day, preference will be extended to applicants qualifying for a veterans preference. After selection for processing, loans are funded on a first-come, first-served basis.

(1) First priority will be given to existing customers who request subsequent loans to correct health and safety hazards.

(2) Second priority will be given to loans related to the sale of an REO property or the transfer of an exisiting RHS financed property.

(3) Third priority will be given to applicants facing housing related hardships including applicants who have been living in deficient housing for more than 6 months, current homeowners in danger of losing a property through foreclosure, and other circumstances determined by RHS on a case-by-case basis to constitute a hardship.

(4) Fourth priority will be given to applicants seeking, loans for the construction of dwellings in an RHS-approved Mutual Self-Help project or loans that will leverage funding or financing from other sources.

(5) Applications from applicants who do not qualify for priority consideration in paragraphs (c)(1), (c)(2), (c)(3), or (c)(4) of this section will be selected for processing after all applications with priority status have been processed.

(d) *Applicant timeframe.* RHS will specify a reasonable timeframe within which eligible applicants selected for processing must provide the information needed to underwrite the loan.

§ 3550.56 Site requirements.

(a) *Rural areas.* Loans may be made only in rural areas designated by RHS. If an area designation is changed to non-rural:

(1) New conditional commitments will be made and existing conditional commitments will be honored only in conjunction with an applicant for a section 502 loan who applied for assistance before the area designation changed.

(2) REO property sales and transfers with assumption may be processed.

(3) Subsequent loans may be made either in conjunction with a transfer with assumption of an RHS loan or to repair properties that have RHS loans.

(b) *Site standards.* Sites must be developed in accordance with 7 CFR part 1924, subpart C and any applicable standards imposed by a State or local government.

(1) The site must not be large enough to subdivide into more than one site under existing local zoning ordinances;

(2) The site must not include farm service buildings, though small outbuildings such as a storage shed may be included; and

(3) The value of the site must not exceed 30 percent of the as improved market value of the property. The State Director may waive the 30 percent requirement in high cost areas where other lenders permit a higher percentage.

§ 3550.57 Dwelling requirements.

(a) *Modest dwelling.* The property must be one that is considered modest for the area, must not be designed for income producing purposes, must not have an in-ground swimming pool or have a market value in excess of the applicable maximum loan limit, in accordance with § 3550.63, unless RHS authorizes an exception under this paragraph. An exception may be granted on a case-by-case basis to accommodate the specific needs of an applicant, such as to serve exceptionally large households or to provide reasonable accommodation for a household member with a disability. Any additional loan amount approved must not exceed the amount required to address the specific need.

(1) *Area-wide exception.* Area-wide exceptions may be granted when RHS determines that the section 203(b) limit is too low to enable applicants to purchase adequate housing.

(2) *Individual exceptions.* Individual exceptions may be granted to accommodate the specific needs of an applicant, such as to serve exceptionally large households or to provide reasonable accommodation for a household member with a disability. Any additional loan amount approved must not exceed the amount required to address the specific need.

(b) *New dwellings.* Construction must meet the requirements in 7 CFR part 1924, subpart A.

(c) *Existing dwellings.* Existing dwellings must be structurally sound; functionally adequate; in good repair, or to be placed in good repair with loan funds; have adequate electrical, heating, plumbing, water, and wastewater disposal systems; and be free of termites and other wood damaging pests and organisms.

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 78329, Dec. 24, 2002; 72 FR 70222, Dec. 11, 2007]

§ 3550.58 Ownership requirements.

After the loan is closed, the borrower must have an acceptable interest in the property as evidenced by one of the following.

(a) *Fee-simple ownership.* Acceptable fee-simple ownership is evidenced by a fully marketable title with a deed vesting a fee-simple interest in the property to the borrower.

(b) *Secure leasehold interest.* A written lease is required. To be acceptable, a leasehold interest must have an unexpired term that is at least 150 percent of the term of the mortgage, unless the loan is guaranteed, in which case the unexpired term of the lease must be at least 2 years longer than the loan term. In no case may the unexpired term be less than 25 years.

(c) *Life estate interest.* To be acceptable a life estate interest must provide the borrower with rights of present possession, control, and beneficial use of the property. Generally, persons with any remainder interests must be signatories to the mortgage. All of the remainder interests need not be included in the mortgage to the extent that one or more of the persons holding remainder interests are not legally competent (and there is no representative who can legally consent to the mortgage), cannot be located, or if the remainder interests are divided among such a large number of people that it is not practical to obtain the signatures of all of the remainder interests. In such cases, the loan may not exceed the value of the property interests

owned by the persons executing the mortgage.

(d) *Undivided interest.* All legally competent co-owners will be required to sign the mortgage. When one or more of the co-owners are not legally competent (and there is no representative who can legally consent to the mortgage), cannot be located, or the ownership interests are divided among so large a number of co- owners that it is not practical for all of their interests to be mortgaged, their interests not exceeding 50 percent may be excluded from the security requirements. In such cases, the loan may not exceed the value of the property interests owned by the persons executing the mortgage.

(e) *Possessory rights.* Acceptable forms of ownership include possessory rights on an American Indian reservation or State-owned land and the interest of an American Indian in land held in severalty under trust patents or deeds containing restrictions against alienation, provided that land in trust or restricted status will remain in trust or restricted status.

§ 3550.59 Security requirements.

Before approving any loan, RHS will impose requirements to secure its interests.

(a) *Adequate security.* A loan will be considered adequately secured only when all of the following requirements are met:

(1) RHS obtains at closing a mortgage on all ownership interests in the security property or the requirements of § 3550.58 are satisfied.

(2) No liens prior to the RHS mortgage exist at the time of closing and no junior liens are likely to be taken immediately subsequent to or at the time of closing, unless the other liens are taken as part of a leveraging strategy or the RHS loan is essential for repairs and the senior lien secures an affordable non-RHS loan. Liens junior to the RHS lien may be allowed at loan closing if the junior lien will not interfere with the purpose or repayment of the RHS loan. When the junior lien involves a grant or a forgivable affordable housing product, the total debt may exceed the market value by the amount of the forgivable loan or grant up to 5 percent.

(3) The provisions of 7 CFR part 1927, subpart B regarding title clearance and the use of legal services have been followed.

(4) Existing and proposed property improvements are totally on the site and do not encroach on adjoining property.

(b) *Guaranteed payment.* Mortgage insurance guaranteeing payment from a Government agency or Indian tribe is adequate security.

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 78330, Dec. 24, 2002]

§ 3550.60 Escrow account.

RHS may require that customers deposit into an escrow account amounts necessary to ensure that the account will contain sufficient funds to pay real estate taxes, hazard and flood insurance premiums, and other related costs when they are due in accordance with the Real Estate Settlement and Procedures Act of 1974 (RESPA) (12 U.S.C. 2601, *et seq.*) and section 501(e) of the Housing Act of 1949, as amended.

§ 3550.61 Insurance.

(a) Borrower responsibility. Any borrower with a secured indebtedness in excess of $15,000 at the time of loan approval must furnish and continually maintain hazard insurance on the security property, with companies, in amounts, and on terms and conditions acceptable to RHS including a ''loss payable clause'' payable to RHS to protect the Government's interest.

(b) Amount. The borrower is required to insure the dwelling and any other essential buildings in an amount equal to the insurable value of the dwelling and other essential buildings. However, in cases where the borrower's outstanding secured indebtedness is less than the insurable value of the dwelling and other essential buildings, the borrower may elect a lower coverage provided it is not less than the outstanding secured indebtedness. If the borrower fails, or is unable, to insure the secured property, RHS will force place insurance and charge the cost to

the borrower's account. Force place insurance only provides insurance coverage to the Agency and does not provide any direct coverage or benefit to the borrower. The amount of the lender-placed coverage will generally be the property's last known insured value.

(c) *Flood insurance*. Flood insurance must be obtained and maintained for the life of the loan for all property located in a Special Flood Hazard Area (SFHA) as determined by the Federal Emergency Management Agency (FEMA). RHS actions will be consistent with 7 CFR part 1806, subpart B which addressed flood insurance requirements. If flood insurance through FEMA's National Flood Insurance Program is not available in an SFHA, the property is not eligible for federal financial assistance.

(d) *Losses*. (1) Loss deductible clauses for required insurance coverage may not exceed the generally accepted minimums based on current industry standards and local market conditions.

(2) Customers must immediately notify RHS of any loss or damage to insured property and collect the amount of the loss from the insurance company.

(3) Depending on the amount of the loss, RHS may require that loss payments be supervised. All repairs and replacements done by or under the direction of the borrower, or by contract, will be planned, performed, inspected, and paid for in accordance with 7 CFR part 1924, subpart A.

(4) When insurance funds remain after all repairs, replacements, and other authorized disbursements have been made, the funds will be applied in the following order:

(i) Prior liens, including delinquent property taxes.

(ii) Past-due amounts.

(iii) Protective advances due.

(iv) Released to the customer if the RHS debt is adequately secured.

(5) If a loss occurs when insurance is not in force, the borrower is responsible for making the needed repairs or replacements and ensuring that the insurance is reinstated on the property.

(6) If the borrower is not financially able to make the repairs, RHS may take one of the following actions:

(i) Make a subsequent loan for repairs.

(ii) Subordinate the RHS lien to permit the borrower to obtain funds for needed repairs from another source.

(iii) Permit the borrower to obtain funds secured by a junior lien from another source.

(iv) Make a protective advance to protect the Government's interest.

(v) Accelerate the account.

[61 FR 59779, Nov. 22, 1996, as amended at 70 FR 6552, Feb. 8, 2005; 73 FR 49592, Aug. 22, 2008]

§ 3550.62 Appraisals.

(a) *Requirement*. An appraisal is required when the debt to be secured exceeds $15,000 or whenever RHS determines that it is necessary to establish the adequacy of the security. Appraisals must be made in accordance with the Uniform Standards of Professional Appraisal Practices. When other real estate is taken as additional security, it will be appraised if it represents a substantial portion of the security for the loan.

(b) *Fees*. RHS will charge a fee for each loan application that requires an appraisal, except the appraisal fee is not required on appraisals done for subsequent loans needed to make minimal, essential repairs or in cases where another party provides an appraisal which is acceptable to RHS. Fees collected in connection with a dwelling constructed under an approved conditional commitment will be paid to the contractor at closing to offset the cost of the real estate appraisal that is included in the conditional commitment fee.

§ 3550.63 Maximum loan amount.

Total secured indebtedness must not exceed the area loan limit or market value limitations specified in paragraphs (a) or (b) of this section, whichever is lower. Any loan amount for the RHS appraisal, tax monitoring fee, and the charge to establish an escrow account for taxes and insurance will not be subject to the limitations specified below. This section does not apply to loans on NP terms.

(a) *Area loan limit*. (1) The area loan limit is the maximum value of the property RHS will finance in a given

locality. Subject to the following, this limit is based on cost data plus the market value of an improved lot, or the State Housing Authority limits, whichever the State Director determines most appropriately reflects the value of modest housing for the area:

(i) The cost of the structure is based upon the cost to construct a modest home and is obtained by RHS from a nationally recognized residential cost provider.

(ii) The market value of an improved site (without the dwelling) is based upon current sales data for typical housing sites and reasonable and typical costs of site improvements.

(iii) The applicable State Housing Authority limit will only be considered if it is within 10 percent of the cost data plus the market value of an improved lot.

(iv) The area loan limit may not exceed the applicable local HUD section 203(b) limit.

(v) All area loan limit data will be updated at least annually and is available in any Rural Development office.

(2) The maximum loan limit calculated under paragraph (a)(1) will be reduced in the following situations:

(i) When the applicant owns the site or is purchasing the site at a sales price below market value, the market value of the lot will be deducted from the maximum loan limit, and

(ii) When an applicant is receiving a housing grant or other form of affordable housing assistance for purposes other than closing costs, the amount(s) of such grants and affordable housing assistance will be deducted from the maximum loan limit.

(3) The maximum loan limit for self-help housing will be calculated by adding the total of the market value of the lot (including reasonable and typical costs of site development), the cost of construction, and the value of sweat equity. The total of these three factors cannot exceed the limit established in paragraph (a)(1) of this section.

(b) *Market value limitation.* (1) The market value limitation is 100 percent of market value for existing housing and for new dwellings for which RHS will receive adequate documentation of construction quality and the source of such documentation is acceptable to RHS.

(2) The market value limitation is 90 percent of market value for new dwellings for which adequate documentation of construction quality is not available.

(3) The market value limitation can be increased by:

(i) Up to one percent, if RHS makes a subsequent loan for closing costs only, in conjunction with the sale of an REO property or an assumption.

(ii) The amount necessary to make a subsequent loan for repairs necessary to protect the Government's interest, and reasonable closing costs.

(iii) The amount necessary to refinance an existing borrower's RHS loans, plus closing costs associated with the new loan.

[61 FR 59779, Nov. 22, 1996; 61 FR 65266, Dec. 11, 1996, as amended at 67 FR 78330, Dec. 24, 2002]

§ 3550.64 Down payment.

Elderly families must use any net family assets in excess of $20,000 towards a down payment on the property. Non-elderly families must use net family assets in excess of $15,000 towards a down payment on the property. Applicants may contribute assets in addition to the required down payment to further reduce the amount to be financed.

[73 FR 49593, Aug. 22, 2008]

§ 3550.65 [Reserved]

§ 3550.66 Interest rate.

Loans will be written using the applicable RHS interest rate in effect at loan approval or loan closing, whichever is lower. Information about current interest rates is available in any Rural Development office.

[67 FR 78330, Dec. 24, 2002]

§ 3550.67 Repayment period.

Loans will be scheduled for repayment over a period that does not exceed the expected useful life of the property as a dwelling. The loan repayment period will not exceed:

(a) Thirty-three years in all cases except as noted in paragraphs (b), (c), and (d) of this section.

(b) Thirty-eight years:

(1) For initial loans, or subsequent loans made in conjunction with an assumption, if the applicant's adjusted income does not exceed 60 percent of the area adjusted median income and the longer term is necessary to show repayment ability.

(2) For subsequent loans not made in conjunction with an assumption if the applicant's initial loan was for a period of 38 years, the applicant's adjusted income at the time the subsequent loan is approved does not exceed 60 percent of area adjusted median income, and the longer terms is necessary to show repayment ability.

(c) Ten years for loans not exceeding $2,500.

(d) Thirty years for manufactured homes.

§ 3550.68 Payment subsidies.

RHS administers three types of payment subsidies: interest credit, payment assistance method 1, and payment assistance method 2. Payment subsidies are subject to recapture when the borrower transfers title or ceases to occupy the property.

(a) *Eligibility for payment subsidy*. (1) Applicants or borrowers who receive loans on program terms are eligible to receive payment subsidy if they personally occupy the property and have adjusted income at or below the applicable moderate-income limit.

(2) Payment subsidy may be granted for initial loans or subsequent loans made in conjunction with an assumption only if the term of the loan is 25 years or more.

(3) Payment subsidy may be granted for subsequent loans not made in conjunction with an assumption if the initial loan was for a term of 25 years or more.

(b) *Determining type of payment subsidy*. (1) A borrower currently receiving interest credit will continue to receive it for the initial loan and for any subsequent loan for as long as the borrower is eligible for and remains on interest credit.

(2) A borrower currently receiving payment assistance using payment assistance method 1 will continue to receive it for the initial loan and for any subsequent loan for as long as the borrower is eligible for and remains on payment assistance method 1.

(3) A borrower who has never received payment subsidy, or who has stopped receiving interest credit or payment assistance method 1, and at a later date again qualifies for a payment subsidy, will receive payment assistance method 2.

(4) A borrower may not opt to change payment assistance methods.

(c) *Calculation of payment assistance*. Regardless of the method used, payment assistance may not exceed the amount necessary if the loan were amortized at an interest rate of one percent.

(1) *Payment Assistance Method 2*. The amount of payment assistance granted is the lesser of the difference between:

(i) The annualized promissory note installments for the combined RHS loan and eligible leveraged loans plus the cost of taxes and insurance less twenty-four percent of the borrower's adjusted income, or

(ii) The annualized promissory note installment for the RHS loan less amount the borrower would pay if the loan were amortized at an interest rate of one percent.

(2) *Payment Assistance Method 1*. The amount of payment assistance granted is the difference between the annualized note rate installment as prescribed on the promissory note and the lesser of:

(i) The floor payment, which is defined as a minimum percentage of adjusted income that the borrower must pay for PITI: 22 percent for very low-income borrowers, 24 percent for low-income borrowers with adjusted income below 65 percent of area adjusted median, and 26 percent for low-income borrowers with adjusted incomes between 65 and 80 percent of area adjusted median; or

(ii) The annualized note rate installment and the payment at the equivalent interest rate, which is determined by a comparison of the borrower's adjusted income to the adjusted median income for the area in which the security property is located. The following chart is used to determine the equivalent interest rate.

When the applicant's adjusted income is:

PERCENTAGE OF MEDIAN INCOME AND THE EQUIVALENT INTEREST RATE

Equal to or more than:	BUT less than:	THEN the equivalent interest rate is*
00%	50.01 of adjusted median income.	1%
50.01%	55 of adjusted median income.	2%
55%	60 of adjusted median income.	3%
60%	65 of adjusted median income.	4%
65%	70 of adjusted median income.	5%
70%	75 of adjusted median income.	6%
75%	80.01 of adjusted median income.	6.5%
80.01%	90 of adjusted median income.	7.5%
90%	100 of adjusted median income.	8.5%
100%	110% of adjusted median income.	9%
110%	Or more than adjusted median income.	9.5%

*Or note rate, whichever is less; in no case will the equivalent interest rate be less than one percent.

(d) *Calculation of interest credit*. The amount of interest credit granted is the difference between the note rate installment as prescribed on the promissory note and the greater of:

(1) Twenty percent of the borrower's adjusted income less the cost of real estate taxes and insurance, or

(2) The amount the borrower would pay if the loan were amortized at an interest rate of 1 percent.

(e) *Annual review*. The borrower's income will be reviewed annually to determine whether the borrower is eligible for continued payment subsidy. The borrower must notify RHS whenever an adult member of the household changes or obtains employment, there is a change in household composition, or if income increases by at least 10 percent so that RHS can determine whether a review of the borrower's circumstances is required.

[72 FR 73255, Dec. 27, 2007]

§ 3550.69 Deferred mortgage payments.

For qualified borrowers, RHS may defer up to 25 percent of the monthly principal and interest payment at 1 percent for up to 15 years. This assistance may be granted only at initial loan closing and is reviewed annually. Deferred mortgage payments are subject to recapture when the borrower transfers title or ceases to occupy the property.

(a) *Eligibility*. In order to qualify for deferred mortgage payments, all of the following must be true:

(1) The applicants adjusted income at the time of initial loan approval does not exceed the applicable very low-income limits.

(2) The loan term is 38 years, or 30 years for a manufactured home.

(3) The applicant's payments for principal and interest, calculated at a one percent interest rate for the maximum allowable term, plus estimated costs for taxes and insurance exceeds:

(i) For applicants receiving payment assistance, 29 percent of the applicants repayment income by more than $10 per month; or

(ii) For applicants receiving interest credit, 20 percent of adjusted income by more than $10 per month.

(b) *Amount and terms*. (1) The amount of the mortgage payment to be deferred will be the difference between the applicants payment for principal and interest, calculated at one percent interest for the maximum allowable term, plus estimated costs for taxes and insurance and:

(i) For applicants receiving payment assistance, 29 percent of the applicants repayment income.

(ii) For applicants receiving interest credit, 20 percent of adjusted income.

(2) Deferred mortgage payment agreements will be effective for a 12-month period.

(3) Deferred mortgage assistance may be continued for up to 15 years after loan closing. Once a borrower becomes ineligible for deferred mortgage assistance, the borrower can never again receive deferred mortgage assistance.

(c) *Annual review*. The borrower's income, taxes, and insurance will be reviewed annually to determine eligibility for continued deferred mortgage assistance. The borrower must notify RHS whenever an adult member of the household changes or obtains employment or if income increases by at least 10 percent so that RHS can determine whether a review of the borrower's circumstances is required.

§ 3550.70 Conditional commitments.

A conditional commitment is a determination by RHS that a dwelling offered for sale will be acceptable for purchase by a qualified RHS loan applicant if it is built or rehabilitated in accordance with RHS-approved plans, specifications, and regulations and priced within the lesser of the property's appraised value or the applicable maximum load limit. The conditional commitment does not reserve funds, does not guarantee funding, and does not ensure that an eligible loan applicant will be available to buy the dwelling.

(a) *Eligibility*. To be eligible to request a conditional commitment, the builder, dealer-contractor, or seller must:

(1) Have an adequate ownership interest in the property, as defined in § 3550.58, prior to the beginning of any planned construction;

(2) Have the experience and ability to complete any proposed work in a competent and professional manner;

(3) Have the legal capacity to enter into the required agreements;

(4) Be financially responsible and have the ability to finance or obtain financing for any proposed construction or rehabilitation; and

(5) Comply with the requirements of 7 CFR part 1901, subpart E and all applicable laws, regulations, and Executive Orders relating to equal opportunity. Anyone who receives 5 or more conditional commitments during a 12-month period must obtain RHS approval of an affirmative marketing plan.

(b) *Limitations*. Conditional commitments for new or substantially rehabilitated dwellings will not be issued after construction has started. RHS may limit the total number of conditional commitments issued in any locality based on market demand.

(c) *Commitment period*. A conditional commitment will be valid for 12 months from the date of issuance. The commitment may be extended for up to an additional 6 months if there are unexpected delays in construction caused by such factors as bad weather, materials shortages, or marketing difficulties. Conditional commitments may be canceled if construction does not begin within 60 days after the commitment is issued.

(d) *Conditional commitments involving packaging of applications*. A conditional commitment may be made to a seller, builder, or dealer-contractor who packages an RHS loan application for a prospective purchaser. In cases where the dwelling is to be constructed for sale to a specific eligible applicant, all of the following conditions must be met:

(1) The conditional commitment will not be approved until the applicant's loan has been approved;

(2) Construction will not begin until loan funds are obligated for the loan. Exceptions may be made when it appears likely that funding will be forthcoming and as long as the RHS lien priority is not jeopardized. The sales agreement must indicate that the loan has been approved but not funded and must provide that if the loan is not closed within 90 days of the date of approval, the contractor may terminate the sales agreement and sell the property to another party. If the sales agreement is terminated, the conditional commitment will be honored for another eligible loan applicant for the remaining period of the commitment; and

(3) The RHS loan will be closed only after the dwelling is constructed or the required rehabilitation completed and final inspection has been made.

(e) *Fees*. An application for a conditional commitment must include payment of the conditional commitment fee. The fee will be refunded if for any reason preliminary inspection of the property or investigation of the conditional commitment applicant indicates that a conditional commitment will not be issued. Application fees will not be refunded for any property on which the required appraisal has been made.

(f) *Failure of conditional commitment applicant or dwelling to qualify*. The conditional commitment applicant will be informed if the conditional commitment is denied. Conditional commitments will be canceled if the property does not meet program requirements.

(g) *Changes in plans, specifications, or commitment price*. The holder of the conditional commitment must request approval for changes in plans, specifications, and commitment price. RHS

may approve the changes if the following requirements are met:

(1) The property price does not exceed the maximum loan limit and increases in costs are due to factors beyond the control of the commitment holder; and

(2) The requested changes are justifiable and appropriate.

(h) *Builder's warranty*. The builder or seller, as appropriate, must execute either an RHS-approved ''Builder's Warranty,'' or provide a 10-year insured warranty when construction is completed or the loan is closed.

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 78330, Dec. 24, 2002]

§ 3550.71 Special requirements for condominiums.

RHS loans may be made for condominium units under the following conditions:

(a) The unit is in a project approved or accepted by U.S. Department of Housing and Urban Development (HUD), the Federal National Mortgage Association (Fannie Mae), or the Federal Home Loan Mortgage Corporation (Freddie Mac).

(b) The condominium project complies with the requirements of the condominium enabling statute and all other applicable laws. Any right of first refusal in the condominium documents will not impair the rights of RHS to:

(1) Foreclose or take title to a condominium unit pursuant to the remedies in the mortgage;

(2) Accept a deed in lieu of foreclosure in the event of default by a mortgagor; and

(3) Sell or lease a unit acquired by RHS.

(c) If RHS obtains title to a condominium unit pursuant to the remedies in its mortgage or through foreclosure, RHS will not be liable for more than 6 months of the unit's unpaid regularly budgeted dues or charges accrued before acquisition of the title to the unit by RHS. The homeowners association's lien priority may include costs of collecting unpaid dues.

(d) In case of condemnation or substantial loss to the units or common elements of the condominium project, unless at least two-thirds of the first mortgagees or unit owners of the individual condominium units have given their consent, the homeowners association may not:

(1) By act or omission seek to abandon or terminate the condominium project;

(2) Change the pro rata interest or obligations of any condominium unit in order to levy assessments or charges, allocate distribution of hazard insurance proceeds or condemnation awards, or determine the pro rata share of ownership of each condominium unit in the common elements;

(3) Partition or subdivide any condominium unit;

(4) Seek to abandon, partition, subdivide, encumber, sell, or transfer the common elements by act or omission (the granting of easements for public utilities or other public purposes consistent with the intended use of the common elements by the condominium project is not a transfer within the meaning of this clause); or

(5) Use hazard insurance proceeds for losses to any condominium property (whether units or common elements) for other than the repair, replacement, or reconstruction of the condominium property.

(e) All taxes, assessments, and charges that may become liens prior to the first mortgage under local law relate only to the individual condominium units and not to the condominium project as a whole.

(f) No provision of the condominium documents gives a condominium unit owner or any other party priority over any rights of RHS as first or second mortgagee of the condominium unit pursuant to its mortgage in the case of a payment to the unit owner of insurance proceeds or condemnation awards for losses to or taking of condominium units or common elements.

(g) If the condominium project is on a leasehold the underlying lease provides adequate security of tenure as described in § 3550.58(b).

(h) At least 70 percent of the units have been sold. Multiple purchases of condominium units by one owner are counted as one sale when determining if the sales requirement has been met.

(i) No more than 15 percent of the unit owners are more than 1 month delinquent in payment of homeowners association dues or assessments at the time the RHS loan is closed.

§ 3550.72 Community land trusts.

Eligible dwellings located on land owned by a community land trust may be financed if:

(a) The loan meets all the requirements of this subpart; and

(b) Any restrictions, imposed by the community land trust on the property or applicant are:

(1) Reviewed and accepted by RHS before loan closing; and

(2) Automatically and permanently terminated upon foreclosure or acceptance by RHS of a deed in lieu of foreclosure.

§ 3550.73 Manufactured homes.

With the exception of the restrictions and additional requirements contained in this section, section 502 loans on manufactured homes are subject to the same conditions as all other section 502 loans.

(a) *Eligible costs.* In addition to the eligible costs described in § 3550.52(d), RHS may finance the following activities related to manufactured homes when a real estate mortgage covers both the unit and the site:

(1) Purchase of an eligible unit, transportation, and set-up costs, and purchase of an eligible site if not already owned by the applicant;

(2) Site development work in accordance with 7 CFR part 1924, subpart A:

(3) Subsequent loans in conjunction with an assumption or sale of an REO property; or

(4) Subsequent loans for repairs of units financed under section 502.

(b) *Loan restrictions.* In addition to the loan restrictions described in § 3550.52(e), RHS may not use loan funds to finance:

(1) An existing unit and site unless it is already financed with a section 502 loan or is an RHS REO property.

(2) The purchase of a site without also financing the unit.

(3) Alteration or remodeling of the unit when the initial loan is made.

(4) Furniture, including movable articles of personal property such as drapes, beds, bedding, chairs, sofas, divans, lamps, tables, televisions, radios, stereo sets, and other similar items of personal property. Furniture does not include wall-to-wall carpeting, refrigerators, ovens, ranges, washing machines, clothes dryers, heating or cooling equipment, or other similar items.

(c) *Dealer-contractors.* No loans will be made on a manufactured home sold by any entity that is not an approved dealer-contractor that will provide complete sales, service, and site development services.

(d) *Loan term.* The maximum term of a loan on a manufactured home is 30 years.

(e) *Construction and development.* Unit construction, site development and set-up must conform to the Federal Manufactured Home Construction and Safety Standards (FMHCSS) and 7 CFR part 1924, subpart A. Development under the Mutual Self-Help and borrower construction methods is not permitted for manufactured homes.

(f) *Contract requirements.* The dealer-contractor must sign a construction contract, as specified in 7 CFR 1924.6 which will cover both the unit and site development work. The use of multi-contracts is prohibited. A dealer-contractor may use subcontractors if the dealer-contractor is solely responsible for all work under the contract. Payment for all work will be in accordance with 7 CFR part 1924, subpart A, except no payment will be made for materials or property stored on site (e.g., payment for a unit will be made only after it is permanently attached to the foundation).

(g) *Lien release requirements.* All persons furnishing materials or labor in connection with the contract except the manufacturer of the unit must sign a Release by Claimants document, as specified in 7 CFR part 1924, subpart A. The manufacturer of the unit must furnish an executed manufacturer's certificate of origin to verify that the unit is free and clear of all legal encumbrances.

(h) *Warranty requirements.* The dealer-contractor must provide a warranty in accordance with the provisions of 7 CFR 1924.12. The warranty must identify the unit by serial number. The dealer-contractor must certify that the

unit substantially complies with the plans and specifications and the manufactured home has sustained no hidden damage during transportation and, if manufactured in separate sections, that the sections were properly joined and sealed according to the manufacturer's specifications. The dealer-contractor will also furnish the applicant with a copy of all manufacturer's warranties.

§ 3550.74 Nonprogram loans.

NP terms may be extended to applicants who do not qualify for program credit, or for properties that do not qualify as program properties, when it is in the best interest of the Government. NP loans are originated and serviced according to the requirements for program loans except as indicated in this section.

(a) *Purpose.* NP terms may be offered to expedite:

(1) Sale of an REO property.

(2) Assumption of an existing program loan on new rates and terms. If additional funds are required to purchase the property, the applicant must obtain them from another source.

(3) Conversion of a program loan that has received unauthorized assistance.

(4) Continuation of a loan on a portion of a security property when the remainder is being transferred and the RHS debt is not paid in full.

(b) *Terms.* (1) Rate and term:

(i) For an applicant who intends to occupy the property, the term will not exceed 30 years.

(ii) For other applicants, the term will not exceed 10 years. If more favorable terms are necessary to facilitate the sale, the loan may be amortized over a period of up to 20 years with payment in full due not later than 10 years from the date of closing.

(iii) An applicant with an NP loan under paragraph (b)(1)(i) of this section who wishes to retain the property and purchase a new property with RHS credit must purchase the second property according to the terms of paragraph (b)(1)(ii) of this section, even if the new property will serve as the applicant's principal residence.

(2) NP loans are written at the NP interest rate in effect at the time of loan approval.

(3) NP borrowers are not eligible for payment assistance or a moratorium.

(c) *Additional requirements.* (1) NP applicants other than public bodies and nonprofit organizations must pay a nonrefundable application fee.

(2) NP applicants must make a down payment based upon the purchase price and whether the applicant intends to personally occupy the property or use it for other purposes.

(3) NP applicants cannot finance loan closing costs or escrow, tax service, or appraisal fees.

(d) *Reduced restrictions.* (1) NP applicants need not be unable to obtain other credit in order to receive an NP loan and are not required to refinance with private credit when they are able to do so.

(2) NP applicants are not required to occupy the property.

(3) NP applicants are not subject to leasing restrictions.

(e) *Waiver of costs.* When the purpose of the loan is the conversion of a program loan that has received unauthorized assistance or continuation of a loan on a portion of a security property when the remainder is being transferred, the application fee, appraisal fee, and down payment may be waived.

§§ 3550.75–3550.99 [Reserved]

§ 3550.100 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0172. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 3 hours per response, with an average of 1½ hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You are not required to respond to this collection of information unless it displays a currently valid OMB control number.

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 78330, Dec. 24, 2002]

Subpart C—Section 504 Origination and Section 306C Water and Waste Disposal Grants

§ 3550.101 Program objectives.

This subpart sets forth policies for administering loans and grants under section 504(a) of title V of the Housing Act of 1949, as amended. Section 504 loans and grants are intended to help very low-income owner-occupants in rural areas repair their properties. This subpart also covers Water and Waste Disposal (WWD) Grants to individuals authorized by Section 306C(b) of the Consolidated Farm and Rural Development Act, (7 U.S.C. 1926c).

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 78331, Dec. 24, 2002]

§ 3550.102 Grant and loan purposes.

(a) *Grant funds.* Grant funds may be used only to pay costs for repairs and improvements that will remove identified health and safety hazards or to repair or remodel dwellings to make them accessible and useable for household members with disabilities. Unused grant funds must be returned to the Rural Housing Service (RHS).

(b) *Loan funds.* Loan funds may be used to make general repairs and improvements to properties or to remove health and safety hazards, as long as the dwelling remains modest in size and design.

(c) *Eligibility of mobile and manufactured homes.* Repairs necessary to remove health and safety hazards may be made to mobile or manufactured homes provided:

(1) The applicant owns the home and site and has occupied the home prior to filing an application with RHS; and

(2) The mobile or manufactured home is on a permanent foundation or will be put on a permanent foundation with section 504 funds.

(d) *Eligible costs.* In addition to construction costs to make necessary repairs and improvements, loan and grant funds may be used for:

(1) Reasonable expenses related to obtaining the loan or grant, including legal, architectural and engineering, title clearance, and loan closing fees; and appraisal, surveying, environmental, tax monitoring, and other technical services.

(2) The cost of providing special design features or equipment when necessary because of a physical disability of the applicant or a member of the household.

(3) Reasonable connection fees, assessments, or the pro rata installation costs for utilities such as water, sewer, electricity, and gas for which the borrower is liable and which are not paid from other funds.

(4) Real estate taxes that are due and payable on the property at the time of closing and for the establishment of escrow accounts for real estate taxes, hazard and flood insurance premiums, and related costs.

(5) Fees to public and private nonprofit organizations that are tax exempt under the Internal Revenue Code for the development and packaging of applications.

(e) *Restrictions on uses of loan or grant funds.* Section 504 funds may not be used to:

(1) Assist in the construction of a new dwelling.

(2) Make repairs to a dwelling in such poor condition that when the repairs are completed, the dwelling will continue to have major hazards.

(3) Move a mobile home or manufactured home from one site to another.

(4) Pay for off-site improvements except for the necessary installation and assessment costs for utilities.

(5) Refinance any debt or obligation of the applicant incurred before the date of application, except for the installation and assessment costs of utilities.

(6) Pay fees, commission, or charges to for-profit entities related to loan packaging or referral of prospective applicants to RHS.

§ 3550.103 Eligibility requirements.

To be eligible, applicants must meet the following requirements:

(a) *Owner-occupant.* Applicants must own, as described in § 3550.107, and occupy the dwelling.

(b) *Age (grant only).* To be eligible for grant assistance, an applicant must be 62 years of age or older at the time of application.

(c) *Income eligibility*. At the time of loan or grant approval, the household's adjusted income must not exceed the applicable very low-income limit. Section 3550.54 provides a detailed discussion of the calculation of adjusted income.

(d) *Citizenship status*. The applicant must be a U.S. citizen or a non-citizen who qualifies as a legal alien, as defined in § 3550.10.

(e) *Need and use of personal resources*. Applicants must be unable to obtain financial assistance at reasonable terms and conditions from non-RHS credit or grant sources and lack the personal resources to meet their needs. In cases where the household is experiencing medical expenses in excess of three percent of the household's income, this requirement may be waived or modified. Elderly families must use any net family assets in excess of $20,000 to reduce their section 504 request. Non-elderly families must use any net family assets in excess of $15,000 to reduce their section 504 request. Applicants may contribute assets in excess of the aforementioned amounts to further reduce their request for assistance. The definition of assets for this purpose is net family assets as described in § 3550.54 of subpart B of this part, less the value of the dwelling and a minimum adequate site.

(f) *Legal capacity*. The applicant must have the legal capacity to incur the loan obligation or have a court appointed guardian or conservator who is empowered to obligate the applicant in real estate matters.

(g) *Suspension or debarment*. Applications from applicants who have been suspended or debarred from participation in federal programs will be handled in accordance with FmHA Instruction 1940–M (available in any Rural Development office).

(h) *Repayment ability (loans only)*. Applicants must demonstrate adequate repayment ability as supported by a budget.

(1) If an applicant does not meet the repayment ability requirements, the applicant can have another party join the application as a cosigner.

(2) If an applicant does not meet the repayment ability requirements, the applicant can have other household members join the application.

(i) *Credit qualifications*. Applicants must be unable to secure the necessary credit from other sources under terms and conditions that the applicant could reasonably be expected to fulfill. Loan applicants must have a credit history that indicates reasonable ability and willingness to meet debt obligations. An applicant with an outstanding judgment obtained by the United States in a federal court, other than the United States Tax Court, is not eligible for a loan or grant from RHS.

(1) Indicators of unacceptable credit include:

(i) Payments on any account where the amount of the delinquency exceeded one installment for more than 30 days within the last 12 months.

(ii) Payments on any account which was delinquent for more than 30 days on two or more occasions within a 12-month period.

(iii) Loss of security due to a foreclosure if the foreclosure has been completed within the last 36 months.

(iv) An outstanding Internal Revenue Service tax lien or any other outstanding tax liens with no satisfactory arrangement for payment.

(v) A court-created or court-affirmed obligation or judgment caused by nonpayment that is currently outstanding or has been outstanding within the last 12 months, except for those excluded by paragraphs (i)(2)(i) and (i)(2)(ii) of this section.

(vi) Outstanding collection accounts with a record of irregular payment with no satisfactory arrangements for repayment, or collection accounts that were paid in full within the last 6 months.

(vii) Non-agency debts written off within the last 36 months or paid in full at least 12 months ago.

(viii) Agency debts that were debt settled within the last 36 months or are being considered for debt settlement.

(ix) Delinquency on a federal debt.

(2) The following will not be considered indicators of unacceptable credit:

(i) A bankruptcy in which debts were discharged more than 36 months prior to the date of application or where an applicant successfully completed a bankruptcy debt restructuring plan

and has demonstrated a willingness to meet obligations when due for the 12 months prior to the date of application.

(ii) A non-foreclosure judgment satisfied more than 12 months before the date of application.

(3) When an application is rejected because of unacceptable credit, the applicant will be informed of the reason and source of information.

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 78331, Dec. 24, 2002; 73 FR 49593, Aug. 22, 2008]

§ 3550.104 Applications.

(a) *Application submissions.* All persons applying for section 504 loans or grants must file a complete written application in a format specified by RHS. Applications will be accepted even when funds are not available.

(b) *Application processing.* (1) Incomplete applications will be returned to the applicant specifying in writing the additional information that is needed to make the application complete.

(2) An applicant may voluntarily withdraw an application at any time.

(3) RHS may periodically request in writing that applicants reconfirm their interest in obtaining a loan or grant. RHS may withdraw the application of any applicant who does not respond within the specified timeframe.

(4) Applicants who are eligible will be notified in writing. If additional information becomes available that indicates that the original eligibility determination may have been in error or that circumstances have changed, RHS may reconsider the application and the applicant may be required to submit additional information.

(5) Applicants who are ineligible will be notified in writing and provided with the specific reasons for the rejection.

(c) *Processing priorities.* When funding is not sufficient to serve all eligible applicants, applications for assistance to remove health and safety hazards will receive priority for funding. In the case of applications with equivalent priority status that are received on the same day, preference will be extended to applicants qualifying for a veterans preference. After selection for processing, requests for assistance are funded on a first-come, first-served basis.

§ 3550.105 Site requirements.

(a) *Rural areas.* Loans may be made only in rural areas designated by RHS. If an area designation is changed to nonrural an existing RHS borrower may receive 504 assistance.

(b) *Not subdividable.* The site must not be large enough to subdivide into more than one site under existing local zoning ordinances.

§ 3550.106 Dwelling requirements.

(a) *Modest dwelling.* The property must be one that is considered modest for the area, must not be designed for income producing purposes, have an inground pool, or have a market value in excess of the applicable maximum loan limit, in accordance with § 3550.63.

(b) *Post-repair condition.* Dwellings repaired with section 504 funds need not be brought to the agency development standards of 7 CFR part 1924, subpart A, nor must all existing hazards be removed. However, the dwelling may not continue to have major health or safety hazards.

(c) *Construction standards.* All work must be completed in accordance with local construction codes and standards. When potentially hazardous equipment or materials are being installed, all materials and installations must be in accordance with the applicable standards in 7 CFR part 1924, subpart A.

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 78331, Dec. 24, 2002; 72 FR 70222, Dec. 11, 2007]

§ 3550.107 Ownership requirements.

The applicant must have an acceptable ownership interest in the property as evidenced by one of the following:

(a) *Full fee ownership.* Acceptable full fee ownership is evidenced by a fully marketable title with a deed vesting a fee interest in the property to the applicant.

(b) *Secure leasehold interest.* A written lease is required. For loans, the unexpired portion of the lease must not be less than 2 years beyond the term of the promissory note. For grants, the remaining lease period must be at least 5 years. A leasehold for mutual help housing financed by U.S. Department

of Housing and Urban Development (HUD) on Indian lands requires no minimum lease period and constitutes acceptable ownership.

(c) *Life estate interest.* To be acceptable, a life estate interest must provide the applicant with rights of present possession, control, and beneficial use of the property. For secured loans, generally persons with any remainder interests must be signatories to the mortgage. All of the remainder interests need not be included in the mortgage to the extent that one or more of the persons holding remainder interests are not legally competent (and there is no representative who can legally consent to the mortgage), cannot be located, or if the remainder interests are divided among such a large number of people that it is not practical to obtain the signatures of all of the remainder interests. In such cases, the loan may not exceed the value of the property interests owned by the persons executing the mortgage.

(d) *Undivided interest.* An undivided interest is acceptable if there is no reason to believe that the applicant's position as an owner-occupant will be jeopardized as a result of the improvements to be made, and:

(1) In the case of unsecured loans or grants, if any co-owners living or planning to live in the dwelling sign the repayment agreement.

(2) In the case of a secured loan, when one or more of the co-owners are not legally competent (and there is no representative who can legally consent to the mortgage), cannot be located, or the ownership interests are divided among so large a number of co-owners that it is not practical for all of their interests to be mortgaged, their interests not exceeding 50 percent may be excluded from the security requirements. In such cases, the loan may not exceed the value of the property interests owned by the persons executing the mortgage.

(e) *Possessory rights.* Acceptable forms of ownership include possessory right on an American Indian reservation or State-owned land and the interest of an American Indian in land held severalty under trust patents or deeds containing restrictions against alienation, provided that land in trust or restricted status will remain in trust or restricted status.

(f) *Land purchase contract.* A land purchase contract is acceptable if the applicant is current on all payments, and there is a reasonable likelihood that the applicant will be able to continue meeting the financial obligations of the contract.

(g) *Alternative evidence of ownership.* If evidence, as described in paragraphs (a) through (e) of this section, is not available, RHS may accept any of the following as evidence of ownership:

(1) Records of the local taxing authority that show the applicant as owner and that demonstrate that real estate taxes for the property are paid by the applicant.

(2) Affidavits by others in the community stating that the applicant has occupied the property as the apparent owner for a period of not less than 10 years, and is generally believed to be the owner.

(3) Any instrument, whether or not recorded, which is commonly accepted as evidence of ownership.

§ 3550.108 Security requirements (loans only).

When the total section 504 indebtedness is $7,500 or more, the property will be secured by a mortgage on the property, leasehold interest, or land purchase contract.

(a) RHS does not require a first lien position, but the total of all debts on the secured property may not exceed the value of the security, except by the amount of any required contributions to an escrow account for taxes and insurance and any required appraisal fee.

(b) Title clearance and the use of legal services generally must be conducted in accordance with 7 CFR part 1927, subpart B. These requirements need not be followed for:

(1) Loans where the total RHS indebtedness is less than $7,500; or

(2) Subsequent loans made for minimal essential repairs necessary to protect the Government's interest.

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 78331, Dec. 24, 2002]

§ 3550.109 Escrow account (loans only).

RHS may require that borrowers deposit into an escrow account amounts

necessary to ensure that the account will contain sufficient funds to pay real estate taxes, hazard and flood insurance premiums, and other related costs when they are due in accordance with the Real Estate Settlement and Procedures Act of 1974 (RESPA) and section 501(e) of the Housing Act of 1949, as amended.

§ 3550.110 Insurance (loans only).

(a) Borrower responsibility. Any borrower with a secured indebtedness in excess of $15,000 at the time of loan approval must furnish and continually maintain hazard insurance on the security property, with companies, in amounts, and on terms and conditions acceptable to RHS including a ''loss payable clause'' payable to RHS to protect the Government's interest.

(b) Amount. The borrower is required to insure the dwelling and any other essential buildings in an amount equal to the insurable value of the dwelling and other essential buildings. However, in cases where the borrower's outstanding secured indebtedness is less than the insurable value of the dwelling and other essential buildings, the borrower may elect a lower coverage provided it is not less than the outstanding secured indebtedness. If the borrower fails, or is unable to insure the secured property, RHS will force place insurance and charge the cost to the borrower's account. Force place insurance only provides insurance coverage to the Agency and does not provide any direct coverage or benefit to the borrower. The amount of the lender-placed coverage generally will be the property's last known insured value.

(c) *Flood insurance*. Flood insurance must be obtained and maintained for the life of the loan for all property located in Special Flood Hazard Areas (SFHA) as determined by the Federal Emergency Management Agency (FEMA). RHS actions will be consistent with 7 CFR part 1806, subpart B which addresses flood insurance requirements. If flood insurance through FEMA's National Flood Insurance Program is not available in a SFHA, the property is not eligible for federal financial assistance.

(d) *Losses*. (1) Loss deductible clauses for required insurance coverage may not exceed the generally accepted minimums based on current and local market conditions.

(2) Borrowers must immediately notify RHS of any loss or damage to insured property and collect the amount of the loss from the insurance company.

(3) RHS may require that loss payments be supervised. All repairs and replacements done by or under the direction of the borrower, or by contract, will be planned, performed, inspected, and paid for in accordance with 7 CFR part 1924, subpart A.

(4) When insurance funds remain after all repairs, replacements, and other authorized disbursements have been made, the funds will be applied in the following order:

(i) Prior liens, including delinquent property taxes.

(ii) Delinquency on the account.

(iii) Advances due for recoverable cost items.

(iv) Released to the borrower if the RHS debt is adequately secured.

(5) If a loss occurs when insurance is not in force, the borrower is responsible for making the needed repairs or replacements and ensuring that the insurance is reinstated on the property.

(6) If the borrower is not financially able to make the repairs, RHS may take one of the following actions:

(i) Make a subsequent loan for repairs.

(ii) Subordinate the RHS lien to permit the borrower to obtain funds for needed repairs from another source.

(iii) Permit the borrower to obtain funds secured by a junior lien from another source.

(iv) Make a protective advance to protect the Government's interest.

(v) Accelerate the account and demand payment in full.

[61 FR 59779, Nov. 22, 1996, as amended at 70 FR 6552, Feb. 8, 2005; 73 FR 49593, Aug. 22, 2008]

§ 3550.111 Appraisals (loans only).

An appraisal is required when the section 504 debt to be secured exceeds $15,000 or whenever RHS determines that it is necessary to establish the adequacy of the security. RHS may

charge an appraisal fee. Appraisals must be made in accordance with the Uniform Standards of Professional Appraisal Practices. When other real estate is taken as additional security it will be appraised if it represents a substantial portion of the security for the loan.

§ 3550.112 Maximum loan and grant.

(a) *Maximum loan permitted.* The sum of all outstanding section 504 loans to 1 borrower or on 1 dwelling may not exceed $20,000.

(1) Transferees who have assumed a section 504 loan and wish to obtain a subsequent section 504 loan are limited to the difference between the unpaid principal balance of the debt assumed and $20,000.

(2) For a secured loan, the total of all debts on the secured property may not exceed the value of the security, except by the amount of any required appraisal and tax monitoring fees, and the contributions to an escrow account for taxes and insurance.

(b) *Maximum loan based upon ability to pay.* The maximum loan is limited to the principal balance that can be supported given the amount the applicant has available, as determined by RHS, to repay a loan at 1 percent interest with a 20-year term.

(c) *Maximum grant.* The lifetime total of the grant assistance to any recipient is $7,500. No grant can be awarded unless the maximum level of loans, as supported by a budget, have been obtained.

§ 3550.113 Rates and terms (loans only).

(a) *Interest rate.* The interest rate for all section 504 loans will be 1 percent.

(b) *Loan term.* The repayment period for the loan should generally be as short as possible based on the applicant's repayment ability, and may never exceed 20 years; however loans made in combination with grants must have a term of 20 years.

§ 3550.114 Repayment agreement (grants only).

Grant recipients are required to sign a repayment agreement which specifies that the full amount of the grant must be repaid if the property is sold in less than 3 years from the date the grant agreement was signed.

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 78331, Dec. 24, 2002]

§ 3550.115 WWD grant program objectives.

The objective of the WWD individual grant program is to facilitate the use of community water and waste disposal systems by the residents of colonias along the border between the U.S. and Mexico. WWD grants are processed the same as Section 504 grants, except as specified in this subpart.

[67 FR 78331, Dec. 24, 2002]

§ 3550.116 Definitions applicable to WWD grants only.

(a) *Colonia.* Any identifiable community designated in writing by the State or county in which it is located; determined to be a colonia on the basis of objective criteria including lack of a potable water supply, lack of adequate sewage systems, and lack of decent, safe, and sanitary housing, inadequate roads, and drainage; and existed and was generally recognized as a colonia before October 1, 1989.

(b) *Individual.* Resident of a colonia located in a rural area.

(c) *Rural areas.* Includes unincorporated areas and any city or town with a population not in excess of 10,000 inhabitants according to the most recent decennial census of the United States.

(d) *System.* A community or central water supply or waste disposal system.

(e) *WWD.* Water and Waste Disposal grants to individuals.

[67 FR 78331, Dec. 24, 2002]

§ 3550.117 WWD grant purposes.

Grant funds may be used to pay the reasonable costs for individuals to:

(a) Extend service lines from the system to their residence.

(b) Connect service lines to residence's plumbing.

(c) Pay reasonable charges or fees for connecting to a system.

(d) Pay for necessary installation of plumbing and related fixtures within dwellings lacking such facilities. This

is limited to one bathtub, sink, commode, kitchen sink, water heater, and outside spigot.

(e) Construction and/or partitioning off a portion of the dwelling for a bathroom, not to exceed 4.6 square meters (48 square feet) in size.

(f) Pay reasonable costs for closing abandoned septic tanks and water wells when necessary to protect the health and safety of recipients of a grant for a purpose provided in paragraph (a) or (b) of this section and is required by local or State law.

(g) Make improvements to individual's residence when needed to allow the use of the water and/or waste disposal system.

[67 FR 78331, Dec. 24, 2002]

§ 3550.118 Grant restrictions.

(a) *Maximum grant.* Lifetime assistance to any individual for initial or subsequent Section 306C WWD grants may not exceed a cumulative total of $5,000.

(b) *Limitation on use of grant funds.* WWD grant funds may not be used to:

(1) Pay any debt or obligation of the grantees other than obligations incurred for purposes listed in § 3550.117.

(2) Pay individuals for their own labor.

[67 FR 78331, Dec. 24, 2002]

§ 3550.119 WWD eligibility requirements.

In addition to the eligibility requirements of § 3550.103, WWD applicants must meet the following requirements:

(a) An applicant need not be 62 years of age or older.

(b) Own and occupy a dwelling located in a colonia. Evidence of ownership will be presented as outlined in § 3550.107.

(c) Have a total taxable income from all individuals residing in the household that is below the most recent poverty income guidelines established by the Department of Health and Human Services.

(d) Must not be delinquent on any Federal debt.

(e) The household income must be verified at the time they apply for assistance through verification of employment and benefits. Federal tax returns are used as further verification of household income.

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 78331, Dec. 24, 2002]

§ 3550.120–3550.149 [Reserved]

§ 3550.150 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0172. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 3 hours per response, with an average of 1½ hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comment regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Department of Agriculture, Clearance Officer, STOP 7602, 1400 Independence Avenue, SW., Washington, DC 20250–0762. You are not required to respond to this collection of information unless it displays a currently valid OMB control number.

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 78331, Dec. 24, 2002]

Subpart D—Regular Servicing

§ 3550.151 Servicing goals.

This subpart sets forth the Rural Housing Service (RHS) policies for managing the repayment of loans made under sections 502 and 504 of the Housing Act of 1949, as amended.

§ 3550.152 Loan payments.

(a) *Payment terms.* Unless the loan documents specify other loan repayment terms, borrowers are required to make monthly payments. Borrowers with existing loans specifying annual payments may request conversion to monthly payments, and must convert to a monthly payment schedule before any subsequent loan or new payment assistance is approved. Suitable forms of payment are: check, money order, or bank draft. Borrowers who make cash

payments will be assessed a fee to cover the cost of conversion to a money order.

(b) *Application of payments.* If a borrower makes less than the scheduled payment, the payment is held in suspense and is not applied to the borrower's account. When subsequent payments are received in an amount sufficient to equal a scheduled payment, the amount will be applied in the following order:

(1) Protective advances charged to the account.

(2) Accrued interest due.

(3) Principal due.

(4) Escrow for taxes and insurance.

(c) *Multiple loans.* When a borrower with multiple loans for the same property makes less than the scheduled payment on all loans, the payment will be applied to the oldest loan and then in declining order of age. Future remittances will be applied beginning with the oldest unpaid installment.

(d) *Application of excess payments.* Borrowers can elect to make payments in excess of the scheduled amount to be applied to principal, provided there are no outstanding fees.

§ 3550.153 Fees.

RHS may assess reasonable fees including a tax service fee, fees for late payments, and fees for checks returned for insufficient funds.

§ 3550.154 Inspections.

RHS or its agent may make reasonable entries upon and inspections of any property used as security for an RHS loan as necessary to protect the interest of the Government. RHS will give the borrower notice at the time of or prior to an inspection.

§ 3550.155 Escrow account.

Escrow accounts will be administered in accordance with RESPA and section 501(e) of the Housing Act of 1949, as amended.

(a) Upon creation of the escrow account, RHS may require borrowers to deposit funds sufficient to pay taxes and insurance premiums applicable to the mortgage for the period since the last payments were made and to fund a cushion as permitted by RESPA.

(b) Borrowers may elect to escrow at any time during the terms of the loan if the outstanding RHS loan balance is over $2,500.

(c) RHS may require borrowers to escrow in conjunction with any special servicing action.

§ 3550.156 Borrower obligations.

(a) After receiving a loan from RHS, borrowers are expected to meet a variety of obligations outlined in the loan documents. In addition to making timely payments, these obligations include:

(1) Maintaining the security property; and

(2) Maintaining an adequately funded escrow account, or paying real estate taxes, hazard and flood insurance, and other related costs when due.

(b) If a borrower fails to fulfill these obligations, RHS may obtain the needed service and charge the cost to the borrowers account.

§ 3550.157 Payment subsidy.

(a) *Borrowers currently receiving payment subsidy.* (1) RHS will review annually each borrower's eligibility for continued payment subsidy and determine the appropriate level of assistance. To be eligible for payment subsidy renewal, the borrower must also occupy the property.

(2) If the renewal is not completed before the expiration date of the existing agreement, the effective date of the renewal will be either the expiration date of the previous agreement if RHS error caused the delay, or the next due date after the renewal is approved in all other cases.

(3) The borrower must notify RHS whenever an adult member of the household becomes employed or changes employment, there is a change in household composition, or if income increases by at least 10 percent. The household may also report decreases in income. If the change in the household's income will cause the payment for principal and interest to change by at least 10 percent, the household's payment subsidy may be adjusted for a new 12-month period. The new agreement will be effective the due date following the date the borrower's information is verified by RHS.

(b) *Borrowers not currently receiving payment subsidy*. Payment assistance may be granted to borrowers not currently receiving payment subsidy whose loans were approved on or after August 1, 1968, whose income does not exceed the applicable low-income limit for the area, are personally occupying the RHS financed property, and who meet the requirements of § 3550.53(b), (e), and (f). In general, to receive payment assistance the term of the loan at closing must have been at least 25 years. If an account has been reamortized and the initial term of the loan was at least 25 years, payment assistance may be granted even though the term of the reamortized loan is less than 25 years. Payment assistance may be granted on a subsequent loan for repairs with a term of less than 25 years.

(c) *Cancellation of payment subsidy*. RHS will cancel a payment subsidy if the borrower does not occupy the property, has sold or transferred title to the property, or is no longer eligible for payment subsidy.

§ 3550.158 Active military duty.

The Soldiers and Sailors Relief Act requires that the interest rate charged a borrower who enters full-time active military duty after a loan is closed not exceed six percent. Active military duty does not include participation in a military reserve or the National Guard unless the borrower is called to active duty.

(a) *Amount of assistance*. If a borrower qualifies for payment subsidy after reduction of the interest rate to six percent, the amount of payment subsidy received during the period of active military duty will be the difference between the amount due at the subsidized rate for principal and interest and the amount due at a six percent interest rate. The six percent interest rate will be effective with the first payment due after RHS confirms the active military status of the borrower.

(b) *Change of active military status*. The borrower must notify RHS when he or she is no longer on active military duty. RHS will cancel the six percent interest rate and resume use of the promissory note interest rate. A new payment subsidy agreement may be processed if the borrower is eligible.

§ 3550.159 Borrower actions requiring RHS approval.

(a) *Mineral leases*. Borrowers who wish to lease mineral rights to a security property must request authorization from RHS. RHS may consent to the lease of mineral rights and subordinate its liens to the lessee's rights and interests in the mineral activity if the security property will remain suitable as a residence and the Government's security interest will not be adversely affected. Subordination of RHS loans to a mineral lease does not entitle the leaseholder to any proceeds from the sale of the security property.

(1) If the proposed activity is likely to decrease the value of the security property, RHS may consent to the lease only if the borrower assigns 100 percent of the income from the lease to RHS to be applied to reduce principal and the rent to be paid is at least equal to the estimated decrease in the market value of the security.

(2) If the proposed activity is not likely to decrease the value of the security property, RHS may consent to the lease if the borrower agrees to use any damage compensation received from the lessee to repair damage to the site or dwelling, or to assign it to RHS to be applied to reduce principal.

(b) *Subordination*. RHS may subordinate its interests to permit a borrower to defer recapture amounts and refinance the loan, or to obtain a subsequent loan with private credit.

(1) When it is in the best interest of the Government, subordination will be permitted if:

(i) The other lender will verify that the funds will be used for purposes for which an RHS loan could be made;

(ii) The prior lien debt will be on terms and conditions that the borrower can reasonably be expected to meet without jeopardizing repayment of the RHS indebtedness;

(iii) Any proposed development will be planned and performed in accordance with 7 CFR part 1924, subpart A or directed by the other lender in a manner which is consistent with that subpart; and

(iv) An agreement is obtained in writing from the prior lienholder providing that at least 30 days prior written notice will be given to RHS before

action to foreclose on the prior lien is initiated.

(2) The total amount of debt permitted when RHS subordinates its interests depends on whether the borrower pays off the RHS loan.

(i) For situations in which the borrower is obtaining a subsequent loan from another source and will not pay off the RHS debt, the prior lien debt plus the unpaid balance of all RHS loans, exclusive of recapture, will not exceed the market value of the security.

(ii) For situations in which RHS is subordinating only a deferred recapture amount, the prior lien debt plus the deferred recapture amount will not exceed the market value of the security.

(c) *Partial release of security.* RHS may consent to transactions affecting the security, such as sale or exchange of security property or granting of a right-of-way across the security property, and grant a partial release provided:

(1) The compensation is:

(i) For sale of the security property, cash in an amount equal to the value of the security being disposed of or rights granted.

(ii) For exchange of security property, another parcel of property acquired in exchange with value equal to or greater than that being disposed of.

(iii) For granting an easement or right-of-way, benefits derived that are equal to or greater than the value of the security property being disposed of.

(2) An appraisal must be conducted if the latest appraisal is more than 1 year old or if it does not reflect market value and the amount of consideration exceeds $5,000. The appraisal fee will be charged to the borrower.

(3) The security property, after the transaction is completed, will be an adequate but modest, decent, safe, and sanitary dwelling and related facilities.

(4) Repayment of the RHS debt will not be jeopardized.

(5) If applicable, the environmental requirements of 7 CFR part 1940, subpart G are met.

(6) When exchange of all or part of the security is involved, title clearance is obtained before release of the existing security.

(7) Proceeds from the sale of a portion of the security property, granting an easement or right-of-way, damage compensation, and all similar transactions requiring RHS consent, will be used in the following order:

(i) To pay customary and reasonable costs related to the transaction that must be paid by the borrower.

(ii) To be applied on a prior lien debt, if any.

(iii) To be applied to RHS indebtedness or used for improvements to the security property in keeping with purposes and limitations applicable for use of RHS loan funds. Proposed development will be planned and performed in accordance with 7 CFR part 1924, subpart A and supervised to ensure that the proceeds are used as planned.

(d) *Lease of security property.* A borrower must notify RHS if they lease the property. If the lease is for a term of more than 3 years or contains an option to purchase, RHS may liquidate the loan. During the period of any lease, the borrower is not eligible for a payment subsidy or special servicing benefits.

§ 3550.160 Refinancing with private credit.

(a) *Objective.* RHS direct loan programs are not intended to supplant or compete with private credit sources. Therefore, borrowers are required to refinance RHS loans with private credit sources when RHS determines that the borrower meets RHS criteria.

(b) *Criteria for refinancing with private credit.* Borrowers must refinance with private credit when RHS determines that the borrower has the ability to obtain other credit at reasonable rates and terms based on their income, assets, and credit history. Reasonable rates and terms are those commercial rates and terms that borrowers are expected to meet when borrowing for similar purposes. Differences in interest rates and terms between RHS and other lenders will not be an acceptable reason for a borrower to fail to refinance with private credit if the available rates and terms are within the borrower's ability to pay.

(c) *Notice of requirement to refinance with private credit.* The financial status

of all borrowers may be reviewed periodically to determine their ability to refinance with private credit. A borrower's financial status may be reviewed at any time if information becomes available to RHS that indicates that the borrower's circumstances have changed.

(1) A borrower undergoing review is required to supply, within 30 days of a request from RHS, sufficient financial information to enable RHS to determine the borrowers ability to refinance with private credit. Foreclosure action may be initiated against any borrower who fails to respond.

(2) When RHS determines that a borrower has the ability to refinance with private credit, the borrower will be required to refinance within 90 days.

(3) Within 30 days after being notified of the requirement to refinance with private credit, a borrower may contest the RHS decision and provide additional financial information to document an inability to refinance with private credit.

(d) *Failure to refinance with private credit.* (1) If the borrower is unable to secure private credit, the borrower must submit written statements and documentation to RHS showing:

(i) The lenders contacted.

(ii) The amount of the loan requested by the borrower and the amount, if any, offered by the lenders.

(iii) The rates and terms offered by the lenders or the specific reasons why other credit is not available.

(iv) The information provided by the borrower to the lenders regarding the purpose of the loan.

(2) If RHS determines that the borrower's submission does not demonstrate the borrower's inability to refinance with private credit, or if the borrower fails to submit the required information, foreclosure may be initiated.

(e) *Subordination of recapture amount.* RHS may subordinate its interest in any deferred recapture amount to permit a borrower to refinance with private credit. The amount to which the RHS debt will be subordinated may include:

(1) The amount required to repay the RHS debt, exclusive of recapture;

(2) Reasonable closing costs;

(3) Up to one percent of the loan amount for loan servicing costs, if required by the lender; and

(4) The cost of any necessary repairs or improvements to the security property.

(f) *Application for additional credit.* A borrower who has been asked to refinance with private credit will not be considered for additional credit until the refinancing issue is resolved unless such additional credit is necessary to protect the Government's interest.

§ 3550.161 Final payment.

(a) *Payment in full.* Full payment of a borrower's account includes repayment of principal and outstanding interest, unauthorized assistance, recapture amounts, and charges made to the borrower's account. Any supervised funds or funds remaining in a borrower's escrow account will be applied to the borrower's account or returned to the borrower.

(b) *Release of security instruments.* RHS may release security instruments when full payment of all amounts owed has been received and verified. If RHS and the borrower agree to settle the account for less than the full amount owed, the security instruments may be released when all agreed-upon amounts are received and verified. Security instruments will not be released until any deferred recapture amount has been paid in full.

(c) *Payoff statements.* At the borrower's request, RHS will provide a written statement indicating the amount required to pay the account in full. RHS may charge a fee for statements for the same account if more than 2 statements are requested in any 30 day period.

(d) *Suitable forms of payment.* Suitable forms of payment are: check, money order, or bank draft. Borrowers who make cash payments will be assessed a fee to cover conversion to a money order.

(e) *Recording costs.* Recording costs for the release of the mortgage will be the responsibility of the borrower, except where State law requires the mortgagee to record or file the satisfaction.

§ 3550.162 Recapture.

(a) *Recapture policy*. Borrowers with loans approved or assumed on or after October 1, 1979, will be required to repay subsidy amounts received through payment subsidy or deferred mortgage assistance. Amounts to be recaptured are due and payable when the borrower transfers title or ceases to occupy the property.

(b) *Amount to be recaptured*. (1) The maximum amount to be recaptured is the amount of principal reduction attributed to subsidy and the lesser of:

(i) The amount of subsidy received; or

(ii) 50 percent of the value appreciation.

(2) The value appreciation of property with a cross-collateralized loan is based on the market value of the dwelling and lot. If located on a farm, the lot size would be a typical lot for a single family housing property.

(3) Interest reduced from the promissory note rate to six percent under the Soldiers and Sailors Relief Act is not subject to recapture.

(c) *Option to defer payment of recapture amounts*. (1) Borrowers may defer payment of recapture amounts if the loan is repaid, the title does not transfer, and the borrower continues to occupy the property.

(2) The RHS mortgage securing the deferred recapture amount may be subordinated to permit refinancing if the RHS mortgage will be adequately secured.

(3) Borrowers eligible to defer recapture may receive a discount on the recapture amount due if the recapture amount is paid along with the final payment, or in the case of a final installment, within 60 days of the date RHS notifies the borrower that recapture may be due.

(d) *Borrower ceases to occupy the property*. When a borrower ceases to occupy a property:

(1) The borrower may pay the recapture amount in full or reamortize the existing loan to include the recapture amount.

(2) If the borrower does not pay the recapture amount or consent to reamortization within 30 days, RHS may proceed with foreclosure.

(e) *Assumed loans*. (1) When a loan subject to recapture is assumed under new rates and terms, the recapture amount may be paid in full by the seller or included in the principal amount assumed by the buyer.

(2) When a loan is assumed under the terms of the promissory note, recapture amounts will not be due. When the new borrower transfers title or ceases to occupy the property, all subsidy subject to recapture before and after the assumption is due.

(3) When a borrower has deferred payment of recapture amounts, the deferred recapture amount may be included in the principal amount of the new loan.

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 78331, Dec. 24, 2002]

§ 3550.163 Transfer of security and assumption of indebtedness.

(a) *General policy*. RHS mortgages contain due-on-sale clauses that generally require RHS consent before title to a security property can be transferred with an assumption of the indebtedness. If it is in the best interest of the Government, RHS will approve the transfer of title and assumption of indebtedness on program or nonprogram (NP) terms, depending on the transferee's eligibility and the property's characteristics.

(b) *RHS approval of assumptions*. (1) A borrower with a loan on program terms who wishes to transfer a security property restricted by a due-on-sale clause to a purchaser who wishes to assume the debt must receive prior authorization from RHS. If RHS authorizes the transfer and assumption, the account will be serviced in the purchaser's name and the purchaser will be liable for the loan under the terms of the security instrument.

(2) If a borrower transfers title to the security property with a due-on-sale clause without obtaining RHS authorization, RHS will not approve assumption of the indebtedness, and the loan will be liquidated unless RHS determines that it is in the Government's best interest to continue the loan. If RHS decides to continue the loan, the account will be serviced in the original borrower's name and the original borrower will remain liable for the loan

under the terms of the security instrument.

(c) *Exceptions to due-on-sale clauses.* (1) Due-on-sale clauses are not triggered by the following types of transfers:

(i) A transfer from the borrower to a spouse or children not resulting from the death of the borrower.

(ii) A transfer to a relative, joint tenant, or tenant by the entirety resulting from the death of the borrower.

(iii) A transfer to a spouse or ex-spouse resulting from a divorce decree, legal separation agreement, or property settlement agreement.

(iv) A transfer to a person other than a deceased borrower's spouse who wishes to assume the loan for the benefit of persons who were dependent on the deceased borrower at the time of death, if the dwelling will be occupied by one or more persons who were dependent on the borrower at the time of death, and there is a reasonable prospect of repayment.

(v) A transfer into an inter vivos trust in which the borrower does not transfer rights of occupancy in the property.

(2) A transferee who obtains property through one of the types of transfer listed in paragraph (c)(1) of this section:

(i) Is not required to assume the loan, and RHS is not permitted to liquidate the loan, if the transferee continues to make scheduled payments and meet all other obligations of the loan. A transferee who does not assume the loan is not eligible for payment assistance or a moratorium.

(ii) May assume the loan on the rates and terms contained in the promissory note, with no down payment. If the account is past due at the time an assumption is executed, the account may be brought current by using any of the servicing methods discussed in subpart E of this part.

(iii) May assume the loan under new rates and terms if the transferee applies and is program-eligible.

(3) Any subsequent transfer of title, except upon death of the inheritor or between inheritors to consolidate title, will be treated as a sale.

(d) *Requirements for an assumption.* (1) Loans secured by program-eligible properties to be assumed by program-eligible purchasers may be assumed on program terms. Loans secured by non-program properties and loans to be assumed by purchasers who are not eligible for program terms may be assumed on NP terms.

(2) The amount the transferee will assume will be either the current market value less any prior liens and any required down payment, or the indebtedness, whichever is less.

(3) For loans assumed on program terms, the interest rate charged by RHS will be the rate in effect at loan approval or loan closing, whichever is lower. For loans assumed on nonprogram terms, the interest rate will be the rate in effect at the time of loan approval.

(4) If additional financing is required to purchase the property or to make repairs, RHS may approve a subsequent loan under subparts B or C of this part.

(5) If an appraisal is required for an assumption on new terms, the purchaser is responsible for the appraisal fee.

(6) If all or a portion of the borrower's account balance is assumed, the borrower and cosigner, if any, will be released from liability on the amount of the indebtedness assumed. If an account balance remains after the assumption, RHS may pursue debt settlement in accordance with subpart F of this part.

(7) Unless it is in the Government's best interest, RHS will not approve an assumption of a secured loan if the seller fails to repay any unsecured RHS loan.

(8) If a loan is secured by a property with a dwelling situated on more than a minimum adequate site and the excess property cannot be sold separately as a minimum adequate site for another dwelling, RHS may approve a transfer of the entire property. If the excess property can be sold separately as a minimum adequate site, RHS will approve assumption of only the dwelling and the minimum adequate site. If the value of the dwelling on the minimum adequate site is less than the amount of the outstanding RHS debt, the remaining debt will be secured by the excess property. The outstanding debt will be converted to an NP loan

and reamortized over a period not to exceed 10 years or the final due date of the original promissory note, whichever is sooner.

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 78332, Dec. 24, 2002]

§ 3550.164 Unauthorized assistance.

(a) *Definition*. Unauthorized assistance includes any loan, payment subsidy, deferred mortgage payment, or grant for which the recipient was not eligible.

(b) *Unauthorized assistance due to false information*. (1) False information includes information that the recipient knew was incorrect or should have known was incorrect that was provided or omitted for the purposes of obtaining assistance for which the recipient was not eligible.

(2) If the recipient receives an unauthorized loan due to false information, RHS will adjust the account using the NP interest rate that was in effect when the loan was approved. The recipient must pay the account in full within 30 days.

(3) If the recipient receives unauthorized subsidy due to false information, RHS will require the recipient to repay it within 30 days. The account cannot be reamortized to include the unauthorized subsidy. If the recipient repays the unauthorized subsidy, the loan may be continued.

(c) *Unauthorized assistance due to inaccurate information*. (1) Inaccurate information includes incorrect information inadvertently provided, used, or omitted without the intent to obtain benefits for which the recipient was not eligible.

(2) RHS will permit a recipient who receives an unauthorized loan due to inaccurate information to retain the loan under the following conditions.

(i) If the inaccurate information was related to the purpose of the loan or the recipient's eligibility, with the exception of income, or the income used was incorrect, but the recipient still qualified as income-eligible, RHS will allow the recipient to continue the loan on existing terms.

(ii) If a section 502 recipient's income was above the moderate-income level, RHS will convert the loan to an NP loan, using the nonprogram interest rate in effect on the date the loan was approved.

(iii) If a section 504 recipient's income was above the very low-income level, RHS will apply the applicable 502 or nonprogram interest rate in effect on the date the loan was approved.

(iv) If an incorrect interest rate was used, RHS will adjust the account using the correct interest rate.

(3) If the recipient receives unauthorized subsidy due to inaccurate information, RHS will require the recipient to repay it within 30 days. If the recipient cannot repay it within 30 days, the account may be reamortized. If the recipient repays the unauthorized subsidy or reamortizes the loan, the loan may be continued.

(d) *Unauthorized grants*. Recipients may either repay the unauthorized assistance in a lump sum or execute a promissory note, regardless of whether the unauthorized assistance was due to false or inaccurate information. RHS may seek a judgment if the recipient refuses to repay the unauthorized assistance.

(e) *Account servicing*. RHS will adjust all accounts retroactively to establish the amount of unauthorized assistance. If the recipient does not repay the unauthorized assistance within 30 days, RHS may accelerate the loan. If the unauthorized assistance is due to inaccurate information and the recipient is unable to repay within 30 days, RHS may reamortize the loan.

(f) *Accounts with no security*. If an unauthorized loan or grant is unsecured, RHS may seek the best mortgage obtainable.

§§ 3550.165–3550.199 [Reserved]

§ 3550.200 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0172. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 3 hours per response, with an average of 1½ hours per response, including time for reviewing instructions, searching existing data sources, gathering and

maintaining the data needed, and completing and reviewing the collection of information. You are not required to respond to this collection of information unless it displays a currently valid OMB control number.

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 78332, Dec. 24, 2002]

Subpart E—Special Servicing

§ 3550.201 Purpose of special servicing actions.

The Rural Housing Service (RHS) may approve special servicing actions to reduce the number of borrower failures that result in liquidation. Borrowers who have difficulty keeping their accounts current may be eligible for one or more available servicing options including: payment assistance; delinquency workout agreements that temporarily modify payment terms; protective advances of funds for taxes, insurance, and other approved costs; payment moratoriums; and reamortization of the loan.

§ 3550.202 Past due accounts.

An account is past due if the scheduled payment is not received by the due date, or as authorized by State law.

(a) *Late fee.* A late fee will be assessed if the full scheduled payment is not received by the 15th day after the due date.

(b) *Liquidation*—(1) *For borrowers with monthly payments.* The account may be accelerated without further servicing when at least 3 scheduled payments are past due or an amount equal to at least 2 scheduled payments is past due for at least 3 consecutive months. In such cases RHS may pursue voluntary liquidation and foreclosure.

(2) *For borrowers with annual payments.* The account may be accelerated without further servicing when at least 3/12 of 1 scheduled payment has not been received by its due date. In such cases, RHS may pursue voluntary liquidation and foreclosure.

§ 3550.203 General servicing actions.

Whenever any of the servicing actions described in this subpart result in reamortization of the account RHS may:

(a) Require a borrower who currently makes annual payments, but receives a monthly income, to convert to monthly payments.

(b) Require the creation and funding of an escrow account for real estate taxes and insurance, if one does not already exist for any borrower with monthly payments.

(c) Convert the method of calculating interest for any account being charged daily simple interest to an amortized payment schedule.

§ 3550.204 Payment assistance.

Borrowers who are eligible may be offered payment assistance in accordance with subpart B of this part. Borrowers who are not eligible for payment assistance because the loan was approved before August 1, 1968, or the loan was made on above-moderate or nonprogram (NP) terms, may refinance the loan in order to obtain payment assistance if:

(a) The borrower is eligible to receive a loan with payment assistance;

(b) Due to circumstances beyond the borrower's control, the borrower is in danger of losing the property; and

(c) The property is program-eligible.

§ 3550.205 Delinquency workout agreements.

Borrowers with past due accounts may be offered the opportunity to avoid liquidation by entering into a delinquency workout agreement that specifies a plan for bringing the account current. To receive a delinquency workout agreement, the following requirements apply:

(a) A borrower who is able to do so will be required to pay the past-due amount in a single payment.

(b) A borrower who is unable to pay the past-due amount in a single payment must pay monthly all scheduled payments plus an agreed upon additional amount that brings the account current within 2 years or the remaining term of the loan, whichever is shorter.

(c) If a borrower becomes more than 30 days past due under the terms of a delinquency workout agreement, RHS may cancel the agreement.

§ 3550.206 Protective advances.

RHS may pay for fees or services and charge the cost against the borrower's account to protect the Governments interest.

(a) *Advances for taxes and insurance.* RHS may advance funds to pay real estate taxes, hazard and flood insurance premiums, and other related costs, as well as amounts needed to fund the current escrow cycle.

(b) *Advances for costs other than taxes and insurance.* Protective advances for costs other than taxes and insurance, such as emergency repairs, will be made only if the borrower cannot obtain a subsequent loan.

(c) *Repayment arrangements.* (1) Advances for borrowers with multiple loans will be charged against the largest loan.

(2) Amounts advanced will be due with the next scheduled payment. RHS may schedule repayment consistent with the borrowers ability to repay or reamortize the loan.

(3) Advances will bear interest at the promissory note rate of the loan to which the advance was charged.

§ 3550.207 Payment moratorium.

RHS may defer a borrowers scheduled payments for up to 2 years. NP borrowers are not eligible for a payment moratorium.

(a) *Borrower eligibility.* For a borrower to be eligible for a moratorium, all of the following conditions must be met:

(1) Due to circumstances beyond the borrower's control, the borrower is temporarily unable to continue making scheduled payments because:

(i) The borrower's repayment income fell by at least 20 percent within the past 12 months;

(ii) The borrower must pay unexpected and unreimbursed expenses resulting from the illness, injury, or death of the borrower or a family member; or

(iii) The borrower must pay unexpected and unreimbursed expenses resulting from damage to the security property in cases where adequate hazard insurance was not available or was prohibitively expensive.

(2) The borrower occupies the dwelling, unless RHS determines that it is uninhabitable.

(3) The borrower's account is not currently accelerated.

(b) *Reviews of borrower eligibility.* (1) Periodically RHS may require the borrower to submit financial information to demonstrate that the moratorium should be continued. The moratorium may be canceled if:

(i) The borrower does not respond to a request for financial information;

(ii) RHS receives information indicating that the moratorium is no longer required; or

(iii) In the case of a moratorium granted to pay unexpected or unreimbursed expenses, the borrower cannot show that an amount at least equal to the deferred payments has been applied toward the expenses.

(2) At least 30 days before the moratorium is scheduled to expire, RHS will require the borrower to provide financial information needed to determine whether the borrower is able to resume making scheduled payments.

(c) *Resumption of scheduled payments.* When the borrower is able to resume scheduled payments, the loan will be reamortized to include the amount deferred during the moratorium and the borrower will be required to escrow. If the new monthly payment, after consideration of the maximum amount of payment subsidy available to the borrower, exceeds the borrower's repayment ability, all or part of the interest that has accrued during the moratorium may be forgiven.

(d) *Borrowers unable to resume scheduled payments.* If even after all appropriate servicing actions have been taken the borrower is unable to resume making scheduled payments after 2 consecutive years of being on a moratorium, the account will be liquidated.

§ 3550.208 Reamortization using promissory note interest rate.

Reamortization using the promissory note interest rate may be authorized when RHS determines that reamortization is required to enable the borrower to meet scheduled obligations, and only if the Government's lien priority is not adversely affected.

(a) *Permitted uses.* Reamortization at the promissory note interest rate may be used to accomplish a variety of servicing actions, including to:

(1) Repay unauthorized assistance due to inaccurate information.

(2) Repay principal and interest accrued and advances made during a moratorium.

(3) Bring current an account under a delinquency workout agreement after the borrower has demonstrated the willingness and ability to meet the terms of the loan and delinquency workout agreement and reamortization is in the borrower's and Government's best interests.

(4) Bring a delinquent account current in the case of an assumption where the due on sale clause is not triggered as described in § 3550.163(c).

(5) Cover the remaining debt when a portion of the security property is being transferred but the acquisition price does not cover the outstanding debt. The remaining balance will be reamortized for a period not to exceed 10 years or the final due date of the note being reamortized, whichever is sooner.

(6) Bring an account current where the National Appeals Division (NAD) reverses an adverse action, the borrower has adequate repayment ability, and RHS determines the reamortization is in the best interests of the Government and the borrower.

(b) *Payment term of reamortized loan.* Except as noted in paragraph (a)(5) of this section, the term of the reamortized loan may be extended to the maximum term for which the borrower was eligible at the time the loan was originally made, less the number of years the loan has been outstanding. In all cases, the term must not exceed the remaining security life of the property.

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 78332, Dec. 24, 2002]

§ 3550.209 [Reserved]

§ 3550.210 Offsets.

Any money that is or may become payable from the United States to an RHS borrower may be subject to administrative, salary, or Internal Revenue Service (IRS) offsets for the collection of a debt owed to RHS.

(a) *IRS offset.* RHS may take action to effect offset of claims due RHS against tax refunds due to RHS debtors under 31 U.S.C. 3720a and 31 CFR 285.2.

(b) *Salary offset.* Offset of claims due to RHS may be collected pursuant to the salary offset provisions in 7 CFR part 3, subpart C for a federal employee or other persons covered in that subpart.

(c) *Administrative offset.* RHS may take action to effect administrative offset to recover delinquent claims due to it in accordance with the procedures in 7 CFR part 3, subpart B.

(d) *Offset by other federal agencies.* Escrow funds and loan and grant funds held or payable by RHS are not subject to offset by other federal agencies.

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 69672, Nov. 19, 2002]

§ 3550.211 Liquidation.

(a) *Policy.* When RHS determines that a borrower is unable or unwilling to meet loan obligations, RHS may accelerate the loan and, if necessary, acquire the security property. The borrower is responsible for all expenses associated with liquidation and acquisition. If the account is satisfied in full, the borrower will be released from liability. If the account is not satisfied in full, RHS may pursue any deficiency unless the borrower received a moratorium at any time during the life of the loan and faithfully tried to repay the loan.

(b) *Tribal allotted or trust land.* Liquidations involving a security interest in tribal allotted or trust land shall only be pursued after offering to transfer the account to an eligible tribal member, the tribe, or the Indian Housing Authority. Forced liquidation of RHS security interests in Indian trust lands or on tribal allotted land will be recommended only after the State Director has determined it is in the best interest of the Government.

(c) *Acceleration and foreclosure.* If RHS determines that foreclosure is in the best interest of the Government, RHS will send an acceleration notice to each borrower and any cosigner.

(d) *Voluntary liquidation.* Borrowers may voluntarily liquidate through:

(1) *Refinancing or sale.* The borrower may refinance or sell the security property for at least net recovery value and apply the proceeds to the account.

(2) *Deed in lieu of foreclosure.* RHS may accept a deed in lieu of foreclosure

to convey title to the security property only after the debt has been accelerated and when it is in the Government's best interest.

(3) *Offer by third party*. If a junior lienholder or cosigner makes an offer in the amount of at least the net recovery value, RHS may assign the note and mortgage.

(e) *Bankruptcy*. (1) When a petition in bankruptcy is filed by a borrower after acceleration, collection actions and foreclosure actions are suspended in accordance with the provisions of the Bankruptcy Code.

(2) RHS may accept conveyance of security property by the trustee in bankruptcy if the Bankruptcy Court has approved the transaction, RHS determines the conveyance is in the best interest of the Government, and RHS will acquire title free of all liens and encumbrances except RHS liens.

(3) Whenever possible in a Chapter 7 Bankruptcy, a reaffirmation agreement will be signed by the borrower and approved by the court prior to discharge, if RHS decides to continue with the borrower.

(f) *Junior lienholder foreclosure*. When a junior lienholder foreclosure does not result in payment in full of the RHS debt but the property is sold subject to the RHS lien, RHS may liquidate the account unless the new owner is eligible to assume the RHS debt and actually assumes the RHS debt.

(g) *Payment subsidy*. If the borrower is receiving payment subsidy, the payment subsidy agreement will not be canceled when the debt is accelerated, but will not be renewed unless the account is reinstated.

(h) *Eligibility for special servicing actions*. A borrower is not eligible for special servicing actions once the account has been accelerated.

(i) *Reporting*. RHS may report to IRS and credit reporting agencies any debt settled through liquidation.

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 78332, Dec. 24, 2002]

§§ 3550.212–3550.249 [Reserved]

§ 3550.250 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0172. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 3 hours per response, with an average of 1½ hours per response, including time for reviewing insurrections, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You are not required to respond to this collection of information unless it displays a currently valid OMB control number.

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 78332, Dec. 24, 2002]

Subpart F—Post-Servicing Actions

§ 3550.251 Property management and disposition.

(a) *Policy*. Rural Housing Service (RHS) will manage custodial property and Real Estate Owned (REO) property to protect the Government's interest, and may dispose of REO property through direct sales, sealed bid, or auction. RHS will follow affirmative fair housing marketing policies.

(b) *Custodial property*. RHS may take custodial possession of security property that has been abandoned, or for other reasons necessary to protect the Government's security. After taking custodial possession of a security property, RHS may maintain and repair the security property as needed to protect the Government's interest, pay required real estate taxes and assessments, and secure personal property left on the premises. Expenses will be charged to the borrower's account. Custodial property may be leased when it is in the Government's best interest and in such cases the borrower's account will be credited for income from the security property.

(c) *REO property*—(1) *Classification*. When RHS takes title to a security property, it is classified as either program or nonprogram (NP) property. An REO property that is eligible for financing under the section 502 program, or which could reasonably be repaired to be eligible, is classified as program property. An REO property that cannot reasonably be repaired to be eligible as section 502 property, and property that

has been improved to a point that it will no longer qualify as modest under section 502, is classified as NP property.

(2) *Disclosing decent, safe, and sanitary defects.* When RHS determines that an REO property to be sold is not decent, safe, and sanitary, or does not meet cost-effective energy conservation standards, it will disclose the reasons why. The deed by which such an REO property is conveyed will contain a covenant restricting it from residential use until it is decent, safe, and sanitary and meets the RHS cost-effective energy conservation standards. RHS will also notify any potential purchaser of any known lead-based paint hazards.

(3) *Property on Indian tribal allotted or trust land.* REO property which is located on Indian tribal allotted or trust land, will be sold or otherwise disposed of only to a member of the particular tribe having jurisdiction over the allotted or tribal land, to the tribe, or to an Indian housing authority serving the tribe on a first-come, first-served basis.

(4) *Reservation of program REO properties.* (i) Program REO properties are reserved for eligible direct or guaranteed single family housing loans under this part or part 1980, subpart D of this title and nonprofit organizations or public bodies providing transitional housing during the first 60 days after the date of the first notice of sale, and during the first 30 days following any reduction in price or any other change in credit terms or other sale terms. After the expiration of a reservation period, program REO properties can be bought by any buyer.

(ii) An offer on a program REO property from a buyer who does not qualify for a direct or guaranteed single family housing loan may be submitted during a reservation period, but is considered to have been received on the day after the reservation period ends.

(iii) No offer is considered until 3 business days after the date the property is offered for sale. An offer received during the 3-day holding period is not considered until the 4th day, and is evaluated with any other offers actually received on the 4th day.

(5) *Priority of offers received the same day.* (i) Offers received on the same business day are selected in the following order:

(A) Offers from eligible direct or guaranteed single family housing loan applicants , with a request for credit on program terms. All offers are evaluated as if they were submitted at the listed price, regardless of the offering price.

(B) Offers from nonprofits or public bodies for conversion to use as transitional housing or for other special purposes as specified in paragraph (d)(4) of this section.

(C) Cash offers, from highest to lowest.

(D) NP credit offers, from highest to lowest.

(ii) Acceptable offers of equal priority received on the same business day are selected by lot.

(iii) REO properties are not held off the market pending the outcome of an appeal of RHS rejection of a request for financing.

(6) *Sale by sealed bid or auction.* RHS may authorize the sale of an REO property by sealed bid or public auction when it is in the best interest of the Government. RHS will publicly solicit requests for sealed bids and publicize auctions. If a successful bidder is unable to settle the transaction under the terms of the offer, except for the financing contingency, any required bid deposit may be retained by RHS. If the highest bid is lower than the minimum acceptable bid established by RHS, or if no acceptable bids are received, RHS may negotiate a sale without further public notice.

(d) *Special purposes.* (1) REO property may be purchased for conversion to multiple family housing.

(2) When a nonprofit organization or public body notifies RHS in writing of its intent to buy an REO property to provide transitional housing for the homeless, RHS may withdraw the property from the market for up to 30 days to give the entity an opportunity to execute a purchase contract. The listed price may be discounted for offers on a nonprogram REO property at any time, and on a program REO property after the 60-day reservation period. No down payment is required, and the loan term will be for a maximum of 30 years. Until RHS executes a sales agreement,

an offer from a program-eligible applicant will receive priority, regardless of a nonprofit's interest in purchasing the REO property for use as transitional housing.

(3) NP properties may be leased to a nonprofit organization or public body to provide transitional housing for the homeless at an annual cost of one dollar. When an REO property is to be leased as transitional housing, RHS will make repairs needed to put the property in decent, safe, and sanitary condition. The lessee is responsible for all future repairs and maintenance.

(4) REO property may be sold under special provisions to nonprofit organizations or public bodies for the purpose of providing affordable housing to very low- and low-income families.

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 78332, Dec. 24, 2002]

§ 3550.252 Debt settlement policies.

(a) *Applicability*. Debt settlement procedures may be initiated to collect any amounts due to RHS including:

(1) Balances remaining on loan accounts after all liquidation proceeds or credits have been applied;

(2) Subsidy recapture or grant amounts due; and

(3) Unauthorized assistance due.

(b) *Judgment*. RHS may seek a judgment whenever a judgment might enable RHS to collect all or a significant portion of an amount owed.

(c) *Multiple loans*. RHS does not settle debts for one loan while other RHS loans on the same security property remain active.

(d) *Cosigners and claims against estates*. RHS may use any and all remedies available under law to collect from any cosigner and from a deceased borrower's estate.

(e) *Reporting*. RHS will report to the Internal Revenue Service and credit reporting agencies any debt settled through cancellation, compromise, or adjustment.

(f) *Settlement during legal or investigative action*. Cases that are under investigation for fiscal irregularity or have been referred to the Office of the Inspector General, the Office of the General Counsel, or the U.S. Attorney will not be considered for debt settlement until final action by the investigating or prosecuting entity has been taken.

(g) *Offsets*. RHS may request offsets as described in § 3550.210 to collect amounts owed.

(h) *Escrow funds*. At liquidation all funds held in escrow or unapplied funds will be applied against the debt.

§ 3550.253 Settlement of a debt by compromise or adjustment.

Compromise or adjustment offers may be initiated by the debtor or by RHS. RHS will approve only those compromises and adjustments that are in the best interest of the Government.

(a) *Compromise*. A compromise is an agreement by RHS to release a debtor from liability upon receipt of a specified lump sum that is less than the total amount due.

(b) *Adjustments*. An adjustment is an agreement by RHS to release a debtor from liability generally upon receipt of an initial lump sum representing the maximum amount the debtor can afford to pay and periodic additional payments over a period of up to 5 years.

(c) *Timing of offers*. (1) For a settlement offer to be considered, secured debts must be fully matured under the terms of the debt instrument or must have been accelerated by RHS.

(2) Unsecured debts owed after the sale of the security property may be proposed for compromise or adjustment at any time. Debts that were never secured may be proposed for compromise or adjustment when they are due and payable.

(d) *Retention of security property*. The debtor may retain the security property if the compromise payment is at least equal to the net recovery value, and it is in the best interest of the Government to allow the debtor to retain the security property.

§§ 3550.254–3550.299 [Reserved]

§ 3550.300 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0172. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 3

hours per response, with an average of 1½ hours per response, including time for review instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

[61 FR 59779, Nov. 22, 1996, as amended at 67 FR 78332, Dec. 24, 2002]

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Subpart A—General Provisions and Definitions

§ 3560.1 Applicability and purpose.

(a) This part sets forth requirements, policies, and procedures for multi-family housing (MFH) direct loan and grant programs to serve eligible very-low, low- and moderate income households. The programs covered by this part are authorized by title V of the Housing Act of 1949 and are:

(1) *Section 515 Rural Rental Housing, which includes congregate housing, group homes, and Rural Cooperative Housing.* Section 515 loans may be made to finance multi-family units in rural areas as defined in § 3560.11.

(2) *Sections 514 and 516 Farm Labor Housing loans and grants.* Housing under these programs may be built in any area with a need and demand for housing for farm workers.

(3) *Section 521 Rental Assistance.* A project-based tenant rent subsidy which may be provided to Rural Rental

Housing and Farm Labor Housing facilities.

(b) The programs covered by this part provide economically designed and constructed rural rental, cooperative, and farm labor housing and related facilities operated and managed in an affordable, decent, safe, and sanitary manner.

(c) Internal Agency procedures containing details for Agency processing under these regulations can be found in the program handbooks, available in any Rural Development office, or from the Rural Development Web site.

§ 3560.2 Civil rights.

(a) As per the Fair Housing Act, as amended and section 504 of the Rehabilitation Act of 1973, all actions taken by recipients of loans and grants will be conducted without regard to race, color, religion, sex, familial status, national origin, age, or disability. These actions include any actions in the sale, rental, or advertising of the dwellings, in the provision of brokerage services, or in residential real estate transactions involving Rural Housing Service (RHS) assistance. It is unlawful for a borrower or grantee or an agent of a borrower or grantee:

(1) To refuse to make reasonable accommodations in rules, policies, practices, or services that would provide a person with a disability an opportunity to use or continue to use a dwelling unit and all public and common use areas; or

(2) To refuse to provide a reasonable accommodation at the borrower's expense that would not cause an undue financial or administrative burden, or to refuse to allow an individual with a disability to make reasonable modifications to the unit at their own expense with the understanding that the owner may require the tenant to return the unit to its original condition when the unit is vacated by the tenant making the modifications (see § 3560.104(c)).

(b) Borrowers and grantees must take reasonable steps to ensure that Limited English Proficiency (LEP) persons receive the language assistance necessary to afford them meaningful access to USDA programs and activities, free of charge. Failure to ensure that LEP persons can effectively participate in or benefit from federally-assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d and Title VI regulations against national origin discrimination. USDA has issued guidance to clarify the responsibilities of recipients and subrecipients who receive financial assistance from USDA and to assist them in fulfilling their responsibilities to LEP persons under Title VI of the Civil Rights Act, as amended, and implementing regulations.

(c) Any tenant/member or prospective tenant seeking occupancy in or use of facilities financed by the Agency who believes he or she is being discriminated against because of race, color, religion, sex, familial status, national origin, or disability may file a complaint in person with, or by mail to the U. S. Department of Agriculture's Office of Civil Rights, Room 326–W, Whitten Building, 14th and Independence Avenue, Washington, DC 20410. Complaints received by Agency employees must be directed to the National Office Civil Rights staff through the State Civil Rights Manager/Coordinator.

(d) Borrowers or grantees that fail to comply with the requirements of federal civil rights requirements are subject to sanctions authorized by law. The following are the major civil rights laws affecting multifamily housing loan and grant programs:

(1) Equal Credit Opportunity Act (ECOA).

(2) Title VI of the Civil Rights Act of 1964.

(3) Title VIII of the Civil Rights Act of 1968.

(4) Section 504 of the Rehabilitation Act of 1973.

(5) Age Discrimination Act of 1975.

(6) Title IX of the Education Amendments of 1972.

§ 3560.3 Environmental requirements.

RHS will consider environmental impacts of proposed housing as equal with economic, social, and other factors. By working with applicants, Federal agencies, Indian tribes, state and local governments, interested citizens, and organizations, RHS will formulate actions that advance program goals in a

manner that protects, enhances, and restores environmental quality. Loan and grant processing and servicing actions taken by RHS under this part are subject to an environmental review conducted in accordance with 7 CFR part 1940, subpart G or any successor regulation.

§ 3560.4 Compliance with other Federal requirements.

RHS is responsible for ensuring that the application is in compliance with all applicable Federal requirements, including the following specific requirements:

(a) *Intergovernmental review.* 7 CFR part 3015, subpart V, or any successor regulation, including the Agency supplemental administrative instruction, RD Instruction 1970–I, 'Intergovernmental Review,' available in any Agency office or on the Agency's Web site.

(b) *National flood insurance.* The National Flood Insurance Act of 1968, as amended by the Flood Disaster Protection Act of 1973; the National Flood Insurance Reform Act of 1994; and 7 CFR part 1806, subpart B, or any successor regulation.

(c) *Clean Air Act and Water Pollution Control Act Requirements.* For any contract, all applicable standards, orders or requirements issued under section 306 of the Clean Air Act; section 508 of the Clean Water Act, Executive Order 11738, and 40 CFR part 32.

(d) *Historic preservation requirements.* The provisions of 7 CFR part 1901, subpart F or any successor regulation.

(e) *Lead-based paint requirements.* The applicable provisions of 24 CFR part 35, subparts A through D, J, and R, as published by the U.S. Department of Housing and Urban Development.

[69 FR 69106, Nov. 26, 2004, as amended at 76 FR 80731, Dec. 27, 2011]

§ 3560.5 State, local or tribal laws.

Borrowers must comply with all applicable state and local laws, and laws of Federally-recognized Indian tribes to the extent they are not inconsistent with this part.

§ 3560.6 Borrower responsibility and requirements.

(a) Borrower responsibilities and requirements specified in this part may be carried out by an individual or entity designated by the borrower to act on behalf of the borrower such as a resident manager or management agent. Ultimate accountability to the Agency, however, is with the borrower whether or not the borrower designated another person or entity to act on the borrower's behalf.

(b) Borrowers who have not executed a loan agreement, and who were not required to execute a loan agreement by the regulations in effect at the time of their loan closing are exempt from the requirements of subparts D through G of this part, as long as the borrower is not in default of any applicable requirement, security instrument, payment, or any other agreement with the Agency. Such borrowers must provide evidence of tenant income eligibility in accordance with § 3560.152(a), except in Farm Labor Housing where the tenant is not paying shelter cost.

§ 3560.7 Delegation of responsibility.

The RHS Administrator may delegate, on an individual or other basis, any decision-making responsibility for Agency programs, unless otherwise noted.

§ 3560.8 Administrator's exception authority.

The RHS Administrator may make an exception to any provision of this part or address any omissions provided that the exception is consistent with the applicable statute, does not adversely affect the interest of the Federal Government, and does not adversely affect the accomplishment of the purposes of the MFH programs or application of the requirement would result in undue hardship on the tenants. Exception requests presented to the RHS Administrator must have the concurrence of a Rural Development State Director or a Deputy Administrator for MFH.

§ 3560.9 Reviews and appeals.

Rural Housing Service decisions may be appealed pursuant to 7 CFR part 11.

§ 3560.10 Conflict of interest.

To reduce the potential for employee conflict of interest, all RHS activities

will be conducted in accordance with 7 CFR part 1900, subpart D.

§ 3560.11 Definitions.

Unless otherwise noted, terms listed in this part shall be defined as follows:

Administrator. The head of the Rural Housing Service who reports directly to the Under Secretary for Rural Development in the U.S. Department of Agriculture.

Agency. The Rural Housing Service within the Rural Development mission area of the U.S. Department of Agriculture.

Amortization. Payment of debt in regular, periodic installments of principal and interest, as opposed to interest only payments.

Applicant. An individual, partnership or limited partnership, consumer cooperative, trust, state or local public agency, corporation, limited liability company, nonprofit organization, Indian tribe, association, or other entity that will be the owner of the project for which an application for funding from the Agency is submitted.

Appraisal. As used by the Agency, a written report developed by a qualified appraiser as established in subpart P that concludes an opinion of value(s) for a specific real property.

Assistance. Financial assistance in the form of a loan, grant, interest credit, or rental assistance.

Association of farmers. Two or more farmers acting as a single legal entity. Association members may include the individual members of farming partnerships or corporations.

Borrower. An individual, partnership or limited partnership, consumer cooperative, trust, state or local public agency, corporation, limited liability company, nonprofit organization, Indian tribe, association, or other entity that has received a loan from the Agency.

Capital Needs Assessment. A Capital Needs Assessment is designed to capture and report on the immediate and the long-range capital needs of an individual property. It includes attention to site features, mechanical and electrical systems, building exterior and common area systems, and dwelling unit interiors.

Caretaker. An individual employed by a borrower or a management agent to handle routine interior and exterior maintenance and upkeep of a MFHMFH project.

Congregate housing. A housing program authorized by section 515 of the Housing Act of 1949 which provides housing for elderly persons, individuals with disabilities, and families who require some supervision and central services but are otherwise able to care for themselves. Such housing does not include any licensed healthcare facility.

Consumer cooperative. A corporation organized under the cooperative laws of a state or Federally recognized Indian tribe that will own and operate the housing on a cooperative basis solely for the benefit of its members.

Conventional rents for comparable units (CRCU). Market rents for comparable rental units in conventional housing located in the same geographic area as a particular Section 514, 515, or 516 project.

Current appraisal. An appraisal with a report date that is no more than 1 year old.

Daily Interest Accrual System (DIAS). A system where interest is charged daily on outstanding principal. Level loan payments are made by the borrower. The amount of interest due on any date is equal to the unpaid daily interest that has accrued.

Default. Failure by a borrower to meet significant monetary or non-monetary obligations or terms of a loan, grant, or other agreement with the Agency which remain unpaid or unperformed for more than 30 days after the date such obligation is due or required to be paid or performed, or within time periods specified in notices of compliance violations.

Disability. The term disability is considered equivalent to the term handicap. Eligibility requirements for fully accessible units are contained in §§ 3560.154(g)(1)(i) and 3560.155(b). A person is considered to have a disability if either of the following two situations occur:

(1) *As defined in section 501(b) of the Housing Act of 1949*. The person is the head of household (or his or her spouse)

and is determined to have an impairment which:

(i) Is expected to be of long-continued and indefinite duration;

(ii) Substantially impedes his or her ability to live independently; and

(iii) Is of such a nature that such ability could be improved by more suitable housing conditions, or if such person has a developmental disability as defined in section 102(7) of the Developmental Disability and Bill of Rights Act (42 U.S.C. 6001(7)).

(2) *As defined in the Fair Housing Act; the Americans with Disabilities Act; and section 504 of the Rehabilitation Act of 1973*. The person has a physical or mental impairment which substantially limits one or more of such person's major life activities; a record of such impairment; or being regarded as having such an impairment. The term does not include current, illegal use of or addiction to a controlled substance. As used in this definition, physical or mental impairment includes:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine;

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term ''physical or mental impairment'' includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance), and alcoholism;

(iii) Major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working;

(iv) Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities;

(v) Is regarded as having an impairment means:

(A) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by the borrower or management agent as constituting such a limitation;

(B) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or

(C) Has none of the impairments described in this definition but is treated by another person as having such an impairment.

Disabled domestic farm laborer. An individual with a disability as separately defined in this paragraph and who was a domestic farm laborer at the time of becoming disabled.

Domestic farm laborer. A person who, consistent with the requirements in § 3560.576(b)(2), receives a substantial portion of his or her income from farm labor employment (not self-employed) in the United States, Puerto Rico, or the Virgin Islands and either is a citizen of the United States or resides in the United States, Puerto Rico or the Virgin Islands after being legally admitted for permanent residence. This definition may include the immediate family members residing with such a person.

Due diligence on hazardous substances. Due diligence is the process of inquiring into the environmental conditions of real estate, in the context of a real estate transaction to determine the presence of contamination from hazardous substances, and to determine the impact such contamination may have on the market value of the property.

Elderly household or individual with a handicapped household. A household in which the tenant or co-tenant of the household is 62 years old or older or is an individual with a disability. An elderly household may include persons younger than 62 years old and the

household of an individual with a handicap may include persons without disabilities.

Elderly person. A person who is at least 62 years old. The term also means a person with a disability as separately defined in this paragraph, regardless of age.

Engagement. An Agency defined financial review of a housing project's financial status that a borrower will contract with a certified public accountant or other qualified individual to perform. An engagement will result in annual financial reports for use by the Agency as described in § 3560.308.

Familial status. One or more individuals (who have not attained the age of 18 years) being domiciled with a parent or another person having legal custody of such individual or individuals; or the designee of such parent or other person having such custody, with the written permission of such parent or other person. The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

Family farm corporation or partnership. A private corporation or partnership involved in agricultural production in which at least 90 percent of the stock or interest is owned and controlled by persons related by blood, which shall include parents, siblings, and children, or law. If more than three separate households are supported by the farming operation, the family farm corporation or partnership must be:

(1) Legally organized and authorized to own and operate a farm business within the state;

(2) Legally able to carry out the purposes of the loan; and

(3) Prohibited from the sale or transfer of 90 percent of the stock or interest to other than family members by either the articles of incorporation, bylaws or by agreement between the stockholders or partners and the corporation or partnership.

Farm. A tract or tracts of land, improvements, and other appurtenances that are used or will be used in the production of crops, livestock, or aquaculture products for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. The term ''farm'' also includes the term ''ranch.'' It may also include land and improvements and facilities used in a non-eligible enterprise or the residence that, although physically separate from the farm acreage, is ordinarily treated as part of the farm in the local community.

Farmer. A person who is actually involved in day to day on-site operations of a farm and who devotes a substantial amount of time to personal participation in the conduct of the operation of a ''farm.''

Farm labor. Services in connection with cultivating the soil, raising or harvesting any agriculture or aquaculture commodity; or in catching, netting, handling, planting, drying, packing, grading, storing, or preserving in the unprocessed stage, without respect to the source of employment (but not self-employed), any agriculture or aquaculture commodity; or delivering to storage, market, or a carrier for transportation to market or to processing any agricultural or aquacultural commodity in its unprocessed stage.

Farm labor contractor. A person—other than an agricultural employer, a member of an agricultural association, or an employee of an agricultural employer or agricultural association—who recruits, solicits, hires, employs, furnishes, or transports any year-round or seasonal migrant farm laborer for money or other valuable consideration.

Farm labor housing. On-farm or off-farm housing for farm laborers authorized by section 514 and section 516 of the Housing Act of 1949.

Farm owner. A natural person, persons, or legal entity who are the owners of a ''farm'' as this term is further defined in this section.

Foreclosure. A proceeding in or out of court to extinguish all rights, title, and interest of the owners of property in order to sell the property to satisfy a lien against it.

General overhead. Includes general operation items necessary for the contractor to be in business. They may include, but are not limited to the following: tools and minor equipment; worker's compensation and employer's liability; unemployment tax; Social Security and Medicare; manager's,

clerical, and estimator's salaries; pension and bonus plans; main office insurance, rental, utilities, miscellaneous expenses; general liability insurance; legal, accounting, and data processing; automotive and light truck expense; vehicle expenses; depreciation of overhead capital expenditures; and office equipment maintenance.

General requirements. Includes items that are required in the construction contract for the contractor to provide for the specific project. They do not include items that pertain to a specific trade nor overhead expenses of the contractor's general operation. Items may include, but are not limited to, the following: Field supervision; field engineering such as field office, sheds, toilets, phone; performance and payment or latent defects bonds; cost certification; building permits; site security; temporary utilities; property insurance; and cleaning or rubbish removal.

Grantee. An entity that has received a grant from the Agency.

Group home. Housing that is occupied by elderly persons or individuals with disabilities who share living space within a rental unit and in which a resident assistant may be required.

Household. The tenant or co-tenant and the persons or dependents living with a tenant or co-tenant, but not including a resident assistant.

Household furnishings. Basic durable items such as stoves, refrigerators, drapes, drapery rods, tables, chairs, dressers and beds.

Housing project. A property with two or more affordable, decent, safe and sanitary rental units and related facilities operated under one management plan and financed with funds appropriated under the authority of sections 515, 514, or 516 of the Housing Act of 1949.

Identity-of-Interest (IOI). A relationship between applicants, borrowers, grantees, management agents, or suppliers of materials or services described under, but not limited to, any of the following conditions:

(1) There is a financial interest between the applicant, borrower, grantee and a management agent or the supplying entity;

(2) One or more of the officers, directors, stockholders or partners of the applicant, borrower, or management agent is also an officer, director, stockholder, or partner of the supplying entity;

(3) An officer, director, stockholder, or partner of the applicant, borrower, or management agent has a 10 percent or more financial interest in the supplying entity;

(4) The supplying entity has or will advance funds to an applicant, borrower, or management agent;

(5) The supplying entity provides or pays on behalf of the applicant, borrower, or management agent the cost of any materials or services in connection with obligations under the management plan or management agreement;

(6) The supplying entity takes stock or a financial interest in the applicant, borrower, or management agent as part of the consideration to be paid them; or

(7) There exists or come into being any side deals, agreements, contracts or understandings entered into thereby altering, amending, or canceling any of the management plan, management agreement documents, organization documents, or other legal documents pertaining to the property, except as approved by the Agency.

Indian tribe. The term ''Indian tribe'' means any Indian tribe, band, group, and nation, including Alaskan Indians, Aleuts, and Eskimos, and any Alaskan-Native Village, which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Public Law 93–638) or under the State and Local Fiscal Assistance Act of 1972 (Public Law 92–512).

Interest credit. A form of assistance available to eligible borrowers that reduces the effective interest rate of the loan.

Lease. A contract setting forth the rights and obligations of a tenant or cooperative member and a property owner, including charges and terms under which a tenant or cooperative member will occupy or use the housing or related facilities.

Legal or qualified alien. Legal or qualified alien refers to any person lawfully admitted to the country who meets the criteria in section 214 of the Housing and Community Development Act of 1980, 42 U.S.C. 1436a.

Letter of Priority Entitlement (LOPE). A letter issued by the Agency providing a tenant with priority entitlement to rental units in other Agency-financed housing projects for 120 days from the date of the LOPE.

Life cycle cost. The life cycle cost has 2 purposes: (1) To determine the expected usable life (utility) of a building component or furnishing and (2) to determine which building components or furnishings are the most cost efficient over the life of the building. Cost efficient is not to be construed to mean the least initial cost.

Life cycle cost analysis. Life cycle cost analysis is the comparison of different materials to examine anticipated useful life and the cost of using a specific material or building component. The analysis has multiple uses, such as: (1) To conduct a cost efficiency comparison between products, (2) for developing component replacement time tables, and (3) for estimating future component replacement costs. Life cycle cost analysis can be accomplished through various methods, such as; insurance actuary tables or Agency documentation of a component's life expectancy. Life cycle cost analysis is conducted by a design professional. For Agency financed projects, a life cycle cost analysis is to be conducted for specific components: (1) drives and parking, (2) roofing system and roofing material, (3) exterior finishes, and (4) energy source items.

Limited Liability Company (LLC). An unincorporated organization of one or more persons or entities established in accordance with applicable state laws and whose members may actively participate in the organization without being personally liable for the debts, obligations or liabilities of the organization.

Limited partnership. An ownership arrangement consisting of general and limited partners; general partners manage the business, while limited partners are passive and liable only for their own capital contributions.

Loan agreement. A written agreement between the Agency and the borrower that sets forth the borrower's responsibilities with respect to Agency financing.

Low-income household. A household that has an adjusted income that is greater than the Department of Housing and Urban Development's (HUD) established very-low income limit, but that does not exceed the HUD established low-income limit (generally 80 percent of median income adjusted for household size for the county where the property is or will be located).

Low-Income Housing Tax Credit (LIHTC). A federal tax credit allowed for investment in qualified low-income housing administered by the Internal Revenue Service (IRS) under section 42 of the Internal Revenue Code.

Management agent. A firm or individual employed or designated by a borrower to act on the borrower's behalf in accordance with a written management agreement.

Management agreement. A written agreement between a borrower and a management agent setting forth the management agent's responsibilities and fees for management services.

Management fee. The compensation provided to a management agent for services provided in accordance with a management agreement.

Management plan. A detailed description of the policies and procedures to be followed by the borrower in managing a MFH project.

Manufactured housing. Housing, constructed of one or more factory-built sections, which includes the plumbing, heating, and electrical systems contained therein, which is built to comply with the Federal Manufactured Home Construction and Safety Standards (FMHCSS), and which is designed to be used with a permanent foundation.

Market area. The geographic or locational delineation of the market for a specific project, including outlaying areas that will be impacted by the project, *i.e.*, the area in which alternative, similar properties effectively compete with the subject property.

Market rent. The most probable rent that a property should bring in a competitive and open market reflecting all conditions and restrictions of the specified lease agreement, including term, rental adjustment and revaluation, permitted uses, use restrictions, and

expense obligations; the lessee and lessor each acting prudently and knowledgeably, and assuming consummation of a lease contract as a specified date and the passing of the leasehold from lessor to lessee.

Maximum debt limit. The maximum amount that the Agency will lend or grant for a MFHMFH project based on the appraised value or total development cost excluding costs ineligible for payment from loan or grant funds, whichever is less, reduced by all funding available to the borrower from sources other than the Agency, multiplied by 95, 97, or 102 percent depending upon the applicant entity and their use of the low-income housing tax credit, in accordance with § 3560.63(b).

Member or co-member. A stockholder or other person who has executed documents or stock pertaining to a cooperative housing type of living arrangement and has made a commitment to upholding the cooperative concept.

Migrants or migrant agricultural laborer. A person (and the family of such person) who receives a substantial portion of his or her income from farm labor employment and who establishes a residence in a location on a seasonal or temporary basis, in an attempt to receive farm labor employment at one or more locations away from their home base state, excluding day-haul agricultural workers whose travels are limited to work areas within one day of their residence.

Minor. An individual under 18 years of age who is a dependent of a tenant or an individual age 18 or older who is a full-time student and a dependent of a tenant.

Moderate-income household. A household that has an adjusted income that is greater than the HUD-established low-income limit but does not exceed the low-income limit by more than $5,500.

Mortgage or Deed of Trust. A form or security instrument or consensual lien on real property.

Net recovery value. The value realized from the Government's acquisition of security property in a default situation after subtracting all costs, actual or anticipated, from acquiring, holding, and disposing of the security property.

New construction. A MFHMFH project being constructed to be occupied for the first time.

Nonprofit organization. A private organization that:

(1) Is organized under state or local laws;

(2) Has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual; and

(3) Is approved by the Secretary of Agriculture and considered to be financially responsible.

Nonprofit organization for section 515 program (Prepayment or Purchase). To be eligible to purchase properties under the conditions of subpart N of this part, nonprofit organizations may not have among their officers or directorate any persons or parties with an identity-of-interest (or any persons or parties related to any person with identity-of-interest) in loans financed under section 515 that have been prepaid or have requested prepayment.

Nonprofit organization of farm workers. A nonprofit organization, as defined in this section, whose membership is composed of at least 51 percent farm workers.

Notice of Funding Availability (NOFA). A ''Notice of Funding Availability'' issued by the Agency to inform interested parties of the availability of assistance and other matters pertinent to the program.

Occupancy agreement. A contract establishing the rights and obligations of the cooperative member and the cooperative, including the amount of the monthly occupancy charge and the other terms under which the member will occupy the housing.

Occupancy charge. The amount of money charged a cooperative member to cover their proportional share of the cooperative's operating costs and cash requirements.

Off-farm labor housing. Housing for farm laborers in any location approved by the Agency but not on the farm where the laborer works.

Office of the General Counsel (OGC). The USDA Office of the General Counsel, including the Regional Attorney, Associate Regional Attorney, or Assistant Regional Attorney.

Office of the Inspector General (OIG). The USDA Office of the Inspector General.

On-farm labor housing. Housing for farm laborers located on the farm where they work that is away from service buildings or in the nearby community.

Overage. That portion of a tenant's net tenant contribution that exceeds basic rent up to note rent. Full overage is an amount equal to the difference between the note rent for a unit and the basic rent.

Plan I. A type of interest subsidy available to borrowers prior to October 27, 1980. Budgets and rental rates developed for Plan I loans are based on a 3 percent loan amortization.

Plan II. A type of interest subsidy available to borrowers operating on a limited profit basis. Budgets and rental rates developed for Plan II loans are based on both the loan being amortized at the interest rate shown on the promissory note and at a 1 percent subsidized rate.

Predetermined Amortization Schedule System (PASS). A system where loan payments are applied based on an amortization schedule.

Prepayment. Payment in full of the outstanding balance on an Agency loan prior to the note's originally scheduled maturity date.

Program requirements. All provisions related to MFHMFH contained in the loan document, grant agreement, statute, regulation, handbook, or administrative notice.

Promissory note. A legal document containing conditions (interest rate and timing) for repayment of indebtedness.

Real estate owned (REO) property. The real estate owned by the Agency acquired through voluntary conveyance, foreclosure or other action.

Rehabilitation. Rehabilitation is when the remodeling of a property is of a complex nature involving structural repairs or when two or more of the life cycle cost components are included in the remodeling of a property.

Related facilities. Facilities in a MFHMFH project that are related to the housing and are in addition to rental units, (e.g., community rooms or buildings, cafeterias, dining halls, infirmaries, child care facilities, assembly halls, and essential service facilities such as central heating, sewerage, lighting systems, clothes washing facilities, trash disposal and safe domestic water supply).

Rent. The amount established as a charge for occupancy in a rental unit of Agency-financed MFH. Rents must be established at the same rate for all similar units in the housing project. The following terms are used to describe rents for various program purposes.

(1) *Note rent* is the rental charge established to cover expenses in the housing project's approved budget and the required loan payment set at the interest rate shown in the promissory note.

(2) *Basic rent* is the rental charge established to cover expenses in the housing project's approved budget and the required loan payment contained in the promissory note reduced by the interest credit agreement.

(3) *HUD contract rent* is the rental charge established for housing receiving project-based Section 8 rental subsidies in accordance with 24 CFR part 880 or part 884, as applicable.

(4) *Low-income housing tax credit (LIHTC) rent* is the rental charge established in accordance with LIHTC requirements.

Rental assistance (RA). The portion of the approved shelter cost paid by the Agency to compensate a borrower for the difference between the approved shelter cost and the tenant contribution when such contribution is less than the basic rent.

Rental assistance units. Dwelling units in a MFH project qualified for rental assistance. There are three types of rental assistance units.

(1) New construction units are units provided in conjunction with initial loans for construction or substantial rehabilitation of the MFHMFH projects.

(2) Replacement units are Agency-funded rental assistance units which replace units with expiring rental assistance agreements or which replace Section 8 units which have expired under the Section 8 contract.

(3) Servicing units are units provided to an operational MFHMFH project as

a part of the Agency's general loan servicing or preservation activities.

Repair and replacement. Repair and replacement is the restoration of minor building materials, elements, components, equipment and fixtures. Examples include: Painting, carpeting, appliances, cabinets, and other fixtures.

Resident assistant. A person residing in a rental unit who is essential to the well-being and care of an elderly person or an individual with a disability, but who:

(1) Is not obligated for the tenant's financial support;

(2) Would not be living in the unit except to provide the needed services;

(3) May be a family member, but is not a dependent of the tenant for tax purposes;

(4) Is not subject to the eligibility requirements of a tenant; and

(5) Is not considered a household member in the determination of household income.

Resident or site manager. The individual employed by the borrower and who is responsible for the day-to-day operations of the housing.

Retired domestic farm laborer. An individual who is at least 55 years of age and who has spent the last 5 years prior to retirement as a domestic farm laborer or spent the majority of the last 10 years prior to retirement as a domestic farm laborer.

Return on Investment (ROI). The annual amount of profit an owner operating on a limited or full profit basis may withdraw from a project, as established in the loan agreement. The amount is calculated as a percentage of the owner's investment in the project.

Rural area. Any open country, or any place, town, village, or city which is not (except in the cases of Pajaro, in the State of California, and Guadalupe, in the State of Arizona) part of or associated with an urban area and which (1) has a population not in excess of 2,500 inhabitants, or (2) has a population in excess of 2,500 but not in excess of 10,000 if it is rural in character, or (3) has a population in excess of 10,000 but not in excess of 20,000 and (A) is not contained within a standard metropolitan statistical area, and (B) has a serious lack of mortgage credit for lower and moderate-income families, as determined by the Secretary and the Secretary of Housing and Urban Development. For purposes of this title, any area classified as ''rural'' or a ''rural area'' prior to October 1, 1990, and determined not to be ''rural'' or a ''rural area'' as a result of data received from or after the 1990 or 2000 decennial census shall continue to be so classified until the receipt of data from the decennial census in the year 2010, if such area has a population in excess of 10,000 but not in excess of 25,000, is rural in character, and has a serious lack of mortgage credit for lower and moderate-income families. Notwithstanding any other provision of this section, the city of Plainview, Texas, shall be considered a rural area for purposes of this title, and the city of Altus, Oklahoma, shall be considered a rural area for purposes of this title until the receipt of data from the decennial census in the year 2000.

Rural Cooperative Housing (RCH). A housing program authorized under section 515 of the Housing Act of 1949, in which a consumer cooperative, organized and operating on a nonprofit basis, may own and operate a MFHMFH development.

Rural Housing Service (RHS). The Agency within the Rural Development mission area of the U.S. Department of Agriculture or its successor agency which administers programs authorized by sections 514, 515, 516, and 521 of the Housing Act of 1949, as amended.

Rural Rental Housing (RRH). A housing program authorized by section 515 of the Housing Act of 1949 to provide rental housing in rural areas for persons of very-low, low- and moderate income.

Seasonal housing. Housing operated on a seasonal basis, typically for migrants or migrant agricultural laborers as opposed to year round.

Security deposit. A one-time fee charged a tenant prior to occupancy of a unit to cover possible loss or damage to the housing unit caused by the tenant.

Self-employed. A person who meets the IRS definition of self-employed at 26 CFR 1.401–10.

Service agreement. A written agreement between a borrower and a service

provider establishing the specific service to be provided to a MFH project, the cost of the service, and the length of time the service will be provided.

Service plan. A written plan describing how services will be provided to a MFH project and which, at a minimum, must specify the services to be provided, the frequency of the services, who will provide the services, how tenants will be advised of the availability of services, and the staff needed to provide the services.

Service provider. A person who signs a written agreement with a borrower to provide services to a MFH project.

Shelter costs. Basic or note rent plus the utility allowance, when used, or the occupancy charge plus the utility allowance. If the utility costs are included in the rent, the rent will equal shelter costs.

Sources and Uses Comprehensive Evaluation (SAUCE). A computer software program used by the Agency to analyze the total funds provided to a MFH project to ensure that the Agency is not providing excess assistance.

Special note rent (SNR). A rental rate charged at a Plan II project experiencing vacancies that is less than note rent but higher than basic rent.

State consolidated plan. A planning document for an individual state that includes a housing and homeless needs assessment; a housing market analysis; a strategic plan for addressing the state's housing challenges; an Action Plan that is an annual description of the state's Federal and other resources that are expected to be available to address its priority housing needs and how the Federal funds will leverage other resources; certifications relating to fair housing, its antidisplacement and relocation plan, a drug-free workplace, and other statutory and program requirements; and a monitoring plan to ensure that the state is using its Federal funds appropriately and effectively.

Tenant or co-tenant. An individual who signs a lease and occupies or will occupy a rental unit in a MFH project. The term tenant or co-tenant also refers to a member of cooperative housing occupying or planning to occupy a dwelling unit in cooperative housing.

Tenant contribution. The portion of the approved shelter cost paid by the tenant household. The proportion of tenant income and adjusted income paid will vary according to the type of subsidy provided to the tenant household.

Total development cost (TDC). The cost of constructing, purchasing, improving, altering, or repairing MFH and related facilities, buying household furnishings (for sections 514/516 only), and purchasing or improving the necessary land, including architectural, engineering, or legal fees, and charges and other technical and professional fees and charges, but excluding fees, charges, or commissions such as payments to brokers, negotiators, or other persons for the referral of prospective applicants or solicitations of loans. Although a developer's fee is part of the project's development cost, such fees are not eligible for payment from Agency loan or grant funds and are not included in determining the Agency authorized development cost.

Utility allowance. An amount determined by a borrower as the amount to be considered a tenant's portion of utility cost in the calculation of a tenant's total shelter cost when utility costs are not included in the rent.

Very low-income household. A household that has an adjusted income that does not exceed the HUD established very low-income limit (generally 50 percent of median income adjusted for household size in the county where the property is or will be located).

Workout agreement. An agreement between a borrower and the Agency listing actions to be taken over a period of time to prevent or correct a compliance violation or to cure a monetary or non-monetary default.

§§ 3560.12–3560.49 [Reserved]

§ 3560.50 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for

reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart B—Direct Loan and Grant Origination

§ 3560.51 General.

This subpart contains the Agency's loan origination requirements for multi-family housing (MFH) direct loans for Rural Rental Housing, Rural Cooperative Housing, and Farm Labor Housing. Additional requirements for farm labor housing loans and grants are contained in subpart L of this part for Off-Farm Labor Housing and subpart M of this part for On-Farm Labor Housing.

§ 3560.52 Program objectives.

The Agency uses appropriated funds to finance the construction, rehabilitation of program properties, or purchase and rehabilitation of MFH and related facilities to serve eligible persons in rural areas. The Agency encourages the use of such financing in conjunction with funding or financing from other sources.

§ 3560.53 Eligible use of funds.

Funds may be used for the following purposes.

(a) *Construct housing.* Funds may be used to construct MFH.

(b) *Purchase and rehabilitate buildings.* Funds may be used to purchase and rehabilitate buildings that have not been previously financed by the Agency.

(1) Rehabilitation must meet the definition of either moderate or substantial rehabilitation as defined in 7 CFR part 1924, subpart A.

(2) The building to be rehabilitated must be structurally sound and the improvements to the building must be necessary to meet the requirements of decent, safe, and sanitary living units.

(3) The total development cost (TDC) for the purchase and rehabilitation of existing buildings must not be more than the estimated TDC for construction of a similar type and unit size property in the same area.

(c) *Subsequent loans.* Funds may be used to provide subsequent loans in accordance with the provisions of § 3560.73.

(d) *Purchase and improve sites.* Funds may be used to purchase and improve the site on which MFH will be located, provided that the amount of loan funds used to purchase the site does not exceed the appraised market value of the site immediately prior to purchase.

(e) *Develop and install necessary systems.* Funds may be used to install streets, a water supply, sewage disposal, heating and cooling systems, electric, gas, solar, or other power sources for lighting and other features necessary for the housing. If such facilities are located off-site, loan funds may only be used if the following additional requirements are met:

(1) The loan applicant will hold title to the facility or have a legal right to use the facility in the form of an easement or other instrument acceptable to the Agency for a period of at least 50 percent longer than the term of the loan or grant and the title or right is transferable to any subsequent owner of the housing.

(2) The facilities will either be provided for the exclusive use of the proposed housing project, or Agency funds are limited to the prorated part of the total cost of the facility according to the use and benefit to the MFH project. If entities other than the housing project financed by the Agency use the facilities on a reimbursable fee basis, the loan applicant must agree, in writing, to apply any fees collected in excess of operating expenses to their Agency loan account as an extra loan payment.

(f) *Landscaping and site development.* Funds may be used to provide landscaping and site development related to a MFH project such as lighting, walks, fences, parking areas, and driveways.

(g) *Tenant-related facilities.* Funds may be used to develop tenant-related facilities appropriate to the size, economics, and prospective tenants of a MFH project, such as a community

room, development of space for education and training purposes for tenants, central laundry facility, outdoor seating, space for passive recreation, tot lots, and a small emergency care infirmary. In congregate housing and group homes, funds may be used for central cooking and dining areas.

(h) *Management-related facilities.* Funds may be used to develop management-related facilities appropriate to the size and economics of a MFH project such as a maintenance workshop, storage facilities, office, and living quarters for a resident manager and other personnel.

(i) *Purchase and install equipment and appliances.* Funds may be used to purchase and install equipment and appliances affixed to the property as customary and appropriate for the area in which the housing is located.

(j) *Household furnishings (Section 514/516).* For farm labor housing sections 514 and 516 only, funds may be used to purchase household furnishings.

(k) *Initial operating capital.* Loan funds equal to 2 percent of total development cost or appraised value, whichever is less, may be used by a state or political subdivision thereof, Indian tribe, consumer cooperative, or any public or private nonprofit borrower who is not receiving low-income housing tax credits (LIHTC), to make the initial operating capital contribution required by § 3560.64. Other borrowers must use their own resources to make the required initial operating capital contribution and may not use loan funds for that purpose.

(l) *Builder's profit, overhead and general requirements.* Subject to the following limits, funds may be used for builder's profit, overhead and general requirements.

(1) Up to 10 percent of the construction contract may be used for builder's profit.

(2) Up to 4 percent of the construction contract may be used for general overhead.

(3) Up to 7 percent of the construction contract may be used for general requirements.

(m) *Legal, technical and professional services.* Funds may be used for the costs of legal, technical, and professional services related to the borrower's MFH project, including appraisals, environmental documentation, and construction plans and specifications.

(n) *Permit and application fees.* Funds may be used for required MFH permits and application fees.

(o) *Reimbursement to nonprofit organizations and public bodies.* Funds may be used to reimburse a nonprofit organization or public body for up to 2 percent of total development costs for section 515, or up to 4 percent of total development costs for off-farm labor housing, for costs that are reasonable and typical for the area, including:

(1) Development and packaging of a loan application and a MFH proposal; and

(2) Legal, technical, and professional fees incurred in the formation of the loan application and MFH proposal; or

(3) Technical assistance from another nonprofit organization to assist in the organization's formation and in the development and packaging of a loan application and MFH proposal.

(p) *Educational programs.* Funds may be used for educational programs related to owning and managing a cooperative housing project for the board of directors of a housing cooperative during the first year of the housing operation. Such funds will be available from the initial operating account. The amount of the funds disbursed will be subject to Agency approval and availability of financial resources from the project.

(q) *Interest and customary charges.* Funds may be used for interest accrued and customary charges necessary to obtain interim financing.

(r) *Purchase housing from an interim lender.* Funds may be used to purchase MFH from an interim lender that holds fee simple title to Agency-financed housing upon which construction commenced and a letter of commitment had been issued by the Agency but the original applicant for whom funds were obligated will not or cannot continue with construction of the housing. In order for the purchase to take place, there must be no outstanding unpaid obligations in connection with the housing.

(s) *Uniform Relocation Assistance and Real Property Acquisition Act of 1970.*

Funds may be used for necessary costs incurred to comply with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970.

(t) *Demonstration programs.* With the RHS Administrator's approval, funds may be used to construct demonstration housing involving innovative units and systems which do not meet existing published standards, rules, regulations, or policies but meet the intent of providing affordable, decent, safe, and sanitary rural housing, and are consistent with the requirements of Title V of the Housing Act of 1949.

(u) *Conversion of section 502 properties.* In accordance with § 3560.506, loan funds may be used to finance the conversion of real estate owned units originally financed under section 502 of the Housing Act of 1949, to MFH authorized by section 515 of the Housing Act of 1949.

§ 3560.54 Restrictions on the use of funds.

(a) *Ineligible uses of funds.* Funds may not be used for:

(1) Housing intended to serve temporary and transient residents, with the exception of housing to serve migrant farm workers in accordance with § 3560.554;

(2) Special care facilities or institutional-type homes;

(3) Facilities which are not in compliance with the design requirements specified in § 3560.60;

(4) Any costs associated with space in a housing project that is leased for commercial use or any commercial facilities except essential service-type facilities when otherwise not conveniently available;

(5) Specialized equipment for training and therapy;

(6) Operating capital for a central dining facility or any items which do not become affixed to the real estate security with the exception of household furnishings for farm labor housing units financed under sections 514 and 516;

(7) Compensation to a loan applicant for value of land contributed in excess of the equity contribution requirements in § 3560.63(c);

(8) Refinancing of an applicant's debt except when the debt involves interim financing or when refinancing is necessary to obtain a release of an existing lien on land owned by a nonprofit organization;

(9) Payment of any fee, charge, or commission to a broker or anyone else as a developer's fee or for referral of a prospective loan applicant or solicitation of a loan;

(10) Payment to any officer, director, trustee, stockholder, member, or agent of an applicant; or

(11) Purchasing land for a site in excess of what is needed, except when:

(i) The applicant cannot acquire an alternate site or cannot acquire the needed land as a separate parcel;

(ii) The applicant agrees to sell the excess land as soon as practical and to apply the proceeds to the loan; and

(iii) Program site density requirements are met in accordance with the site requirements established under § 3560.58.

(b) *Obligations incurred before loan approval.* Funds may not be used for expenses incurred by an applicant prior to approval except when all the following conditions are met:

(1) The debts were incurred for eligible purposes;

(2) Contracts, materials, construction, and any land purchased meet Agency standards and requirements;

(3) Payment of the debts will remove any attached liens and any basis for liens that may attach to the property on account of such debts; and

(4) The appropriate level of environmental review in accordance with 7 CFR part 1940, subpart G has been completed.

§ 3560.55 Applicant eligibility requirements.

Applicants for off-farm labor housing loans and grants should also refer to § 3560.555, and applicants for on-farm labor housing loans should refer to § 3560.605.

(a) *General.* To be eligible for Agency assistance, applicants must meet the following requirements:

(1) Be a U. S. citizen or qualified alien(s); a corporation; a state or local public Agency; an Indian tribe as defined in § 3560.11; or a limited liability company (LLC), nonprofit organization, consumer cooperative, trust, partnership, or limited partnership in

which the principals are U.S. citizens or qualified aliens;

(2) Be unable to obtain similar credit elsewhere at rates that would allow for rents within the payment ability of eligible residents;

(3) Possess the legal and financial capacity to carry out the obligations required for the loan or grant;

(4) Be able to maintain, manage, and operate the housing for its intended purpose and in accordance with all Agency requirements;

(5) With the exception of applicants who are a nonprofit organization, housing cooperative or public body, be able to provide the borrower contribution from their own resources (this contribution must be in the form of cash, or land, or a combination thereof);

(6) Have or be able to obtain a minimum of 2 percent of the total development costs for use as initial operating capital (for nonprofit organizations, cooperatives, or public bodies, this amount may be financed through Agency funds); and

(7) Not be suspended, debarred, or excluded based on the ''List of Parties Excluded from Federal Procurement and Nonprocurement Programs.'' The list is available to Federal agencies from the U.S. Government Printing Office. Non-federal parties should contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

(8) Not delinquent on Federal debt or a Federal judgment debtor, with the exception of those debtors described in § 3560.55 (b).

(b) *Additional requirement for applicants with prior debt.* If an applicant or the managing general partner of a borrower, as well as any affiliated entity having a 10 percent or more ownership interest, has a prior or existing Agency debt, the following additional requirements must be met.

(1) The applicant must be in compliance with any existing loan or grant agreements and with all legal and regulatory requirements or must have an Agency-approved workout agreement and be in compliance with the provisions of the workout agreement. The Agency may require that applicants with monetary or non-monetary deficiencies be in compliance with an Agency-approved workout agreement for a minimum of 6 consecutive months before becoming eligible for further assistance.

(2) The applicant must be in compliance with the Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and all other applicable civil rights laws.

(c) *Additional requirements for nonprofit organizations.* In addition to the eligibility requirements of paragraphs (a) and (b) of this section, nonprofit organizations must meet the following criteria:

(1) The applicant must have received a tax-exempt ruling from the IRS designating the applicant as a 501(c)(3) or 501(c)(4) organization.

(2) The applicant must have in its charter the provision of affordable housing.

(3) No part of the applicant's earnings may benefit any of its members, founders, or contributors.

(4) The applicant must be legally organized under state and local law.

(5) In the case of off-farm labor housing loans and grants, nonprofit organizations must be ''broad-based'' nonprofit organizations (refer to § 3560.555(a)(1)).

(d) *Additional requirements for limited partnerships.* In addition to the applicant eligibility requirements of paragraphs (a) and (b) of this section, limited partnership loan applicants must meet the following criteria:

(1) The general partners must be able to meet the borrower contribution requirements if the partnership is not able to do so at the time of loan request.

(2) The general partners must maintain a minimum 5 percent financial interest in the residuals or refinancing proceeds in accordance with the partnership organizational documents.

(3) The partnership must agree that new general partners can be brought into the organization only with the prior written consent of the Agency.

(e) *Additional requirements for Limited Liability Companies (LLCs).* In addition to the applicant eligibility requirements of paragraphs (a) and (b) of this section, LLC loan applicants must meet the following criteria:

(1) One member who holds at least a 5 percent financial interest in the LLC must be designated the authorized agent to act on the LLC's behalf to bind the LLC and carry out the management functions of the LLC.

(2) No new members may be brought into the organization without prior consent of the Agency.

(3) The members must commit to meet the equity contribution requirements if the LLC is not able to do so at the time of loan request.

§ 3560.56 Processing section 515 housing proposals.

Processing requirements for farm labor housing proposals are found in subpart L of this part for Off-Farm and subpart M of this part for On-Farm.

(a) *Notice of Funding Availability (NOFA) responses.* (1) The Agency will publish an annual NOFA with deadlines and other information related to submission of new construction MFH proposals, including expansion of existing MFH in designated places selected in accordance with § 3560.57.

(2) To be eligible for funding consideration, MFH proposals must be submitted in accordance with the NOFA and must provide information requested in the NOFA for the Agency to score and rank the proposals.

(3) MFH proposals needing rental subsidies must include requests for Agency rental assistance or a description of any non-Agency rental subsidy to be used with the proposal and must provide information required by § 3560.260 (c).

(4) The Agency will consider housing proposals requesting rental assistance in rank order to the extent rental assistance is available. When there is no rental assistance available, the Agency will consider only those housing proposals in rank order that do not require rental assistance.

(b) *Preliminary proposal assessment.* The Agency will make a preliminary assessment of the application using the following criteria and will reject those applications which do not meet all of these criteria:

(1) The proposal was received by the submission deadline specified in the NOFA,

(2) The proposal is complete as specified in the NOFA,

(3) The proposal is for an authorized purpose, and

(4) The applicant meets Agency eligibility requirements.

(c) *Scoring and ranking project proposals.* The Agency will score and rank each housing proposal that meets the criteria of paragraph (b) of this section.

(1) The following criteria will be used to score housing proposals as more completely established in the NOFA:

(i) The presence and extent of leveraged assistance in the proposal for the units that will serve tenants meeting Agency income limits at basic rents comparable to what the rent would be if the Agency provided full financing.

(ii) The proposal will provide rental units in a colonia, tribal land, Rural Economic Area Partnership (REAP) community, Enterprise Zone or Empowerment Community (EZ/EC) or in a place identified in the state Consolidated Plan or a state needs assessment as a high need community for MFH.

(iii) The proposal supports Agency initiatives announced in the NOFA.

(iv) The proposal uses a donated site which meets the following conditions:

(A) The site is donated by a state, unit of local government, public body or a nonprofit organization;

(B) The site is suitable for the housing proposals and meets Agency requirements;

(C) Site development costs do not exceed what they would be to purchase and develop an alternative site;

(D) The overall cost of the MFH is reduced by the donation of the site; and

(E) A return on investment is not paid to the borrower for the value of the donated site nor is the value of the site considered as part of the borrower's contribution.

(2) The Agency will rank housing proposals based on their scoring.

(i) When proposals have an equal score, preference will be given to Indian tribes as defined in § 3560.11 and local nonprofit organizations or public bodies whose principal purposes include low-income housing that meet the conditions of § 3560.55(c) and the following conditions.

(A) Is exempt from Federal income taxes under section 501(c)(3) or 501(c)(4) of the Internal Revenue code;

(B) Is not wholly or partially owned or controlled by a for-profit or limited-profit type entity;

(C) Whose members, or the entity, do not share an identity of interest with a for-profit or limited-profit type entity;

(D) Is not co-venturing with another entity; and

(E) The entity or its members will not be receiving any direct or indirect benefits pursuant to LIHTC.

(ii) A drawing will be held in the event of a tie score, first for proposals from applicants who meet the conditions of paragraph (c)(2)(i) of this section and next for proposals from applicants for which paragraph (c)(2)(i) of this section is not applicable. Each proposal will be numbered in the order in which it is drawn.

(3) The Agency will request initial loan applications from parties who submitted the housing proposals with the highest ranking, taking into consideration available funds. The Agency will notify non-selected parties with the reasons for their non-selection, and the process that may be used to seek a review of the non-selection decision.

(d) *Processing initial loan applications.* The Agency will review all initial loan applications submitted in accordance with Agency requirements to further evaluate the eligibility and feasibility of the housing proposals. This determination will include:

(1) A review of the preliminary plans and cost estimates,

(2) A market feasibility review,

(3) An Agency site visit to gather preliminary environmental information and determine that the proposed site meets the site requirements of § 3560.58,

(4) A review of the Affirmative Fair Housing Marketing Plan,

(5) An analysis of current credit reports,

(6) A review of Civil Rights Impact Analysis in accordance with 7 CFR part 2006, subpart P, and

(7) Completion of the appropriate level of environmental review in accordance with 7 CFR part 1940, subpart G.

(e) *Processing order of initial loan applications.* The Agency will process initial loan applications in rank order, taking into account available funds. If any initial loan applications are withdrawn, rejected, or delayed for a period of time that will not permit funding in the current funding cycle, the Agency will process, in rank order, the next initial loan application as funding levels permit.

(f) *Other assistance.* During each stage of loan application processing, loan applicants must notify the Agency of all other assistance, including other Federal Government assistance proposed or approved for use in connection with the loan application.

(g) *Proposal withdrawal or rejection.* An applicant may withdraw a housing proposal, an initial loan application, or a final loan application at any time during the Agency review process with a written request. The Agency may reject a housing proposal, an initial loan application, or a final loan application at any time during the Agency review process when an applicant fails to provide information requested by the Agency within the time frame specified by the Agency.

(h) *Final applications.* Applicants, with initial loan applications that are selected by the Agency for further processing, must submit a final application, with any additional information requested by the Agency, to confirm and document a housing proposal's eligibility and feasibility, including an affirmative fair housing marketing plan. The Agency will notify applicants with initial loan applications that are not selected for further processing of their non-selection, the reasons for their non-selection, and the process that may be used to seek a review of the non-selection decision.

(i) *Rural cooperative housing proposals.* Rural cooperative housing loan proposals will be solicited through a NOFA and will be assessed and processed in the same manner described in paragraphs (a) through (h) of this section.

§ 3560.57 Designated places for section 515 housing.

(a) *Establish a list of designated places.* The Agency will establish a list of designated places from which loan proposals will be accepted. The list is updated each fiscal year and is available when the NOFA is published. The NOFA provides information on obtaining the list. This list will be developed from a list of rural places which the Agency identifies as having the greatest need for multifamily housing based on the following factors:

(1) Qualification as a rural area as defined in § 3560.11,

(2) Lack of mortgage credit, and

(3) Demonstrated need for MFH based on:

(i) The incidence of poverty,

(ii) The existence of substandard housing,

(iii) The lack of affordable housing, and

(iv) The following high need areas:

(A) Places identified in the state Consolidated Plan or similar state plan or needs assessment report,

(B) Indian reservations or communities located within the boundaries of tribal allotted or trust land, and

(C) EZ/EC or REAP communities.

(b) *Establishing partnership designated place list.* The Agency, in states with an active leveraging program and formal partnership agreement with the state agency, may establish a partnership designated place list consisting of places identified by the partnership as high need areas based on criteria consistent with the Agency's and the state's authorizing statutes. The partnership agreement and partnership designated place list must have the concurrence of the Administrator.

(c) *Administrator's discretion.* The Administrator may add to the list of designated places any place that is determined to have a compelling need for MFH, for example, a place that has had a substantial increase in population not reflected in the most recent census data, or a place that has experienced a loss of affordable housing because of a natural disaster.

(d) *Restrictions on loans in certain designated places.* (1) Initial loan applications will not be requested and final loan applications will not be closed for housing proposals in designated places where any of the following conditions exist:

(i) The Agency has selected another MFH proposal in the designated place for processing.

(ii) A previously funded Agency, the U.S. Department of Housing and Urban Development (HUD), low-income housing tax credit or other similar assisted MFH in the designated place has not been completed or has not reached projected occupancy levels.

(iii) Existing assisted MFH in the designated place is experiencing high vacancy levels.

(iv) A special note rent or other loan servicing tool is pending or in effect for other assisted housing in the designated place, or

(v) The need in the market area is for additional rental assistance and not additional rental units.

(2) Exceptions to the provisions in § 3560.57(d)(1) may be made:

(i) When a group home is proposed for persons with disabilities in an area where the existing MFH is insufficient or unavailable for their needs; or

(ii) There is a compelling need for additional MFH, for example when the units that have been approved or are under development represent only a small portion of the total units needed in the community.

§ 3560.58 Site requirements.

(a) *Location.* (1) New construction section 515 loans will be made only in designated places selected by the Agency in accordance with the requirements of § 3560.57.

(2) Agency-financed MFH must be located in residential areas as part of established rural communities, except as permitted in § 3560.58(b), and for farm labor housing units financed under sections 514 and 516, which may be developed in any area where a need for farm labor housing exists.

(3) Communities in which Agency-financed MFH is located must have adequate facilities and services to support the needs of tenants.

(4) Housing complexes will not be located in areas where there are undesirable influences such as high activity

railroad tracks; adjacent to or near industrial sites; bordering sites or structures which are not decent, safe, or sanitary; or bordering sites which have potential environmental concerns such as processing plants. Sites which are not an integral part of a residential community and do not have reasonable access, either by location or terrain, to essential community facilities such as water, sewerage removal, schools, shopping, employment opportunities, medical facilities, may not be acceptable. Consistent with Federal law and Departmental Regulation, the Agency must conduct an environmental assessment and a civil rights impact analysis before a site can be accepted. Sites may be determined by the Agency to be unacceptable if any of the adverse conditions described in this paragraph exist.

(b) *Structures located in central business areas.* The Agency will consider financing construction or the purchase and substantial rehabilitation of an existing structure located in the central business area of a rural community. With prior consent from the Agency, a portion of such a structure may be designated for commercial use on a lease basis. RHS funds may not be used to finance any cost associated with the commercial space.

(c) *Site development costs and standards.* The cost of site development must be less than or comparable to the cost of site development at other available sites in the community and the site must be developed in accordance with 7 CFR part 1924, subpart C and any applicable standards imposed by a state or local government.

(d) *Densities.* Allowable site densities will be determined based on the following criteria:

(1) Compatibility and consistency with the community in which the MFH is located;

(2) Impact on the total development costs; and

(3) Size sufficient to accommodate necessary site features.

(e) *Flood or mudslide-prone areas.* (1) The Agency will not approve sites subject to 100-year floods when non-floodplain sites exist. The environmental review process will assess the availability of a reasonable site outside the 100-year floodplain.

(2) Sites located within the 100 year floodplain are not eligible for federal financial assistance unless flood insurance is available through the National Flood Insurance Program (NFIP). The Agency will complete Federal Emergency Management Agency (FEMA) Form 81–93, Standard Flood Hazard Determination, to document the site's location in relation to the floodplain and the availability of insurance under NFIP.

§ 3560.59 Environmental requirements.

Under the National Environmental Policy Act, the Agency is required to assess the potential impact of the proposed action on protected environmental resources. Measures to avoid or at least mitigate adverse impacts to protected resources may require a change in the site or project design. Therefore, a site cannot be approved until the Agency has completed the environmental review in accordance with 7 CFR part 1940, subpart G, or any successor regulation. Likewise, the applicant should be informed that the environmental review must be completed and considered before the Agency can make a commitment of resources to the project.

§ 3560.60 Design requirements.

(a) *Standards.* All Agency-financed MFH will be constructed in accordance with 7 CFR part 1924, subpart A and will consist of two or more rental units plus appropriate related facilities. Single family structures may be used for group homes and cooperative housing. Also, manufactured homes may be used to create MFH and single family housing originally financed through section 502 of the Housing Act of 1949 may be converted to MFH. Maintenance requirements are listed in § 3560.103(a)(3).

(b) *Residential design.* All MFH must be residential in character, except as provided for in § 3560.58(b), and must meet the needs of eligible residents.

(c) *Economical construction, operation and maintenance.* Taking into consideration life-cycle costs, all housing must be economical to construct, operate, and maintain and must not be of elaborate design or materials.

(1) Economical construction means construction that results in housing of at least average quality with amenities that are reasonable and customary for the community and necessary to appropriately serve tenants.

(2) Economical operating and maintenance means housing with operational and maintenance costs that allow a basic rent structure less than or consistent with conventional rents for comparable units in the community or in a similar community except that when determined necessary by the Agency to allow for decent, safe and sanitary housing to be provided in market areas where conventional rents are not sufficient to cover necessary operating, maintenance, and reserve costs. Basic rents may be allowed to exceed comparable rents for conventional units, but in no case may the rent exceed 150% of the comparable rent for conventional unit rent level.

(3) In meeting the Agency objective of economical construction, operation and maintenance, housing proposals must:

(i) Contain costs without jeopardizing the quality and marketability of the housing;

(ii) Employ life-cycle cost analyses acceptable to the Agency to determine the types of materials which will reduce overall costs by lowering operation and maintenance costs, even though their initial costs may be higher; and

(iii) Provide assurances that costs will be reduced when the Agency determines that housing costs are not economical. If assurances cannot be provided, funding may be withdrawn.

(4) The housing proposal will give maximum consideration to energy conservation measures and practices.

(d) *Accessibility*. All housing will meet the following accessibility requirements.

(1) For new construction of MFH, at least 5 percent of the units (but not less than one) must be constructed as fully accessible units to persons with disabilities. The Uniform Federal Accessibility Standards (UFAS) will be followed. Individual copies of these standards are available from the Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW, Suite 1000, Washington, DC 20004–1111, Telephone: (202) 272–0080, TTY: (202) 272–0082, e-mail address: *info@access-board.gov*. When calculating how many accessible units are required, always round up to the next whole number to ensure the 5 percent requirement is met.

(2) For existing properties that do not have fully accessible units, the 5 percent requirement will apply when making substantial alterations as defined by UFAS. The UFAS defines substantial alteration as ''alteration to any building or facility is to be considered substantial if the total cost for a twelve month period amounts to 50 percent or more of the full and fair cash value of the building * * *'' UFAS further defines full and fair cash value as ''the assessed valuation of a building or facility as recorded in the assessor's office of the municipality and as equalized at one hundred percent (100%) valuation, or the replacement cost, or the fair market value.'' The 5 percent rule will also apply to repair or renovation work on a single unit. For instance, if a unit is damaged by fire and extensive repair is necessary, to the extent possible the unit is to be converted to a fully accessible unit.

(3) The variety of bedroom quantities of fully accessible units will be comparable to the variety of bedroom quantities of units which are not fully accessible. Borrowers will not, however, be required to exceed the 5 percent requirement simply to have an accessible unit of each bedroom quantity. In addition, accessible units should be distributed throughout the complex so not to concentrate the units in one location.

(4) All MFH must meet:

(i) The accessibility requirements as contained in section 504 of the Rehabilitation Act of 1973;

(ii) The requirements of the Fair Housing Amendments Act of 1988;

(iii) The requirements of the Americans with Disabilities Act of 1990, as applicable; and

(iv) All other Federal, State, and local requirements. When architectural standards differ, the most stringent standard will be followed.

§ 3560.61 Loan security.

(a) *General.* Each loan made by the Agency will be secured in a manner that adequately protects the financial interest of the Federal Government throughout the period of the loan.

(b) *Lien position.* (1) The Agency will seek a first or parity lien position on Agency-financed property in all instances. The Agency may accept a junior lien position if the Federal Government's interests are adequately secured.

(2) The Agency will seek a first or parity lien on revenue from rent; Agency, HUD, state or private rental subsidy payments; chattels; assignments; and operating and reserve accounts. The Agency will accept a junior lien position if the Federal Government's interests are adequately secured.

(c) *Liability.* Personal liability will be required of all individual borrowers. Personal liability will not be required for the members or stockholders of any corporation or trust or any partners in a limited partnership.

(d) *Housing and land ownership.* Applicants must own the MFH and related land for which the loan is being requested, or become the owner when the loan is closed or have a leasehold interest in the land. If an applicant is not the owner of the housing and the related land, the following conditions must be met prior to or at loan closing.

(1) A recorded mortgage on the improvements is given as collateral.

(2) The amount of the loan against the collateral does not exceed its estimated security value.

(3) The unexpired term of the lease on the date of loan closing is at least 50 percent longer than the term of the loan and rent charged for the lease does not exceed the rate being paid for similar leases in the area.

(4) The applicant's leasehold interest is not subject to summary foreclosure or cancellation.

(5) The lease permits:

(i) The Agency to foreclose the mortgage and to transfer the lease;

(ii) The Agency to bid at a foreclosure sale or to accept voluntary conveyance of the security in lieu of foreclosure;

(iii) The Agency to occupy the property, sublet the property, or sell the leasehold for cash or credit if the leasehold is acquired through foreclosure, if the Agency accepts voluntary conveyance in lieu of foreclosure, or if the borrower abandons the property; and

(iv) The applicant, in the event of default or inability to continue with the lease and the loan, to transfer the leasehold subject to the mortgage to a transferee that will assume the property ownership obligations.

§ 3560.62 Technical, legal, insurance, and other services.

(a) *Legal services.* Applicants must have written contracts for any legal services that are to be paid out of Agency loan funds.

(b) *Title clearance.* Applicants must obtain title clearance in accordance with the provisions of 7 CFR part 1927, subpart B applicable to title clearance, which would include title insurance or title opinion, unless the loan applicant is leasing the property or is an organization or an individual with special title or loan closing problems, in which case title clearance and related legal services will be obtained in accordance with procedures approved by the Agency.

(c) *Architectural services.* Applicants must obtain a written contract for architectural services in accordance with the provisions of 7 CFR part 1924, subpart A.

(d) *Insurance.* Applicants must have property and liability coverage at loan closing as well as flood insurance, if needed. Fidelity coverage must be in force as soon as there are assets within the organization and it must be obtained before any loan funds or interim financing funds are made available to the borrower. At a minimum, applicants must meet the property, liability, flood, and fidelity insurance requirements in § 3560.105.

(e) *Surety bonding.* Applicants must comply with the surety bonding provisions of 7 CFR part 1924, subpart A.

§ 3560.63 Loan limits.

(a) *Determining the security value.* The security value for an Agency loan is the lesser of the total development cost (exclusive of any developer's fee as provided by paragraph (d)(2) of this section) or the housing project's security

value as determined by an appraisal conducted in accordance with subpart P of this part, minus any prior or parity liens on the housing project. For purposes of determining security value:

(1) Total development cost must be calculated excluding costs not considered allowable under § 3560.54(a), and excluding costs related to compliance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970.

(2) The appraisal, which will determine the market value, subject to restricted rents, will be obtained by the Agency and conducted in accordance with subpart P of this part.

(b) *Limitations on loan amounts.* The Agency will not make any loans without adequate security. The following limitations will be set on loan amounts:

(1) For all loan applicants who will receive benefits from the low-income housing tax credit program, the amount of Agency financing for the housing will not exceed 95 percent of the security value available for the Agency loan.

(2) For all loan applicants who will not receive low-income housing tax credit benefits and who are comprised solely of nonprofit organizations, consumer cooperatives, or state or local public agencies, the amount of the loan will be limited to the security value available for the Agency loan, plus the 2 percent initial operating capital and any necessary relocation costs incurred.

(3) For all other loan applicants who will not receive low-income housing tax credit benefits, the loan amount will be limited to no more than 97 percent of the security value available for the Agency loan.

(c) *Equity contribution.* Loan applicants, with the exception of nonprofit organizations, consumer cooperatives, or state or local public agencies who will not be receiving tax credits, must make an equity contribution from their own resources.

(1) Loan applicants who will receive benefits from the low-income housing tax credit program must make an equity contribution in the amount of 5 percent of the Agency loan. The maximum Agency loan will be determined in accordance with § 3560.63(b).

(2) Loan applicants who will not receive benefits from the low-income housing tax credit program and are not nonprofit organizations, consumer cooperatives, or state or local public agencies must make an equity contribution in the amount of 3 percent of the Agency loan. The maximum Agency loan will be determined in accordance with § 3560.63(b).

(d) *Review of assistance from multiple sources.* The Agency will analyze Federal Government and other assistance provided to any MFH project to establish the maximum loan amount and to assure that the assistance is not more than the minimum necessary to make the housing affordable, decent, safe, and sanitary to potential tenants.

(1) *Determining minimum assistance.* For purposes of determining minimum assistance, the total amount paid for builder's profit, overhead, and general requirements may not exceed 21 percent of the construction contract. Unless specified differently in a Memorandum of Understanding between the Agency and the state agency that allocates low-income housing tax credits, limits will be those specified in § 3560.53(l).

(2) *Developer's fee.* While, in accordance with § 3560.54(a)(9), payment of a developer's fee is not an eligible use of Agency loan funds, the Agency will include in total development costs a developer's fee paid from other sources when analyzing the Federal Government assistance to the housing. The Agency may recognize a developer's fee paid from other sources on construction or rehabilitation of up to 15 percent of the total development costs authorized for low-income housing tax credit purposes, or by another Federal Government program. Likewise for transfer proposals that include acquisition costs, the developer's fee on the acquisition cost may be recognized up to 8 percent of the acquisition costs only when authorized under a Federal Government program providing assistance. The developer's fee is not included in determining the Agency's maximum debt limit and loan amount.

(e) *Limits on equity loans.* For equity loans to avert prepayment, the amount

of the Agency equity loan will be limited to no more than the difference between 90 percent of market value of the property when appraised as conventional unsubsidized MFH and all current unpaid balances. For information on appraisal issues, refer to subpart P of this part.

(f) *Cost overruns.* (1) All applicants must agree in writing to provide funds at no cost to the housing and without pledging the housing as security to pay any cost for completing planned construction after the maximum debt limit is reached.

(2) After loan approval, the Agency will only approve cost increases for housing proposals involving new construction or major rehabilitation when the additional costs will not cause the limits specified in § 3560.53(l) or the maximum debt limit to be exceeded and the cost increases were caused by:

(i) Unforeseen factors that are determined by the Agency to be beyond the borrower's control;

(ii) Design changes required by the Agency, state, or the local government; or

(iii) Financing changes approved by the Agency.

§ 3560.64 Initial operating capital contribution.

Borrowers are required to make an initial operating capital contribution to the general operating account in the amount of at least 2 percent of the total development cost or appraised value, whichever is less.

(a) Borrowers that are nonprofit organizations, consumer cooperatives, or state or local public agencies and are not receiving low-income housing tax credits, may use loan funds for their initial operating capital contribution. All other borrowers must fund the initial operating capital contribution from their own resources.

(b) Borrowers must provide to the Agency for approval a list of materials and equipment to be funded from the general operating account for initial operating expenses. As specified in § 3560.304(b), initial operating capital may be used only to pay for approved budgeted expenses. If total initial operating expenses exceed 2 percent, the additional amount must be paid by the borrower from its own resources, except that borrowers meeting the provisions of § 3560.64(a) who do not have sufficient resources for this purpose may request Agency assistance. Withdrawals from the reserve account will not be approved for such expenses.

(c) Borrowers must provide the Agency with documentation of their initial operating capital contribution deposited into the general operating account prior to the start of construction or loan closing, whichever comes first, and such funds thereafter, may only be used for authorized budgeted purposes.

(d) If the conditions specified in § 3560.304(c) are met, funds contributed as initial operating capital may be returned to the borrower.

§ 3560.65 Reserve account.

To meet major capital expenses of a housing project, borrowers must establish and fund a reserve account that meets requirements of § 3560.306. At a minimum, the borrower must agree to make monthly contributions to the reserve account at the rate of 1 percent annually of the amount of the total development cost until the reserve account equals 10 percent of the total development cost.

§ 3560.66 Participation with other funding or financing sources.

(a) *General requirements.* The Agency encourages the use of funding or financing from other sources in conjunction with Agency loans. When the Agency is not the sole source of financing for MFH, the following conditions must be met.

(1) The Agency will enter into a participation (or intercreditor) agreement with the other participants that clearly defines each party's relationship and responsibilities to the others.

(2) The rental units that will serve tenants eligible for housing under the Agency's income standards must meet Agency standards and the number of units that will serve the Agency's tenants are at least equal to the units financed by the Agency.

(3) All rental units must be operated and managed in compliance with the requirements of the Agency and the other sources. To the extent these requirements overlap, the most stringent

requirement must be met. The Agency may negotiate the resolution of overlapping requirements on a case-by-case basis; however, at a minimum, Agency requirements must be met.

(4) If the number of units subject to the LIHTC rent and income restrictions is greater than the number of units projected to receive Agency rental assistance (RA) or similar tenant subsidy, the market feasibility documentation must clearly reflect a need and demand by LIHTC income-eligible households financially able to afford the projected rents without such a subsidy for the units not receiving RA or similar tenant subsidy.

(b) *Rental assistance*. The Agency may provide rental assistance with MFH loans participating with other sources of funding under the following conditions:

(1) The Agency's loan equals at least 25 percent of the housing's total development cost.

(2) The rental assistance is provided only to those rental units where the basic rents do not exceed what basic rents would have been had the Agency provided full financing.

(3) The provisions of subpart F of this part are met.

(c) *Security requirements*. The security requirements of § 3560.61 must be met for all Agency-financed MFH participating with other sources of funding.

(d) *Reserve requirements*. Reserve account requirements will be determined on a case-by-case basis, taking into consideration the reserve requirements of the other participating lenders, so that the aggregate fully funded reserve account is consistent with the requirements of § 3560.65. Reserve requirements and procedures for reserve account withdrawals must be agreed upon by all lenders and included in the intercreditor or participation agreement.

(e) *Design requirements*. Housing and related facilities must be planned and constructed in accordance with 7 CFR 1924, subparts A and C. If housing includes non-Agency financed common facilities, the following conditions must be met:

(1) The non-Agency-financed common facility's operating and maintenance costs must be paid through collection of a user fee from residents who use the facility,

(2) The non-Agency-financed common facility must be designed and operated with appropriate safeguards for the health and safety of tenants, and

(3) The facility must be fully available and accessible to all tenants.

§ 3560.67 Rates and terms for section 515 loans.

Rates and terms for farm labor housing loans are found in subpart L of this part for Off-Farm and subpart M of this part for On-Farm.

(a) *Interest*. Loans will be closed at the lower of the interest rate in effect at the time of loan approval or the interest rate that is in effect at time of loan closing.

(b) *Interest credit*. The Agency will provide interest credit to subsidize the interest on the Agency loan to a payment rate of 1 percent for all of the Agency's initial and subsequent loans.

(c) *Amortization period and term*. (1) Except for manufactured housing, loans will be amortized over a period not to exceed the lesser of the economic life of the housing being financed or 50 years and paid over a term not to exceed 30 years from the date of loan. The Agency may make a loan to the borrower to finance the final payment of a loan in accordance with § 3560.74.

(2) Loans for manufactured housing will be amortized and paid over a term not to exceed 30 years as specified in § 3560.70(c).

§ 3560.68 Permitted return on investment (ROI).

(a) *Permitted return*. Borrowers operating on a limited profit basis will be permitted a return not to exceed 8 percent of their required initial investment determined at the time of loan approval in accordance with § 3560.63(c).

(b) *Calculation of permitted return*. The permitted return will be based on the borrower's contributions from their own resources, which, when added to the Agency loan amount and all sources of funding or financing, do not exceed the security value of the MFH project as specified in § 3560.63(a).

(1) Proceeds received by the borrower from the syndication of low-income

housing tax credit and contributed to the MFH project may be considered funds from the borrower's own resources for the portion of the proceeds which exceeds:

(i) The allowable developer's fee determined by the state agency administering the low-income housing tax credit, and

(ii) The borrower's expected contribution to the transaction, as determined by the state agency administering the low-income housing tax credit.

(2) A building site contributed by the borrower will be appraised by the Agency to determine its market value. A return may not be allowed on the amount above the equity contribution required by § 3560.63(c) if the market value as determined by the Agency, when added to the loan and grant amounts from all sources, exceeds the security value of the MFH project as specified in § 3560.63(a).

(c) *Return on additional investment.* The initial investment may exceed the equity contribution required by § 3560.63(c) and a return allowed on the investment if the additional return does not increase basic rents and rental assistance costs above what basic rents and rental assistance costs would have been with the Agency financing 95 or 97 percent of the total development cost.

(d) *Compensation to nonprofit organizations.* Although nonprofit organizations are not eligible to take a return on investment, with prior Agency approval, cooperatives and nonprofit organizations may use housing project funds to pay asset management expenses directly attributable to ownership responsibilities, as described in § 3560.303(b)(1)(ii).

§ 3560.69 Supplemental requirements for congregate housing and group homes.

(a) *General.* Congregate housing and group homes must be planned and developed in accordance with 7 CFR part 1924, subparts A and C.

(b) *Design criteria.* Congregate housing and group homes must be designed to accommodate all special services that will be provided.

(c) *Services.* Congregate housing and group home loan applicants, as part of their loan request, must submit a plan to make affordable services available to residents to assist the residents in living independently. The plan must address the availability of this assistance from service providers throughout the term of the loan.

(1) For congregate housing, the resident services plan must address how the following services will be provided or made available:

(i) One cooked meal per day, seven days per week;

(ii) Transportation to and from the property;

(iii) Assistance in housekeeping;

(iv) Personal services;

(v) Recreational and social activities; and

(vi) Access to medical services.

(2) For group homes, the resident services plan must address how access to the following services will be provided or made available:

(i) A common kitchen in which to prepare meals;

(ii) Transportation;

(iii) Nearby recreational and social activities which may be coordinated by the resident assistant, if applicable; and

(iv) Medical services as necessary.

(d) *Necessary items.* Borrowers must ensure items such as tables, chairs, and cookware necessary to furnish common areas are made available to congregate housing or group homes. The 2 percent initial operating capital may be used to purchase these items.

(e) *Association with other organizations.* Congregate housing and group homes may coordinate services or training with another organization, such as a workshop for the developmentally disabled. However, the housing facility must be a separate entity and not dependent on the other organization.

(f) *Market feasibility documentation.* Market feasibility documentation for congregate housing and group homes is subject to the following requirements:

(1) Must address the need for housing with services and include information concerning alternative service providers;

(2) Must contain demographic information pertaining to the population that is to be served by the congregate housing or group home project; and

(3) May consider an expanded market area that includes nondesignated places, but the facility must be located in a designated place.

(g) *Rental assistance for group homes.* A unit in a group home consists of a space occupied by a specific tenant household, which may be an apartment unit, a bedroom, or a part of a bedroom. Agency rental assistance will be made available to tenants sharing a unit so long as the total rent for the unit does not exceed conventional rents for comparable units in the area or a similar area.

§ 3560.70 Supplemental requirements for manufactured housing.

(a) *Design requirements.* Manufactured housing must meet the requirements of 7 CFR part 1924, subpart A applicable to manufactured housing.

(b) *Eligible properties.* The manufactured housing must include two or more housing units. The applicant will become the first owner purchasing the manufactured homes for purposes other than resale. The following exceptions may be made to this provision:

(1) A housing proposal may include the purchase of the real property with existing manufactured housing which will be redeveloped with the placement of new manufactured homes.

(2) A housing proposal may include the rehabilitation of existing manufactured housing only if the units to be rehabilitated are currently financed by the Agency. The proposal will include the results of the applicant's consultation with the manufacturer to determine if the proposed rehabilitation work will affect the structural integrity of the unit and, if so, the statement will include an explanation as to how.

(c) *Terms.* The maximum loan amount will be determined in accordance with the requirements of § 3560.63. The amortization period and term of loans for manufactured housing will not exceed the lesser of the economic life of the housing being financed or 30 years.

(d) *Security.* A mortgage or deed of trust will be taken on the entire property purchased or improved with the loan. The encumbered property must be covered under a standard real estate title insurance policy or attorney's title opinion that identifies the housing as real property and insures or indemnifies against any loss if the manufactured home is determined not to be part of the real property. The property must be taxed as real estate by the jurisdiction where the housing is located if such taxation is permitted under applicable law when the loan is closed.

(e) *Special warranty requirements.* The general contractor or dealer-contractor, as applicable, must provide a warranty in accordance with the provisions of 7 CFR part 1924, subpart A.

(1) The warranty must establish that the manufactured homes, foundations, positioning and anchoring of the units to their permanent foundations, and all contracted improvements, are constructed in conformity with applicable approved plans and specifications.

(2) The warranty must include provisions that the manufactured homes sustained no hidden damage during transportation and, for double-wide units, that the sections were properly joined and sealed.

(3) The general contractor or dealer contractor must warrant that the manufacturer's warranty is in addition to and does not diminish or limit all other warranties, rights, and remedies that the borrower or lender may have.

(4) The seller of the manufactured homes must deliver to the borrower the manufacturer's warranty with an additional copy for RHS. The warranty must identify the units by serial number.

§ 3560.71 Construction financing.

(a) *Construction financing plan.* Prior to loan approval, applicants must submit to the Agency for its concurrence a plan for the construction financing and securing of the loan.

(b) *Interim financing.* Interim financing is required by the Agency for any construction, except as noted in paragraph (c) of this section.

(1) The Agency reserves the right to review and approve the interim financing arrangements proposed by the applicant.

(2) When interim financing is used, the Agency will obligate the funds and provide an interim financing letter to

the lender that will confirm the procedures and conditions for the construction financing. The take-out loan will be closed and the interim lender paid off when the conditions of the interim financing letter have been met.

(3) The applicable provisions of 7 CFR part 1924, subpart A will be used to monitor the construction.

(4) An environmental review must be completed in accordance with 7 CFR part 1940, subpart G, prior to issuance of the interim financing letter.

(c) *Multiple advances.* When interim financing is not available or when it is in the best interest of the Federal Government, the Agency may provide for multiple advances of the funds to cover the cost of construction.

(1) The Agency will review and approve the multiple advances proposed by the borrower.

(2) When multiple advances are used, the Agency will close the loan prior to any advancement of funds and the relevant provisions of 7 CFR part 1924, subpart A will be used to monitor the construction.

(3) The loan check will be handled in accordance with 7 CFR part 1902, subpart A.

§ 3560.72 Loan closing.

(a) *Requirements.* Loans will be closed in accordance with 7 CFR part 1927, subpart B and any state supplements. In all cases, the borrower must:

(1) Provide evidence that an Agency-approved accounting system is in place;

(2) Execute a restrictive-use contract acceptable to the Agency that establishes the borrower's obligation to operate the housing for program purposes for the term of the Agency loan;

(i) For all section 514 loans, except as provided in § 3560.621, made pursuant to a contract entered into on or after the effective date of this regulation, the following language will be included in the mortgage and deed of trust: ''The borrower and any successors in interest agree to use the housing for the purpose of housing people eligible for occupancy as provided in sections 514 and 516 of title V of the Housing Act of 1949, and Rural Housing Service regulations then in effect. The restrictions are applicable for a term of 20 years from the date on which the last loan was closed. No eligible person occupying the housing will be required to vacate nor any eligible person denied occupancy for housing prior to the close of such period because of a prohibited change in the use of the housing. A tenant or person wishing to occupy the housing may seek enforcement of this provision as well as the Government.''

(ii) All other loans are subject to restrictive-use provisions as outlined in subpart N of this part.

(3) Provide evidence that construction financing arrangements are adequate when interim financing is going to be used;

(4) Provide evidence that all the funds from other sources as proposed in the application are available and that there have been no changes in the Sources and Uses Comprehensive Evaluation (SAUCE).

(5) Provide evidence of the title to all security required by the Agency;

(6) Provide a certification that all construction in the case of interim financing has been or, in the case of multiple advances, will be paid;

(7) Provide, in the case of interim financing, a dated and signed statement from the owner's architect certifying to substantial completion of the housing project;

(8) Provide a certification that all construction in the case of interim financing has been or, in the case of multiple advances, will be in accordance with the plans and specifications concurred in by the Agency;

(9) Provide evidence, if applicable, that the conditions of the interim financing letter have been met; and

(10) Attend a pre-occupancy conference with the Agency.

(b) *Cost certification.* In all cases, the borrower must report actual construction costs. Whenever the State Director determines it appropriate, and in all situations where there is an identity of interest as defined in 7 CFR 1924.4 (i), the borrower, contractor and any subcontractor, material supplier, or equipment lessor having an identity of interest must each provide certification as to the actual cost of the work performed in connection with the construction contract in accordance with 7

CFR part 1924, subpart A. The construction costs must also be audited in accordance with Governmental Auditing Standards, by a Certified Public Accountant (CPA). In some cases, the Agency will contract directly with a CPA for the cost certification. Funds that were included in the loan for cost certification and which are ultimately not needed because Agency contracts for the cost certification will be returned on the loan. Agency personnel will utilize exhibit M of 7 CFR part 1924, subpart A to assist in the evaluation of the cost certification process.

(c) *Notification of loan cancellation.* Loans may be canceled after approval and before loan closing. The Agency will notify all parties of the cancellation and the reasons for the cancellation in accordance with 7 CFR part 1927, subpart B.

§ 3560.73 Subsequent loans.

(a) *Applicability.* The Agency may make a subsequent loan to a borrower to complete, improve, repair, or make modifications to MFH initially financed by the Agency or for equity for preservation purposes. Loan requests to add units to comply with accessibility requirements may be processed as a subsequent loan; however, loan requests to add units to meet market demand will be processed as an initial loan request and must compete under the NOFA.

(b) *Application requirements and processing.* Upon receipt of a subsequent loan request, the Agency will inform the applicant what information is required based on the nature and purpose of the loan request. Subsequent loan requests do not have to compete for funding against initial loan proposals.

(c) *Amortization and payment period.* Subsequent loans will be amortized over a period not to exceed the lesser of the economic life of the housing being financed or 50 years and paid over a term not to exceed the lesser of the economic life of the housing or 30 years from the date of the loan.

(d) *Equity contribution.* Applicants for subsequent loans must make contributions on the loans in the same proportion as outlined in § 3560.63(c). Loan applicants will not be given consideration for any increased equity value that the property may have since the initial loan.

(1) Excess initial investment on an initial loan may be credited toward the required investment on a subsequent loan.

(2) An initial operating capital contribution to the general operating account as described in § 3560.64 is required for a subsequent loan approved under the conditions set in § 3560.63(f) to complete housing construction but is not required for a subsequent loan to repair or improve existing housing.

(e) *Environmental requirements.* Subsequent loans are subject to the completion of an environmental review in accordance with 7 CFR part 1940, subpart G.

(f) *Design requirements.* All improvements, repairs, and modifications will be in accordance with 7 CFR part 1924, subparts A and C.

(g) *Architectural services.* The applicant must obtain architectural services when any of the following conditions exist:

(1) Enclosed space is being added,

(2) When required by state law, and

(3) When the Agency determines that the work being proposed requires architectural services.

(h) *Restrictive-use requirements.* Subsequent loans are subject to restrictive-use provisions as outlined in § 3560.662(a) and borrowers must execute a restrictive-use contract in accordance with § 3560.72(a)(2).

(i) *Designation changes from rural to nonrural.* If the designation of an area changes from rural to nonrural after the initial loan is made, a subsequent loan may be made only to make necessary improvements and repairs to the property or for equity when needed to avert prepayment.

(j) *Agency's discretion.* The Administrator may approve a subsequent loan in a place that is not on the list of designated places as a servicing action, for example, to replace units destroyed by a natural disaster.

§ 3560.74 Loan for final payments.

(a) *Use.* The Agency may finance final payments for borrowers holding existing loans for which the Agency approved an amortization period that exceeded the term of the loan.

(b) *Requirements*. The Agency may finance final payments if documentation regarding the market area shows that a need for low-income rental housing still exists for that area and one of the following conditions has been met.

(1) It is more cost efficient and serves the tenant base more effectively to maintain existing MFH than to build another property in the same location; or

(2) The MFH has been maintained to such an extent that it can be expected to continue providing affordable, decent, safe and sanitary housing for 20 years beyond the date of the loan to finance a final payment; and

(3) Funds are available.

(c) *Term*. The term of Agency loans to finance final payments will not exceed 20 years from the date of the initial loan final payment.

§§ 3560.75–3560.99 [Reserved]

§ 3560.100 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart C—Borrower Management and Operations Responsibilities

§ 3560.101 General.

This subpart sets forth borrower obligations regarding management and operations of multi-family housing (MFH) projects financed by the Agency. As noted in § 3560.6, the borrower requirements listed in this subpart must be complied with by the borrower. The borrower may designate in writing a person to act as the borrower's authorized agent.

§ 3560.102 Housing project management.

(a) *General*. Borrowers hold final responsibility for housing project management and must ensure that operations comply with the terms of all loan or grant documents, Agency requirements and applicable local, state and Federal laws and ordinances. Project operations shall be conducted to meet the actual needs and necessary expenses of the property or for any other purpose authorized under Agency regulations. Any party not meeting these responsibilities may be subject to penalties. It is expected that only typical and reasonable expenses be incurred for the services rendered. Consequently, methods to inflate, duplicate, obscure, or failure to disclose the true nature and cost of work performed for the services rendered will cause the Agency to deny budget requests for the services or issue a demand for recovery and reimbursement for unauthorized actions.

(b) *Management plan*. Borrowers must develop and maintain a management plan for each housing project covered by their loan or grant. The management plan must establish the systems and procedures necessary to ensure that housing project operations comply with Agency requirements.

(1) At a minimum, management plans must address the following items:

(i) Maintenance systems, including procedures for routine maintenance, capital item repair and replacement, and effective energy conservation practices;

(ii) Personnel policies, job descriptions, staffing plans, training procedures for on-site staff. The Borrower will include specific duties and responsibilities of each property manager, site manager and caretaker;

(iii) Front-line management functions to be performed by off-site staff;

(iv) Plans and procedures for providing supplemental services including laundry, vending, and security;

(v) Plans for accounting, record keeping and meeting Agency reporting requirements;

(vi) Procurement procedures;

(vii) Rent and occupancy charge collection procedures, and procedures for requesting and implementing changes

in rents, utility allowances, or occupancy charges;

(viii) Plans and procedures for marketing rental units and maintaining compliance with the Affirmative Fair Housing Marketing Plan in accordance with § 3560.104;

(ix) Unit leases and leasing policies and procedures, including procedures for maintaining and purging waiting lists, determining applicant eligibility, certifying and recertifying income, tenant selection, and occupancy policies such as security deposit amounts, occupancy rules, termination of leases or occupancy agreements and eviction;

(x) Plans for allowing tenant participation in property operations and for fostering tenant relationships with management;

(xi) Procedures for applicant and tenant appeals; and

(xii) Describe how management will make known to tenants and applicants that management will provide reasonable accommodations under the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, and regulations implemented thereunder at the borrower's expense unless to do so would cause an undue financial or administrative burden, how such requests are to be made, and who within management will have the authority to approve or disapprove a request for an accommodation.

(2) Loan or grant applicants must submit a management plan before the Agency will give final approval to the loan or grant application. The plan must address the required items identified in paragraph (b)(1) of this section in sufficient detail to enable the Agency to monitor housing project performance.

(c) *Management plan effective period.* A management plan remains in effect as long as it accurately reflects housing project operations and the housing project is in compliance with the Agency requirements.

(1) Borrowers must submit an updated management plan to the Agency if operations change or are no longer consistent with the management plan on file with the Agency.

(2) When there are no changes in operations, borrowers must submit a certification to the Agency every 3 years stating that operations are consistent with the management plan and the plan is adequate to assure compliance with the loan and grant documents and Agency requirements or applicable local, state and Federal laws.

(3) If the Agency determines that operations are in compliance with Agency requirements, loan or grant agreements, or applicable local, state, and Federal laws, but are not consistent with the management plan, the Agency will require the borrower to:

(i) Revise the management plan to accurately reflect housing operations;

(ii) Take actions to ensure the management plan is followed; or

(iii) Advise the Agency in writing of the action taken.

(4) When a housing project is being transferred from one borrower to another, the transferee must submit a management plan that addresses the required items identified in paragraph (b)(1) of this section in sufficient detail to enable the Agency to give final approval of the transfer.

(d) *Housing projects with compliance violations.* Upon receiving notice of compliance violations in accordance with § 3560.354, borrowers must submit to the Agency:

(1) Revisions to the management plan establishing the changes in housing operations that will be made to restore compliance;

(2) If the borrower determines the compliance violations were due to a failure to follow the management plan, the borrower must certify to the Agency that the management plan is adequate to assure compliance with the applicable requirements of this part and submit a written description of the actions they will take to ensure the management plan is followed; or

(3) If the Agency discovers continued discrepancies between a management plan and housing project operations or compliance violations, the Agency may require the borrower to install a different management agent acceptable to the Agency as described in paragraph (e) of this section.

(e) *Acceptable management agents.* Borrowers must obtain Agency approval of the agent proposed to manage a housing project prior to entering into any formal agreement with the agent and

prior to allowing the agent to assume responsibility for housing project operations. Borrowers that plan to self-manage a housing project also must receive Agency approval before assuming responsibility for housing operations.

(1) Borrowers must submit a written request for Agency approval of the proposed management agent at least 45 days prior to the date the agent is to assume responsibility for operations. This request must include a profile of the proposed management agent that provides sufficient information to allow the Agency to evaluate whether the agent is acceptable.

(2) The Agency will deny approval of any proposed management agent that cannot provide evidence of at least two years of experience and satisfactory performance in directing and overseeing the management of similar federally-assisted MFH.

(3) The Agency may issue approval of a management agent that does not meet the requirements of § 3560.102(e)(2) if the management agent can provide evidence that indicates the ability to successfully manage a MFH project in accordance with Agency requirements.

(4) If a borrower enters into an agreement with a management agent or begins to self-manage prior to receiving Agency approval, the Agency will place the borrower in non-monetary default status and will require the borrower to immediately terminate the contract with the management agent.

(f) *Self-management*. Borrowers may self-manage a housing project but must receive Agency approval before assuming responsibility for housing operations. Borrowers that plan to self-manage must meet all requirements of § 3560.102, except for paragraph (h) of this section.

(g) *Identity-of-interest disclosure*. Borrowers and management agents must disclose to the Agency all identity-of-interest relationships which they have with firms and must receive Agency approval to use such firms prior to entering into any contractual relationships with such entities that involve Agency funds.

(1) This disclosure must include any identity-of-interest relationships between:

(i) The borrower and the management agent;

(ii) The borrower or management agent and the providers of supplies and services to the housing project; and

(iii) The borrower or the management agent and employees of any of the above.

(2) Failure to disclose such relationships may subject the borrower, the management agent, and the other firms or employees found to have an identity of interest relationship to suspension, debarment, or other remedies available to the Agency.

(3) After disclosure of an identity-of-interest relationship:

(i) The borrower, management agent, and supplier of goods and services must provide documentation proving that use of identity-of-interest firms is in the best interest of the housing project;

(ii) Any supplier of goods and services must certify in writing to the Agency that the individual or organization has a viable, on-going trade or business qualified and licensed, if appropriate, to do the work for which a contract is being proposed;

(iii) The borrower, management agent, and supplier of goods and services must agree, in writing, that all records related to the housing project will be made available to the Agency, Office of the Inspector General (OIG), General Accountability Office (GAO), or a representative of the Agency, upon request; and

(iv) The Agency will deny the use of an identity-of-interest firm when the Agency determines such use is not in the best interest of the Federal Government or the tenants.

(h) *Management agreement*. Borrowers contracting with a management agent must execute a management agreement that establishes:

(1) The management agent's responsibility to comply with Agency requirements and local, state, and Federal laws;

(2) That the management fee is payable out of the housing project's general operating account consistent with the requirements of paragraph (i) of this section; and

(3) The Agency's authority to terminate the agreement for failure to operate the housing project in accordance with Agency requirements or local, state, or Federal laws.

(i) *Management fees.* Management fees will be an allowable expense to be paid from the housing project's general operating account only if the fee is approved by the Agency as a reasonable cost to the housing project and documented on the management certification. Management fees must be developed in accordance with the following:

(1) The management fee may compensate the management entity only for the specifically identified bundle of services to be provided to the housing project. Costs and services to be paid as part of the bundle of services include:

(i) Supervision by the management agent and its staff (time, knowledge, and expertise) of overall operations and capital improvements of the site.

(ii) Hiring, supervision, and termination of on-site staff.

(iii) General maintenance of project books and records (general ledger, accounts payable and receivable, payroll, etc.). Preparation and distribution of payroll for all on-site employees, including the costs of preparing and submitting all appropriate tax reports and deposits, unemployment and workers' compensation reports, and other IRS- or state-required reports.

(iv) Training provided to on-site staff at the project site.

(v) Preparation and submission of proposed annual budgets and negotiation of approval with the Agency, other governmental agencies and the borrowers.

(vi) Preparation and distribution of the Agency or other governmental agency forms and routine financial reports to borrowers.

(vii) Preparation and distribution of required year-end reports to the Agency or other governmental agency and borrowers.

(viii) Preparation of requests for reserve withdrawals, rent increases, or other required adjustments.

(ix) Arranging for preparation by outside contractors of energy audits and utility allowance analysis. Implement appropriate changes.

(x) Preparation and implementation of Affirmative Fair Housing Marketing Plans as well as general marketing plans and efforts.

(xi) Review of tenant certifications and submission of monthly rental assistance requests, and overage. Submission of payments where required.

(xii) Preparation, approval, and distribution of operating disbursements; oversight of project receipts; and reconciliation of deposits.

(xiii) Overhead of management agent, including:

(A) Establish, maintain, and control an accounting system sufficient to carry out accounting supervision responsibilities.

(B) Maintain agent office arrangements, staff, equipment, furniture, and services necessary to communicate effectively with the properties, the Agency or other governmental agency and with the borrowers.

(C) Postage expenses related to the normal responsibility for mailings to the properties, the Agency or other governmental agency, the tenants, the vendors, and the owners.

(D) Expense of telephone and facsimile communication to the properties, tenants, the Agency or other governmental agency, and the borrowers.

(E) Direct costs of insurance (fidelity bonds covering central office staff, computer and data coverage, general liability, etc.) directly related to protection of the funds and records of the borrower.

(F) Central office staff training and ongoing certifications.

(G) Maintenance of all required profession and business licenses and permits. (This does not include project site office permits or licenses.)

(H) Insurance coverage for agent's office and operations (Property, Auto, Liability, E&O, Casualty, Workers Compensation, etc.)

(I) Travel of agent staff to the properties for on-site inspection, training, or supervision activities.

(J) Agent bookkeeping for their own business.

(xiv) Attendance at meetings (including travel) with tenants, owners, and the Agency or other governmental agency.

(xv) Development, preparation, and revision of management plans or agreements.

(xvi) Coordination of U.S. Department of Housing and Urban Development (HUD) certifications or vouchers with tenants, including all reporting to all pertinent agencies and borrowers.

(xvii) Directing the investment of project funds into required accounts.

(xviii) Maintenance of bank accounts and monthly reconciliations.

(xix) Preparation, request for, and disbursement of borrower's initial operating capital (for new projects) as well as administration of annual owner's return on investment.

(xx) Account maintenance, settlement, and disbursement of security deposits.

(xxi) Working with third party auditors for initial set-up of audits and annually thereafter for audit preparation and review. Assistance with supplemental letters and preparation of Agency financial reports or other governmental agency reports.

(xxii) Storage of records and adherence to records retention requirements.

(xxiii) Assist on-site staff with tenant relations and problems. Provide assistance to on-site staff in severe actions (eviction, death, insurance loss, etc.).

(xxiv) Oversight of general and preventive maintenance procedures and policies.

(xxv) Development and oversight of asset replacement plans.

(xxvi) Oversight of preparation of section 504 reviews, development of plans, and implementation of improvements necessary to comply with plans and section 504 requirements.

(xxvii) Reporting to general and limited partners and State agencies for Low Income Housing Tax Credit (LIHTC)-compliance purposes.

(2) Management fees may consist of a base per occupied unit fee and add-on fees for specific housing project characteristics. Management entities may be eligible to receive the full base per occupied unit fee for any month or part of a month during which the unit is occupied.

(i) Periodically, the Agency will develop a range of base per occupied unit fees that will be paid in each state. The Agency will develop the fees based on a review of housing industry data. The final base for occupied unit fees for each state will be made available to all borrowers.

(ii) Periodically, the Agency will develop the amount and qualifications to receive add-on fees. The final set of qualifications will be made available to all borrowers.

(3) Allowable Administrative Expenses. (i) *Identifying the Type of Administrative Expense*. Management Plans and Agreements must describe if administrative expenses are to be paid from the management fee or paid for as a project cost.

(A) A management plan is required for all projects. The management plan should describe administrative expenses paid from management agent fees or project operations. The management plan should provide job descriptions for the site manager, the management agent and other personnel. It is important that these documents accurately reflect the duties being performed by the various personnel. The management plan must meet the standards set out in this rule.

(B) A task list should be used to identify which services are included in the management fee, which services are included in project operations, and which are pro-rated along with the methodology used to pro-rating of expenses between management agent fees and project operations. Some property responsibilities are completed at the property and some offsite. Agent responsibilities may be performed at the property, the management office, or at some other location.

(C) Disputes may arise as to who performs certain services. The management plan and job descriptions should normally provide sufficient clarity to avoid or resolve any such disputes; however, sometimes clarifications and supporting materials may be required to resolve disputes. The decision must be made based on the most complete evaluation of the facts presented.

(ii) *Allowable Administrative Expenses*. Payroll related administrative expenses are allowable expenses. Postage expense to mail out rental applications, third-party (asset income and adjustments to income) verifications,

application processing correspondence (acceptance or denial letters), mailing project invoice payments, required correspondence, and report submittals to various regulatory authorities for the managed property are allowable project expenses no matter what location or point of origin the mail is generated. Photocopying or printing expense related to actual production of project brochures, marketing pieces, forms, reports, notices, and newsletters are allowable project expenses no matter what location or point of origin the work is performed including outsourcing the work to a professional printer. Correspondence or reports required for record retention or project compliance are allowable project expenses. The cost or expense of equipment and any related equipment service contract is a management agent direct expense, unless the machine becomes the property of the project after purchase.

(iii) *Determining if Expenses are Reasonable.* Generally, expenses charged to project operations, whether for management agent services or other expenses, must be reasonable, typical, necessary and show a clear benefit to the residents of the property. Services and expenses charged to the property must show value added and be for authorized purposes. If such value is not apparent, the service or expense should be examined.

(A) Administrative expenses for project operations exceeding 23 percent, or those typical for the area, of gross potential basic rents and revenues (*i.e.*, referred to as gross potential rents in industry publications) highlight a need for closer review for unnecessary expenditures. Budget approval is required and project resources may not always permit an otherwise allowable expense to be incurred if it is not fiscally prudent in the market.

(B) Excessive administrative expenses can result in inadequate funds to meet other essential project needs, including expenditures for repair and maintenance needed to keep the project in sound physical condition. Actions that are improper or not fiscally prudent may warrant budget disapproval and/or a demand for recovery action.

(4) Unallowable Administrative Expenses.

(i) Certain expenses are not allowable such as legal fees, association dues, bonuses or monetary performance awards, parties, computer hardware and some software, and telephone purchases.

(ii) It is inappropriate to charge for legal services to represent any interest other than the borrower's interest (*i.e.*, representing a general partner or limited partner to defend their individual owner interest is not allowable). Where there is no finding of a borrower's fault, commercially reasonable legal expenses and costs for defending or settling lawsuits (without admission of liability) are allowable.

(iii) Charging for payment of penalties, including opposition legal fees resulting from an award finding improper actions on the part of the owner or management agent is generally an inappropriate project expense. The party responsible generally pays such expenses for violating the standards or by their insurance carriers.

(iv) Association dues to be paid by the project should only be related to training for site managers or management agents. To the extent that association dues can document training for site managers or management agents related to project activities by actual cost or pro-ration, a reasonable expense may be billed to the project.

(v) It is inappropriate for the project to pay for bonuses or monetary performance awards to site managers or management agents that are not clearly provided for by the site manager salary contract.

(vi) Billing the project for parties that are large or unreasonable, such as renting expensive party halls or hotel rooms and payment for alcoholic beverages or gifts to management agent staff are also inappropriate.

(vii) It is inappropriate to bill the project for computer hardware, some software, and internal connections that are beyond the scope and size reasonably needed for the services supplied (*i.e.*, purchasing equipment or software for use by a site manager that is clearly beyond that needed to support

project operations). Note that computer learning center activities benefiting tenants are not covered in this prohibition.

(viii) It is inappropriate to bill the project for practices that are inefficient such as routine use of collect calls from a site manager to a management agent office.

(j) *Management certification*. (1) As a condition of approval of the management agent and the management fee, the borrower and the management agents must execute an Agency-approved certification establishing an allowable management fee to be paid out of the housing project's general operating account and certifying that:

(i) The borrower and management agent agree to operate the housing project in accordance with the management plan;

(ii) The borrower and the management agent will comply with Agency requirements, loan or grant agreements, applicable local, state and Federal laws and ordinances, and contract obligations, will certify that no payments have been made to anyone in return for awarding the management contract to the management agent, and will agree that such payments will not be made in the future;

(iii) The borrower and the management agent will comply with Agency notices or other policy directives that relate to the management of the housing project;

(iv) The management agreement between the borrower and management agent complies with the requirements of this section;

(v) The borrower and the management agent will comply with Agency requirements regarding management fees as specified in paragraph (i) of this section, and allocation of management costs between the management fee and the housing project financial accounts specified in § 3560.302(c)(3);

(vi) The borrower and the management agent will not purchase goods and services from entities that have an identity-of-interest (IOI) with the borrower or the management agent until the IOI relationship has been disclosed to the Agency according to paragraph (g) of this section, not denied by the Agency under paragraph (d)(3) of this section, and it has been determined that the costs are as low as or lower than arms-length, open-market purchases; and

(vii) The borrower and the management agent agree that all records related to the housing project are the property of the housing project and that the Agency, OIG, or GAO may inspect the housing records and the records of the borrower, management agent, and suppliers of goods and services having an IOI with the borrower or with a management agent acting as an agent of the borrower upon demand.

(2) A certification will be executed each time a management agent is proposed and a management agreement is executed or renewed. Any amendment to a management certification must be approved by the Agency and the borrower.

(k) *Procurement*. The borrower and the agents of the borrower must obtain contracts, materials, supplies, utilities, and services at a reasonable cost and seek the most advantageous terms to the housing project. Any discounts, rebates, fees, proceeds, or commissions obtainable with respect to purchases, service contracts, or other transactions must be credited to the housing project.

(l) *Electronic Submission of Data to Agency*. For properties with eight or more housing units, the Agency may specify that borrowers submit information required by this part electronically.

§ 3560.103 Maintaining housing projects.

(a) *Physical maintenance*. (1) The purposes of physical maintenance are the following:

(i) Provide decent, safe, and sanitary housing; and

(ii) Maintain the security of the property.

(2) Borrowers are responsible for the long-term, cost-effective preservation of the housing project.

(3) At all times, borrowers must maintain housing projects in compliance with local, state and federal laws and regulations and according to the following Agency requirements for affordable, decent, safe, and sanitary housing. Agency design requirements

are discussed in § 3560.60. The Agency acknowledges that property maintenance is an ongoing process and will not penalize borrowers for less than 100 percent compliance as long as it is evident that the borrower is striving to achieve the standards listed in this paragraph. In addition, the Agency understands that although its multifamily housing portfolio is relatively homogeneous, no one standard is appropriate for all properties.

(i) *Utilities.* The housing project must have an adequate and safe water supply, a functional and safe waste disposal system, and must be free of hazardous waste material.

(ii) *Drainage and erosion control.* The housing project must have drainage that effectively protects the housing project from water damage from standing water and erosion. Units, basements, and crawl spaces must be free of water seepage.

(iii) *Landscaping and grounds.* The housing project must be landscaped attractively. Lawns, plants and shrubs must be maintained and must allow air to windows, vents, and sills. Recreation areas must be maintained in a safe and clean manner and trash collection areas must be adequately sized, screened, and maintained.

(iv) *Drives, parking services and walks.* The housing project must have drives, parking lots, and walks that are free of holes and deterioration. Walks with changes in height between slabs of approximately ½ inch or greater will be considered unacceptable.

(v) *Exterior signage.* All signs at the housing project, including those related to the housing project name, buildings, parking spaces, unit numbers and other informational directions must be visible and well-kept. Sign requirements must conform to § 3560.104(d).

(vi) *Fences and retaining walls.* The housing project must have fence lines that are free of trash, weeds, vines, and other vegetation. Fences must be free of holes and damaged or loose sections. The bases of all retaining walls must be erosion free and drainage weep holes must be cleaned out to prevent excessive pressure behind the retaining wall.

(vii) *Debris and graffiti.* The housing project, including common areas, must be free of trash, litter, and debris. Public walkways, walls of buildings and common areas must be free of graffiti.

(viii) *Lighting.* The housing project must have functional exterior lighting and functional interior lighting in common areas which permits safe access and security.

(ix) *Foundation.* The housing project must have a foundation that is free of evidence of structural failure, such as uneven settlement indicated by horizontal cracks or severe bowing of the foundation wall. Structural members must not have evidence of rot or insect or rodent infestation.

(x) *Exterior walls and siding.* The housing project must have walls that are free from deterioration which allows elements to infiltrate the structure, eaves, gables, and window trim that are free from deterioration, exterior wall coverings that are intact, securely attached, and in good condition. Brick veneers must be free of missing mortar or bricks.

(xi) *Roofs, flashing, and gutters.* The housing project must have gutters and downspouts, where appropriate for climatic conditions, that are securely attached, clean, and finished or painted properly with splash blocks or extenders that direct water flow away from the building. The housing project must have a roof that is free of leaks, defective covering, curled or missing shingles and which is not sagging or buckling. Fascia and soffits must be intact.

(xii) *Windows, doors, and exterior structures.* The housing project must have screens that are free of tears, breaks and rips and windows that are unbroken. Window thermopane seals must be unbroken and caulking on the exterior of windows and doors must be continuous and free of cracks. Doors must be weather tight, free of holes, and provide security with functional locks. Porches, balconies, and exterior stairs must be free of broken, missing, or rotting components.

(xiii) *Common area accessibility.* The housing project must have accessible, designated handicapped parking spaces with handicapped space signs properly posted. Common areas must be accessible through walks, ramps, porches, and thresholds. The laundry room must

have accessible appliances and mailboxes must be at an accessible level. Elevators or mechanical lifts must be functional and kept in good repair.

(xiv) *Common area signage.* The following must be posted in a conspicuous place in a common area: ''Justice for All'' poster, HUD equal housing opportunity poster including the Spanish version if there are Hispanic Limited English Proficiency tenants or applicants, current affirmative fair housing marketing plan, the tenant grievance and appeal procedure, housing project occupancy rules, office hours and phone number, and emergency hours and phone number.

(xv) *Flooring.* If a housing project has carpeting, the carpet must be clean, without excessive wear, and seams that are secure and stretched properly. If the housing project has resilient flooring, the flooring must be clean, unstained, free of tears and breaks, and seams that are secure.

(xvi) *Walls, floors, and ceilings.* The housing project must have walls, floors, and ceilings that are free of holes, evidence of current water leaks, and free of material that appears in danger of falling. The housing project must have wallboard joints that are secure and free of cracks.

(xvii) *Doors and windows.* The housing project must have doors that are free of holes, secure, unbroken and easily operable hardware, deadbolt locks which are in place and secure, and, if doors are metal, free of rust. The housing project must have windows which are easily operated, free of bent blinds or torn curtains, and window interiors must be free of evidence of moisture damage.

(xviii) *Electrical, air conditioning and heating.* The housing project must have heating and cooling units that are free of bare wires and which are functioning properly, including thermostats. The housing project must not have uncovered outlets or other evident safety hazards, switches which work improperly, or light fixtures which are broken and inoperable.

(xix) *Water heaters.* The housing project must have water heaters which are operating properly, free of leaks, supply adequate hot water, and are fitted with temperature and pressure relief valves.

(xx) *Smoke alarms.* The housing project must have smoke alarms which are properly located according to local code and which operate properly.

(xxi) *Emergency call system.* If a housing project has an emergency call system, the switches must be located in the bathroom and bedroom, furnished with a pull cord, with the down position set to ''ON'', and must operate properly.

(xxii) *Insect or vermin infestation.* The housing project must have all units free of visible signs of insects or rodents and must be free of signs of insect or rodent damage.

(xxiii) *Range and range hood.* The housing project must have range units in which all elements are operable, electrical connections are secure and insulated, doors and drawers which are secure, control knobs and handles which are in place and secure, and housing which is sound and the finish is free of chips, damage, or signs of rust. The range hood fan and light must be operable.

(xxiv) *Refrigerator.* The housing project must have refrigerators in which the cooler and freezer are operating properly, the shelves and door containers are secure and free of rust, door gaskets are in good condition and functioning properly, and the housing is sound and the finish is free of chips, damage, or signs of rust.

(xxv) *Sinks.* The housing project must have sinks in which the fittings work properly and are free of leaks, plumbing connections under the cabinet which are free of leaks, the finish is free of chips, damage, or signs of rust, the strainer is in good condition and in place, and which are secured to a wall, counter, or vanity top.

(xxvi) *Cabinets.* The housing project must have cabinets and vanities which are secure to walls or floor and have faces, doors, and drawer fronts that are in good condition and free of breaks and peeling. Shelving must be in place, fastened securely, and free of warps. The housing project must have counter tops which are secure and free of burn marks or chips, bottoms under sinks which are free of evidence of warping, breaks, or being water soaked. Kitchen

counter, vanity tops, and back splashes must be properly caulked.

(xxvii) *Water closets.* The housing project must have the base of the water closets at the floor properly caulked. The tanks must be free of cracks or leaks and have a lid which fits and is in good condition. The seats must be secure and in good condition, and the flushing mechanisms must be in good condition and operating properly. The stools must be free of cracks and breaks and be securely fastened to the floor.

(xviii) *Bathtub and shower stalls.* The housing project must have tubs or shower stalls which are free of cracks, breaks, and leaks, and a strainer in good condition and in place. The housing project must have walls and floors of the bathtubs which are properly caulked, tops and sides of shower stalls must be properly caulked, and the finish is free of chips, damage, or signs of rust.

(4) The Agency expects that upon discovery of a condition not in compliance with the standards listed in this section that the borrower will remedy the situation in a timeframe required by the Agency. The Borrower must provide documentation and justification for any failure to meet such timeframe. Properties with deficiencies in the process of being addressed will not be deemed to be out of compliance unless there are so many deficiencies that it would result in a declaration of substantial noncompliance and call into questions the viability of the property and the effectiveness of the borrower's maintenance program. Failure to make such corrections or repairs constitutes a non-monetary default under § 3560.452(e).

(b) *Maintenance systems.* Borrowers must establish the following maintenance systems and must describe these systems in their management plan.

(1) A system for routine maintenance, including:

(i) Regular maintenance tasks that can be prescheduled or planned; and

(ii) Tasks performed on a regular basis to maintain compliance with the standards established in paragraph (a)(3) of this section.

(2) A system for responsive maintenance including:

(i) A process for responding to requests for maintenance from tenants;

(ii) A process for responding to unexpected malfunctions of equipment or damages to building systems such as a furnace breakdown or a water leak; and

(iii) A ''work order'' process for managing and tracking responses to maintenance requests and the performance of maintenance tasks.

(3) A system for preventive maintenance including:

(i) Maintenance of mechanical systems, building exteriors, elevators, and heating and cooling systems which require specially trained personnel; and

(ii) Maintenance that supports energy-efficient operation of the housing project.

(4) A system for correcting deficiencies identified by periodic inspections, which must include:

(i) A move-in inspection;

(ii) A move-out inspection; and

(iii) An annual inspection of occupied units.

(c) *Capital budgeting and planning.* (1) Borrowers must develop a capital budget as part of their annual housing project budget required under § 3560.303. The capital budget must include anticipated expenditures on the long-term capital needs of the housing project to assure adequate maintenance and replacement of capital items.

(2) If the borrower requests an increase in the project's reserve for replacement account, the borrower must have a capital needs assessment prepared and submitted to the Agency to reflect anticipated needs of the housing project for replacement of capital equipment and systems. The cost for preparation of a capital needs assessment will be approved by the Agency as an eligible housing project expense provided the capital needs assessment is reasonable in cost and meets Agency requirements.

(3) [Reserved]

(4) As a part of the annual budget process, borrowers may request an increase in the amount to be contributed and held in the housing project reserve account to fund the needs identified in an Agency-approved capital needs assessment.

(5) At any time, borrowers may request and the Agency may approve amendments to loan or grant documents to increase the amount of funds to be contributed and held in a reserve account to cover the cost of capital improvements based on the needs identified in an Agency approved capital needs assessment. Borrowers must assure improvements are performed as specified in the capital needs assessment.

§ 3560.104 Fair housing.

(a) *General.* Borrowers must comply with the requirements of the Fair Housing Amendments Act of 1988, and this section to meet their fair housing responsibilities.

(b) *Affirmative Fair Housing Marketing Plan.* (1) Borrowers with housing projects that have four or more rental units must prepare and maintain an Affirmative Fair Housing Marketing Plan (AFHMP) as defined in 24 CFR part 200, subpart M.

(2) Loan or grant applicants must submit an AFHMP for Agency approval prior to loan closing or grant approval. Plans must be updated by the borrower whenever components of the plan change.

(3) Borrowers must post the approved AFHMP for public inspection at the housing project site, rental office, or at any other location where tenant applications for the project are received.

(4) When developing the plan, the following items must be considered by the borrower:

(i) *Direction of marketing activities.* The plan should be designed to attract applications for occupancy from all potentially eligible groups of people in the housing marketing area, regardless of race, color, religion, sex, age, familial status, national origin, or disability. The plan must show which efforts will be made to reach very low-income or low-income groups who would least likely be expected to apply without special outreach efforts.

(ii) *Marketing program.* The applicant or borrower should determine which methods of marketing such as radio, newspaper, TV, signs, etc., are best suited to reach those very low-income or low-income groups who are in the market area but who are least likely to apply for occupancy. Marketing must not rely on ''word of mouth'' advertising.

(A) *Advertising.* (*1*) *Frequency.* The borrower should advertise availability of housing units in advance of their availability to allow time to receive and process applications. Advertising by newsprint or electronic media must occur at least annually to promote project visibility, even if there is an adequate waiting list.

(*2*) *Posters, brochures, etc.* Any radio, TV or newspaper advertisement, pamphlets, or brochures used must identify that the complex is operated on an equal housing opportunity basis. This must be done through the use of the equal housing opportunity statement, slogan, or logo type. Copies of the proposed material must be sent when requesting approval of the plan.

(B) *Community contacts.* Community leaders and special interest groups such as community, public interest, religious organizations, and organizations for the disabled must be contacted. Owners and managers of projects with fully accessible apartments must adopt suitable means to ensure that information regarding the availability of accessible units reaches eligible persons with disabilities. In addition, owners and managers of elderly housing must ensure that information regarding eligibility reaches people who are less than 62 years old but who are eligible because they are disabled. Appropriate contacts are with physical rehabilitation centers, hospitals, workshops for the disabled, commissions on aging, and veterans organizations.

(C) *Rental staff.* All staff persons responsible for renting the units must have had training provided on Federal, state, and local fair housing laws and regulations and in the requirements of fair housing marketing and in those actions necessary to carry out the marketing plan. Copies of instructions to the staff regarding fair housing and a summary of the training they have received must be attached to the plan when requesting approval.

(iii) *Marketing records.* Records must be maintained by the borrower reflecting efforts to fulfill the plan. These records will be reviewed by the Agency

during civil rights compliance reviews. Plans will be updated as needed.

(c) *Accommodations and communication.* The borrower must take appropriate steps to ensure effective communication with applicants, tenants, and members of the public with disabilities. At a minimum, the following steps must be taken:

(1) Furnish appropriate auxiliary aids (electronic, mechanical, or personal assistance) where necessary, to afford an individual with disabilities an equal opportunity to participate in and enjoy the benefits of Agency financed housing.

(i) In determining what auxiliary aids are necessary, the borrower must give primary consideration to the requests of individuals with disabilities.

(ii) The borrower is not required to provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where a borrower communicates with applicants and tenants by telephone, telecommunication devices for deaf persons or equally effective communication systems must be available for use.

(3) The borrower must implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information concerning the existence and location of accessible services, activities, and facilities in the housing project and community.

(4) The borrower is required to provide reasonable accommodations at the project's expense unless doing so would result in undue financial or administrative burden on the project. Examples of reasonable accommodations may include such items as the installation of grab bars, ramps, and roll-in showers. Reasonable accommodations may also include the modification of rules or policies such as permitting a disabled tenant to have a two-bedroom unit to accommodate a resident assistant or to permit a disabled tenant to have a companion animal. The decision whether the requested accommodation is reasonable or unreasonable or whether to provide the accommodation would cause an undue financial or administrative burden lies with the borrower and would be for the borrower to defend should a complaint subsequently be filed. Borrowers may wish to consult with their legal counsel prior to denying a request. If the borrower takes the position that providing an accommodation would cause an undue financial or administrative burden, the borrower must permit the tenant to make reasonable modifications at the tenant's expense. Requests for reasonable accommodations must be handled in accordance with the management plan.

(d) *Housing sign requirements.* (1) A permanent sign identifying the housing project is required for all housing projects approved on or after September 13, 1977. Permanent signs are recommended for all housing projects approved prior to September 13, 1977. The sign must meet the following requirements:

(i) Must be located at the primary site entrance and be readable and recognizable from the roadside;

(ii) Must be located near the site manager's office when the housing project has multiple sites and portable signs must be placed where vacancies exist at other site locations of a ''scattered site'' housing project;

(iii) May be of any shape;

(iv) Must be not less than 16 square feet of area for housing projects with 8 or more rental units (smaller housing projects may have smaller signs);

(v) Must be made of durable material including its supports;

(vi) Must include the housing project name;

(vii) Must show rental contact information including but not limited to the office location of the housing project and a telephone number where applicant inquiries may be made;

(viii) Must show either the equal housing opportunity logotype (the house and equal sign, with the words equal housing opportunity underneath the house); the equal housing opportunity slogan ''equal housing opportunity''; or the equal housing opportunity statement, ''We are pledged to the letter and spirit of U.S. policy for the achievement of equal housing opportunity throughout the nation. We encourage and support an affirmative advertising and marketing program in

which there are no barriers to obtaining housing because of race, color, religion, sex, handicap, familial status, or national origin.'' If the logotype is used, the size of the logo must be no less than 5 percent of the total size of the project sign.

(ix) May display the Agency or Department logotype; and

(x) Must comply with state and local codes.

(2) Accessible parking spaces must be reserved for individuals with disabilities by a sign showing the international symbol of accessibility. The sign must be mounted on a post at a height that is readily visible from an occupied vehicle. In snow areas, the sign must be visible above piled snow. If there is an office, the designated parking space must be van accessible.

(3) When the continuous unobstructed ingress or egress disabled accessibility route to a primary building entrance is other than the usual or obvious route, the alternate route for disabled accessibility must be clearly marked with international accessibility symbols and directional signs to aid a disabled person's ingress or egress to the building, through an accessible entrance, and to the accessible common use and public and living areas.

§ 3560.105 Insurance and taxes.

(a) *General.* Borrowers must purchase and maintain property insurance on all buildings included as security for an Agency loan. Also, borrowers must furnish fidelity coverage, liability insurance, and any other insurance coverage required by the Agency in accordance with this paragraph to protect the security of the asset. Failure to maintain adequate insurance coverage or pay taxes may lead to a non-monetary default under § 3560.452(c).

(b) *General insurance requirements.* All insurance policies must meet the requirements established by the loan documents and this section.

(1) At loan closing, prior to loan approval, applicants must provide documentary evidence that insurance requirements have been met. The borrower must maintain insurance in accordance with requirements of their loan or grant documents and this section until the loan is repaid or the terms of the grant expire.

(2) Insurance companies must meet the requirements of paragraph (e) of this section.

(3) Insurance coverage amount, terms, and conditions must meet the requirements of paragraph (f) of this section.

(4) The Agency must be named as loss co-payee on all property insurance policies where it holds first lien position. The Agency must be named as an additional insured if its lien position is other than first.

(c) *Borrower failure or inability to meet insurance requirements.* The Agency will take the following actions in cases where a borrower is unwilling or unable to meet the Agency's insurance requirements:

(1) The Agency will obtain insurance for Agency financed property if the borrower fails to do so. If borrowers refuse to pay the insurance premium, the Agency will pay the insurance premium and charge the premium payment amount to the borrower's Agency account and will place the borrower in default as described in § 3560.452(c).

(2) If borrowers habitually fail to pay premiums in a timely manner, the Agency will require borrowers to escrow amounts appropriate to pay insurance premiums.

(3) If insurance that meets the Agency's specified requirements is not available (e.g., flood or hurricane insurance), the Agency may accept the insurance policy that most nearly conforms to established requirements.

(4) If the best insurance policy a borrower can obtain at the time the borrower receives the loan or grant contains a loss deductible clause greater than that allowed by paragraph (f)(8) of this section, the insurance policy and an explanation of the reasons why more adequate insurance is not available must be submitted to the Agency prior to loan or grant approval.

(d) *Credits, refunds, or rebates.* Borrowers must credit any refund or rebate from an insurance company to the project's general operating account or reserve account.

(e) *Insurance company requirements.* All insurers, insurance agents, and brokers must meet the following requirements:

(1) Be licensed or authorized to do business in the state or jurisdiction where the housing project is located; and

(2) Be deemed reputable and financially sound as determined by the Agency.

(f) *Property insurance.* The following conditions apply to property insurance purchased for Agency-financed housing projects.

(1) At a minimum, borrowers must obtain the following types of property insurance:

(i) *Hazard insurance.* A policy which generally covers loss or damage by fire, smoke, lightning, hail, explosion, riot, civil commotion, aircraft, and vehicles. These policies may also be known as ''Fire and Extended Coverage,'' ''Homeowners,'' ''All Physical Loss,'' or ''Broad Form'' policies.

(ii) *Flood insurance.* This coverage is required for properties located in Special Flood Hazard Areas (SFHA) as defined in 44 CFR part 65, as determined by the Federal Emergency Management Agency (FEMA).

(iii) *Builder's risk insurance.* A policy that insures dwellings under construction or rehabilitation.

(iv) *Elevators, boiler, and machinery coverage.* This coverage is required for properties that operate elevators, steam boilers, turbines, engines, or other pressure vessels.

(2) Other types of insurance that the Agency may require:

(i) Windstorm Coverage.

(ii) Earthquake Coverage.

(iii) Sinkhole Insurance or Mine Subsidence Insurance.

(3) For property insurance, the minimum coverage amount must equal the ''Total Estimated Reproduction Cost of New Improvements,'' as reflected in the housing project's most recent appraisal. At a minimum, property insurance coverage must be adequate to cover the lesser of the depreciated replacement value of essential buildings or the unpaid balance of all secured debt, unless such coverage is financially unfeasible for the housing project.

(i) If the cost of the minimum level of property insurance coverage exceeds what the housing project can reasonably afford, the borrower, with Agency concurrence, must obtain the maximum amount of property insurance coverage that the housing project can afford.

(ii) If the coverage amount is less than the depreciated replacement value of all essential buildings, borrowers must obtain coverage on one or more of the most essential buildings, as determined by the Agency.

(iii) When required, the coverage amount for flood insurance must equal the outstanding loan balance or the maximum coverage allowed by FEMA's ''National Flood Insurance Program.''

(4) Except for flood insurance, property insurance is not required if the housing project:

(i) Has a depreciated replacement value of $2,500 or less; or

(ii) Is in a condition which the Agency determines makes insurance coverage not economical.

(5) Policies for several buildings or properties located on noncontiguous sites are acceptable if the insurer provides proof that each secured building or property related to the housing project is as fully protected as if a separate policy were issued.

(6) Borrowers must notify the Agency and their insurance company agents of any loss or damage to insured property and collect the amount of the loss.

(7) When the Agency is in the first lien position and an insurance settlement represents a satisfactory adjustment of a loss, the insurance settlement will be deposited in the housing project's general operating account unless the settlement exceeds $5,000. If the settlement exceeds $5,000, the funds will be placed in the reserve account for the housing project.

(i) Insurance settlement funds which remain after all repairs, replacements, and other authorized disbursements have been made retain their status as housing project funds.

(ii) If the indebtedness secured by the insured property has been paid in full or the insurance settlement is in payment for loss of property on which the Agency has no claim; a loss draft which includes the Agency as co-payee may

be endorsed by the Agency without recourse and delivered to the borrower.

(8) When the Agency is not in the first lien position and the insurance settlement represents satisfactory adjustment of the loss, the Agency will release the settlement funds to the primary mortgagee upon agreement of all parties to the provisions contained in agreements between the Agency and the primary lienholder.

(9) Allowable deductible amounts are as follows:

(i) *Hazard/Property Insurance.* (A) $1,000 on any housing project with an insurable value under $200,000; or

(B) One-half of one percent (0.0050) of the insurable value, up to $10,000 on housing projects with insurance values over $200,000.

(ii) *Flood Insurance.* The Agency allows a maximum deductible of $5,000 per building.

(iii) *Windstorm Coverage.* When windstorm coverage is excluded from the ''All Risk'' policy, the deductible must not exceed five percent of the total insured value.

(iv) *Earthquake Coverage.* In the event that the borrower obtains earthquake coverage, the Agency is to be named as a loss payee. The deductible should be no more than 10 percent of the coverage amount.

(v) *Sinkhole Insurance or Mine Subsidence Insurance.* The deductible for sinkhole insurance or mine subsidence insurance should be similar to what would be required for earthquake insurance.

(10) Deductible amounts (excluding flood, windstorm, earthquake and sinkhole insurance or mine subsidence insurance) must be accounted for in the replacement reserve account. Borrowers who wish to increase the deductible amount must deposit an additional amount to the reserve account equal to the difference between the Agency's maximum deductible and the requested new deductible. The Borrower will be required to maintain this additional amount so long as the higher deductible is in force.

(g) *Liability insurance.* The borrower must carry comprehensive general liability insurance with coverage amounts that meet or exceed Agency requirements. This coverage must insure all common areas, commercial space, and public ways in the security premises. Coverage may also include borrower exposure to certain risks such as errors and omissions, environmental damages, or protection against discrimination claims. The insurer's limit of liability per occurrence for personal injury, bodily injury, or property damage under the terms of coverage must be at least $1 million.

(h) *Fidelity coverage.* Borrowers must provide fidelity coverage on any personnel entrusted with the receipt, custody, and disbursement of any housing monies, securities, or readily salable property other than money or securities. Borrowers must have fidelity coverage in force as soon as there are assets within the organization and it must be obtained before any loan funds or interim financing funds are made available to the borrower. In addition, the following conditions apply to fidelity insurance:

(1) Fidelity insurance coverage must be documented on a bond form acceptable to the Agency.

(2) Fidelity coverage policies must declare in the insuring agreements that the insurance company will provide protection to the insured against the loss of money, securities, and property other than money and securities, through any criminal or dishonest act or acts committed by any employee, whether acting alone or in collusion with others, not to exceed the amount of indemnity stated in the declaration of coverage.

(i) The fidelity insurance policy, at a minimum, must include an insuring agreement that covers employee dishonesty.

(ii) Fidelity coverage amounts and deductible:

Fidelity coverage	Deductible level
Under $50,000	$1,000
In the area of $100,000	2,500
In the area of $250,000	5,000
In the area of $500,000	10,000
In the area of $1,000,000	15,000

(3) Blanket crime insurance coverage or fidelity bonds are acceptable types of fidelity coverage.

(4) At a minimum, borrowers must provide an endorsement, listing all of

the borrower's Agency financed properties and their locations covered under the policy or bond as evidence of required fidelity insurance. The policy or bond may also include properties or operations other than Agency financed properties on separate endorsement listings.

(5) Individual or organizational borrowers must have fidelity coverage when they have employees with access to the MFH complex assets. Borrowers who use a management agent with exclusive access to housing assets must require the agent to have fidelity coverage on all principals and employees with access to the housing assets. If active management reverts to the borrower, the borrower must obtain fidelity coverage, as a first course of business.

(6) Fidelity coverage is not required under the following circumstances:

(i) The borrower is an individual or a general partnership and the individual or general partner will be responsible for the financial activities of the housing project.

(ii) In the case of a land trust where the beneficiary is responsible for management, the beneficiary will be treated as an individual.

(iii) A limited partnership (or its general partners) unless one or more of its general partners perform financial acts within the scope of the usual duties of an ''employee.''

(7) The premium for fidelity coverage of employees and general partners at a housing project is an eligible operating account expense.

(i) The premium of a management agent's fidelity coverage for the agent's principals and employees will be the management agent's business expense (*i.e.*, it is included within the management fee).

(ii) When a housing project employee is covered under the ''umbrella'' of the management agent's fidelity coverage, the premium may be prorated among the housing projects covered.

(8) Borrowers must review fidelity coverage annually and adjust it as necessary to comply with the requirements of this section.

(i) *Taxes*. The borrower is responsible for paying all taxes and assessments on a housing project before they become delinquent.

(1) An exception to the above may be made if the borrower has formally contested the amount of the property assessment and escrowed the amount of taxes in question in a manner approved by the Agency.

(2) Failure to pay taxes and assessments when due will be considered a default. If a borrower fails to pay outstanding taxes and assessments, the Agency will pay the outstanding balance and charge the tax or assessment amount, assessed penalties, and any additional incurred costs to the borrower's Agency account.

(3) The Agency will require borrowers who have demonstrated an inability to pay taxes in a timely manner to escrow amounts sufficient to pay taxes.

§§ 3560.106–3560.149 [Reserved]

§ 3560.150 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart D—Multi-Family Housing Occupancy

§ 3560.151 General.

(a) *Applicability*. This subpart contains borrower and tenant requirements and Agency responsibilities related to occupancy of Agency-financed multi-family housing (MFH) projects. Occupancy eligibility requirements apply to the following:

(1) Family housing projects, including farm labor housing;

(2) Elderly housing projects; and

(3) Congregate housing or group homes for persons with special needs.

(b) *Civil rights requirements.* All occupancy policies must meet applicable civil rights requirements, as stated in § 3560.2.

§ 3560.152 Tenant eligibility.

(a) *General requirements.* Except as specified in paragraph (b) of this section, a tenant eligible for occupancy in Agency-financed housing must either:

(1) Be a United States citizen or qualified alien, and

(2) Qualify as a very low-, low-, or moderate-income household; or

(3) Be eligible under the requirements established to qualify for housing benefits provided by sources other than the Agency, such as U.S. Department of Housing and Urban Development (HUD) Section 8 assistance or Low Income Housing Tax Credit (LIHTC), when a tenant receives such housing benefits.

(b) *Exception.* Households with incomes above the moderate-income level may occupy housing projects with an Agency loan approved prior to 1968 with a loan agreement that does not restrict occupancy by income.

(c) *Requirements for elderly housing, elderly units in mixed housing, congregate housing, and group homes.* In addition to the requirements of paragraph (a) of this section, the following occupancy requirements apply to elderly housing, elderly units in mixed housing, and congregate housing or group homes:

(1) For elderly housing, elderly units in mixed housing, and congregate housing the following provisions apply:

(i) Households must meet the definition of an elderly household in § 3560.11 to be eligible for occupancy in elderly or congregate housing.

(ii) If non-elderly persons are members of a household where the tenant or co-tenant is an elderly person, the non-elderly persons are eligible for occupancy in the tenant's or co-tenant's rental unit.

(iii) Applicants who will agree to participate in the services provided by a congregate housing project may be given occupancy priority.

(2) For group homes, the following provisions apply:

(i) Occupancy may be limited to a specific group of tenants, such as elderly persons or persons with developmental disabilities, or mental impairments, if such an occupancy limitation is contained in the borrower's management plan.

(ii) Tenants must be able to demonstrate a need for the special services provided by the group home.

(iii) Tenants cannot be required to participate in an ongoing training or rehabilitation program.

(iv) Tenants must be selected from the market area prior to considering applicants from other areas.

(d) *Ineligible tenant waiver.* The Agency may authorize the borrower in writing, upon receiving the borrower's written request with the necessary documentation, to rent vacant units to ineligible persons for temporary periods to protect the financial interest of the Government. Likewise, this provision may extend to a cooperative. This authority will be for the entire project for periods not to exceed one year. Within the period of the lease, the tenant may not be required to move to allow an eligible applicant to obtain occupancy, should one become available. The Agency must make the following determinations:

(1) There are no eligible persons on a waiting list.

(2) The borrower provided documentation that a diligent but unsuccessful effort to rent any vacant units to an eligible tenant household has been made. Such documentation may consist of advertisements in appropriate publications, posting notices in several public places, including places where persons seeking rental housing would likely make contacts, holding open houses, making appropriate contacts with public housing agencies and organizations, Chambers of Commerce, and real estate agencies.

(3) The borrower agrees to continue with aggressive efforts to locate eligible tenants and retain documentation of all marketing.

(4) The borrower is temporarily unable to achieve or maintain a level of occupancy sufficient to prevent financial default and foreclosure. The Agency's approval of the waiver would then be for a limited duration.

(5) The lease agreement will not be more than 12 months and at its expiration will convert to a month-to-month

lease. The monthly lease will require that the unit be vacated upon 30 days notice when an eligible applicant is available.

(6) Tenants residing in Rural Rental Housing (RRH) units who are ineligible because their adjusted annual income exceeds the maximum for the RRH project will be charged the Rural Housing Service (RHS) approved note rent for the size of unit occupied in a Plan II RRH project. In projects operated under Plan I, ineligible tenants will be charged a rental surcharge of 25 percent of the approved note rent.

(e) *Tenant certification and verification.* Tenants and borrowers must execute an Agency-approved tenant certification form establishing the tenant's eligibility prior to occupancy. In addition, tenant households must be recertified and must execute a tenant certification form at least annually or whenever a change in household income of $100 or more per month occurs. Borrowers must recertify for changes of $50 per month, if the tenant requests that such a change be made.

(1) *Tenant requirements.* (i) Tenants must provide borrowers with the necessary income and other household information required by the Agency to determine eligibility.

(ii) Tenants must authorize borrowers to verify information provided to establish their eligibility or determination of tenant contribution.

(iii) Tenants must report all changes in household status that may affect their eligibility to borrowers.

(iv) Tenants who fail to comply with tenant certification and recertification requirements will be considered ineligible for occupancy and will be subject to unauthorized assistance claims, if applicable, as specified in subpart O of this part.

(2) *Borrower requirements.* (i) Borrowers must verify household income and other information necessary to establish tenant eligibility for the requested rental unit type, in a format approved by the Agency, prior to a tenant's initial occupancy and prior to annual or other recertifications.

(ii) Borrowers must review all reported changes in household status and assess the impact of these changes on the tenant's eligibility or tenant contribution.

(iii) Borrowers must submit initial or updated tenant certification forms to the Agency within 10 days of the effective date of an initial certification or any changes in a tenant's status. The effective date of an initial or updated tenant certification form will always be a first day of the month.

(iv) Since tenant certifications are used to document interest credit and rental assistance eligibility and are a basic responsibility of the borrower under the loan documents, borrowers who fail to submit annual or updated tenant certification forms within the time period specified in paragraph (e)(2)(iii) of this section will be charged overage, as specified in § 3560.203(c). Unauthorized assistance, if any, will be handled in accordance with subpart O of this part.

(v) Borrowers must submit tenant certification forms to the Agency using a format approved by the Agency.

(vi) Borrowers must retain executed tenant certification forms and any supporting documentation in the tenant file for at least 3 years or until the next Agency monitoring visit or compliance review, whichever is longer.

(3) The Agency maintains the right to independently verify tenant eligibility information.

EFFECTIVE DATE NOTE: At 70 FR 8503, Feb. 22, 2005, in § 3560.152(a)(1), implementation of the words ''Be a United States citizen or qualified alien, and'' was delayed indefinitely.

§ 3560.153 Calculation of household income and assets.

(a) Annual income will be calculated in accordance with 24 CFR 5.609.

(b) Adjusted income will be calculated in accordance with 24 CFR 5.611.

§ 3560.154 Tenant selection.

(a) *Application for occupancy.* Borrowers must use tenant application forms that collect sufficient information to properly determine household eligibility and to enable the Agency to monitor compliance with the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, and title VI of the Civil Rights Act of 1964 during

compliance reviews. At a minimum, borrowers must use application forms that collect the following information:

(1) Name of the applicant and present address;

(2) Number of household members and their birthdates;

(3) Annual income information calculated in accordance with § 3560.153(a);

(4) Adjustments to income calculated in accordance with § 3560.153(b);

(5) Net assets calculated in accordance with § 3560.153(c);

(6) Indication of a need for a unit accessible to individuals with disabilities and any disability adjustments to income;

(7) Certification by the applicant that the unit will serve as the household's primary residence, and a certification that the applicant is a U.S. citizen or a qualified alien as defined in § 3560.11;

(8) Signature of the applicant and date;

(9) Race, ethnicity, and sex designation. The following disclosure notice shall be used:

''The information regarding race, ethnicity, and sex designation solicited on this application is requested in order to assure the Federal Government, acting through the Rural Housing Service, that the Federal laws prohibiting discrimination against tenant applications on the basis of race, color, national origin, religion, sex, familial status, age, and disability are complied with. You are not required to furnish this information, but are encouraged to do so. This information will not be used in evaluating your application or to discriminate against you in any way. However, if you choose not to furnish it, the owner is required to note the race, ethnicity, and sex of individual applicants on the basis of visual observation or surname,'' and

(10) Social security number.

(b) *Additional information.* Applicants are to be provided a list of any additional information that must be submitted with the application for the application to be considered complete (an application will be considered complete without verification of the applicant information). The list of information will be restricted to the same items for all Agency-assisted properties of a particular type, such as a family or elderly complex.

(c) *Application submission.* Borrowers must establish when applications may be submitted. Information on the place and times for tenant application submission must be documented in the housing project's management plan and Affirmative Fair Housing Marketing Plan.

(d) *Selection of eligible applicants.* (1) Applicants may be determined ineligible for occupancy based on selection criteria other than Agency requirements only if such criteria are contained in the borrower's management plan. Borrower established selection criteria may not contain arbitrary or discriminatory rejection criteria, but may consider an applicant's past rental and credit history and relations with other tenants.

(2) Borrowers with projects receiving low-income housing tax credits (LIHTCs), may leave a housing unit vacant if they are required to rent the available unit to an LIHTC-eligible applicant, and none of the applicants on the waiting list meet the applicable LIHTC eligibility requirements.

(e) *Recordkeeping.* Borrowers must retain all tenant application forms for at least 3 years. The Agency may require borrowers to submit application information for Agency review.

(f) *Waiting lists.* (1) When an applicant has submitted an application form the borrower must place the applicant on the waiting list. All applications, whether complete, eligible, or ineligible, will be placed on the list. The waiting list will document the final disposition of all applications (rejected, withdrawn, or placed in a unit).

(2) The date and time a complete application was submitted will be recorded on the waiting list and will establish priority for selection from the list. If an applicant submits an incomplete application (see paragraph (a) of this section), they must be notified in writing within 10 days of the items that are needed for the application to be considered complete and that priority will not be established until the additional items are received.

(3) The race and the ethnicity of each applicant shall be recorded on the waiting list. This information shall be collected for statistical purposes only and

must not be used when making eligibility determinations or in any other discriminatory manner. The information shall be recorded using the race and ethnicity codes that are utilized on the Agency tenant certification form available in the servicing office.

(4) Within 10 days of receipt of a complete application, the Borrower must notify the applicant in writing that he has been selected for immediate occupancy, placed on a waiting list, or rejected.

(5) Selections from the completed applications on the waiting list shall be made in the following priority order:

(i) Very low-income applicants;

(ii) Low-income applicants; and

(iii) Moderate-income applicants.

(g) *Priorities and preferences for admission.* (1) Eligible applicants that meet the following conditions must be given priority for occupancy over all other tenants regardless of income. Such applicants, however, will be ranked among themselves by income level, giving priority first to very low-income households, then to low-income households, and finally to moderate-income households.

(i) Persons who require the special design features of a unit accessible to individuals with disabilities will have priority only for units with these features.

(ii) In congregate housing facilities, persons who agree to use the services provided by the facility will have priority over other applicants.

(2) Eligible applicants that meet any of the following conditions must be given priority over other applicants in their same income category.

(i) The applicant has a Letter of Priority Entitlement (LOPE) issued in accordance with § 3560.660(c).

(ii) The applicant was displaced from Agency-financed housing but was not issued a LOPE.

(iii) The applicant was displaced in a Federally declared disaster area.

(3) Borrowers receiving Section 8 project-based assistance may establish preferences in accordance with U.S. Department of Housing and Urban Development (HUD) regulations. The use of such preferences must be documented in the project's management plan.

(h) *Notices of ineligibility or rejection.* Borrowers must provide written notification to applicants who are determined to be ineligible or who are rejected for occupancy. Notices of ineligibility or rejection must give specific reasons for the ineligibility determination or rejection and, in accordance with § 3560.160, the notice must advise the applicant of ''the right to respond to the notice within ten calendar days after receipt'' and of ''the right to a hearing in accordance with § 3560.160 which is available upon request.'' When an applicant is rejected based on the information from a credit bureau report, the source of the credit bureau report must be revealed to the applicant in accordance with the Fair Credit Reporting Act.

(i) *Purging waiting list.* Procedures used by borrowers to purge waiting list must be documented in the project's management plan and must be based on the length of the waiting list or the extent of time an applicant will be expected to wait for housing. At a minimum, borrowers must document removal of any names from the waiting list with the time and date of the removal. If an electronic waiting list is used, borrowers must periodically print out electronic waiting lists or preserve backup copies showing how the waiting list appeared before and after the removal of each name.

(j) *Criminal activity.* Borrowers may deny admission for criminal activity or alcohol abuse by household members in accordance with the provisions of 24 CFR 5.854, 5.855, 5.856, and 5.857.

EFFECTIVE DATE NOTE: At 70 FR 8503, Feb. 22, 2005, in § 3560.154(a)(7), implementation of the words ''* * * and a certification that the applicant is a U.S. citizen or a qualified alien as defined in § 3560.11 * * *'' was delayed indefinitely.

§ 3560.155 Assignment of rental units and occupancy policies.

(a) *General.* Available rental units are assigned in accordance with the requirements of this section and the priorities and preferences outlined in § 3560.154.

(b) *Rental units accessible to individuals with disabilities.* If a rental unit accessible to individuals with disabilities is available and there are no applicants

that require the features of the unit, borrowers may rent the unit to a non-disabled tenant subject to the inclusion of a lease provision that requires the tenant to vacate the unit within 30 days of notification from management that an eligible individual with disabilities requires the unit and provided the accessible unit has been marketed as an accessible unit, outreach has been made to organizations representing the disabled, and marketing of the unit as an accessible unit continues after it has been rented to a tenant who is not in need of the special design features.

(c) *Transfer of existing tenants within a housing project.* When a rental unit becomes available for occupancy and an eligible tenant in the housing project is either over housed or under housed as provided for in paragraph (e) of this section, the borrower must use the available unit for the over housed or under housed tenant, if suitable, prior to selecting an eligible applicant from the waiting list.

(d) *Applicant placement.* When a specific rental unit type becomes available for occupancy, borrowers must select eligible applicants suitable for the available unit according to the priorities established in § 3560.154.

(e) *Occupancy policies.* Borrowers must establish occupancy policies for each housing project. Households living in a rental unit with more bedrooms than persons in the household will be considered over housed and must be relocated in accordance with paragraph (c) of this section. Households under housed as defined by the project's occupancy standards must be relocated in accordance with paragraph (c) of this section. Borrowers with no one-bedroom units in a housing project may make an exception to this requirement in their occupancy policies. In addition, a borrower's occupancy policies must establish:

(1) Reasonable standards for determining when a tenant household is considered under housed. The standards will describe the maximum number of persons that may occupy units of a given size based on occupancy guidelines provided by the Agency or another governmental source;

(2) The order in which eligible applicants and existing tenants will be housed or re-housed; and

(3) How fair housing requirements will be met, including how reasonable accommodations will be made for applicants and tenants with disabilities.

(f) *Agency concurrence.* The Agency must concur with a borrower's occupancy rules prior to initial occupancy of the housing project. All modifications to occupancy rules must be posted for tenant comment in accordance with § 3560.160 and receive Agency concurrence prior to implementation.

§ 3560.156 Lease requirements.

(a) *Agency approval.* Borrowers must use a lease approved by the Agency. The lease must be consistent with Agency requirements and the requirements of all programs participating in the housing project. Prior to submitting the lease to the Agency for approval, borrowers must have their attorney certify that the lease complies with state and local laws, Agency requirements, and the requirements of all programs participating in the housing project. If there are conflicting requirements the borrower shall notify the Agency of the conflict and request guidance. Borrowers must execute their Agency approved lease with each tenant household prior to tenant occupancy of a rental unit.

(b) *Lease requirements.* (1) All leases must be in writing.

(2) Initial leases must be for a 1-year period.

(3) If the tenant is not subject to occupancy termination according to § 3560.158 and § 3560.159, a renewal lease or lease extension must be for a 1-year period.

(4) In areas with a concentration of non-English speaking populations, leases (including the occupancy rules) must be available in both English and the non-English language.

(5) Leases must give the address of the management agent to which tenants may direct complaints.

(6) Leases must include a statement of the terms and conditions for modifying the lease.

(c) *Required items and provisions.* (1) Leases for tenants who hold a Letter of

Priority Entitlement (LOPE) issued according to § 3560.655(d) and are temporarily occupying a unit for which they are not eligible must include a clause establishing the tenant's responsibility to move when a suitable unit becomes available in the housing project.

(2) Leases must contain a clause permitting escalation in the tenant contribution when there is an Agency-approved change in basic or note rate rents prior to the expiration of the lease. The escalation clause also must specify that the tenant contribution may be changed prior to expiration of the lease if the change is due to changes in tenant status, as documented on the tenant certification form, or the tenant's failure to properly recertify.

(3) Leases must specify that no change in the tenant contribution will occur due to monetary or non-monetary default or when rental assistance or interest credit, is suspended, canceled, or terminated due to the borrower's fault. For information on tenant contributions when a borrower prepays the Agency loan, refer to subpart N of this part.

(4) Leases must contain a requirement that tenants make restitution when unauthorized assistance is received due to applicant or tenant fraud or misrepresentation and a statement advising tenants that submission of false information could result in legal action.

(5) Leases must include a statement that the housing project is financed by the Agency and that the Agency has the right to further verify information provided by the applicant.

(6) Leases must state that the housing project is subject to:

(i) Title VI of the Civil Rights Act of 1964;

(ii) Title VIII of the Fair Housing Act;

(iii) Section 504 of the Rehabilitation Act of 1973; and

(iv) The Age Discrimination Act of 1975.

(7) Leases must establish the tenant's responsibility according to the housing project's occupancy rules to move to the next available appropriately sized rental unit if the household becomes over housed or under housed in the unit they occupy.

(8) Leases must include provisions that establish when a guest will be considered a member of the household and be required to be added to the tenant certification.

(9) Leases must include a provision stating that tenancy continues until the tenant's possessions are removed from the housing either voluntarily or by legal means, subject to state and local law.

(10) Leases must include a requirement that tenants who are no longer eligible for occupancy under the housing project's occupancy rules or do not meet the criteria set forth in § 3560.155(c) and (e) must vacate the property within 30 days of being notified by the borrower that they are no longer eligible for occupancy or at the expiration of their lease, or whichever is greater, unless the conditions cited in § 3560.158(c) exist;

(11) Leases for rental units receiving rental assistance must include clauses that specify that the tenant's monthly tenant contribution and a description of the circumstances under which the tenant's contribution may change.

(12) Leases must include a requirement that tenants notify borrowers when changes occur in their income or assets, their qualifications for adjustments to income, their citizenship status, or the number of persons living in the unit.

(13) A requirement that tenants agree to fulfill the tenant income verification and certification requirements established under § 3560.152.

(14) Leases for tenants living in Plan II interest credit rental units must include provisions establishing the net monthly tenant contribution.

(15) Leases, including renewals, must include the following language:

"It is understood that the use, or possession, manufacture, sale, or distribution of an illegal controlled substance (as defined by local, State, or federal law) while in or on any part of this apartment complex or cooperative is an illegal act. It is further understood that such action is a material lease violation. Such violations (hereafter called a "drug violation") may be evidenced upon the admission to or conviction of the use, possession, manufacture, sale, or distribution of a controlled substance (as defined by local,

state, or Federal law) in any local, state, or Federal court.

The landlord may require any lessee or other adult member of the tenant household occupying the unit (or other adult or non-adult person outside the tenant household who is using the unit) who commits a drug violation to vacate the leased unit permanently, within timeframes set by the landlord, and not thereafter to enter upon the landlord's premises or the lessee's unit without the landlord's prior consent as a condition for continued occupancy by the remaining members of the tenant's household. The landlord may deny consent for entry unless the person agrees to not commit a drug violation in the future and is either actively participating in a counseling or recovery program, complying with court orders related to a drug violation, or has successfully completed a counseling or recovery program.

The landlord may require any lessee to show evidence that any non-adult member of the tenant household occupying the unit, who committed a drug violation, agrees not to commit a drug violation in the future, and to show evidence that the person is either actively seeking or receiving assistance through a counseling or recovery program, complying with court orders related to a drug violation, or has successfully completed a counseling or recovery program within timeframes specified by the landlord as a condition for continued occupancy in the unit. Should a further drug violation be committed by any non-adult person occupying the unit the landlord may require the person to be severed from tenancy as a condition for continued occupancy by the lessee.

If a person vacating the unit, as a result of the above policies, is one of the lessees, the person shall be severed from the tenancy and the lease shall continue among any other remaining lessees and the landlord. The landlord may also, at the option of the landlord, permit another adult member of the household to be a lessee.

Should any of the above provisions governing a drug violation be found to violate any of the laws of the land the remaining enforceable provisions shall remain in effect. The provisions set out above do not supplant any rights of tenants afforded by law.''

(16) Leases for rental units accessible to individuals with disabilities occupied by those not needing the accessibility features must establish the tenant's responsibility to move to another unit when an appropriate unit becomes available or when the unit is needed by an eligible individual with disabilities. Additionally, the lease clause must require the borrower to provide tenants written notification of the date by which they must move to another unit in the project.

(17) If loan prepayment occurs and the housing project is subject to restrictive use provisions, leases and renewals must be amended to include a clause specifying the tenant protections required under subpart N of this part.

(18) All leases must contain the following information and provisions:

(i) The name of the tenant, any co-tenants, and all members of the household residing in the rental unit;

(ii) The identification of the rental unit;

(iii) The amount and due date of monthly tenant contributions, any late payment penalties, and security deposit amounts;

(iv) The utilities, services, and equipment to be provided for the tenant;

(v) The tenant's utility payment responsibility;

(vi) The certification process for determining tenant occupancy eligibility and contribution;

(vii) The limitations of the tenant's right to use or occupancy of the dwelling;

(viii) The tenant's responsibilities regarding maintenance and consequences if the tenant fails to fulfill these responsibilities;

(ix) The agreement of the borrower to accept the tenant contribution toward rent charges prior to payment of other charges that the tenant owes and a statement that borrowers may seek legal remedy for collecting other charges accrued by the tenant;

(x) The maintenance responsibilities of the borrower in buildings and common areas, according to state and local codes, Agency regulations, and Federal fair housing requirements;

(xi) The responsibility of the borrowers at move-in and move-out to provide the tenant with a written statement of rental unit's condition and provisions for tenant participation in inspection;

(xii) The provision for periodic inspections by the borrower and other circumstances under which the borrower may enter the premises while a tenant is renting;

(xiii) The tenant's responsibility to notify the borrower of an extended absence;

(xiv) A provision that tenants may not assign the lease or sublet the property;

(xv) A provision regarding transfer of the lease if the housing project is sold to an Agency-approved buyer;

(xvi) The procedures that must be followed by the borrower and the tenant in giving notices required under terms of the lease including lease violation notices;

(xvii) The good-cause circumstances under which the borrower may terminate the lease and the length of notice required;

(xviii) The disposition of the lease if the housing project becomes uninhabitable due to fire or other disaster, including rights of the borrower to repair building or terminate the lease;

(xix) The procedures for resolution of tenant grievances consistent with the requirements of § 3560.160;

(xx) The terms under which a tenant may, for good cause, terminate their lease, with 30 days notice, prior to lease expiration; and

(xxi) The signature and date clause indicating that the lease has been executed by the borrower and the tenant.

(d) *Prohibited provisions.* Borrowers are prohibited from including any of the following clauses in the lease:

(1) Clauses prohibiting families with children under 18;

(2) Clauses requiring prior consent by tenant to any lawsuit that borrowers may bring against the tenant in connection with the lease;

(3) Clauses authorizing borrowers to hold any of a tenant's property until the tenant fulfills an obligation;

(4) Clauses in which tenants agree not to hold borrowers liable for anything they may do or fail to do;

(5) Clauses in which tenants agree that borrowers may institute suit without any notice to the tenant that the suit has been filed;

(6) Clauses in which tenants agree that borrowers may evict the tenant or sell their possessions whenever borrowers determine that a breach or default has occurred;

(7) Clauses authorizing the borrower's attorneys to appear in court on behalf of the tenant, and to waive the tenant's right to a trial by jury;

(8) Clauses authorizing the borrower's attorneys to waive the tenant's right to appeal or to file suit; and

(9) Clauses requiring the tenant to agree to pay legal fees and court costs whenever the borrower takes action against the tenant, even if the court finds in favor of the tenant.

(e) *Housing projects and units receiving HUD assistance.* (1) In housing projects receiving Section 8 project-based assistance, borrowers may use the HUD model lease. The provisions of the HUD model lease will prevail, unless they conflict with Agency lease requirements in accordance with this section. If there is conflict between HUD requirements and Agency requirements, the provision that will be enforced will be the one that is most favorable to the tenant.

(2) For units occupied by Section 8 certificate and voucher holders, borrowers may use:

(i) A standard HUD-approved lease;

(ii) A HUD-approved lease that includes a number of modifications from the standard HUD-approved lease; or

(iii) An Agency-approved lease may be used if acceptable by HUD or the local housing authority.

(f) *State and local requirements.* Borrowers must use a lease that is consistent with state and local requirements.

(1) If any lease provision is in violation of state or local law, the lease may be modified to the extent needed to comply with the law, but any changes must be consistent with the provisions established in paragraph (c) of this section.

(2) Leases must include a procedure for handling tenant's abandoned property, as provided by state or local law.

EFFECTIVE DATE NOTE: At 70 FR 8503, Feb. 22, 2005, in § 3560.156(c)(12), implementation of the words ''* * * their citizenship status, * * *'' was delayed indefinitely.

§ 3560.157 Occupancy rules.

(a) *General.* The purpose of a borrower's occupancy rules is to outline the basis for the tenant and management relationship. Prior to Agency approval of occupancy rules, borrowers must provide written certification

from their attorney that the housing project's occupancy rules are consistent with applicable Federal, state, and local laws, as well as Agency requirements, and the requirements of all programs participating in the housing project. Borrowers must obtain Agency approval of the occupancy rules prior to initial occupancy and obtain Agency approval prior to the implementation date of any subsequent modifications to the rules.

(b) *Requirements*. The occupancy rules must be in writing and posted for easy tenant access. A copy of these rules must be attached to the tenant's lease upon initial occupancy. At a minimum, the occupancy rules must address:

(1) The tenant's rights and responsibilities under the lease or occupancy agreement;

(2) The rent payment or occupancy charge policies;

(3) The policies regarding periodic inspection of units;

(4) The system for responding to tenant complaints;

(5) The maintenance request and work order procedures;

(6) The housing services and facilities available to tenants or members;

(7) The office locations, hours, and emergency telephone numbers;

(8) The restrictions on storage and prohibitions on non-functional vehicles in the housing project area;

(9) Other requirements related to a subsidy provided to a tenant from non-Agency sources;

(10) When a guest becomes a member of the tenant household; and

(11) The procedures tenants must follow to request reasonable accommodations.

(c) *Modification of occupancy rules*. The Agency must concur with any modification to the occupancy rules prior to implementation. Proper notice must be given to each tenant at least 30 days in advance of implementation of such rules in accordance with § 3560.160.

(d) *Federal, state and local requirements*. The occupancy rules must be consistent with Federal, state, and local law.

(e) *Pets/Assistance Animals*. All housing projects should establish reasonable written pet rules. No rules may be promulgated that would prevent occupancy by a household member who requires a service or assistance animal. In elderly housing, borrowers must not prohibit tenants from keeping domestic animals in their rental units as pets.

(f) *Tenant organizations*. Borrowers must not infringe on the rights of tenants to organize an association of tenants. Borrowers (or a designated management representative) should be available and willing to work with a tenant organization.

(g) *Community rooms*. Borrowers may not place unreasonable restrictions on tenants that desire to use a community room.

§ 3560.158 Changes in tenant eligibility.

(a) *General requirements*. Tenants must continue to meet the requirements of § 3560.152 to remain eligible for occupancy.

(b) *Tenants no longer eligible*. Tenants who are no longer eligible for occupancy under the housing project's occupancy rules or do not meet the criteria set forth in § 3560.155(c) and (e) must vacate the property within 30 days of being notified by the borrower that they are no longer eligible for occupancy or at the expiration of their lease, whichever is greater, unless the conditions specified in paragraph (c) of this section exist.

(c) *Temporary continuation of tenancy*. If conditions described in § 3560.454(b) or the following conditions exist, borrowers may permit tenants who are no longer eligible for occupancy to continue to reside at the housing project with prior approval of the Agency.

(1) The waiting list for the specific rental unit type has no eligible applicants; or

(2) The required time period for vacating the rental unit would create a hardship on the tenant household.

(d) *Surviving and remaining household members*. (1) Members of a household may continue to reside in a housing project after the departure or death of the tenant or co-tenant, provided that:

(i) They are eligible with respect to adjusted income;

(ii) They occupied a rental unit in the housing project at the time of the

departure or death of the tenant or cotenant;

(iii) They execute a tenant certification form establishing their own tenancy; and

(iv) They have the legal ability to sign a lease for the rental unit, except where a legal guardian may sign when the tenant or member is otherwise eligible.

(2) Surviving or remaining members of the household may remain in the housing project, taking into consideration the conditions of paragraph (d)(1) of this section, but must move to a suitably sized rental unit within 30 days of its availability.

(3) After the death of a tenant or cotenant in elderly housing, the surviving members of the household, regardless of age but taking into consideration the conditions of paragraph (d)(1) of this section, may remain in the rental unit in which they were residing at the time of the tenant's or cotenant's death, even if the household is over housed according to the housing project's occupancy rules as follows:

(i) Continued occupancy of the rental unit will not be allowed when in either situation of paragraph (d)(1) or (d)(3) of this section, the rental unit has accessibility features for individuals with disabilities, the household no longer has a need for such accessibility features, and the housing project has a tenant application from an individual with a need for the accessibility features;

(ii) If the housing project does not have a tenant application from an individual with a need for the accessibility features, the household may remain in the rental unit with such features until the housing project receives an application from an individual with a need for accessibility features. The household in the unit with accessibility features will be required to move within 30 days of the housing project's receipt of a tenant application requiring accessibility features if another suitably sized unit without accessibility features is available in the project. If a suitably sized unit is not available in the project within 30 days, the tenant may remain in the unit with accessibility features until the first available unit in the project becomes available and then must move within 30 days.

§ 3560.159 Termination of occupancy.

(a) *Tenants in violation of lease.* Borrowers, in accordance with lease agreements, may terminate or refuse to renew a tenant's lease only for material non-compliance with the lease provisions, material non-compliance with the occupancy rules, or other good causes. Prior to terminating a lease, the borrower must give the tenant written notice of the violation and give the tenant an opportunity to correct the violation. Subsequently, termination may only occur when the incidences related to the termination are documented and there is documentation that the tenant was given notice prior to the initiation of the termination action that their activities would result in occupancy termination.

(1) Material non-compliance with lease provisions or occupancy rules, for purposes of occupancy termination by a borrower, includes actions such as:

(i) Violations of lease provisions or occupancy rules that are substantial and/or repeated;

(ii) Non-payment or repeated late payment of rent or other financial obligations due under the lease or occupancy rules; or

(iii) Admission to or conviction for use, attempted use, possession, manufacture, selling, or distribution of an illegal controlled substance when such activity occurred on the housing project's premises by the tenant, a member of the tenant's household, a guest of the tenant, or any other person under the tenant's control at the time of the activity.

(2) Good causes, for purposes of occupancy terminations by a borrower, include actions such as:

(i) Actions by the tenant or a member of the tenant's household which disrupt the livability of the housing by threatening the health and safety of other persons or the right of other persons to enjoyment of the premises and related facilities;

(ii) Actions by the tenant or a member of the tenant's household which result in substantial physical damage causing an adverse financial effect on

the housing or the property of other persons; or

(iii) Actions prohibited by state and local laws.

(b) *Lease expiration or tenant eligibility*. A tenant's occupancy in an Agency-financed housing project may not be terminated by a borrower when the lease agreement expires unless the tenant's actions meet the conditions described in paragraph (a) of this section, or the tenant is no longer eligible for occupancy in the housing. Borrowers must handle terminations of occupancy due to a change in tenant eligibility status in accordance with § 3560.158. At a minimum, the occupancy termination notice must include the following information:

(1) A specific date by which lease termination will occur;

(2) A statement of the basis for lease termination with specific reference to the provisions of the lease or occupancy rules that, in the borrower's judgment, have been violated by the tenant in a manner constituting material non-compliance or good cause; and

(3) A statement explaining the conditions under which the borrower may initiate judicial action to enforce the lease termination notice.

(c) *Other terminations*. If occupancy is terminated due to conditions which are beyond the control of the tenant, such as a condition related to required repair or rehabilitation of the building, or a natural disaster, the tenants who are affected by such a circumstance are entitled to benefits under the Uniform Relocation Act and may request a Letter of Priority Entitlement (LOPE) from the Agency. If tenants need additional time to secure replacement housing, the Agency may, at the tenant's request, extend the LOPE entitlement period.

(d) *Criminal activity*. Borrowers may terminate tenancy for criminal activity or alcohol abuse by household members in accordance with the provisions of 24 CFR 5.858, 5.859, 5.860, and 5.861.

§ 3560.160 Tenant grievances.

(a) *General*. (1) The requirements established in this section are designed to ensure that there is a fair and equitable process for addressing tenant or prospective tenant concerns and to ensure fair treatment of tenants in the event that an action or inaction by a borrower, including anyone designated to act for a borrower, adversely affects the tenants of a housing project.

(2) Any tenant/member or prospective tenant/member seeking occupancy in or use of Agency facilities who believes he or she is being discriminated against because of age, race, color, religion, sex, familial status, disability, or national origin may file a complaint in person with, or by mail to the U.S. Department of Agriculture's Office of Civil Rights, Room 326–W, Whitten Building, 14th and Independence Avenue, SW., Washington DC 20250–9410 or to the Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development (HUD), Washington, DC 20410. Complaints received by Agency employees must be directed to the National Office Civil Rights Staff through the State Civil Rights Manager/Coordinator.

(b) *Applicability*. (1) The requirements of this section apply to a borrower action regarding housing project operations, or the failure to act, that adversely affects tenants or prospective tenants.

(2) This section does not apply to the following situations:

(i) Rent changes authorized by the Agency in accordance with the requirements of § 3560.203(a);

(ii) Complaints involving discrimination which must be handled in accordance with § 3560.2(b) and paragraph (a)(2) of this section;

(iii) Housing projects where an association of all tenants has been duly formed and the association and the borrower have agreed to an alternative method of settling grievances;

(iv) Changes required by the Agency in occupancy rules or other operational or management practices in which proper notice and opportunity have been given according to law and the provisions of the lease;

(v) Lease violations by the tenant that would result in the termination of tenancy and eviction;

(vi) Disputes between tenants not involving the borrower; and

(vii) Displacement or other adverse actions against tenant as a result of

loan prepayment handled according to subpart N of this part.

(c) *Borrower responsibilities.* Borrowers must permanently post tenant grievance procedures that meet the requirements of this section in a conspicuous place at the housing project. Borrowers also must maintain copies of the tenant grievance procedure at the housing project's management office for inspection by the tenants and the Agency upon request. Each tenant must receive an Agency summary of tenant's rights when a lease agreement is signed. If a housing project is located in an area with a concentration of non-English speaking individuals, the borrower must provide grievance procedures in both English and the non-English language. The notice must include the telephone number and address of USDA's Office of Civil Rights and the appropriate Regional Fair Housing and Enforcement Agency.

(d) *Reasons for grievance.* Tenants or prospective tenants may file a grievance in writing with the borrower in response to a borrower action, or failure to act, in accordance with the lease or Agency regulations that results in a denial, significant reduction, or termination of benefits or when a tenant or prospective tenant contests a borrower's notice of proposed adverse action as provided in paragraph (e) of this section. Acceptable reasons for filing a grievance may include:

(1) Failure to maintain the premises in such a manner that provides decent, safe, sanitary, and affordable housing in accordance with §3560.103 and applicable state and local laws;

(2) Borrower violation of lease provisions or occupancy rules;

(3) Modification of the lease;

(4) Occupancy rule changes;

(5) Rent changes not authorized by the Agency according to §3560.205; or

(6) Denial of approval for occupancy.

(e) *Notice of adverse action.* In the case of a proposed action that may have adverse consequences for tenants or prospective tenants such as denial of admission to occupancy and changes in the occupancy rules or lease, the borrower must notify the tenant or prospective tenant in writing. In the case of a Borrower's proposed adverse action including denial of admission to occupancy, the Borrower shall notify the applicant/tenant in writing. The notice must be delivered by certified mail return receipt requested, or a hand-delivered letter with a signed and dated acknowledgement of receipt from the applicant/tenant, The notice must give specific reasons for the proposed action. The notice must also advise the tenant or prospective tenant of ''the right to respond to the notice within ten calendar days after date of the notice'' and of ''the right to a hearing in accordance with §3560.160 (f), which is available upon request.'' The notice must contain the information specified in paragraph (a)(2) of this section. For housing projects in areas with a concentration of non-English speaking individuals, the notice must be in English and the non-English language.

(f) *Grievances and responses to notice of adverse action.* The following procedures must be followed by tenants, prospective tenants, or borrowers involved in a grievance or a response to an adverse action.

(1) The tenant or prospective tenant must communicate to the borrower in writing any grievance or response to a notice within 10 calendar days after occurrence of the adverse action or receipt of a notice of intent to take an adverse action.

(2) Borrowers must offer to meet with tenants to discuss the grievance within 10 calendar days of receiving the grievance. The Agency encourages borrowers and tenants or prospective tenants to make an effort to reach a mutually satisfactory resolution to the grievance at the meeting.

(3) If the grievance is not resolved during an informal meeting to the tenant or prospective tenant's satisfaction, the borrower must prepare a summary of the problem and submit the summary to the tenant or prospective tenant and the Agency within 10 calendar days The summary should include: The borrower's position; the applicant/tenant's position; and the result of the meeting. The tenant also may submit a summary of the problem to the Agency.

(g) *Hearing process.* The following procedures apply to a hearing process.

(1) *Request for hearing.* If the tenant or prospective tenant desires a hearing,

a written request for a hearing must be submitted to the borrower within 10 calendar days after the receipt of the summary of any informal meeting.

(2) *Selection of hearing officer or hearing panel.* In order to properly evaluate grievances and appeals, the borrower and tenant must select a hearing officer or hearing panel. If the borrower and the tenant cannot agree on a hearing officer, then they must each appoint a member to a hearing panel and the members selected must appoint a third member. If within 30 days from the date of the request for a hearing, the tenant and borrower have not agreed upon the selection of a hearing officer or hearing panel, the borrower must notify the Agency by mail of the situation. The Agency will appoint a person to serve as the sole hearing officer. The Agency may not appoint a hearing officer who was earlier considered by either the borrower or the tenant, in the interest of ensuring the integrity of the process.

(3) *Standing hearing panel.* In lieu of the procedure contained in paragraph (g)(2) of this section for each grievance or appeal presented, a borrower may ask the Agency to approve a standing hearing panel for the housing project.

(4) *Examination of records.* The borrower must allow the tenant the opportunity, at a reasonable time before a hearing and at the expense of the tenant, to examine or copy all documents, records, and policies of the borrower that the borrower intends to use at a hearing unless otherwise prohibited by law or confidentiality agreements.

(5) *Scheduling of hearing.* If a standing hearing panel has been approved, a hearing will be scheduled within 15 calendar days after receipt of the tenant's or prospective tenant's request for a hearing. If a hearing officer or hearing panel must be selected, a hearing will be scheduled within 15 calendar days after the selection or appointment of a hearing panel or a hearing officer. All hearings will be held at a time and place mutually convenient to both parties. If the parties cannot agree on a meeting place or time, the hearing officer or hearing panel will designate the place and time.

(6) *Escrow deposits.* If a grievance involves a rent increase not authorized by the Agency, or a situation where a borrower fails to maintain the property in a decent, safe, and sanitary manner, rental payments may be deposited by the tenant into an escrow account, provided the tenant's rental payments are otherwise current.

(i) The escrow account deposits must continue until the complaint is resolved through informal discussion or by the hearing officer or panel.

(ii) The escrow account must be in a Federally-insured institution or with a bonded independent agent.

(iii) Failure to make timely rent payments into the escrow account will result in a termination of the tenant grievance and appeals procedure and all sums will immediately become due and payable under the lease.

(iv) Receipts of escrow account deposits must be available for examination by the borrower.

(7) *Failure to request a hearing.* If the tenant or prospective tenant does not request a hearing within the time provided by paragraph (f)(1) of this section, the borrower's disposition of the grievance or appeal will become final.

(h) *Requirements governing the hearing.* The following requirements will govern the hearing process.

(1) Subject to paragraph (f)(2) of this section, the hearing will proceed before a hearing officer or hearing panel at which evidence may be received without regard to whether that evidence could be used in judicial proceedings.

(2) The hearing must be structured so as to provide basic due process safeguards for both the borrower and the tenants or prospective tenants, which must protect:

(i) The right of both parties to be represented by counsel or another person chosen as their representative;

(ii) The right of the tenant or prospective tenant to a private hearing unless a public hearing is requested;

(iii) The right of the tenant or prospective tenant to present oral or written evidence and arguments in support of their grievance or appeal and to cross-examine and refute the evidence of all witnesses on whose testimony or information the borrower relies; and

(iv) The right of the borrower to present oral and written evidence and arguments in support of the decision,

to refute evidence relied upon by the tenant or prospective tenant, and to confront and cross-examine all witnesses in whose testimony or information the tenant or prospective tenant relies.

(3) At the hearing, the tenant or prospective tenant must present evidence that they are entitled to the relief sought, and the borrower must present evidence showing the basis for action or failure to act against that which the grievance or appeal is directed.

(4) The hearing officer or hearing panel must require that the borrower, the tenant or prospective tenant, counsel, and other participants or spectators conduct themselves in an orderly manner. Failure to comply may result in exclusion from the proceedings or in a decision adverse to the interests of the disorderly party and granting or denial of the relief sought, as appropriate.

(5) If either party or their representative fails to appear at a scheduled hearing, the hearing officer or hearing panel may make a determination to postpone the hearing for no more than five days or may make a determination that the absent party has waived their right to a hearing under this subpart. If the determination is made that the absent party has waived their rights, the hearing officer or hearing panel will make a decision on the grievance. Both the tenant or prospective tenant and the borrower must be notified in writing of the determination of the hearing officer or hearing panel.

(i) *Decision*. Hearing decisions must be issued in accordance with the following requirements.

(1) The hearing officer or hearing panel has the authority to affirm or reverse a borrower's decision.

(2) The hearing officer or hearing panel must prepare a written decision, together with the reasons thereof based solely and exclusively upon the facts presented at the hearing within 10 calendar days after the hearing. The notice must state that the decision is not effective for 10 calendar days to allow time for an Agency review as specified in paragraphs (i)(3) and (i)(4) of this section.

(3) The hearing officer or hearing panel must send a copy of the decision to the tenant, or prospective tenant, borrower, and the Agency.

(4) The decision of the hearing officer or hearing panel shall be binding upon the parties to the hearing unless the parties to the hearing are notified within 10 calendar days by the Agency that the decision is not in compliance with Agency regulations.

(5) Upon receipt of written notification from the hearing officer or hearing panel, the borrower and tenant must take the necessary action, or refrain from any actions, specified in the decision.

§§ 3560.161–3560.199 [Reserved]

§ 3560.200 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart E—Rents

§ 3560.201 General.

This subpart sets forth the requirements for establishing and collecting rents charged to occupants of multifamily housing (MFH) projects financed by the Agency.

§ 3560.202 Establishing rents and utility allowances.

(a) *General*. Rents and utility allowances for rental units in Agency-financed housing projects are set by the borrower and must be based on the operating, management and maintenance expenses and other costs related to the housing project including loan payment amounts due to the Agency.

(b) *Agency approval*. All rents and utility allowances set by borrowers are subject to Agency approval.

(c) *Rents.* As applicable, borrowers must establish the following rents:

(1) Note rent;

(2) Basic rent;

(3) U.S. Department of Housing and Urban Development (HUD) contract rents; and

(4) Low-income housing tax credit (LIHTC) rents.

(d) *Utility allowances.* In projects where tenants pay the utilities, borrowers must establish utility allowances for each size and type of rental unit in the housing project based on estimated utility costs. Borrowers must review utility allowances annually, adjust for accuracy, and submit any utility allowance changes to the Agency for approval. If no changes are needed, the borrower must notify the Agency that no changes were made. Documentation to justify utility allowances must be maintained in the housing project files.

(e) *Funds contributed to reduce rents.* If borrowers use funds contributed from sources other than the Agency (e.g., state or local grants, private contributions) to reduce general operating and management expenses, housing project rents must be reduced to reflect the funding being used to offset housing project expenses. When funds contributed from sources other than the Agency are used for housing project expenses, the borrower must certify to the Agency, in writing, that the funds provided will not need to be repaid with Agency funds. Funds from borrower contributions or rehabilitation loans will not be counted towards reducing rents.

(f) *Rents for resident manager, caretaker, or owner-occupied unit.* (1) If approved as a part of a management plan, a borrower may occupy a rental unit in a housing project when they are acting as a management agent or resident manager as specified in § 3560.102(e).

(2) If the rental unit being occupied by a borrower or resident manager is designated as a revenue-producing unit, borrowers must calculate the rental charge to the borrower or resident manager in the same manner as tenant contributions.

(3) If the rental unit being occupied by a borrower or resident manager is designated as a non-revenue producing unit, borrowers must treat the cost of providing the unit the same as other non-revenue producing portions of the housing project.

(g) *LIHTC.* Borrowers who receive LIHTCs may establish rents in accordance with LIHTC requirements. However, borrowers are obligated to ensure that sufficient annual funds are available to cover expenses in the housing project's approved budget, including the required payments on the borrower's Agency loan. Borrowers must not use housing project funds to make up any difference between rents required under Agency program requirements and the maximum allowed rents under the LIHTC program.

§ 3560.203 Tenant contributions.

(a) *Tenant contributions.* A tenant's contribution to rent charged for a rental unit in an Agency financed housing project is based on the tenant's income, as calculated on the Agency's tenant certification forms, and the availability of Agency or non-Agency rental subsidies.

(1) *Tenant contributions.* Borrowers must set tenant contributions to rent at the highest of the following standards but never more than the note rent:

(i) Thirty percent of monthly adjusted income;

(ii) Ten percent of gross monthly income;

(iii) An amount equal to the portion of an assistance payment specifically designated to meet the household's shelter costs if the household is receiving assistance payments from a public agency; or

(iv) The basic rent, unless RHS rental assistance is provided to the household.

(2) *Tenant contribution surcharge.* Tenants in a Plan I housing project with incomes above the eligibility standards set in § 3560.152(a)(1) must pay a 25 percent surcharge in addition to note rent.

(b) *Adjustment of tenant contribution.* Borrowers must adjust the tenant contribution whenever there is a change in tenant household status or income sufficient to generate a revised tenant certification in accordance with § 3560.152(e) or an Agency approved rent or utility allowance change that affects the tenant contribution amount.

(c) *Overage*. If a tenant's tenant contribution is higher than basic rent, borrowers must remit to the Agency the rent collected in excess of the basic rent and up to the note rent.

§ 3560.204 Security deposits and membership fees.

(a) *General*. Borrowers may collect security deposits when it is reasonable and customary for the area in which the housing is located. Borrowers must hold security deposits in a separate bank or bookkeeping account in accordance with § 3560.302(c)(3).

(b) *Allowable amounts*. Borrowers may charge security deposits that are typical for the area in which the housing is located, as long as the security deposit charged a tenant does not exceed that tenant's net contribution for one month's rent or basic rent, whichever is greater.

(1) As noted in § 3560.102(b)(1)(viii) and § 3560.156(c)(18)(iii), borrowers must specify in the housing project's management plan how the amount to be charged as a security deposit will be established and must specify the amount to be charged to individual tenants in the lease to be signed by the tenant.

(2) Borrowers may charge security deposits to households receiving HUD assistance in accordance with HUD requirements.

(3) Members of a cooperative shall be required to pay a membership fee no greater than one month's occupancy charge.

(4) Additional security deposits for pets may be charged as long as the additional deposit is not greater than basic rent for 1 month. No additional security deposit for assistance animals is allowed where an assistance animal is necessary for the normal functioning of a household member with a disability.

(5) Borrowers must not charge additional security deposits based on disabilities of tenants or other personal characteristics.

(c) *Payment plans*. Borrowers must offer, for persons who are eligible for rental assistance or Section 8 assistance, the option of paying the security deposit on an installment payment plan. Should installments not be met, the total charge may become due and payable in full.

(d) *Charges for damage or loss*. Borrowers may charge tenants for damage or loss caused or allowed by the tenant equal to the cost of the damage or loss.

(1) Borrowers must consider expenses due for addressing normal wear and tear as normal operating expenses and must not charge tenants a fee or withhold security deposits to pay for such costs.

(2) Borrowers may withhold security deposits and may charge tenants for damage or loss costs above security deposit amounts.

(e) *State and local security deposit requirements*. Borrowers must follow all state and local laws and other requirements governing the handling and disposition of security deposits.

(1) Resolution of any security deposit disputes must be handled in accordance with state and local law.

(2) Any interest earned on security deposits will accrue in accordance with state law.

(f) *Unclaimed security deposits*. Any funds in the housing project's security deposit account unclaimed by a tenant must be deposited into the housing project's general operating account.

§ 3560.205 Rent and utility allowance changes.

(a) *General*. Borrowers must fully document that changes to rents and utility allowances are necessary to cover housing or utility costs allowed under the approved budget for the housing. Any changes must apply to all similar units in the housing project.

(b) *Agency approval*. Borrowers must submit a fully documented request to the Agency to effect any rent or utility allowance change.

(1) Borrowers must obtain written consent or approval from the Agency as specified in paragraph (e) of this section before implementing any changes in the rents or utility allowances.

(2) If a borrower implements an unauthorized rent or utility allowance charge, the Agency will require the borrower to roll back rents to the last authorized rent charge, and the borrower must reimburse tenants for any unauthorized rents collected.

(c) *Timing of request for changes.* Borrowers must submit rent and utility allowance change requests in conjunction with the annual budget submission as required under § 3560.303(d). The effective dates of any approved changes will coincide with the start of the housing project's fiscal year or the start of the season for seasonally occupied farm labor housing. However, the Agency will accept borrower requests for rent or utility allowance changes anytime during the year if a change is necessary to preserve the financial integrity of the housing complex and the financial distress is due to circumstances beyond the borrower's control.

(d) *Tenant notification.* Borrowers must notify tenants and solicit their comments to proposed rent or utility allowance change requests that are submitted to the Agency at the same time that the initial request is made to the Agency.

(1) Tenants will be given 20 calendar days to provide their comments to the Agency.

(2) Borrowers must deliver the proposed rent or utility allowance change request notice to each tenant and post at least one copy of the notice at the housing project site in a visible location frequented by tenants.

(e) *Approval.* If the Agency approves a rent or utility allowance increase request on which the comments were solicited, the borrower will deliver a notice announcing the rent or utility allowance change to the tenants to be effective 30 calendar days from the date of the notification.

(f) *Denial of change request.* The Agency may deny a rent or utility allowance increase request in the following circumstances.

(1) The Agency determines that the borrower did not provide sufficient information to justify operating costs.

(2) The borrower is out of compliance with Agency requirements including any corrective action requirements agreed to in a workout agreement developed according to subpart J of this part.

(3) Sufficient funds are being collected under existing rents to meet approved expenses.

(g) *Notice of denial.* If the rent change will not be approved as requested, the Agency will notify the borrower of the denial in accordance with § 3560.303(d).

§ 3560.206 Conversion to Plan II (Interest Credit).

The Agency encourages any borrower not on Plan II to convert to Plan II to provide more favorable rent costs to very-low, low, and moderate-income households.

§ 3560.207 Annual adjustment factors for Section 8 units.

(a) *General.* For rental units receiving project-based Section 8 assistance, the Agency will review rents annually without regard to HUD's automatic annual adjustment.

(b) *Establishing rents in housing with HUD rent assistance.* Borrowers will set note and basic rents for housing receiving HUD project based Section 8 assistance, as specified in § 3560.202(c)(3).

(1) Borrowers must notify the Agency of any HUD rent changes.

(2) If allowed by the interest credit agreement, the borrower will remit the amount collected in excess of the basic rent up to the note rent to the Agency as overage.

(3) When HUD contract rents exceed note rents, borrowers must deposit HUD funds equal to the difference between the Agency approved note rent and the HUD approved rent into the reserve account for the housing project.

(c) *Excess HUD rents.* When permitted by the Agency interest credit agreement, the Agency may reduce or cancel the interest credit on the housing, if excess HUD rents deposited in the reserve account result in the reserve account being funded beyond the fully funded level approved by the Agency.

§ 3560.208 Rents during eviction or failure to recertify.

(a) *Rents during eviction.* If a tenant is appealing an eviction and the borrower refuses to accept rent payment during the appeal of the eviction, the tenant must escrow required rent payments to safeguard their occupancy, unless State or local laws specify otherwise.

(b) *Rents when tenants fail to recertify.* If a borrower can document that a tenant received a notice specifying a tenant recertification date and the tenant fails to comply by the specified date or fails to cooperate with verification or other procedures related to the tenant's recertification so that the tenant recertification cannot be completed by the recertification date, the borrower, within 10 days of the recertification date, shall give the tenant and the Agency written notification that:

(1) Termination proceedings are being initiated, in accordance with § 3560.159; and

(2) The tenant will be charged note rent until the tenant's lease is terminated.

(c) *Unauthorized assistance due to tenant recertification failure.* Any unauthorized assistance received because of the tenant's failure to be recertified will be collected in accordance with the provisions of subpart O of this part.

(d) *Rents when borrowers fail to recertify tenants.* If a borrower cannot document that a tenant received a recertification notice, and a tenant is not recertified within 12 months of the most recently executed tenant certification, tenants shall continue to make net tenant contributions to rent based on their most recent tenant certification and the borrower must remit to the Agency full overage as if the tenant was paying the note rent until the tenant is recertified.

(e) *Unauthorized assistance due to borrower recertification failure.* Any unauthorized assistance received as a result of the borrower's failure to recertify a tenant will be collected from the borrower in accordance with the provisions of subpart O of this part and may not be paid from housing project funds or funds collected from the tenant.

§ 3560.209 Rent collection.

(a) *General.* Borrowers must collect rents on a monthly basis and maintain a system for collecting and tracking rents.

(b) *Fees for late rent payments.* Borrowers may adopt a late fee schedule for overdue rental payments. Late fee schedules must be submitted to the Agency for approval as part of the housing project's management plan, be in accordance with State and local law, and consistent with the following requirements:

(1) A grace period of 10 days from the rental payment due date must be allowed for all tenants.

(2) The late fee must not exceed the higher of $10 or an amount equal to 5 percent of the tenant's gross tenant contribution.

(3) Tenants receiving housing benefits from sources other than the Agency may be subject to the late rent fee requirements of the other funding sources.

(c) *Improperly advanced rents.* Improperly advanced interest credit or rental assistance is considered unauthorized assistance and is subject to recapture in accordance with subpart O of this part.

§ 3560.210 Special note rents (SNRs).

When a Plan II housing project is experiencing severe vacancies due to market conditions, the Agency may allow the borrower to charge an SNR, which is less than note rent but higher than basic rent, to attract or retain tenants whose income level would require them to pay special note rent. The requirements for requesting and receiving an SNR are established under § 3560.454.

§§ 3560.211–3560.249 [Reserved]

§ 3560.250 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart F—Rental Subsidies

§ 3560.251 General.

This subpart contains policies for borrower administration and tenant use of rental subsidies in Agency financed multi-family housing (MFH) projects.

§ 3560.252 Authorized rental subsidies.

(a) *General*. The purpose of rental subsidies is to reduce amounts paid by tenants for rent. Rental subsidies equal the difference between the approved shelter costs and tenant contributions as calculated in accordance with § 3560.203(a)(1).

(b) *Forms of rental subsidies*. Rental subsidies may be in the form of:

(1) Agency rental assistance;

(2) HUD section 8 assistance, including project-based and vouchers;

(3) Private rental subsidies; or

(4) State or local government rental subsidies.

(c) *Multiple rent subsidies*. (1) Multiple types of rent subsidies may be used in the same MFH project.

(2) Tenants with subsidies from sources other than the Agency may be eligible for Agency rental assistance if the following conditions are met.

(i) The tenant qualifies for Agency rental assistance.

(ii) The rental subsidy the tenant is receiving is not a HUD voucher.

(iii) The rental subsidy being received by the tenant is less than the full amount of Agency rental assistance for which the tenant would qualify. In such cases, the Agency may provide the difference between the subsidy received by the tenant and the amount of Agency rental assistance for which the tenant qualifies.

(d) *Agency rental assistance (RA)*. Agency RA is obligated to MFH projects on a rental unit basis. The obligation is composed of a number of rental units and associated dollar amounts of RA specified in a RA agreement with a borrower. The following types of Agency RA may be obligated to a housing project.

(1) *Renewal units*. RA may be assigned to a housing project to replace existing rental unit obligations because funds associated with the units have been fully disbursed.

(2) *New construction units*. RA may be provided in conjunction with initial Agency loans for construction or substantial rehabilitation of MFH projects.

(3) *Servicing units*. Additional RA may be provided to operational MFH projects as a part of the Agency's general loan servicing or preservation activities.

§ 3560.253 [Reserved]

§ 3560.254 Eligibility for rental assistance.

(a) *Eligible housing*. Housing projects eligible for Agency RA include the following types of projects.

(1) Housing projects that operate under an Interest Credit Plan II RA agreement.

(2) Housing projects financed with an Agency off-farm labor housing loan or grant. On-farm labor housing is not eligible for rental assistance.

(3) Housing projects financed with a direct or insured Rural Rental Housing loan approved prior to August 1, 1968, and operated under an interest credit agreement that identifies the housing project as a Plan RA project.

(4) Housing projects financed from Agency and other sources if the conditions of § 3560.66 are met.

(b) *Eligible units*. Borrowers may not request RA for rental units that the Agency determines are not habitable in accordance with § 3560.103.

(c) *Eligible households*. Households eligible for rental assistance are those:

(1) With very low-or low-incomes who are eligible to live in MFH;

(2) Whose net tenant contribution to rent determined in accordance with § 3560.203(a)(2) is less than the basic rent for the unit;

(3) Whose head of the household is a U.S. citizen or a legal alien as defined in § 3560.11;

(4) Who meet the occupancy rules established by the borrower in accordance with § 3560.155(e); and

(5) Who have a signed, unexpired tenant certification form on file with the borrower.

EFFECTIVE DATE NOTE: At 70 FR 8503, Feb. 22, 2005, in § 3560.254(c)(3), implementation of the words ''Whose head of the household is a U.S. citizen or a legal alien as defined in § 3560.11.'' was delayed indefinitely.

§ 3560.255 Requesting rental assistance.

(a) *Submitting requests.* Borrowers seeking an allocation of rental assistance for MFH must request the rental assistance from the Agency as follows.

(1) *Renewal rental assistance.* To the extent sufficient funds are available, the Agency will automatically renew expiring rental assistance agreements at the existing number of units.

(2) *New construction units.* Loan applicants proposing to use Agency rental assistance must include their request for rental assistance in their loan proposal in accordance with § 3560.56.

(3) *Servicing units.* Borrowers requesting rental assistance must have tenants or eligible tenant applicants on a waiting list who are RA eligible.

(b) *Denial of requests.* (1) If a rental assistance request is denied due to the loan applicant's or borrower's ineligibility, the Agency will send the loan applicant or borrower written notification of the decision with an explanation of the denial.

(2) If a rental assistance request to renew expiring rental assistance agreements is denied because funding is not available, the Agency will notify the borrower and the borrower must notify the tenants of rent increases in accordance with their lease and state and local law. Tenants losing rental assistance due to a lack of Agency funding may quit the lease and vacate the housing without penalty in accordance with the terms of their lease.

(3) Loan applicants or borrowers determined to be eligible for RA as a result of an appeal or funding review will receive RA, if RA funding is available, beginning with the month following the date of the appeal or funding review decision or beginning in the first month that RA funding becomes available.

§ 3560.256 Rental assistance payments.

(a) *Borrower submission requirements.* The borrower must submit monthly requests for RA payments to the Agency based on occupancy as of the first day of the month previous to the month in which the request is being made.

(b) *Basis of RA requests.* Borrower requests for RA payments must be based on the difference between the basic rent plus utility allowances for each rental unit eligible for RA and the net tenant contribution of the tenant.

(c) *Payments to borrower.* Prior to making RA payments to a borrower, the Agency will deduct from the approved RA payment amount any unpaid loan payments, late fees, and other amounts which the borrower owes to the Agency.

(d) *Utility payments to tenants.* The borrower must pay tenants the difference between the utility allowance and the tenant's net contribution to rent when a tenant receiving RA is billed directly for utilities and the utility allowance exceeds the net tenant contribution to rent. Such utility payments to tenants must be made on a monthly basis.

(e) *Administrative errors.* Borrowers are responsible for correcting borrower errors made in regard to RA requests for payments. In accordance with subpart O of this part, borrowers will be required to repay the Agency for any unauthorized RA received or any unauthorized use of RA except in certain cases of tenant error or fraud.

§ 3560.257 Assigning rental assistance.

(a) *Priorities for rental assistance.* (1) Borrowers must use the following priorities when assigning available rental assistance.

(i) First priority is to eligible very low-income tenants paying the highest percentage of their adjusted annual income for Agency approved shelter costs.

(ii) Second priority, if the housing project has vacant rental units, is to eligible very low-income applicants on the waiting list.

(iii) Third priority is to eligible low-income tenants paying the highest percentage of their adjusted annual income for Agency approved shelter costs.

(iv) Fourth priority, if the housing project has vacant rental units, is to eligible low-income applicants on the waiting list.

(v) Fifth priority is to households which are residing in a rental unit for which they do not qualify on the basis of an occupancy waiver or other special approval situations.

(2) In order to provide rental assistance to the third, fourth, and fifth priority categories, a borrower must fully document either that there are no very low-income households on the housing project's waiting list or that occupancy by low-income households is limited as follows:

(i) For housing occupied on or after November 30, 1983, no more than 5 percent of the units in the housing are occupied by low-income households; or

(ii) For housing occupied before November 30, 1983, no more than 25 percent of the units in the housing are occupied by low-income households.

(b) *Continued eligibility*. Tenants receiving rental assistance may continue to do so as long as they remain eligible for occupancy and for rental assistance under § 3560.254(c), and as long as rental assistance units are available.

(c) *Assignment of rental assistance*. Except as provided in § 3560.454(c) and using the priorities given in paragraph (a) of this section, borrowers must assign available rental assistance units as soon as rental assistance units become available.

(1) When a rental assistance unit is assigned to an eligible existing tenant on a day other than the first day of a month, the Agency will not provide the borrower rental assistance for the newly assigned existing tenant and the tenant will not pay reduced rental charges until the first of the month following the assignment of the rental assistance.

(2) When an eligible applicant moves into a rental assistance unit on a day other than the first day of a month, they will pay a prorated rent based on the number of days they occupy the rental assistance unit and the amount of rental assistance they will be receiving.

(d) *Incorrectly assigned rental assistance*. Incorrectly assigned rental assistance is viewed as unauthorized assistance and handled in accordance with subpart O of this part.

§ 3560.258 Terms of agreement.

(a) *Term of agreement*. Rental assistance agreements will be consistent with available funding. Rental assistance agreements expire when the funds obligated for rental assistance units are fully disbursed in accordance with the conditions of the agreement.

(b) *Replacing expiring obligations*. To the extent funds are available for replacement units, the Agency will renew rental assistance agreements.

§ 3560.259 Transferring rental assistance.

(a) *Agency authority*. The Agency may transfer rental assistance in the following instances:

(1) To accompany the transfer of a housing project to a different borrower;

(2) After a voluntary conveyance or a foreclosure sale;

(3) After a liquidation or prepayment;

(4) To the extent permitted by law, when any rental assistance units have not been used for a 6-month period; or

(5) When the loan cannot be closed.

(b) *Agency review before transferring rental assistance*. The Agency must perform a review to determine if all eligible tenants in the project are receiving rental assistance before the Agency transfers it to another project.

(c) *Transferring rental assistance for displaced tenants*. The Agency may transfer rental assistance from one housing project to another eligible housing project for a tenant who is moving due to displacement as a result of prepayment, liquidation, or a natural disaster. The tenant must begin using the rental assistance within 4 months of the transfer or the RA will become available for use by the next rental assistance eligible tenant in the housing project.

§ 3560.260 Rental subsidies from non-Agency sources.

(a) *General*. The Agency may authorize the use of rental subsidies from sources other than the Agency in Agency financed housing projects. The Agency will make no commitment to providing Agency rental assistance at the expiration of the rental subsidies from other sources.

(b) *HUD vouchers*. For tenants with HUD vouchers, the borrower must set the rental unit rent at the basic rent or the rent standard set by the public housing authority, whichever is less. The public housing authority distributing the HUD vouchers may set the utility allowance.

(c) *Loan proposals using non-Agency rental subsidy*. Loan applicants or borrowers proposing to use rental subsidy from sources other than the Agency must provide:

(1) Documentation demonstrating that a market exists for households eligible for the subsidy and the households are at income levels that would benefit from the amount of rental subsidy that will be provided;

(2) A plan describing actions to be taken when the rental subsidy expires to minimize the impact on tenants losing the rental assistance and to avoid displacement; and

(3) A copy of the project-based rental assistance agreement to be signed by the borrower and the provider of the rental assistance.

(d) *Rental subsidy agreement*. The borrower and the provider of rental subsidies from sources other than the Agency must execute a rental subsidy agreement and submit a copy of the agreement to the Agency. At a minimum, the rental subsidy agreement between the borrower and the source of the rental subsidy must include the following provisions:

(1) A description of how the subsidy will be paid. The rental subsidy payments may be paid directly to the tenants, to the borrower on behalf of the tenants, or deposited to a separate account established for the subsidy. The tenants must be advised of the amount and source of the subsidy through the lease or a supplement to the lease.

(2) The life of a project-based rental subsidy agreement with a non-Agency source must be similar to existing or current Agency rental assistance funding levels and sufficient funds must be set aside to assure availability of the rental subsidy for this term. The method of supplying the funds must be clearly established.

§ 3560.261 Improperly advanced rental assistance.

Improperly advanced RHS rental assistance resulting from tenant or borrower error or fraud constitutes unauthorized assistance and the provisions of subpart O of this part apply.

§§ 3560.262–3560.299 [Reserved]

§ 3560.300 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart G—Financial Management

§ 3560.301 General.

This subpart contains requirements for the financial management of Agency-financed multi-family housing (MFH) projects, including accounts, budgets, reports, and engagements. Financial management systems and procedures must cover all housing operations and provide adequate documentation to ensure that program objectives are met.

§ 3560.302 Accounting, bookkeeping, budgeting, and financial management systems.

(a) *General*. Borrowers must establish the accounting, bookkeeping, budgeting and financial management procedures necessary to conduct housing project operations in a financially safe and sound manner. Borrowers must maintain records in a manner suitable for an engagement and must be able to report accurate operational results to the Agency from these accounts and records.

(b) *Acceptable methods of accounting*. (1) Borrowers may use a cash, accrual, or modified accrual method of accounting, bookkeeping, and budget preparations as long as the method is consistent with the statements required by the engagement in accordance with the standards identified in § 3560.308.

(2) Borrowers must describe their accounting, bookkeeping, budget preparation, and financial reporting procedures, including Agency-approved engagements, in their management plan.

(3) Borrowers must notify the Agency of any changes in their accounting, bookkeeping, budget preparation, and financial management reporting systems through a revision of their management plan.

(c) *Account requirements.* (1) As used in this paragraph, the term account is used interchangeably to mean a bookkeeping account (ledger) or a bank account.

(2) At a minimum, borrowers must maintain the accounts required by their loan agreement or resolution.

(3) The following list identifies the financial accounts that are required for each housing project. Additional accounts may be required by third-party lenders. Accounts are to be funded in the following priority order, except that paragraphs (c)(3)(iv), (v), and (vi) of this section are funded directly by tenant security deposits or patron capital receipts respectively:

(i) General operating account;

(ii) Real estate tax and insurance account (if not part of the general operating account);

(iii) Reserve account;

(iv) Tenant security deposit account;

(v) Membership fee account for cooperative housing; and

(vi) For cooperative housing only, a patron capital account.

(4) Amounts escrowed for taxes and insurance may be kept in the general operating account as long as the accounting system reflects the amount escrowed.

(5) Regardless of the number or types of accounts established, the borrower must meet the following requirements:

(i) All housing project funds must be held only in financial institution accounts insured by an agency of the Federal Government, backed by collateral provided by the bank, or held in securities meeting the conditions in this subpart.

(ii) Funds maintained in an institution may not exceed the limit established for Federal deposit insurance. If funds exceed the amount covered by Federal deposit insurance, borrowers must obtain a collateral pledge from the institution to cover all funds or must move funds to an institution that will insure the funds.

(iii) All funds and proceeds in any account must be used only for authorized purposes as described in Agency's regulations, loan or grant documents. Use of funds for non-program purposes constitutes non-monetary default as described in § 3560.452(c).

(iv) All funds received and held in any account, except the tenant security deposit, membership fee, and patron capital accounts, must be held in trust by the borrower for the loan obligation until used and serve as security for the Agency loan or grant.

(v) Borrowers must be able to account for housing project funds with accounting methods or practices that maintain the proprietary identity of the funds for each project. A borrower may operate one account for multiple projects as long as the funds for each project themselves are accounted for separately.

(vi) Each borrower must have access to at least one demand deposit or checking account.

(vii) Housing project funds may not be pledged as collateral for debts without Agency approval. If such a need arises for an eligible program purpose, the borrower must obtain prior Agency approval.

(6) Tenant security deposit accounts or membership fee accounts and patron capital accounts must be maintained in a separate account in trust for the tenants or members and handled in a manner consistent with state and local laws.

(d) *Documentation of separate accountability.* Housing project funds may be combined in one or more bank accounts for two or more housing projects as long as the borrower's accounting system segregates and tracks funds for each project separately.

(1) When borrowers request Agency approval of an accounting system that combines funds from two or more housing projects, they must demonstrate to the Agency that the accounting systems are structured to segregate and maintain separate accountability for each housing project. Such demonstration must include a statement issued

by a Certified Public Accountant (CPA) stating that the accounting system is structured to meet this principle of separate accountability.

(2) The accounting system and management plan must document the method for prorating revenue and expenses that are not clearly identifiable as being associated with a particular housing project.

(3) Funds for housing projects managed by the same management company must not be co-mingled.

(e) *Records*. (1) Borrowers must retain all housing project financial records, books, and supporting material for at least three years after the issuance of the engagement and financial reports. Upon request, these materials will immediately be made available to the Agency, its representatives, the USDA Office of the Inspector General (OIG), or the General Accountability Office (GAO).

(2) Borrower accounts and records will be kept or made available in a location with reasonable access for inspection, review, and copying by the Agency, other authorized representatives of the USDA, OIG, or GAO.

(3) Automated records may be used if they meet the conditions of paragraph (f) of this section.

(f) *Forms generated by automated systems*. (1) The forms and formats approved for use by borrowers may be prepared on automated systems when they meet the requirements of this paragraph.

(2) Forms may be automated if they meet the following requirements:

(i) The identical wording and nomenclature of an official form must be included in the automated version of the form, including the Office of Management and Budget (OMB) approval number.

(ii) The logic or mathematical calculation of an official form must be the same in an automated version of the form.

(iii) The name or logo of the source of the automated form must be visible on each output of the automated form.

(iv) Output size must be 8½ × 11 inches.

(v) Nominal spacing adjustment and colored paper are allowed.

(g) *Farm Labor Housing*. Borrowers with on-farm labor housing units will be considered in compliance with this section by virtue of completing the record keeping and reporting requirements outlined in subpart M of this part.

§ 3560.303 Housing project budgets.

(a) *General requirements*. (1) Using an Agency-approved format, borrowers must submit to the Agency for approval a proposed annual housing project budget prior to the start of the housing project's fiscal year. The capital budget section of the annual project budget must include anticipated expenditures on the project's long-term capital needs as specified in § 3560.103(c).

(2) Budget projections regarding income, expenses, vacancies, and contingencies must be realistic given the housing project's history, current circumstances, and market conditions.

(3) Borrowers must document that the operating expenses included in the budget accurately reflect reasonable and necessary costs to operate the housing project in a manner consistent with the objectives of the loan and in accordance with the applicable Agency requirements.

(4) Borrower must submit supporting documentation to justify housing project utility allowances.

(5) Upon Agency request, borrowers must submit any additional documentation necessary to establish that applicable Agency requirements have been met.

(b) *Allowable and unallowable project expenses*. Expenses charged to project operations, whether for management agent services or other expenses, must be reasonable, typical, necessary and show a clear benefit to the residents of the property. Services and expenses charged to the property must show value added and be for authorized purposes.

(1) *Allowable expenses*. Allowable expenses include those expenses that are directly attributable to housing project operations and are necessary to carry out successful operations.

(i) Housing project expenses must not duplicate expenses included in the

management fee as defined in § 3560.102(i).

(ii) Actual costs for direct personnel costs of permanent and part-time staff assigned directly to the project site. This includes managers, maintenance staff, and temporary help including their:

(A) Gross salary;

(B) Employer FICA contribution;

(C) Federal unemployment tax;

(D) State unemployment tax;

(E) Workers compensation insurance;

(F) Health insurance premiums;

(G) Cost of fidelity or comparable insurance;

(H) Leasing, performance incentive or annual bonuses;

(I) Direct costs of travel to off-site locations by on-site staff for property business or training; and/or

(J) Retirement benefits.

(iii) Legal fees directly related to the operation and management of the property including tenant lease enforcement actions, property tax appeals and suits, and the preparation of all legal documents.

(iv) All outside account and auditing fees, if required by the Agency, directly related to the preparation of the annual audit, partnership tax returns and 401–K's, as well as other outside reports and year-end reports to the Agency, or other governmental agency.

(v) All repair and maintenance costs for the project including:

(A) Maintenance staffing costs and related expenses.

(B) Maintenance supplies.

(C) Contract repairs to the projects (e.g., heating and air conditioning, painting, roofing).

(D) Make ready expenses including painting and repairs, flooring replacement and appliance replacement as well as drapery or mini-blind replacement. (Turnover maintenance).

(E) Preventive maintenance expenses including occupied unit repairs and maintenance as well as common area systems repairs and maintenance.

(F) Snow removal.

(G) Elevator repairs and maintenance contracts.

(H) Section 504 and other Fair Housing compliance modifications and maintenance.

(I) Landscaping maintenance, replacements, and seasonal plantings.

(J) Pest control services.

(K) Other related maintenance expenses.

(vi) All operational costs related to the project including:

(A) The costs of obtaining and receiving credit reports, police reports, and other checks related to tenant selection criteria for prospective residents.

(B) The cost of duplicating forms for those properties not owning a copier. This will include the costs of producing or purchasing forms and mailing or delivering those forms to the project site.

(C) All bank charges related to the property including purchases of supplies (e.g., checks, deposit slips, returned check fees, service fees).

(D) Costs of site-based telephone including initial installation, basic services, directory listings, and long-distances charges.

(E) All advertising costs related specifically to the operations of that project. This can include advertising for applicants or employees in newspapers, newsletters, radio, cable TV, and telephone books.

(F) Postage and delivery costs from the site including expenses to the Agency or other governmental agencies, tenants, verifying third parties, central management offices, etc.

(G) Partnership or corporate business expenses including state taxes and other mandated state or local fees as well as other relevant expenses required for operation of the property by a third-party governmental unit. Costs of continuation financing statements and site license and permit costs.

(H) Expenses related to site utilities including actual costs and surcharges as well as deposits and expense of utility bonds in lieu of bonds.

(I) Site office furniture and equipment including site based computer and copiers. Service agreements and warranties for copiers, telephone systems and computers are also included (if approved by the Agency).

(J) Real estate taxes (personal tangible property and real property taxes) and expenses related to controlling or reducing taxes.

(K) All costs of insurance including property liability and casualty as well

as fidelity or crime and dishonesty coverage for on-site employees and the owners.

(L) Costs of collecting rents on-site including bookkeeping supplies and recordkeeping items.

(M) Costs of preparing and maintaining tenant files and processing tenant certifications including all office supplies, copies and other associated expenses.

(N) Public relations expense relative to maintaining positive relationships between the local community and the tenants with the management staff and the borrowers. Chamber of Commerce dues, contributions to local charity events, and sponsorship of tenant activities, are examples.

(O) Tax Credit Compliance Monitoring Fees imposed by HFAs.

(P) All insurance deductibles as well as adjuster expenses.

(Q) Professional service contracts (audits and compilations, tax returns, energy audits, utility allowances, architectural, construction, rehabilitation and inspection contracts, etc.)

(R) On-site training pre-approved by the Agency provided by outside training vendors.

(S) Site manager salary for additional hours associated with congregate housing.

(vii) With prior Agency approval, cooperatives and nonprofit organizations may use housing project funds to pay asset management expenses directly attributable to ownership responsibilities. Such expenses may include:

(A) Errors and omissions insurance policy for the Board of Directors.

(B) Board of Director review and approval of proposed Agency's annual operating budgets, including proposed repair and replacement outlays and accruals.

(C) Board of Director review and approval of capital expenditures, financial statements, and consideration of any management comments noted.

(D) Long-term asset management reviews.

(2) *Unallowable expenses*. Housing project funds may not be used for any of the following:

(i) Equity skimming as defined in 42 U.S.C. 543 (a).

(ii) Purposes unrelated to the housing project.

(iii) Reimbursement of inaccurate or false claims.

(iv) Settlement agreements, court ordered decrees, legal fees, or other costs that result from the filing of civil rights complaints or legal action alleging the borrower, or a representative of the borrower, has committed a civil rights violation.

(v) Fines, penalties, and legal fees where the borrower or a borrower's representative has been found guilty of violating laws, including, but not limited to, civil rights, and building codes.

(vi) Association dues to be paid by the project should be related to training for site managers or management agents. To the extent that association dues can document training for site managers or management agents related to project activities by actual cost or pro-ration, a reasonable expense may be billed to the project.

(vii) Pay for bonuses or monetary performance awards to site managers or management agents that are not clearly provided for by the site manager salary contract.

(viii) Billing for parties that are large or unreasonable, such as renting expensive party halls or hotel rooms and payment for alcoholic beverages or gifts to management agent staff.

(ix) Billing for practices that are inefficient such as routine use of collect calls from a site manager to a management agent office.

(c) *Priorities*. The priority order of planned and actual budget expenditures will be:

(1) Senior position lienholder, if any;

(2) Operating and maintenance expenses, including taxes and insurance;

(3) Agency debt payments;

(4) Reserve account requirements;

(5) Other authorized expenditures; and

(6) Return on owner investment.

(d) *Agency review and approval*. (1) The Agency will only approve housing project budgets that meet the requirements of paragraphs (a), (b) and (c) of this section.

(2) If no rent change is requested, borrowers must submit budget documents for Agency approval 60 calendar days prior to the start of the housing

project's fiscal year. The Agency will notify borrowers if the budget submission does not meet the requirements of paragraphs (a), (b), and (c) of this section. The borrower will have 10 days to submit the additional material.

(3) If a rent change is requested, the borrower must submit budget documents to the Agency and notify tenants of the requested rent change at least 90 calendar days prior to the start of the housing project's fiscal year.

(i) The Agency will notify borrowers if the budget submission does not meet the requirements of paragraphs (a), (b), and (c) of this section, or if the rent and utility allowance request has been denied in accordance with § 3560.205(f). The borrower will have 10 days to submit the additional material to address any issues raised by the Agency.

(ii) The rent change is not approved until the Agency issues a written approval. If there is no response from the Agency within the 30-day period, the rent change is considered automatic. The following budgets are not eligible for automatic approval:

(A) Budgets with rent increases above $25 per unit; and

(B) Budgets that are submitted late or that miss other deadlines set by the Agency.

(4) If the Agency denies the budget approval, the Agency will notify the borrower in writing.

(5) If budget approval is denied, the borrower shall continue to operate the housing project on the basis of the most recently approved budget.

§ 3560.304 Initial operating capital.

(a) *Purpose*. To provide a source of capital for start-up costs, such as the purchase of equipment, and paying operating, maintenance, and debt service expenses. Borrowers are required to make an initial operating capital contribution to the general operating account as described in § 3560.64.

(b) *Authorized uses of initial operating capital*. Initial operating capital may be used only to pay for approved budgeted expenses.

(c) *Withdrawal of initial operating capital*. Initial operating capital funds may be withdrawn by a borrower if:

(1) The initial operating capital was provided from the borrower's own funds;

(2) The borrower requests the withdrawal after the second year of housing project operations and prior to the 7th year of operations;

(3) The housing project has had a 90 percent occupancy rate for a period of 12 months prior to the withdrawal request;

(4) The withdrawal will not affect the financial viability of the housing project;

(5) Contributions to the reserve account are at authorized levels;

(6) The withdrawal request will not result in rent increases; and

(7) There are no outstanding deficiencies in management's physical maintenance of the housing project.

§ 3560.305 Return on investment.

(a) *Borrower's return on investment*. Borrowers may receive a return on their investment (ROI) in accordance with the terms of their loan agreement and the following:

(1) If there is a positive net cash flow in housing project operations, the ROI may be taken by the borrower after the housing project's fiscal year, provided that the balance of the reserve account is equal to or greater than required deposits minus authorized withdrawals. If the annual financial reports indicate that an ROI should not have been taken, borrowers will be required to return any unauthorized ROI.

(2) If there is negative cash flow in housing project operations, the Agency may authorize the borrower to take the ROI only after the Agency has reviewed the housing project's annual financial reports and determines:

(i) Surplus cash exists in either the general operating account as defined in § 3560.306(d)(1) or the reserve account, if the balance is greater than the required deposits minus authorized withdrawals.

(ii) The housing project has sufficient funds to address identified capital or operational needs.

(b) *Unpaid return on investment*. An earned, but unpaid ROI for the previous year only may be requested by the borrower and authorized by the Agency under the provisions of § 3560.305(a)(2)

provided the current year's ROI has been paid first and a rent increase is not required to generate funds to pay the unpaid ROI.

§ 3560.306 Reserve account.

(a) *Purpose.* To meet the major capital expense needs of a housing project, borrowers must establish and maintain a reserve account.

(b) *Financial management of the reserve account.* Borrower management of the reserve account is subject to the requirements of 7 CFR part 1902, subpart A regarding supervised bank accounts.

(c) *Funding of the reserve account.* Borrowers must make payments to the reserve account in the amount established in loan documents, beginning with the first loan payment or a date specified in loan documents.

(d) *Transfer of surplus general operating account funds.* (1) The general operating account will be deemed to contain surplus funds when the balance at the end of the housing project's fiscal year, after all payables, exceeds 20 percent of the operating and maintenance expenses. If the borrower is escrowing taxes and insurance premiums, include the amount that should be escrowed by year end and subtract such tax and insurance premiums from operating and maintenance expenses used to calculate 20 percent of the operating and maintenance expenses.

(2) If a housing project's general operating account has surplus funds at the end of the housing project's fiscal year, the Agency will require the borrower to use the surplus funds to address capital needs, make a deposit in the housing project's reserve account, reduce the debt service on the borrower's loan, or reduce rents in the following year. At the end of the borrower's fiscal year, if the borrower is required to transfer surplus funds from the general operating account to the reserve account, the transfer does not change the future required contributions to the reserve account.

(e) *Account requirements.* Borrowers must establish and maintain the reserve account according to § 3560.65, § 3560.302(c)(5), and the following requirements:

(1) Reserve accounts must be deposited in interest-bearing accounts or securities; and

(2) Reserve accounts must be supervised accounts that require Agency countersignatures on all withdrawals.

(f) *Funds invested in securities.* In addition to the requirements specified in paragraph (e) of this section, the following requirements apply when reserve funds are invested in securities:

(1) The reserve account must be held either at a Federally insured domestic institution such as a bank, savings and loan association, credit union, or at a domestic institution authorized to sell securities.

(2) The borrower must record the price actually paid for the securities. When designated as a reserve deposit, the price paid must equal the required contribution to reserves.

(3) Borrowers must be knowledgeable about industry practices and consider the impact of typical fees and charges for purchases and sales and maintenance of an account when making investment decisions. Such fees may be paid for out of reserves, only with the consent of the Agency. Housing project funds may not be used to pay for a financial advisor.

(g) *Use of the reserve account.* (1) Borrowers must request Agency approval of reserve account withdrawals prior to the withdrawal. Borrowers must inform the Agency of planned uses of reserve accounts in their annual capital budget if known at budget planning time. Any item on the approved capital budget does not require additional preapproval by the Agency.

(2) The Agency will indicate any conditions governing withdrawals from a reserve account at the time it approves the withdrawal.

(3) In emergency situations, the Agency may specify special procedures to provide an expedited approval process for the use of the reserve account.

(4) The Agency may approve the use of reserve funds for operating costs when circumstances that are determined by the Agency to be beyond the borrower's control have resulted in a shortfall in the housing project's general operating account.

(h) *Allowable uses.* Allowable uses of reserve funds include the following:

(1) Major capital improvements and replacements.

(2) Housing project operating expenses provided the requirement of paragraph (g)(4) of this section has been met, including:

(i) Payments due on the loan, or

(ii) Payment of a return on investment at the end of the borrower's fiscal year if such payment comes from surplus operating funds in the reserve account.

(3) With Agency approval, borrowers operating on a for-profit or a limited profit basis may make an annual withdrawal from the reserve account, equal to no more than 25 percent of the interest earned on a reserve account during the prior year.

(4) For other purposes, which in the judgment of the Agency will promote the loan purposes, strengthen the security or facilitate, improve, or maintain the housing and the orderly collection of the loan without jeopardizing the loan or impairing the adequacy of the security.

(i) *Records.* Borrowers must maintain records documenting all expenses that were paid by withdrawals from the reserve account.

(j) *Changes to reserve requirements.* (1) As projects age, the required reserve account level may be adjusted to meet anticipated ''life-cycle'' needs, including equipment and facility replacement costs, by amending the loan agreement/resolution.

(2) The Agency may approve a change in the reserve account funding level based on the findings of an approved capital needs assessment. The approval to increase reserve account funding levels will take into consideration the housing project's approved budget and the housing project's ability to support increased reserve account deposits without causing basic rents to exceed conventional rents for comparable units in the area.

(k) *Excess reserves.* Amounts in the reserve account which exceed the total required by the loan or grant agreement must be used, at the direction of the Agency, for any of the following:

(1) Pay for expenses specified in a long-term capital plan;

(2) Make payments and reamortize the Agency loan;

(3) Reduce rents by a transfer to the general operating account;

(4) Fund preservation incentives authorized in subpart N of this part; or

(5) Cover other expenditures determined to be related to the purpose of the housing project and in the best interest of the Federal Government.

(l) *Procurement.* The requirements of § 3560.102(g), (j), and (k), and all other Agency requirements relating to procurement, bidding, identity-of-interest, cost-reasonableness, and construction management apply to any work or services paid out of reserve funds. Structural repairs and other significant work on major building systems such as heating or air conditioning must be done in accordance with the requirements of 7 CFR part 1924, subpart A.

§ 3560.307 Reports.

(a) *Required reports.* Borrowers must submit required reports using Agency-approved formats.

(b) *Quarterly and monthly reports.* The Agency may require quarterly or monthly reports to monitor financial progress when closer supervision is warranted.

§ 3560.308 Annual financial reports.

(a) *General.* Borrowers must submit annual financial reports that meet the requirements of this section. The annual financial reports to be submitted are the Multi-Family Housing (MFH) Project Budget with actual expenditures and the MFH Balance Sheet. Annual financial reports are due to the Agency within 90 days of the end of the borrower's fiscal year.

(1) Borrowers with 16 or more units in their housing project must base their annual financial reports on an engagement report completed according to agreed upon procedures established by the Agency as specified in paragraph (b) of this section. Borrowers must include the engagement report with their annual financial reports submitted to the Agency.

(2) Borrowers with less than 16 units in their housing project must submit annual financial reports using a limited scope engagement based on Agency approved procedures and certify

that the housing meets the performance standards established in paragraph (c) of this section. Borrowers may use a CPA to prepare this report. For properties that prepare a limited scope engagement, the Agency may undertake random audits, once every two or three years.

(3) If a third party requires it, the borrower may have a CPA prepare an audit in accordance with generally accepted government auditing standards (GAGAS). Costs incurred to obtain this audit are an allowable project expense.

(b) *Engagement requirements.* Borrowers required to submit annual financial reports based on an engagement performed by a CPA must meet the following requirements:

(1) Borrowers must use an Agency approved engagement letter. Borrowers must submit the results of an engagement that examines specific records using agreed upon procedures established by the Agency and that describes the borrower's performance in meeting the standards described in paragraph (c) of this section.

(2) The engagement will be initiated by the borrower using the Agency's engagement letter, which will specify the engagement program and establish the reporting requirements for the engagement.

(3) The engagement must be conducted by a CPA in accordance with American Institute of Certified Public Accountant (AICPA) Standards and Agency requirements.

(4) All engagement reports must be prepared for use by the Agency.

(c) *Performance standards.* Borrowers must ensure that:

(1) Required accounts are properly maintained and tracked separately;

(2) Payments from operating accounts are disclosed and accurately represented on financial reports;

(3) The reserve amount is at the authorized level and there are no encumbrances;

(4) Tenant security deposit accounts are fully-funded and are maintained in separate accounts and meet state and local requirements;

(5) Amount of payment of owner return was consistent with the terms of the applicable loan agreement;

(6) The borrower has maintained proper insurance in accordance with the requirements of § 3560.105(b); and

(7) All financial records are adequate and suitable for examination.

(d) *Other financial reports.* (1) Nonprofit and public borrower entities must submit audits in accordance with 7 CFR part 3052 that must also include the requirements set forth in the limited scope engagement.

(2) The Agency may require additional opinions of financial condition and compliance, such as audits, to assure the security of the asset, determine whether the housing project is being operated at a reasonable cost, or to detect fraud, waste, or abuse.

(3) Any audits independently obtained by the borrower also must be submitted to the Agency.

§ 3560.309 Advancement (loan) of funds to a RRH project by the owner, member of the organization, or agent of the owner.

(a) Prior written approval by the Servicing Office is required. Such advances may be authorized when justified by unusual short-term conditions. When conditions are not short-term in nature, a servicing plan may be developed and advances may be approved in accordance with the provisions set out in § 3560.453 of this part. Justification will be based on the following:

(1) A review of the documented circumstances and the project operating budget before any funds are advanced (loaned). The financial position of the project must not be jeopardized.

(2) Funds are not immediately available from any of the following sources:

(i) Reserve funds;

(ii) Initial operating capital; and

(iii) An imminent rent increase.

(b) The funds will be applied to ordinary project operating and maintenance expenses.

(c) Interest may be charged or paid on the loan from project income; however, interest must be reasonable. The proposal may be denied if Rural Development financing can be provided to resolve the problem in a more cost-effective manner.

(d) No lien in connection with the loan will be filed against the property securing the Rural Development loan or against project income. The advance

may show as an unsecured project liability on financial statements prepared for year-end reports until such time as it is authorized to be repaid.

(e) The payback of the advance (loan) may be permitted by the Servicing Official provided the terms and conditions were mutually agreed to by the borrower and Rural Development at the time of the advance and the financial position of the project will not be jeopardized. Payback should only be permitted on the advance when the Rural Development debt is current and the reserve requirements are being maintained at the authorized levels.

§§ 3560.310–3560.349 [Reserved]

§ 3560.350 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart H—Agency Monitoring

§ 3560.351 General.

This subpart contains policies for Agency monitoring of operations and management at multi-family housing (MFH) projects.

§ 3560.352 Agency monitoring scope, purpose, and borrower responsibilities.

(a) *Scope of Agency monitoring activities*. The Agency will review reports, records, and other materials related to the housing project, including borrower financial reports, housing project records, and other communications. The Agency also will review material related to a housing project submitted by a tenant or other source. To assess conditions such as a housing project's physical condition, record keeping procedures, and operations and management activities, including borrower compliance with Federal, state, and local laws and Agency requirements, the Agency will conduct periodic onsite monitoring reviews of a housing project.

(b) *Purpose of Agency monitoring activities*. Agency monitoring activities are designed to assess borrower and tenant compliance with Agency requirements, and to:

(1) Ensure housing projects are managed in accordance with the goals and objectives of the Agency's MFH programs and are maintained in accordance with Agency requirements for affordable, decent, safe, and sanitary housing;

(2) Preserve the value of the Agency-financed housing projects;

(3) Detect waste, fraud, and abuse in housing project operations or management and to ensure the cost of operations and management are necessary and reasonable;

(4) Verify compliance with Affirmative Fair Housing Marketing requirements, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, as amended, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, other applicable Federal laws, and Agency requirements related to occupancy and tenant eligibility.

(c) *Borrower responsibilities*. The borrower is responsible for cooperating fully and promptly with Agency monitoring activities. Agency monitoring activities do not diminish borrower operation and management responsibilities and do not relieve borrowers from any Agency requirements including, but not limited to, borrower requirements to comply with:

(1) The terms of all agreements with the Agency, including the loan or grant agreement, assurance agreement, loan resolution, promissory note, mortgage, interest credit agreement, rental assistance agreement, mitigation measures contained in the environmental review document, and workout agreement;

(2) The requirements contained in this part;

(3) The requirements of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, as amended; section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Americans with Disabilities Act of 1990; and

(4) Applicable Federal, state, and local laws.

§ 3560.353 Scheduling of on-site monitoring reviews.

Generally, the Agency will provide the borrower prior notice of an on-site monitoring review and will conduct the on-site monitoring review in the presence of the borrower. However, the Agency may visit a housing project, without prior notice, to observe physical conditions, operations and management activities, or other borrower or tenant activities. In addition, the Agency may conduct on-site reviews without the presence of the borrower, the management agent, or other designated representative of the borrower.

§ 3560.354 Borrower response to monitoring review notifications.

The Agency will notify borrowers, in writing, whenever Agency monitoring activities result in deficiency findings or compliance violations. The monitoring review notification will describe the deficiencies findings or compliance violations and will specify a time period by which corrective action must be taken by the borrower. The notification will offer borrowers an opportunity to discuss the reported deficiency findings or compliance violations with the Agency and will explain enforcement actions that the Agency may take if corrective action is not taken within the time period specified in the monitoring review notification. When civil rights non-compliance is found, the State Civil Rights Coordinator or Manager (SCRC/M) will be notified. If voluntary compliance cannot be obtained, appropriate enforcement or remedial action will be taken.

§§ 3560.355–3560.399 [Reserved]

§ 3560.400 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart I—Servicing

§ 3560.401 General.

(a) *Purpose*. This subpart contains actions the Agency may take to service and collect loans or other debts owed by multi-family housing (MFH) borrowers. The loan servicing and other actions set forth are designed to protect Agency and tenant interests and assist borrowers in meeting program objectives.

(b) *General servicing policies*. Borrowers must repay loans or other amounts due to the Agency according to provisions specified in promissory notes, loan agreements and resolutions, mortgages, deeds-of-trust, assumption agreements, reamortization agreements, or other agreements executed between the borrower and the Agency.

(c) *Special servicing actions*. The Agency will not agree to any proposal for loan servicing or debt collection action other than actions consistent with this section, debt instruments, and other agreements. When payments due to the Agency from a borrower remain unpaid for more than 30 days after the due date, past due, after the Agency may initiate the special servicing actions described in subpart J of this part.

§ 3560.402 Loan payment processing.

(a) *Predetermined Amortization Schedule System (PASS) requirements*. All loans, except the loans specified in paragraph (c) of this section, must be closed and serviced using the PASS.

(b) *Required conversion to PASS*. Borrowers with Daily Interest Accrual System (DIAS) accounts must convert

to PASS whenever a loan servicing action on the account involves a change in the loan rates or terms or whenever a subsequent loan to the borrower is closed.

(c) *Exceptions.* Seasonal farm labor housing loans and on-farm labor housing loans may be closed on DIAS, monthly, or annual payment schedules.

§ 3560.403 Account servicing.

(a) *Payment due dates.* Loan or other payments due to the Agency are due on the first day of each month unless otherwise established in the debt instrument or other agreement executed with the Agency.

(b) *Payment application order.* Loan payments will be applied to the borrower's account in the following order of priority:

(1) Amortized audit receivables. (*i.e.*, amounts due to the Agency, over a period of time, as a result of a finding from an audit or other monitoring activity.)

(2) Unamortized audit receivables. (*i.e.*, amounts due to the Agency, in a lump sum payment, as a result of a finding from an audit or other monitoring activity.)

(3) Late fees. (*i.e.*, amounts due to the Agency as a result of late payments.)

(4) Amortized recoverable costs. (*i.e.*, amounts due to the Agency, over a period of time, as a result of Agency payments made on behalf of a borrower for housing project related expenses such as taxes or insurance premiums.)

(5) Unamortized recoverable costs. (*i.e.*, amounts due to the Agency, in a lump sum payment, as a result of Agency payments made on behalf of a borrower for housing project related expenses such as taxes or insurance premiums.)

(6) Overage. (*i.e.*, amounts due to the Agency as a result of a tenant's tenant contribution being higher than basic rent.)

(7) Interest. (*i.e.*, amounts due to the Agency as a result of scheduled interest on a loan and as a result of interest charged on unpaid delinquent principal amounts.)

(8) Principal. (*i.e.*, amounts due to the Agency as the loan principal.)

(9) Advance payments. (Any funds remaining after disbursement of a payment to all other payment priorities will be applied to the borrower's account as an advance regular payment unless a borrower specifically designates, in writing, another application.)

(c) *Late fees.* If payments on a borrower's account, under PASS, are more than $15 delinquent after the close of business on the 10th day after the payment due date, a late fee will be charged to the borrower's account.

(1) Late fees charged to a borrower's account will equal 6 percent of the total regular payments due as specified in any promissory notes, assumption agreements, or reamortization agreements related to the borrower's account.

(2) Late fees are a borrower expense and must not be paid from housing project funds.

(3) The Agency may waive late fees for circumstances beyond a borrower's control and when a waiver is determined by the Agency to be in the best financial interest of the Federal Government.

(d) *Interest on unpaid overdue principal.* On the first day of the month following a payment due date, the Agency will charge interest at the note rate on any unpaid principal payment due according to the loan's amortization schedule (*i.e.*, interest will be charged on delinquent principal). The interest charged on the unpaid principal payment due will be charged to the borrower in addition to the scheduled interest due on payments according to the loan's amortization schedule.

§ 3560.404 Final loan payments.

(a) *Payoff statements.* At the borrower's request, the Agency will provide a statement indicating the pay off amount necessary to pay the borrower's account in full.

(b) *Final payments.* A borrower's final loan payment must include repayment of all outstanding obligations to the Agency.

(1) Any supervised funds being held by the Agency will be applied to the borrower's account or, at the borrower's option, will be returned to the borrower following acceptance of final payment on all outstanding obligations.

(2) If a balance due remains on a borrower's account after Agency acceptance of a final payment, due to borrower error or fraud or Agency error, the Agency will initiate collection action in accordance with the unauthorized assistance collection procedures described in subpart O of this part.

(c) *Final payment loans.* Borrowers with loans for which the Agency approved an amortization period that exceeded the term of the loan may request a loan to finance the final payment in accordance with the requirements of § 3560.74.

(d) *Loan prepayment requests.* If prepayment of an Agency loan is requested, the applicable preservation requirements of subpart N of this part, including the execution of any appropriate restrictive-use agreements, must be met prior to the Agency's acceptance of a final loan payment under the prepayment request.

(e) *Payment forms.* Final payments may be made by cashier's check, certified check, money order, bank draft, or other withdrawal instruments approved by the Agency.

(1) If borrowers use forms of payment requiring special handling, the borrower is responsible for the cost of the special handling.

(2) When payment is provided in a form that is not the equivalent of cash, the Agency will consider the payment to be received at the time the payment has been converted to cash and funds have been transferred to the Agency.

(f) *Release of security instruments.* The Agency will release security instruments, subject to applicable restrictive-use agreements referenced in subpart N of this part, when full payment of all outstanding obligations to the Agency has been received, accepted, and the funds have been transferred to the Agency.

(1) If the Agency and the borrower agree to settle an account for less than the full amount owed, the Agency will release security instruments when the borrower has paid in full all agreed upon obligations.

(2) Recording costs for the release of the security instruments will be the responsibility of the borrower, except where state law requires the mortgagee to record or file the satisfaction.

(g) *Special circumstances—Refund of entire principal.* If the entire principal of the loan is refunded after the loan is closed, the borrower must pay interest from the date of the note to the date of receipt of the refund.

§ 3560.405 Borrower organizational structure or ownership interest changes.

(a) *General.* The requirements of this section apply to changes in a borrower entity's organizational structure or to a change in a borrower entity's controlling interest. If 100 percent of a borrower entity's ownership interest is transferred, within a 12-month period, the change will be considered a housing project transfer and the provisions of § 3560.406, which covers transfers or sales of housing projects, will apply.

(b) *Agency requirements.* Borrowers must notify the Agency prior to the implementation of any changes in a borrower entity's organizational structure. The Agency must give its consent prior to the implementation of changes in a borrower entity's controlling interest.

(1) Borrowers must submit written requests for Agency consent to the Agency at least 45 days prior to the anticipated effective date of the proposed organizational change. The request must document that the proposed changes will not adversely affect the program purposes or security interest of the Agency and will not adversely affect tenants.

(2) If the controlling interest change involves a transfer of interest to an entity not previously holding an ownership interest in the borrower entity, the request for consent must include a written certification, executed by the party receiving the ownership interest, certifying that the recipient of the ownership interest agrees to assume responsibilities and obligations required of a borrower as established in Agency program requirements including requirements in the promissory note, loan agreement, or other document related to Agency loans held by the borrower entity.

(3) The Agency will not take a consent request for a controlling interest

change under consideration if the borrower's request fails to meet the requirements specified in paragraph (b)(2) of this section.

(c) *Documentation of organizational structures and ownership interest.* Borrowers must annually document their organizational structure and ownership.

(1) Documentation must be submitted with the annual financial reports required by § 3560.308 and must reflect any changes made during the 12-month period preceding the submission of the annual financial reports.

(2) If no changes in a borrower entity's organizational structure or ownership were made during the 12-month period prior to submission of the annual financial reports, borrowers are not required to submit documentation, but must submit a statement certifying that no changes have been made in the documents on file with the Agency.

(3) Organizational structure and ownership documentation must include the following items:

(i) A current organization description reflecting all approved changes in the organizational structure of the borrower entity and listing the names, addresses, and tax identification numbers of all parties with an ownership interest in the borrower entity; and

(ii) A written statement by the borrower certifying that the changes in the borrower entity's organizational structure or ownership interests were completed in compliance with state and local laws and in accordance with organizational requirements of the borrower entity.

§ 3560.406 MFH ownership transfers or sales.

(a) *General.* The provisions of this section apply to ownership transfers or sales (e.g., title transfers) involving an Agency financed housing project. The provisions cover situations where Agency loans are being assumed as a part of a housing project transfer or sale.

(b) *Agency consent requirements.* Agency consent must be obtained prior to an ownership transfer or sale and Agency consent will only be given when the transfer or sale is in the best interest of the Federal Government. Any ownership transfer or sale without the consent of the Agency will be considered a default and will be handled in accordance with subpart J of this part.

(1) Priority consideration will be given to ownership transfers or sales needed to remove a hardship to the borrower that was caused by circumstances beyond the borrower's control.

(2) Ownership transfers or sales with an assumption of debt at an amount less than the borrower's debt amount will only be approved by the Agency when all persons in the borrower entity who are transferring their ownership interest or are involved in the selling of the property are not part of the transferee organization.

(c) *Consent request requirements.* Borrowers must submit written requests for Agency consent to an ownership transfer or sale of a housing project to the Agency at least 45 days prior to proposed ownership transfer or sale date. The consent request must document that the proposed transfer or sale meets the requirements of paragraph (d) of this section and must include the following items:

(1) A statement disclosing any identity-of-interest between the borrower and the party to which the housing project ownership is being transferred or sold.

(2) A statement certifying that the housing project's financial accounts are funded at required levels, less authorized withdrawals, and that payments due for operation and maintenance expenses, tax assessments, insurance premiums, any required tenant security deposit accounts, and other obligations incurred as a part of the housing project operations are paid in full with no overdue balances or a statement explaining the housing project's financial situation and the reasons for overdue payments or under funded accounts.

(3) A proposed housing project budget covering the partial year, if applicable, and first full year operation following the ownership transfer or housing project sale.

(4) A written statement, signed by the proposed transferee or buyer, certifying that the transferee or buyer will

assume the borrower responsibilities and obligations specified in Agency program requirements including requirements in a promissory note, loan agreement or other documents related to Agency loans held by the borrower entity.

(5) A certification from the borrower and the proposed transferee or buyer that the borrower does not and will not have a reversionary interest in the housing project.

(d) *Requirements for ownership transfers or sales.* An ownership transfer or sale of a housing project with an assumption of Agency loans by the transferee or buyer must comply with the following conditions:

(1) The transferee or buyer must be an eligible borrower under the requirements established by subpart B of this part;

(2) The transferee or buyer must agree to set basic rents at the housing project covered by the assumed loans at levels that do no exceed conventional rents for comparable units in the area, except that when determined necessary by the Agency to allow for decent, safe and sanitary housing to be provided in market areas where conventional rents are not sufficient to cover necessary operating, maintenance, and reserve costs. Basic rents may be allowed to exceed comparable rents for conventional units, but in no case by more than 150% of the comparable rent for conventional unit rent level; and

(3) The value of the housing project covered by the loans to be assumed, at the time of an ownership transfer or sale, must be sufficient to ensure that all Agency loans being assumed and all subsequent loans being offered as a part of the transfer or sale can be secured to a level that fully protects the Agency's interest. Loans from third-party sources that are not dependent on project revenue for payment will not be included in this determination.

(i) If the total value of the loans being offered as a part of an ownership transfer or sale is $100,000 or less, the security value of the housing project may be determined through either: An Agency review of monitoring reports conducted in accordance with the requirements in subpart H of this part or an appraisal paid for by the borrower and conducted in accordance with subpart P of this part.

(ii) If the total value of the loans being offered as a part of an ownership transfer or sale exceeds $100,000, the security value of the housing project must be determined through an appraisal obtained by the Agency and conducted in accordance with subpart P of this part.

(iii) The Agency may approve a loan write-down, in accordance with § 3560.455, prior to an ownership transfer or sale to reduce the amount of debt being assumed by the transferee or buyer.

(4) Prior to Agency approval of an ownership transfer or sale, an environmental review, as required under the National Environmental Policy Act and in accordance with 7 CFR part 1940, subpart G, must be conducted on all property related to the ownership transfer or sale. If contamination from hazardous substances or petroleum products is found on the property, the finding must be disclosed to the Agency and the transferee or buyer and must be taken into consideration in the determination of the housing project's value.

(5) All immediate and long-term repair and rehabilitation needs must be identified by a capital needs assessment. The reserve requirements for the housing project will be reviewed by the Agency and adjusted, if necessary, to adequately cover the cost of addressing the property's capital needs. The Agency may approve the release of the current reserve amount to the transferor provided the transferee agrees to deposit the amount to cover the project's immediate needs into the reserve account at closing.

(6) The borrower and transferee must disclose to the Agency all terms, conditions, or other considerations related to the ownership transfer or sale. All side or other agreements must be disclosed and all sources and uses of funds related to the ownership transfer or sale must be disclosed.

(7) An agreement must be signed between the borrower and the transferee listing all repairs known by the borrower to be necessary to bring the housing project into compliance with

Agency requirements for decent, safe, and sanitary housing as listed in subpart C of this part.

(i) The agreement must include repairs required to correct compliance violations cited in a compliance violation notice issued by the Agency.

(ii) The agreement must specify whether each repair listed will be completed by the borrower prior to the ownership transfer or by the transferee in accordance with a workout agreement developed in accordance with the requirements of § 3560.453 and executed between the transferee or buyer and the Agency.

(8) A civil rights compliance review, as required by 7 CFR part 1901, subpart E, will be conducted by the Agency prior to the ownership transfer or sale.

(9) During or immediately after the transfer, a review of the property must be conducted to ensure that it complies with or will comply with section 504(c) of the Americans with Disabilities Act (ADA), which covers accessibility requirements, and the Title VI of the Fair Housing Act of 1968.

(10) A transferee must ensure that tenant certifications in compliance with subpart D of this part for all occupied rental units are on file with the Agency.

(11) A transferee must comply with insurance and bonding requirements established in subpart C of this part at the time of the transfer.

(12) A transferee must agree to submit financial reports to the Agency according to subpart G of this part.

(13) A transferee must establish that there are no liens, judgments, or other claims against the housing project other than those by the Agency and those to which the Agency has previously agreed.

(14) A limited profit Rural Rental Housing transferee's initial investment and return on investment will remain the same as that originally provided to the transferor unless:

(i) The property is transferred to a non-profit entity and the return on investment is eliminated; or

(ii) The transferee contributes additional funds for repair or rehabilitation and the Agency agrees to recognize a higher initial investment.

(e) *Equity payments.* The Agency will withhold any equity payment due to the borrower, as part of an ownership transfer or sale, if any of the following conditions exist:

(1) The borrower's indebtedness to the Agency has not been paid in full or is not being assumed by the transferee. The Agency will require that all or part of an equity payment be applied against other Agency loans owed by the borrower if payments on the other loans are not current.

(2) Any non-Agency prior liens against a housing project are not paid in full.

(3) Any housing project financial accounts are not funded at required levels, less authorized withdrawals, or any payments due for operation and maintenance expenses, tax assessments, insurance premiums, tenant security deposits or other obligations incurred as a part of housing project operations are not paid in full.

(4) Any management deficiencies cited in a compliance violation notice issued by the Agency to the borrower have not been corrected or the housing project is not operating under an approved management plan or, if applicable, an approved management agreement.

(5) Any operation and maintenance deficiencies cited in compliance violation notices issued by the Agency have not been corrected or are not scheduled for correction in a workout agreement developed in accordance with the requirements of § 3560.453.

(6) The borrower entity is, at the time of the ownership transfer or sale, cited by the Agency or other Federal, state, or local agencies for violations of Fair Housing or Equal Opportunity requirements.

(7) The borrower entity is, at the time of the ownership transfer or sale, cited by the Agency or any other entity involved in the financing of the housing project for misappropriation of funds.

(f) *Equity payment funding sources.* Equity may be provided in cash or through a loan. If a full equity payment to the transferor is not paid at the time of the ownership transfer or sale or has not been paid through an

Agency equity loan or third-party equity loan approved by the Agency to the borrower, the transferee must certify that equity payments due to the borrower will be paid from sources other than housing project's funds and must identify the sources of such payments.

(g) *Restrictive-use requirement.* Transferees assuming Agency loans, including loans approved prior to December 21, 1979, will be required to execute a restrictive-use agreement that contains the language specified in § 3560.662. The restrictive-use agreement will require the housing project to be used for program purposes for a specified period of time beyond the date that the ownership transfer or sale is closed. When an equity loan is involved at the time of transfer, the restrictions will be for 30 years.

(h) *Subsequent loans.* The Agency may approve a subsequent loan or permit a loan from a third-party source in conjunction with an ownership transfer or sale of a housing project. The subsequent loan may be in the form of a junior or parity lien.

(1) Subsequent loans on a housing project proposed in conjunction with an ownership transfer or sale must be requested and processed in accordance with the Agency loan origination requirements in subpart B of this part.

(2) The Agency may amortize the subsequent loan over a period not to exceed the remaining economic life of the housing or 50 years, whichever is less.

(3) The Agency may extend the term of the existing loan to a period not to exceed 30 years or the remaining economic life of the housing, whichever is less.

(i) *Loan assumption interest rates.* The interest rate for Agency loans assumed in conjunction with an ownership transfer or sale will be determined as follows:

(1) The interest rate for all loans, except farm labor housing loans, will be set at the lower of:

(i) The note rate of the existing Agency loan;

(ii) The Agency note rate on the day the transfer is approved;

(iii) The Agency note rate on the day the transfer is closed; or

(iv) If the rents are increased due to a transfer, the transfer will be done under new rates and terms when the Agency determines that it is in the best interest of the government. Subsequent loan may be in the form of a senior, junior or parity lien or soft second.

(2) The interest rate on farm labor housing loans will be the rate specified in the note, except that loans transferred to public bodies, nonprofit organizations of farm workers, and broadly-based nonprofit corporations for farm labor housing purposes may be at a one percent interest rate regardless of the rate specified in the note if the Agency determines that such a reduction is necessary to maintain affordable rental rates for tenants.

(j) *Loan assumption terms.* The amount of the loan balance that may be assumed through an ownership transfer or sale must not exceed the security value of the housing project determined according to § 3560.406(d)(3)(i).

(1) The Agency may reamortize a loan assumed through an ownership transfer or sale over a period not to exceed the remaining economic life of the housing or 50 years, whichever is less.

(2) The Agency may extend the term of the loan to a period not to exceed 30 years or the remaining economic life of the housing, whichever is less.

(3) When loans assumed through an ownership transfer or sale are amortized on an annual payment basis, the loans will be converted, at the time of the transfer or sale, to a monthly payment amortization and will be made subject to PASS. When on- or off-farm labor housing projects are involved in an ownership transfer or sale, the related loans may be transferred on a DIAS basis or converted to PASS if the Agency determines that such a conversion will not be detrimental to the operation of the farm labor housing.

(k) *Processing ownership transfers or sales.* (1) At the time of the transfer, the Agency will require the borrower to transfer all equipment, related facilities, and housing project financial accounts to the transferee including the operation and maintenance account, reserve account, tenant security deposit account, tax and insurance escrow accounts.

(i) Any funds remaining in a rental assistance contract not dispersed by the transferor will be assigned to the transferee unless the rental assistance is not needed for tenants or another form of rental subsidy is to be used.

(ii) Any rental assistance determined to be unnecessary will be reassigned to other housing projects in accordance with the provisions of subpart F of this part.

(2) The Agency will require that appropriate loan documents are executed by the transferee. The Agency may require such documents to be referenced in security instruments (e.g., mortgage or deed of trust).

(3) If all of a borrower's outstanding Agency debt is not assumed or paid off at the time of the transfer or sale, the Agency will not release a borrower from liability unless the Agency determines that the borrower is unable to pay the remaining debt from assets taken as security through the debt settlement procedure in accordance with § 3560.457.

(l) *Ownership transfers or sales under special rates, terms, and conditions.* Housing projects may be transferred or sold to entities that do not meet borrower eligibility requirements for the type of loans being assumed. However, such a transfer or sale will only be considered when it is determined by the Agency to be in the best interest of the Federal Government and the objectives of the original loan can no longer be met. The following special rates, terms, and conditions will apply to such situations.

(1) The transferee makes a down payment of at least 10 percent of the remaining loan balance to be assumed.

(2) The transferee has the ability to pay the Agency debt.

(3) Monthly or annual installments will be amortized over the term of the loan and the interest rate will be at a rate of interest at least one percent higher than the interest rate offered to eligible borrowers as specified in paragraphs (i)(1) or (2) of this section.

§ 3560.407 Sales or other disposition of security property.

(a) *General.* Borrowers must obtain Agency approval prior to selling or exchanging all or a part of, or an interest in, property serving as security for Agency loans. Agency approval also must be requested and received prior to the granting or conveyance of rights-of-way through property serving as security property. An environmental review must be completed in accordance with 7 CFR part 1940, subpart G, before the Agency approves all such sales or other dispositions of security property.

(b) *Request requirements.* Requests for Agency approval of transactions related to security property must document that the following conditions will be met.

(1) The borrower's ability to repay the Agency debt will not be impaired;

(2) The transaction will not interfere with the successful operation of the housing project or prevent the borrower from carrying out the purpose for which the loan was made.

(3) The monetary or other consideration offered in the transaction is equal to or greater than the market value of the security property being disposed of or the rights being granted, except that right-of-way easements may be granted or conveyed with minimal or no consideration being offered if:

(i) The value of the security property will not be reduced;

(ii) The suitability of the security property for the intended purpose will not be impaired; and

(iii) The easement is granted to allow the borrower to develop additional lots or units that will be integrated into the housing project or for enhancement of streets, utilities or other services provided by a public body.

(4) The property that will remain as security for Agency loans, after any transaction related to security property, will fully secure the borrower's debt to the Agency.

(5) Borrowers must report to the Agency the total of all proceeds derived from the sale or other disposition of property serving as security for Agency loans. The proceeds from the disposition of the security property will be used for purposes approved by the Agency.

§ 3560.408 Lease of security property.

(a) *General.* Borrowers must obtain Agency approval prior to entering into

a lease agreement related to any property serving as security for Agency loans. An environmental review must be completed in accordance with 7 CFR part 1940, subpart G, before the Agency can give lease approval for real property serving as security for Agency loans.

(b) *Leases to public housing authorities.* Borrowers may not lease all or part of their housing facilities to a housing authority. Lease agreements in place prior to the effective date of this regulation may be continued provided that leases are in a form acceptable to the housing authority and are on terms that will enable the borrower to comply with Agency program requirements, to meet Agency program objectives, and make loan and other required payments to the Agency on an Agency approved schedule.

(c) *Lease of a portion of the security property.* The Agency may, subject to the applicable provisions governing loan purposes found in of § 3560.53, § 3560.553 and § 3560.603, approve the leasing of facilities related to a housing project (e.g., central kitchens, recreation facilities, laundry rooms, and community rooms) when the borrower will continue to operate the facilities for the purposes for which the loan was made. Agency approval is not required for leases with a term of less than 30 days. The Agency will only approve a lease with a term over 30 days if the following conditions are met:

(1) The lease is in the best interest of the borrower, the tenants, and the Federal Government.

(2) The amount of the consideration agreed to in the lease is adequate to pay all prorated operating and maintenance expenses, a prorated share of the annual reserve deposit, and the prorated part of the loan amortization at the note rate of interest.

(3) All compensation and considerations, whether payments, a share of proceeds, or improvements to the property paid for by the lessee, must be disclosed to the Agency. No payments or compensation for entering into a lease shall flow to the borrower or any identity-of-interest related to the borrower.

(4) The lease provides at its termination for the restoration of the leased space to its original condition or a condition acceptable to the owner and the Federal Government.

(5) Consent to the lease will not exceed 3 years at a time unless the Agency determines that a longer lease is advantageous to the borrower, the tenants, and the Federal Government.

(6) When another lienholder's mortgage requires that lienholder's consent to a lease, the borrower must obtain written consent from the lienholder before the Agency will consider approving the lease.

(d) *Mineral leases.* Mineral leases will be handled according to 7 CFR 3550.159 except that all references to County Supervisor will be construed to mean District Director when applied to the MFH Programs.

§ 3560.409 Subordinations or junior liens against security property.

(a) *General.* Borrowers must obtain Agency consent prior to entering into any financial transaction that will require a subordination of the Agency security interest in the property (*i.e.*, granting of a prior interest to another lender.) An environmental review must be completed in accordance with 7 CFR part 1940, subpart G, before the Agency can consent to a subordination or junior lien against the property. Borrowers must use an Agency approved subordination agreement.

(1) If a lien is placed against property serving as security for an Agency loan without prior Agency consent, the Agency will declare the borrower to be in default and will pursue liquidation of the borrower's loans in accordance with the procedures specified in § 3560.457, unless an agreement can be reached between the borrower and the Agency to work out removal of the lien or post approve the lien.

(2) Subordinations or junior liens need not encompass the entire site, (e.g., a subordination or junior lien requested to permit an interim lender to advance construction funds may only cover the portion of the site proposed for construction.)

(3) The subordination or junior lien must be for a specific amount.

(4) The subordination or junior lien must not adversely impact the Agency's ability to service the loan according to the requirements of this part.

(b) *Consent request requirements.* Borrowers proposing to have the Agency subordinate its interest to another lender or to give a creditor a junior lien against property serving as security for an Agency loan must submit a consent request to the Agency. The consent request must document the following:

(1) The action will enable the borrower to obtain financial resources for improvements or repairs on the security property that are consistent with the purposes of the Agency loan secured by the property.

(2) The action will not adversely impact the borrower's financial condition and the borrower's ability to repay the Agency loan being secured by the property.

(3) The action will not result in basic rents at the security property that exceed conventional rents for comparable units in the area.

(4) The terms and conditions of the credit to be secured by the subordination or junior lien are not expected to adversely affect the borrowers ability to meet the terms and conditions of the Agency loan secured by the property.

(5) The proposed use of the funds obtained through the granting of a subordination or junior lien will not adversely affect the borrower's ability to meet Agency program requirements or to operate and manage the housing project in a manner consistent with program objectives.

(6) The creditor receiving the ''subordination'' of interest in the property or the junior lien will agree that a foreclosure or acceptance of a deed-in-lieu of foreclosure will not be initiated without at least 30 days prior notice to the Agency.

(7) The subordination or junior lien is not being secured with any funding from housing project financial accounts.

(8) The ''subordination'' of interest or junior lien will not cause the debt from all sources to exceed the value of the security property.

(9) The transaction related to the placement of a ''subordination'' of interest or junior lien against the property serving as security for an Agency loan is in the best interest of the Federal Government.

(c) *Required conditions for subordinations and junior liens.* Subordinations of interest in or junior liens against property serving as security for an Agency loan may be approved by the Agency only if they improve a borrower's financial condition and allow for improvements or repairs that are consistent with the purposes of the Agency loan secured by the property.

(1) Farm Labor Housing loans on farm tracts may be subordinated for essential farm improvements and operations.

(2) Any proposed development must be planned and performed according to 7 CFR part 1924, subpart A, or in a manner directed by the other lienholder that meets the objectives of 7 CFR part 1924, subpart A.

(d) *Other liens against a property or other assets.* (1) Borrowers must not enter into any agreements to place a lien on a housing project or any equipment related to a housing project without prior Agency approval and unless the following conditions are met:

(i) The transaction will not adversely affect the Agency's security position;

(ii) The lien is not related to a nonprogram eligible action;

(iii) The items to be acquired by the funding related to the lien is needed for the operation of the property; and

(iv) The financing arrangements are otherwise sound.

(2) In cases where the above criteria are met, borrowers must complete and provide the Agency a copy of the financing statement, loan document, or contract, as applicable, as well as a security agreement acceptable to the Agency.

§ 3560.410 Consolidations.

(a) *General.* With Agency approval, loans, loan agreements, or loan resolutions may be consolidated to reduce the administrative burden (*i.e.*, record keeping, budgeting), to improve the cost effectiveness and efficiencies of

housing project operations, and to effectively utilize facilities common to housing projects.

(b) *Loan consolidations.* Loan consolidations will only be considered when:

(1) Multiple loans to the one borrower entity are being transferred to a different borrower entity in accordance with § 3560.406, or

(2) One borrower entity has an initial loan and one or more subsequent loans for the same housing project and all the loans were closed on the same date and with the same rates and terms.

(c) *Loan agreement or loan resolution consolidations.* Loan agreements or loan resolutions may be consolidated, even if the loans related to the agreement or resolution are not consolidated, to allow borrowers to comply with reporting, accounting, and other Agency requirements as a single housing project.

(1) The loan agreements or loan resolutions may only be consolidated when they are related to loans made for the same purposes, to the same borrower, and operating under the same type of interest credit, if applicable.

(2) All of a borrower's loan accounts must be current after the loan agreement or loan resolution consolidation is processed, unless otherwise approved by the Agency.

§§ 3560.411–3560.449 [Reserved]

§ 3560.450 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart J—Special Servicing, Enforcement, Liquidation, and Other Actions

§ 3560.451 General.

This subpart contains special servicing, enforcement, liquidation, and other actions that the borrower may request or the Agency may implement when compliance violations, monetary defaults, or non-monetary defaults cannot be resolved through regular servicing.

(a) *Agency obligations.* The Agency is under no obligation to offer or agree to any special servicing actions.

(b) *Relationship to workout agreements.* Special servicing actions may be implemented either as a part of a workout agreement, developed in accordance with § 3560.453, or as an action approved by the Agency separate from a workout agreement unless indicated otherwise in this subpart.

§ 3560.452 Monetary and non-monetary defaults.

(a) *General.* Borrowers are in default when they have received a compliance violation notice, issued in accordance with § 3560.354, and have failed to correct the compliance violation identified in the compliance violation notice within the time period specified in the notice. Compliance violations include, but are not limited to, violations of promissory note provisions, loan or grant agreement provisions, regulatory, or other Agency requirements, including requirements imposed on a borrower through a workout agreement developed in accordance with § 3560.453.

(b) *Monetary defaults.* A monetary default exists when any amount due to the Agency or a third party (such as real estate taxes and insurance) under a promissory note, loan or grant agreement, workout agreement, or other agreement remains due more than 30 days after the due date.

(c) *Nonmonetary defaults.* A nonmonetary default exists when a borrower fails to correct a compliance violation, other than a monetary amount past due, within the time period specified in a compliance violation notice issued in accordance with § 3560.354. Nonmonetary defaults include, but are not limited to, failure to:

(1) Operate and manage a housing project in accordance with the Agency approved management plan or Agency requirements;

(2) Maintain the physical condition of a housing project in a decent, safe, and sanitary manner and in accordance with Agency requirements;

(3) Keep general operating expense, reserve, and other financial accounts related to a housing project at required funding levels;

(4) Occupy rental units with eligible tenants, unless granted an exception by the Agency;

(5) Charge correct rents or to correctly calculate net tenant contributions, utility allowances, or rental assistance payments or to properly administer the Agency rental assistance assigned to the housing project;

(6) Submit required annual financial reports to the Agency within time periods specified in § 3560.308;

(7) Submit management plans, leases, occupancy rules, and other required materials to the Agency in accordance with Agency requirements; and,

(8) Comply with applicable Federal laws including laws related to civil rights, fair housing, disabilities, and environmental conditions.

(d) *Default notice.* When borrowers are in default, the Agency will notify borrowers, in writing, that they are in default. The default notice will identify the compliance violation that led to the default, will specify actions necessary to cure the default, and will establish a date by which the default must be cured to preclude Agency initiation of enforcement actions, liquidation, or other actions.

(e) *Agency action.* If a borrower fails to cure a default within the time period specified in the default notice, the Agency may initiate the enforcement actions described in § 3560.461 or liquidation as described in § 3560.456. Also, Agency compliance violation notices and related default notices may be referred to Federal, state, and local agencies with jurisdictions related to the violations for handling, in accordance with their requirements.

§ 3560.453 Workout agreements.

(a) *General.* (1) Prevention or resolution of compliance violations or default cures are a borrower's responsibility.

(2) A borrower may develop and submit to the Agency for approval a workout agreement that proposes actions to be taken over a period of time to prevent or correct a compliance violation or to cure a monetary or non-monetary default.

(3) A borrower developed workout agreement may propose, but is not limited to, the following actions:

(i) A combination of one or more of the special servicing actions outlined in §§ 3560.454 and 3560.455;

(ii) A change in operations and management at a housing project; or

(iii) A commitment of additional financial resources to the housing project with the amount and source of the additional resources to be committed to the housing project specifically identified.

(b) *Workout agreement approval.* (1) The Agency is under no obligation to approve a workout agreement as submitted by a borrower or to act with forbearance when a housing project is in monetary or non-monetary default.

(2) Borrower developed workout agreements may not be implemented until the borrower receives written approval from the Agency.

(3) The Agency will only approve a workout agreement if the Agency determines that the actions proposed are likely to prevent or correct compliance violations or cure a default and approval is in the best interest of the Federal Government and tenants.

(4) The Agency will only approve a workout agreement if the proposed actions are consistent with the borrower's management plan. If proposed actions are not consistent with the borrower's management plan, applicable revisions to the borrower's management plan must be made before approval of the workout agreement is given.

(c) *Workout agreement required content.* (1) Workout agreements submitted to the Agency for approval must be in writing and signed by the borrower. Workout agreements must describe proposed actions in sufficient detail to demonstrate the likelihood of the actions to prevent or correct compliance violations or cure defaults.

(2) At a minimum, workout agreements must include the following.

(i) The name and address of the housing project, project number, borrower's tax identification number, and other information necessary to identify the housing project.

(ii) A description of the potential or actual compliance violation or default situation, including an explanation of related causes, such as cash flow concerns, budget revisions, deferred maintenance, vacancies, or violations of statutes.

(iii) A definition and description of the housing project's market area, including information on housing availability, rents, and vacancy rates in the market area.

(iv) A description of the proposed actions to prevent or correct compliance violations or to cure defaults along with a date specific schedule indicating when interim and final actions will be taken to correct the compliance violation or cure the default.

(v) A description of financial and other resources necessary to prevent or correct the compliance violation or cure the default including an identification of the sources for such resources.

(d) *Workout agreement budgets.* Budget revisions submitted as a part of a workout agreement for a housing project experiencing cash flow problems must prioritize cash disbursements in the following order:

(1) Prior lienholder, if any;

(2) Critical operating and maintenance expenses, including taxes and insurance;

(3) Agency debt payments;

(4) Reserve account requirements; and

(5) Other authorized expenditures.

(e) *Workout agreement terms and cancellation.* (1) Workout agreements shall be in effect for no longer than a 2-year time period, beginning on the date of Agency approval. If an approved workout agreement calls for actions that extend beyond a 2-year period, borrowers must submit an updated and, if necessary, revised workout agreement to the Agency for approval. The updated workout agreement must be submitted to the Agency, 30 days prior to the expiration of the workout agreement in effect.

(2) The Agency may cancel a workout agreement at any time if the borrower fails to comply with the terms of the agreement. The Agency will provide notice to the borrower upon cancellation of the workout agreement.

§ 3560.454 Special servicing actions related to housing operations.

(a) *Changing rents or revising budgets.* The Agency may approve a borrower request for a rent change, rent incentives, or a revised budget, at any time during a housing project's fiscal year.

(b) *Occupancy waivers.* If the Agency determines that a housing project with high vacancies could be kept operationally and financially viable by allowing the borrower to accept as tenants persons with incomes above the income eligibility standards specified in § 3560.152(a), the Agency, in writing, may grant the borrower an occupancy waiver to allow such persons as tenants. Occupancy waivers will be in effect only during the time period specified by the Agency when the waiver is granted. In addition, borrowers must rent to all eligible applicants on the housing projects waiting list prior to accepting persons with incomes above the Agency standards as tenants.

(c) *Additional rental assistance (RA).* If the Agency determines that a housing project with high vacancies could be kept operationally and financially viable by increasing the amount of RA allocated to the housing project, the Agency, subject to available funds, may offer the housing project RA as a means of preventing or correcting a compliance violation or curing a default.

(d) *Special note rents.* When a Plan II housing project is experiencing severe vacancies due to market conditions, the Agency may approve a rent less than the note rent to attract and keep tenants whose incomes, according to the formula in § 3560.203, would require them to pay the note rent. The reduced rent is called a Special Note Rent (SNR) and, as noted in § 3560.210, approval of an SNR may affect approvals of loan proposals submitted to the Agency for the market area where the SNR is in effect.

(1) An SNR rent may only be requested as a part of a proposed workout agreement and must include documentation of market conditions, the housing project's vacancy rates, evidence of marketing efforts, and other concerns necessitating the request for an SNR.

(2) Borrowers must forego the annual return to owner for each housing project's fiscal year that an SNR is in effect for all or part of a fiscal year at a housing project.

(3) SNR's may be increased, decreased, or terminated any time during a housing project's fiscal year when market conditions, vacancy rates, or other concerns that necessitated the SNR warrant a change.

(4) In addition to any state lease law requirements that might be related to the implementation of an SNR, the borrower must notify each tenant of any change in rents or utility allowances that result from approval of an SNR, in accordance with § 3560.205(c) and must submit the appropriate budget changes to the Agency for approval.

(e) *Termination of management agreement.* If the Agency determines that a compliance violation or loan default was caused, in full or in part, by actions or inactions of the housing project's management agent, the Agency will require the borrower to terminate the management agreement with that agent, or in the case of a borrower managed housing project, to enter an agreement with a third-party non-identity of interest management agent, unless the borrower and the Agency agree on a written plan to prevent reoccurrence of the violation. Housing project funds may not be used to pay a management fee to a management agent after the Agency has directed the borrower to terminate a management agreement with that agent, except during an Agency approved transition period.

§ 3560.455 Special servicing actions related to loan accounts.

(a) *General.* To prevent or correct a compliance violation or to prevent or cure a default in a situation that cannot be resolved through regular servicing, the Agency may approve a deferral of loan payments or a loan restructuring. Nothing herein precludes the Agency from initiating appropriate legal action to correct a compliance violation if the Agency determines such action is more in the Government's interest than entering into a special servicing agreement as provided for in this section. Procedures for debt collection are discussed in § 3560.460. As part of a workout agreement, the Agency may agree to accept less than full monthly payment installments due on an Agency loan for a specified period of time, not to exceed the effective period of the workout agreement.

(b) *Loan reamortizations.* A loan reamortization is a restructuring of loan terms and conditions over a period of time that does not exceed the remaining useful life of the housing project.

(1) Loan reamortizations will only be approved when they are in the best interest of the Federal Government and tenants and when the following conditions are met.

(i) The Agency determines that the borrower will be unable to meet their obligations without a reduction in monthly payment installments; and

(ii) The Agency is satisfied that the security, including the potential income for debt service, will be adequate to protect the Agency's interest over the term of the reamortization and that the reamortization will not adversely affect the Federal Government's lien priority.

(2) If the Agency approves a reamortization of a loan under this section, it will be at the existing note rate, or the current interest rate at the time of reamortization closing or approval, whichever is less.

(3) Loan reamortization may be used to:

(i) Restructure loan repayments to prevent or correct a compliance violation or cure a default caused by circumstances beyond the borrower's control in situations where the borrower is otherwise in compliance with Agency requirements;

(ii) Repay principal, outstanding interest, overage, and advances made by the Agency for recoverable cost items when less than full payments were authorized under the provisions of an Agency approved workout agreement;

(iii) Restructure a borrower's loan payments in conjunction with an incentive package developed in accordance with § 3560.656 to prevent prepayment of the loan;

(iv) Restructure an existing loan in conjunction with a subsequent loan for rehabilitation; or

(v) Restructure remaining debt when a portion of the property serving as loan security is sold and there is a need to reestablish the financial stability of the housing project.

(c) *Loan writedowns.* A loan writedown is a reduction of a borrower's debt approved by the Agency.

(1) Loan writedowns will only be approved when they are in the best interest of the Federal Government and when the following conditions exist:

(i) Sound management of the housing project is evident or sound management practices are proposed for correction in accordance with an Agency approved workout agreement; and

(ii) The housing project's financial stability is being affected by conditions beyond the borrower's control, such as market weaknesses, unforeseen site problems, or natural disasters.

(2) Prior to Agency approval for a loan writedown, the borrower must obtain an appraisal of the housing project that concludes the ''as-is' market value,'' subject to restricted rents, conducted in accordance with subpart P of this part. The Agency will not approve a loan write-down unless the appraisal indicates the Federal Government's interests are secured at the proposed writedown level.

(3) Any writedown will be conditioned on a finding that the borrower does not have the ability to pay a higher loan payment, even if the loan is reamortized.

(4) Loan writedowns may be used to allow for a loan transfer and assumption for less than the total amount of outstanding debt.

§ 3560.456 Liquidation.

Prior to any servicing action which might lead to the acquisition of real property by the Agency, the Agency must complete a due diligence report to assess any potential contamination of the property from hazardous substances, hazardous wastes, or petroleum products. The borrower must cooperate with the Agency in the development of this report.

(a) *Before acceleration.* Before accelerating a project loan, the Agency will consider the possibility that the borrower is forcing an acceleration to circumvent the prepayment process. If it is found that this is the borrower's motivation, the Agency will consider alternatives to acceleration, such as suing for specific performance under loan and management documents.

(b) *Acceleration.* When a borrower is in monetary or non-monetary default, the Agency will accelerate the loan unless the Agency decides other enforcement measures are more appropriate.

(1) If the borrower does not pay the full account balance and meet the other terms of the acceleration notice within the time period set forth in the acceleration notice, the Agency will foreclose or acquire the security property through deed in lieu of foreclosure.

(2) The Agency will suspend interest credit and rental assistance.

(3) The Agency will not accept partial payment of an accelerated loan unless required by state law.

(c) *Voluntary liquidation.* After acceleration, borrowers may voluntarily liquidate through either of the following mechanisms:

(1) Deed in lieu of foreclosure. RHS may accept a deed in lieu of foreclosure to convey title to the security property only after the debt has been accelerated and when it is in the Government's best interest.

(2) Offer by third party. If a junior lienholder or cosigner makes an offer in the amount of at least the net recovery value, RHS may assign the note and mortgage after all appeal rights have expired.

(d) *Foreclosure.* (1) The Agency will initiate foreclosure when a borrower is in monetary or non-monetary default and foreclosure is in the best interest of the Federal Government.

(2) When a junior lienholder foreclosure does not result in payment in full of the Agency debt but the property is sold subject to the Agency lien, the Agency will liquidate the account.

(e) *Acquisition of chattel properties.* (1) The Agency will accept voluntary conveyance of chattel property only when the borrower can convey ownership free of other liens and the Agency has agreed to release the borrower from further liability on the account.

(2) If the Agency decides to accept an offer of voluntary conveyance of chattel property, the borrower must provide an itemized listing of each chattel property item being conveyed and provide title to vehicles or other equipment, where applicable.

§ 3560.457 Negotiated debt settlement.

(a) *Borrower proposals to settle debt.* A borrower who cannot pay the full amount of loan payments may propose an offer to settle an outstanding debt for less than the full amount of that debt. The Agency may approve a negotiated debt settlement only in cases where a default is evident and doing so is in the best interest of the Federal Government and tenants.

(b) *Required information.* Borrowers requesting debt settlement must submit complete and accurate information from which a full determination of financial condition can be made. Debt settlement offers will not be approved by the Agency unless the financial information submitted by the borrower indicates that the borrower will be able to make the debt settlement payments as proposed.

(c) *Effective date of approval.* Debt settlement offers will not be accepted until the borrower receives written approval from the Agency.

(d) *Appraisal requirement.* No debt settlement offer will be accepted for less than the net recovery value of the security as determined by a licensed appraiser or other qualified official, and concurred in by the Agency's qualified appraisal review official or other qualified official.

(e) *Disposition of security prior to offer.* Borrowers are not required to dispose of security prior to making a debt settlement offer. However, if a borrower has disposed of security prior to making a debt settlement offer, the proceeds from the disposed security must be applied to the borrower's account prior to any negotiations on the debt settlement offer.

(f) *Final release condition.* Upon full payment of the approved debt settlement, the Agency will release the borrower from liability.

§ 3560.458 Special property circumstances.

(a) *Abandonment.* When the Agency determines that a borrower has abandoned security for a loan under this part, the Agency will take the steps necessary to protect the Federal Government's interest in the security. Costs associated with managing abandoned property are the responsibility of the borrower and will be charged to the borrower's account until liquidation is completed.

(b) *Other security.* The Agency will service security such as collateral assignments, assignments of rents, Housing Assistance Payments Contracts, and notices of lienholder interest according to acceptable practices in the respective states.

(c) *Taking of additional security to protect Agency interests.* The Agency may require borrowers to provide additional security in the form of real estate, cash reserves, letters of credit, or other security when needed to improve the chances that the Agency will not suffer a loss, and when:

(1) The account is in default; or

(2) The property has not been properly managed or maintained.

(d) *Due diligence.* When the Agency has completed an environmental review in accordance with 7 CFR part 1940, subpart G, and decides not to acquire security property through liquidation action or chooses to abandon its security interest in real property, whether due in whole or in part, to the presence of contamination from hazardous substances, hazardous wastes, or petroleum products, the Agency will provide the appropriate environmental authorities with a copy of its due diligence report.

§ 3560.459 Special borrower circumstances.

(a) *Deceased borrower, bankruptcy, insolvency, and divorce actions.* The Agency will address borrower accounts affected by special circumstances such as death, bankruptcy, insolvency, and divorce on a case-by-case basis. The

Agency will make servicing decisions in such cases on the basis of best interest to the Federal Government and tenants. The Agency will bring a legal action to establish the legal capacity of the borrower to administer the project if found necessary to protect the government's interests. In order for the Agency to make servicing decisions in such cases, the borrower or the borrower's representative will provide to the Agency:

(1) On the part of the heirs or executor of the borrower's estate, evidence of legal action due to a will or court actions that establish who is to become the owner;

(2) The financial status of the borrower and any member pledging additional security for the debt;

(3) The status of the security property; and

(4) The impact of the identified actions on the operation of the project.

(b) *Membership liability agreements.* If a borrower's note is endorsed by individuals other than the borrower or a borrower has security agreements with members of the organization for the purchase of shares of stock or for the payment of a pro rata share of the loan in the event of default, or has individual liability agreements, which are usually assigned to and held by the Agency as additional security for the loan, the security and liability agreements must be adequate to protect the Agency's interest.

(c) *Security issues in participation loans.* When a multi-family housing (MFH) project is receiving financing or a subsidy from sources other than the Agency, the Agency will service the account in accordance with the participation agreements made with the Agency and the other funding sources under § 3560.65.

§ 3560.460 Double damages.

(a) *Action to recover assets or income.* (1) The Agency may request to the Attorney General to bring an action in a United States district court to recover any assets or income used by any person in violation of the provisions of a loan made by the Agency under this section or in violation of any applicable statute or regulation.

(2) For the purposes of this section, a use of assets or income in violation of the applicable loan, statute, or regulation includes any use for which the documentation in the books and accounts does not establish that the use was made for a reasonable operating expense or necessary repair of the project or for which the documentation has not been maintained in accordance with the requirements of the Agency and in reasonable condition for proper audit.

(3) For the purposes of this section, the term ''person'' means:

(i) Any individual or entity that borrows funds in accordance with programs authorized by this section;

(ii) Any individual or entity holding 25 percent or more interest in any entity that the Agency funds in accordance with programs authorized by this section; and

(iii) Any officer, director, or partner of an entity that borrows funds in accordance with programs authorized by this section.

(b) *Amount recoverable.* (1) In any judgment favorable to the United States entered under this section, the Attorney General may recover double the value of the assets and income of the project that the court determines to have been used in violation of the provisions of a loan made by the Agency under this section or any applicable statute or regulation, plus all costs related to the actions, including reasonable attorney and auditing fees.

(2) Notwithstanding any other provisions of law, the Agency may use amounts recovered under this section for activities authorized under this section and such funds must remain available for such use until expended.

(c) *Time limitation.* Notwithstanding any other provisions of law, an action under this section may be commenced at any time during the six-year period beginning on the date that the Agency discovered or should have discovered the violation of the provisions of this section or any related statutes or regulations.

(d) *Continued availability of other remedies.* The remedy provided in this section is in addition to and not in substitution of any other remedies available to the Agency or the United States.

§ 3560.461 Enforcement provisions.

(a) *Equity skimming*—(1) *Criminal penalty*. Whoever, as an owner, agent, employee, or manager, or is otherwise in custody, control, or possession of property that is security for a loan made under this title, willfully uses, or authorizes the use, of any part of the rents, assets, proceeds, income, or other funds derived from such property, for any purpose other than to meet actual, reasonable, and necessary expenses of the property, or for any other purpose not authorized by this title or the regulations adopted pursuant to this title, must be fined under title 18, United States Code, or imprisoned not more than five years, or both.

(2) *Civil sanctions*. An entity or individual who as an owner, operator, employee, or manager, or who acts as an agency for a property that is security for a loan made under this title where any part of the rents, assets, proceeds, income, or other funds derived from such property are used for any purpose other than to meet actual, reasonable, and necessary expenses of the property, or for any other purpose not authorized by this title of the regulations adopted pursuant to this title, must be subject to a fine of not more than $25,000 per violation. The sanctions provided in this paragraph may be imposed in addition to any other civil sanctions or civil monetary penalties authorized by law.

(b) *Civil monetary penalties*—(1) *When civil monetary penalties may be imposed*. The Agency may, after notice and opportunity for a hearing, impose a civil monetary penalty in accordance with this section against any individual or entity, including its owners, officers, general partners, limited partners, or employees, who knowingly and materially violate, or participate in the violation of, the provisions of this title, the regulation issued by the Agency pursuant to this title, or agreements made in accordance to this title by:

(i) Submitting information to the Agency that is false.

(ii) Providing the Agency with false certifications.

(iii) Failing to submit information requested by the Agency in a timely manner.

(iv) Failing to maintain the property subject to loans made under this title in good repair and condition, as determined by the Agency.

(v) Failing to provide management for a project that received a loan made under this title that is acceptable to the Agency.

(vi) Failing to comply with the provisions of applicable civil rights statutes and regulations.

(2) *Amount*. (i) The amount of a civil penalty imposed under this section must not exceed the greater of twice the damages the Agency or the project that is secured for a loan under this section suffered or would have suffered as a result of the violation, or $50,000 per violation.

(ii) Determination. In determining the amount of a civil monetary penalty under this section, the Agency must take into consideration:

(A) The gravity of the offense;

(B) Any history of prior offenses by the violator (including offenses occurring prior to the enactment of this section);

(C) Any injury to tenants;

(D) Any injury to the public;

(E) Any benefits received by the violator as a result of the violation;

(F) Deterrence of future violations; and

(G) Such other factors as the Agency may establish by regulation.

(3) *Payment of penalties*. No payment of a penalty assessed under this section may be made from funds provided under this title or from funds of a project which serve as security for a loan made under this title.

(4) *Remedies for noncompliance*. (i) *Judicial intervention*. If a person or entity fails to comply with a final determination by the Agency imposing a civil monetary penalty, the Agency may request the Attorney General of the United States to bring an action in an appropriate district court to obtain a monetary judgment against such an individual or entity and such other relief as may be available. The monetary judgment may, in the court's discretion, include attorney's fees and other expenses incurred by the United States in connection with the action.

(ii) *Reviewability of determination.* In an action under this paragraph, the validity and appropriateness of a determination by the Agency imposing the penalty must not be subject to review.

(c) *Conditions for renewal extension.* The Agency may require that expiring loan or assistance agreements entered into under this title must not be renewed or extended unless the owner executes an agreement to comply with additional conditions prescribed by the Agency, or executes a new loan or assistance agreement in the form prescribed by the Agency.

§ 3560.462 Money laundering.

The Agency will act in accordance with U.S. Code Title 18, part I, chapter 95, section 1956(c)(7)(D).

§ 3560.463 Obstruction of Federal audits.

The Agency will act in accordance with U.S. Code Title 18, part I, chapter 73, section 1516(a).

§§ 3560.464–3560.499 [Reserved]

§ 3560.500 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart K—Management and Disposition of Real Estate Owned (REO) Properties

§ 3560.501 General.

This subpart contains Agency procedures and other policies related to the management and disposition of multifamily housing (MFH) projects in the Agency's inventory (Real Estate Owned (REO) property). Housing projects will not be accepted into the Agency's inventory unless one of the following has occurred:

(a) The borrower has abandoned the housing project and the Agency has performed the required steps to take the housing project into custody.

(b) The housing project title has been transferred to the Agency as a result of foreclosure, voluntary conveyance, redemption, or other action.

§ 3560.502 Tenant notifications and assistance.

Each tenant in an REO property designated to be sold as a non-program property will be notified by the Agency, in writing, of the housing projects' non-program designation and will be given an opportunity to obtain a Letter Of Priority Entitlement (LOPE) as specified in § 3560.159(c).

§ 3560.503 Disposition of REO property.

(a) Preference will be given to offers from bidders who are determined eligible by the Agency to purchase REO property designated to be sold as program property. It is the Agency's priority that property previously operated as program property prior to becoming REO inventory property be sold as program property. However, REO property may be sold under whatever Agency program is most appropriate for the property and the community needs regardless of the program under which the property was originally financed or whether the property was being used to secure loans under more than one Agency program.

(b) When the Agency determines that the REO property to be sold is not decent, safe, and sanitary and/or does not meet cost effective energy conservation standards, it will disclose the basis for this determination to prospective purchasers. The deed by which such an REO property is conveyed will contain a covenant restricting it from residential use until it is decent, safe, and sanitary, and meets the Agency's cost effective conservation standards. The Agency will also notify any potential purchaser of any known lead based paint hazards.

§ 3560.504 Sales price and bidding process.

(a) The loan documents related to REO property sold for program purposes must contain the restrictive-use language specified in § 3560.662(a).

(b) Entities bidding on REO property designated to be sold as program property must submit a loan application package that meets the requirements specified in subpart B of this part.

(1) Bidders on REO property designated to be sold as program property must meet the eligibility requirements established under § 3560.55.

(2) Bidders determined by the Agency to be ineligible to purchase REO property designated to be sold as program property will be notified in writing. The bidding process will continue regardless of pending appeals.

(3) All offers from bidders determined to be eligible to purchase REO property designated to be sold as program property will be considered in the bidding process and must provide evidence of financial stability and credit worthiness.

(c) The Agency will determine the successful bidder on REO property designated to be sold as program property by conducting a drawing of sealed bids.

(1) The Agency may authorize the sale of an REO property by sealed bid or public auction when it is in the best interest of the Government. The Agency will publicly solicit requests for sealed bids and publicize auctions. If the highest bid is lower than the minimum acceptable bid established by the Agency, or if no acceptable bids are received, the Agency may negotiate a sale without further public notice.

(2) Bidders who desire to withdraw their bids must do so prior to the drawing date.

(d) Property designated to be sold as non-program property may be sold to entities that do not meet the Agency's eligible borrower requirements specified in § 3560.55, and must be sold for cash or on terms approved by the Agency. Cash sales will be given first preference and will be drawn before any sales on terms.

§ 3560.505 Agency loans to finance purchases of REO properties.

(a) Agency loans to finance the purchase of REO property designated to be sold as program property must meet the same requirements as specified in subparts A and B of this part. In addition, the following provisions apply.

(1) At the borrower's option, the interest rate will be the prevailing rate at the time of loan approval or the prevailing rate at loan closing.

(2) Purchasers may pay closing costs from their own funds or, if allowable under subparts B, L, or M of this part, as applicable, may finance such costs as part of the Agency loan.

(b) Agency loans to finance the purchase of REO property designated to be sold as non-program property must meet the following terms.

(1) A down payment of not less than 10 percent of the purchase price is required at closing.

(2) The interest rate will equal the lesser of the prevailing interest rate at the time of loan approval or loan closing for MFH loans plus one-half percent.

(3) The note amount will be amortized over a period not to exceed 10 years. If the Agency determines that more favorable terms are necessary to facilitate the sale, the note amount may be amortized using a 30-year factor with payment in full due no later than 10 years from the date of closing (balloon payment). In no case will the term be longer than the useful life of the property.

(4) Agency loans to finance the purchase of non-program REO property are subject to the availability of funds.

(c) Loan limits and allowable uses of loan funds specified in subparts B, L, and M of this part, as applicable, are applicable to any Agency-financed (credit) sale of REO property.

(d) Title clearance and loan closing for an Agency financed sale and any subsequent loan to be closed simultaneously with the sale must meet the requirements in subpart B of this part for an initial loan, with the following exceptions:

(1) A ''Quit Claim'' or other non-warranty deed will be used; and

(2) The buyer must pay attorney's fees, insurance costs, recording fees

and other customary fees unless they are included in a subsequent loan and the subsequent loan is for purposes other than closing costs and fees.

(e) After approval of an Agency-financed sale of occupied REO property designated to be sold as program property, but prior to closing, the purchaser must prepare a budget for housing operations in accordance with subpart B of this part. If a rent increase is necessary, procedures specified in subparts E and F of this part for calculating rents, net tenant contributions, and rental assistance will be followed by the borrower.

§ 3560.506 Conversion of single family type REO property to MFH use.

Single family type REO property may be sold for conversion to MFH program use under the following conditions:

(a) The Agency will allow nonprofit organizations, public bodies, or for-profit entities to purchase single family type REO property for conversion to MFH program use. When the Agency finances the sale of single family-type REO property for conversion to rural rental housing program use (*i.e.*, MFH including group homes and homes for the elderly or disabled, farm labor housing, or rural cooperative housing), the sale price will be the lesser of the Federal Government's investment or an amount based on the ''as-is'' market value of the housing project as determined by an appraisal conducted in accordance with subpart P of this part.

(b) The Agency will only accept written offers to purchase two or more single family type REO properties for conversion to rural rental housing from nonprofit organizations, public bodies, or for-profit entities with a good record of providing housing under the Agency's MFH programs. The single family type properties are not required to be contiguous, however, they must be located in close enough proximity so that management capabilities are not diminished because of distance.

§§ 3560.507–3560.549 [Reserved]

§ 3560.550 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart L—Off-Farm Labor Housing

§ 3560.551 General.

This subpart establishes the requirements for making loans and grants for off-farm labor housing and for ongoing operations of this housing. Unless otherwise specified in this subpart, the requirements of subparts A through K, N, O, and P of this part will apply in addition to the requirements in this subpart.

§ 3560.552 Program objectives.

(a) In addition to the objectives stated in § 3560.52, off-farm labor housing loan and grant funds will be used to increase:

(1) The supply of affordable housing for farm labor; and

(2) The ability of communities to attract farm labor by providing housing which is affordable, decent, safe and sanitary.

(b) Under section 516(i) of the Housing Act of 1949 (42 U.S.C. 1486(i)), the Agency may award technical assistance grants to encourage the development of farm labor housing.

§ 3560.553 Loan and grant purposes.

(a) In addition to the purposes stated in § 3560.53, off-farm labor housing loan and grant funds may be used to provide facilities for seasonal or temporary residential use with appropriate furnishings and equipment. A temporary residence is a dwelling which is used for occupancy, usually for a short period of time, but is not the legal domicile for the occupant.

(b) The Agency may award technical assistance grants to eligible private and public nonprofit agencies. These grant recipients will, in turn, assist other organizations to obtain loans and grants for the construction of farm labor housing.

(c) Technical assistance services may not be used to reimburse a nonprofit or public body applicant for technical services provided by a nonprofit organization, with housing and/or community development experience, to assist the nonprofit applicant entity in the development and packaging of its loan/grant docket and project. In addition, technical assistance will not be funded by the Agency when an identity of interest exists between the technical assistance provider and the loan or grant applicant.

§ 3560.554 Use of funds restrictions.

Off-farm labor housing loan and grant funds may not be used for any purpose prohibited by § 3560.54 except § 3560.54(a)(1). Off-farm labor housing may be used to serve migrant farmworkers.

§ 3560.555 Eligibility requirements for off-farm labor housing loans and grants.

(a) *Eligibility for loans.* Applicants for off-farm labor housing loans must be:

(1) A broad-based nonprofit organization, a nonprofit organization of farmworkers, a federally recognized Indian tribe, a community organization, or an agency or political subdivision of State or local government, and must meet the requirements of § 3560.55, excluding § 3560.55(a)(6). A broad-based nonprofit organization is a nonprofit organization that has a membership that reflects a variety of interests in the area where the housing will be located; or

(2) A limited partnership with a nonprofit general partner which meets the requirements of § 3560.55(d).

(b) *Eligibility for grants.* To be eligible for off-farm labor housing grants, applicants must:

(1) Meet the requirements in § 3560.555(a)(1); and

(2) Be able to contribute at least one-tenth of the total farm labor housing development cost from its own or other resources. The applicant's contribution must be available at the time of grant closing. An off-farm labor housing loan financed by RHS may be used to meet this requirement.

(c) *Limitation.* Limited partnerships eligible under paragraph (a)(2) of this section are not eligible for farm labor housing grants.

§ 3560.556 Application requirements and processing.

Off-farm loans and grants will be available under a Notice of Funding Availability (NOFA) that will be published in the FEDERAL REGISTER each fiscal year.

§ 3560.557 [Reserved]

§ 3560.558 Site requirements.

The requirements established in § 3560.58 apply to all applications for off-farm labor housing loans and grants except that off-farm labor housing are not limited to rural areas.

§ 3560.559 Design and construction requirements.

(a) *General.* The requirements established in § 3560.60 apply to all applications for off-farm labor housing loans and grants except that seasonal off-farm labor housing that will be occupied for eight months or less per year by migrant farmworkers while they are away from their residence, may be constructed in accordance with Exhibit I of 7 CFR part 1924, subpart A.

(b) *Additional requirements.* In addition to the requirements established in § 3560.60, it is encouraged that the design of off-farm labor housing incorporate outdoor shower, boot washing station, and/or hose bibb facilities as necessary to protect the resident and the asset from excess dirt and chemical exposure.

(c) *Davis-Bacon wage requirements.* Construction financed with the assistance of a Section 516 grant will be subject to the provisions of the Davis-Bacon Act (40 U.S.C. 276(a)–276(a)(7)), and the implementing regulations published by the Department of Labor at 29 CFR parts 1, 3, and 5.

§ 3560.560 Security.

The security requirements established in § 3560.61 will apply to all applications for off-farm labor housing loans.

§ 3560.561 Technical, legal, insurance and other services.

The requirements established under § 3560.62 apply to all applications for off-farm labor housing loans and grants.

§ 3560.562 Loan and grant limits.

(a) *Determining the security value.* The requirements established under § 3560.63(a) apply to off-farm labor housing loans.

(b) *Maximum amount of loan.* The requirements established in § 3560.63(c)(1) and (2), regarding borrower equity contribution apply to all applications for off-farm labor housing loans. (For applicants eligible under § 3560.555(a)(2), the amount of Agency financing for the housing will not exceed 95 percent of the total development cost or 95 percent of the security value available for the Agency loan, whichever is lower.) In determining the amount of the loan, the Agency will also review the capacity of the applicant to amortize such loan, considering any rental assistance provided for use in the housing, and any rents anticipated to be paid by farmworkers expected to occupy the housing.

(c) *Maximum amount of grant.* The amount of any off-farm labor housing grant must not exceed the lesser of:

(1) Ninety percent of the total development cost, or

(2) That portion of the total development cost which exceeds the sum of any amount provided by the applicant from their own resources plus the amount of any loans approved for the applicant, considering the capacity of the applicant to amortize the loan.

§ 3560.563 Initial operating capital.

The requirements for § 3560.64 apply to all applications for off-farm labor housing loans and grants.

§ 3560.564 Reserve accounts.

The requirements for § 3560.65 apply to all applications for off-farm labor housing loans and grants.

§ 3560.565 Participation with other funding or financing sources.

The requirements established in § 3560.66 apply to all applications for off-farm labor housing loans and grants, except that the 25 percent requirements stated in paragraph § 3560.66(b)(1) may consist of loan and/or grant funds.

§ 3560.566 Loan and grant rates and terms.

(a) *Amortization period.* The loan will be amortized over a period not to exceed 33 years. The amortization schedule will take into account the depreciation of the security and ensure that the loan will be adequately secured.

(b) *Interest rate.* The effective interest rate will be 1 percent.

(c) *Term of grant agreement.* The grant agreement will remain in effect for so long as there is a need for farm labor housing.

§ 3560.567 Establishing the profit base on initial investment.

The requirements established under § 3560.68 apply to applicants eligible under § 3560.555(a)(2) and operating as a limited partnership with a nonprofit general partner.

§ 3560.568 Supplemental requirements for seasonal off-farm labor housing.

For off-farm labor housing operating on a seasonal basis, the management plan must establish specific opening and closing dates. During the off-season, off-farm labor housing may be used as defined in subpart A of this part under short-term lease provisions. Where rents are charged on a per-unit basis and family income qualifies the household for rental assistance, rental assistance may be used.

§ 3560.569 Supplemental requirements for manufactured housing.

The requirements established in § 3560.70 apply to all applications for off-farm labor housing loans and grants.

§ 3560.570 Construction financing.

The requirements established in § 3560.71 apply to all applications involving off-farm labor housing loans and grants. In addition, the following requirements apply.

(a) Equity contributions being made by a borrower or grantee must be contributed and disbursed prior to any disbursement of interim loan funds and any loan or grant funds from the Agency.

(b) If the Agency is providing both loan and grant funds, loan funds must be fully released and expended prior to the release of grant funds by the Agency.

(c) If construction is financed with a Labor Housing grant, it is subject to the provisions of the Davis-Bacon Act (published in the Department of Labor regulations 29 CFR parts 1, 2, and 5).

§ 3560.571 Loan and grant closing.

The requirements established in § 3560.72 apply to all applications for off-farm labor housing loans and grants. In addition, the following requirements apply.

(a) A nonprofit organization will have its Board of Directors adopt an Agency-approved loan and/or grant resolution, which is required as part of the loan docket before loan and/or grant approval. All other loan applicants will execute an Agency-approved loan agreement.

(b) For grants, an Agency approved grant agreement, must be executed by the applicant on the date of grant closing.

(c) The obligations incurred by the applicant, as a condition of accepting the grant, will be in accordance with the off-farm labor housing grant agreement.

(d) Off-farm labor housing loans used to build or acquire new units made pursuant to a contract entered into on or after the effective date of this regulation, will be subject to the restrictive-use provision stated in § 3560.72(a)(2)(ii). All other off-farm labor housing loans are subject to the restrictive-use provisions contained in their loan documents and as outlined in subpart N of this regulation. Such restrictions must be included in the mortgage and deed of trust.

§ 3560.572 Subsequent loans.

The requirements established in § 3560.73 will apply to all applications for subsequent off-farm labor housing loans.

§ 3560.573 Rental assistance.

(a) Rental assistance may be provided to income eligible tenants living in off-farm labor housing in accordance with subpart F of this part. The requirements established in § 3560.252 apply to all tenants receiving rental assistance.

(b) For dormitory style facilities operating on a per bed basis, rental assistance will be made available to the housing on a per unit basis, but may be pro-rated to tenants on a per bed basis. However, total rent charged for a unit must not exceed conventional rent for comparable units in the area or a similar area and per bed rents must be comparable to per bed rents in the market.

§ 3560.574 Operating assistance.

Operating assistance may be used in lieu of tenant-specific rental assistance in off-farm labor housing projects financed under section 514 or section 516(i) of the Housing Act of 1949 (U.S.C. 1486(i)) that serve migrant farmworkers. Owners of eligible projects may choose tenant-specific rental assistance as described in § 3560.573 or operating assistance, or a combination of both, however, any tenant or unit assisted under this section may not receive rental assistance under § 3560.572. The objective of this program is to provide assistance toward the cost of operating the project so that rents may be set at rates that are affordable to very low and low-income migrant farmworkers.

(a) *Project eligibility requirements.* To be eligible for the operating assistance program, projects must be:

(1) Off-farm labor housing projects financed under section 514 or section 516 with units that are for migrant farmworkers. Housing units for year-round farmworker households are ineligible; and

(2) Eligible for the Agency's rental assistance program as defined in § 3560.573.

(b) *Operating assistance limits.* The amount of operating assistance requested by the owner must be based on the project's actual income and expenses and must be approved by the Agency. In the case of a mixed project, the amount of operating assistance must be based on the portion of actual income and expenses that are attributable to the units that are for migrant farmworkers. In no instance may the annual amount of operating assistance exceed 90 percent of the annual operating costs that are attributable to the migrant units.

(c) *Owner responsibilities*—(1) *Requesting for operating assistance program.* Owners of off-farm labor housing projects with units for migrant farmworkers may request operating assistance by submitting a request to the Agency, which must include a budget. The budget must include:

(i) Estimated operating costs for the migrant units, including authorized expenditures such as reserve deposits;

(ii) Proposed rental rates for the migrant units to generate sufficient funds for operating costs of those units, taking into consideration all other sources of project income; and

(iii) Estimated rental income from tenants, based on a tenant contribution of 30 percent of the average adjusted monthly income of migrant farmworker households in the area.

(2) *Requesting operating assistance payments.* Each month, the owner will submit a request for operating assistance to the Agency.

(3) *Verifying tenant income eligibility.* Owners are responsible for verifying tenant income eligibility. Only very low or low-income households are eligible for the operating assistance rents. Households with incomes above the low-income limits must pay the full rent.

(4) *Reporting requirements.* (i) Owners will complete and submit to the Agency tenant certifications to document tenant income and eligibility.

(ii) Owners will complete and submit monthly to the Agency a project worksheet for operating assistance.

(iii) Owners must submit an annual planning budget to the Agency prior to the project's fiscal year.

§ 3560.575 Rental structure and changes.

Off-farm labor housing is subject to the tenant contribution and rental unit rent requirements for Plan II housing established under subpart E of this part, except where seasonal housing will be occupied for less than a 3-month period. In such instances the best available and practical income verification methods may be used with prior approval of the Agency.

§ 3560.576 Occupancy restrictions.

(a) *Restrictions on conditions of occupancy.* (1) No borrower or grantee will be permitted to require that an occupant work on any particular farm or for any particular owner or interest as a condition of occupancy of the housing.

(2) Tenant selection should be in accordance with the loan agreement, subpart D of this part and § 3560.577.

(3) No borrower or grantee will discriminate, or permit discrimination by any agent, lessee, or other operator in the use or occupancy of the housing or related facilities because of race, color, religion, sex, age, disability, familial status, or national origin.

(b) *Eligible households.* To be eligible for occupancy in off-farm labor housing, households must meet the following requirements.

(1) *Occupational.* An eligible household must include a domestic tenant or co-tenant farm laborer, a retired domestic farm laborer, or a disabled domestic farm laborer.

(2) *Income.* The household must meet the definition of income eligible as established in § 3560.152 and the tenant or co-tenant must receive a substantial portion of income from farm labor employment. To determine if a substantial portion of income is from farm labor employment, the following measures will be used.

(i) For housing rented to farm laborers and owned by public bodies, public or private nonprofit organizations, and limited partnerships when charging rent.

(A) Actual dollars earned from farm labor by domestic farm laborers other than migrant farmworkers must equal at least 65 percent of the annual income limits indicated for the Standard

Federal regions as published by the Agency for their particular region of the country. For migrant farmworkers living in seasonal housing the actual dollars earned from farm labor by a domestic farm laborer must equal at least 50 percent of annual income limits indicated for the Standard Federal regions, as published by the Agency.

(B) An alternate measure for determining substantial portion of income when actual earnings are not available may be the duration of time a farm laborer worked on a farm or other farming enterprise as a domestic farmworker during the preceding 12 months. In order to be considered as substantial the farm laborer must have worked at least 110 whole days in farm work. For purposes of this section one whole day is the equivalent of at least 7 hours. When using a period of more than 1 year, a yearly average must amount to at least 110 days per year.

(ii) For housing owned by a farmer, family-farm partnership, family-farm corporation, or an association of farmers which was initially provided on a non-rental basis, a substantial portion of income is earned when housing is provided by the owner as part of employment compensation for farm labor.

(iii) When a natural disaster has occurred, such as a drought, flood, freeze, etc., figures for the 12 months preceding such disaster will be used to determine substantial portion of income under paragraph (b)(2) of this section.

(iv) The tenant who qualifies as a domestic farm laborer residing in a property with a nonrestrictive farm labor clause in the mortgage covenants must not have adjusted income which exceeds the moderate income limit for the appropriate household size and appropriate geographical area.

(3) *Occupancy*. The household must remain in compliance with the borrower's occupancy policy as established in § 3560.155.

(c) *Tenant eligibility requirements for operating assistance rents*. To be eligible for operating assistance rents, tenants must meet the rental assistance eligibility requirements described in § 3560.573 and in § 3560.252.

(d) *Ineligible tenants*. Tenants who, at any time, fail to meet all the requirements in paragraph (b) of this section will be deemed ineligible for occupancy in off-farm labor housing. Ineligible tenants in off-farm labor housing will be addressed in accordance with the requirements of § 3560.158.

(e) *Non-farm laborer tenants*. When there is a diminished need for housing for persons or families in the above categories, units in off-farm labor housing complexes may be made available to persons or families eligible for occupancy under § 3560.152. Eligible tenants under this section may occupy the labor housing until such time the units are again needed by persons or families eligible under paragraph (b) of this section. As the basis for Agency approval or disapproval of the borrower's determination of diminished need, the borrower must submit a current analysis of need and demand to the Agency, identical to the market analysis that is required of loan applicants in the loan origination process. The borrower's determination and the State Director's recommendation should be forwarded to the National Office for concurrence. The procedures specified in § 3560.158 shall be followed when tenants are required to vacate housing to allow for occupancy by persons eligible under paragraph (b) of this section.

§ 3560.577 Tenant priorities for labor housing.

Tenant occupancy in off-farm labor housing is based on eligible farm labor certified through the income certification process required by § 3560.152 and is prioritized in the following order.

(a) First priority is to be given to eligible active farm laborer households with first priority going to very low-income households, next priority to low-income households, and last to moderate-income households.

(b) Second priority is given to retired domestic farm laborer households and disabled domestic farm laborer households who were active in the local farm labor market area at the time of retiring or becoming disabled. Occupancy priority will be given in accordance with paragraph (a) of this section.

(c) Third priority is to be given to retired domestic farm laborer households and disabled domestic farm laborer households who were not active in the local farm labor market at the time of

retiring or becoming disabled. Occupancy priority will be given in accordance with paragraph (a) of this section.

§ 3560.578 Financial management of labor housing.

The requirements established in subpart G of this part will apply to all off-farm labor housing.

§ 3560.579 Servicing off-farm labor housing.

The requirements established in subparts I and J of this part will apply to all off-farm labor housing. Servicing according to subparts I and J of this part shall apply throughout the term of the loan or grant, whichever is longer.

§§ 3560.580–3560.599 [Reserved]

§ 3560.600 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart M—On-Farm Labor Housing

§ 3560.601 General.

This subpart contains the requirements for making loans for on-farm labor housing and for ongoing operation and management of on-farm labor housing. Unless otherwise specified in this subpart, the requirements of subparts A through K, N, O, and P of this part will apply in addition to requirements given in this subpart.

§ 3560.602 Program objectives.

In addition to the objectives stated in § 3560.52, on-farm labor housing funds will be used to increase:

(a) The supply of affordable housing for farm labor; and

(b) The ability of the farmer to provide affordable, decent, safe and sanitary housing for farm workers.

§ 3560.603 Loan purposes.

On-farm labor housing loans may be made only for the purposes established in § 3560.553. Grants are not available for on-farm labor housing.

§ 3560.604 Restrictions on use of funds.

On-farm labor housing loans may not be used for any purpose prohibited by § 3560.54 except § 3560.54(a)(1). On-farm labor housing may be used to serve migrant workers. In addition, on-farm labor housing loan funds may not be used to provide housing for members of the immediate family of the applicant when the applicant is an individual farm owner, family farm corporation, family farm partnership, or a member of an association of farmers. Immediate family includes mother, father, brothers, sisters, sons, and daughters of the applicant and spouse.

§ 3560.605 Eligibility requirements.

(a) To be eligible for an on-farm labor housing loan, the applicant must meet the requirements of § 3560.55(a) with the exception of § 3560.55(a)(1), (5), and (6) and the following requirements.

(1) The applicant must be a farm owner, family farm partnership, family farm corporation, or an association of farmers engaged in agricultural or aquacultural farming operations whose farming operations demonstrate a need for on-farm labor housing and who will own the housing and operate it on a nonprofit basis.

(2) The applicant must agree to use the labor housing to engage in the farming operations of the individual farm owner applicant, or in the farming operations of its members if it is a family farm corporation or partnership, or an association of farmers.

(3) The applicant must, as determined by the Agency, be unable to provide the necessary housing from the applicant's own resources and be unable to obtain credit from any other source upon terms and conditions which the applicant could reasonably be expected to fulfill. If the applicant

is an association of farmers or family farm corporation or partnership, the individual members, individually and jointly, must be unable to provide the necessary housing by utilizing their own resources and be unable, by pledging their personal liability, to obtain other credit that would enable them to provide housing for farm workers at rental rates they can afford to pay. The individual resources of family farm corporation or partnership members with less than a 10 percent corporate or partnership interest should not be considered when determining if the applicant can obtain credit elsewhere.

(b) The Agency may make an exception to the requirement that an individual farm owner, family farm corporation, family farm partnership or an association of farmers be unable to obtain the necessary credit elsewhere when all of the following conditions exist:

(1) There is a housing need in the area for domestic farmworkers who are migrants and the applicant will provide such housing; and

(2) There are no qualified state or political subdivisions or public or private nonprofit organizations available, or likely to become available within 12 months of the application, that are willing and able to provide the housing.

(c) When an applicant is determined eligible under paragraph (b) of this section, the interest rate for such loans will be determined in accordance with 7 CFR part 1810, subpart A.

(d) On-farm labor housing that consists of buildings with less than three units is not subject to the requirement that five percent of the units be constructed as fully accessible units, as described in § 3560.60(d).

§ 3560.606 Application requirements and processing.

(a) On-farm labor housing loan applications will be processed according to 7 CFR part 1940, subpart L. Applicants must submit an application in an Agency-approved format that adequately documents the need for the housing and the eligibility of the applicant.

(b) The applicant must certify that the farm workers for which the housing is intended are or will be involved in the applicant's agricultural or aquacultural farming operations.

(c) The applicant must certify that housing operations will be conducted in a non-profit manner such that income from the housing does not exceed eligible expenses associated with the housing. Eligible expenditures for the housing include, but are not limited to housing repairs and upkeep, payment of installments on the loan, taxes, insurance and reserves and other essential uses needed for success of the operations.

§ 3560.607 [Reserved]

§ 3560.608 Site and construction requirements.

(a) *General.* Cost and development standards for on-farm labor housing will be consistent with the requirements, standards, and cost limits specified in subpart B of this part, if the housing is a multi-family housing type structure, or consistent with section 502 of the Housing Act of 1949, if the housing is a single family type structure.

(b) *Permanent units.* On-farm labor housing occupied for 8 months or more of the year will be required to meet the following requirements.

(1) Housing may be multi-family or single family in type and may be located on the farm away from farm service buildings, or in the nearby community. Single-family type housing is defined as an individual or a group of individual single family detached dwelling units. All sites and housing shall be planned and constructed in accordance with 7 CFR part 1924, subparts A and C.

(2) Sites must be accessible from a public road, when feasible.

(c) *Seasonal units.* On-farm labor housing occupied for less than 8 months of the year will be considered seasonal housing. Such housing must meet the following requirements.

(1) Housing designed for seasonal occupancy may be either single family or multi-family.

(2) Seasonal housing may be constructed in accordance with exhibit I of 7 CFR part 1924, subpart A. If constructed in accordance with exhibit I, the housing must be suitable to allow

for conversion to full-year occupancy if the need for migrant farmworkers in the area declines.

(d) *Accessibility*. On-farm labor housing that consists of buildings with less than three units, need not meet the requirement that five percent of the units be constructed as fully accessible units, as described in § 3560.60(d). This does not, however, eliminate any other accessibility requirements.

§ 3560.609 [Reserved]

§ 3560.610 Security.

(a) Security instruments must meet the requirements established under § 3560.560.

(b) When feasible, the on-farm labor housing will be located on a tract of land that is surveyed such that, for security purposes, it is considered separate and distinct from the farm. The security for the loan must include a lien on the tract of land where the on-farm labor housing is located and the security must have adequate value to protect the Federal government's interest. The Agency will seek a first or parity lien position on Agency-financed property in all instances, however, the Agency may accept a junior lien position if the Federal government's interests are adequately secured.

(c) The Agency will determine the value of the security for the loan in accordance with 7 CFR part 1922, subpart B if the farm is used as security or in accordance with section 502 of the Housing Act of 1949, if only the on-farm labor housing and related land is used for security.

(d) If necessary to provide adequate security for the loan, the Agency may require that any household furnishings purchased with loan funds also be secured.

(e) Personal liability and recourse will be required of all borrowers, including the individual members, stockholders or partners of an association of farmers, family farm corporations or partnerships, respectively.

§ 3560.611 Technical, legal, insurance and other services.

When technical, legal, insurance, or services are required for development of on-farm labor housing, applicants must comply with the applicable requirements of § 3560.62. Regarding insurance coverage, the requirements of § 3560.62(d) apply to on-farm labor housing.

§ 3560.612 Loan limits.

The maximum loan amount will be 100 percent of the allowable total development costs of on-farm labor housing and related facilities subject to §§ 3560.603, 3560.604 and 3560.608.

§ 3560.613 [Reserved]

§ 3560.614 Reserve accounts.

When on-farm labor housing operations include 12 or more units, the Agency will require such properties to comply with the reserve account requirements in § 3560.65.

§ 3560.615 Participation with other funding sources.

The Agency encourages the use of other funding sources in conjunction with on-farm labor housing loans. Use of such financing in conjunction with an on-farm labor housing loan is subject to the approval of the Agency and must comply with the requirements of § 3560.66.

§ 3560.616 Rates and terms.

(a) The interest rate for on-farm labor housing loans will be 1 percent.

(b) The term of the on-farm labor housing loan will not exceed 33 years.

(c) Loan amortization for on-farm labor housing may be on a monthly or an annual basis.

§ 3560.617 [Reserved]

§ 3560.618 Supplemental requirements for on-farm labor housing.

The management plan for on-farm labor housing operated on a seasonal basis must have specific opening and closing dates. During the off-season, on-farm labor housing may be used under short-term lease provisions.

§ 3560.619 Supplemental requirements for manufactured housing.

On-farm labor housing loan funds used for manufactured housing must comply with § 3560.70. Manufactured

housing located on-farm may consist of individual units.

§ 3560.620 Construction financing.

The requirements established in § 3560.71 apply to all applications involving on-farm labor housing loans.

§ 3560.621 Loan closing.

Applicants for on-farm labor housing loans must execute an Agency-approved loan agreement. In addition, if determined appropriate by the Agency, on-farm labor housing loans made on or after the effective date of this regulation may be subject to the restrictive-use provisions as stated in § 3560.72(a)(2)(ii). All other on-farm labor housing loans are subject to the restrictive-use provisions contained in their loan documents and as outlined in subpart N of this regulation.

§ 3560.622 Subsequent loans.

The requirements established in § 3560.572 apply to all applications for on-farm labor housing subsequent loans.

§ 3560.623 Housing management and operations.

Borrowers with on-farm labor housing loans must:

(a) Develop and submit to the Agency a management plan in a format specified by the Agency. At a minimum, the management plan will detail the borrower's operational and occupancy policies, how the borrower will deal with resident complaints, and how repairs will be completed; and

(b) Maintain a lease or employment contract with each tenant specifying employment with the borrower as a condition for continued occupancy.

§ 3560.624 Occupancy restrictions.

(a) The immediate relatives of the borrowers are ineligible occupants for on-farm labor housing.

(b) Occupants must meet the definition of a domestic farm laborer, as defined in § 3560.11.

(a) Occupancy of on-farm labor housing is restricted to employees of the borrower unless otherwise approved by the Agency.

(d) With prior written permission of the Agency, on-farm labor housing may be occupied by ineligible tenants on a short-term basis. The permission of the Agency must also be for a limited duration.

§ 3560.625 Maintaining the physical asset.

On-farm labor housing must meet state and local building and occupancy codes.

§ 3560.626 Affirmative Fair Housing Marketing Plan.

On-farm labor housing must meet the requirements of § 3560.104.

§ 3560.627 Response to resident complaints.

The management plan submitted in accordance with § 3560.623 (a) will include a provision for dealing with resident complaints.

§ 3560.628 Establishing and modifying rental charges.

If it becomes necessary to establish or modify a shelter cost, the borrower must obtain Agency approval as specified in subpart E of this part.

§ 3560.629 Security deposits.

Borrowers that require security deposits to be paid by the tenants will be required to comply with the requirements of § 3560.204.

§ 3560.630 Financial management.

Financial information must be submitted in an Agency-approved format and will show operation of the housing in a non-profit manner.

§ 3560.631 Agency monitoring.

A compliance review and physical inspection will be conducted by the Agency at least once every 3 years. The purpose of this review will be to inspect:

(a) Tenant eligibility documentation;

(b) Financial information on the operation and management of the labor housing, including relevant borrower financial materials;

(c) Payment of taxes, insurance and hazard insurance;

(d) Compliance with the security deposit requirements;

(e) Compliance with the operating plan;

(f) Compliance with the loan agreement;

(g) Compliance with Agency requirements for affordable, decent, safe, and sanitary housing; and

(h) Compliance with civil rights requirements.

§§ 3560.632–3560.649 [Reserved]

§ 3560.650 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart N—Housing Preservation

§ 3560.651 General.

(a) This subpart contains the Agency's housing preservation requirements as related to prepayment requests and restrictive-use provisions (RUPs). The requirements of this subpart support the Agency's commitment to the preservation of decent, safe, sanitary, and affordable multi-family housing (MFH) for very low-, low-, and moderate-income households.

(b) The Agency will coordinate, direct, and monitor the Agency's MFH preservation activities from the National Office level.

§ 3560.652 Prepayment and restrictive-use categories.

(a) Loans with prepayment prohibitions include:

(1) Initial section 515 loans made on or after December 15, 1989, and

(2) Subsequent loans made on or after December 15, 1989, for additional rental units.

(b) Loans without prepayment prohibitions but with restrictive-use provisions include:

(1) All loans made after December 21, 1979, but prior to December 15, 1989;

(2) Subsequent loans made on or after December 15, 1989, for purposes other than additional rental units; or

(3) Loans subsequently restricted by servicing actions including transfers.

(c) Loans without prepayment prohibitions or restrictive-use provisions include all loans made on or before December 21, 1979 or loans that had restrictive-use provisions that have expired. Such loans are eligible to receive incentives subject to the provisions of this subpart.

(d) Loans may be prepaid if another loan or grant from the Agency imposes the same or more stringent restrictive-use provisions on the housing project covered by the loan being prepaid.

§ 3560.653 Prepayment requests.

(a) Borrowers seeking to prepay an Agency loan must submit a written prepayment request to the Agency at least 180 days in advance of the anticipated prepayment date and must obtain Agency approval before the Agency will accept prepayment.

(b) Prior to submitting a prepayment request, borrowers must take whatever actions are necessary to provide the following items:

(1) A clear description of the loan to be prepaid, the housing project covered by the loan being prepaid, and the requested date of prepayment.

(2) A statement documenting the borrower's ability to prepay under the terms specified.

(3) A certification that the borrower will comply with any federal, state, or local laws or regulations which may relate to the prepayment request and a statement of actions needed to assure such compliance.

(4) A copy of lease language to be used during the period between the submission date and the final resolution of the prepayment request notifying tenant applicants that the owner of the housing project has submitted a prepayment request to the Agency and explaining the potential effect of the request on the lease.

(5) Borrowers are required to submit a signed release of information form along with the prepayment request.

The Agency will notify nonprofit organizations and public bodies involved in providing affordable housing or financial assistance to tenants of the receipt of a borrower's request to prepay their loan(s). Additionally, the Agency is to notify nonprofit organizations and public bodies whenever a borrower, who has requested prepayment, is required or elects to offer their property for sale to a nonprofit or public body.

(6) A certification that the borrower has notified all governmental entities involved in providing affordable housing or financial assistance to tenants in the project and that the borrower has provided a statement specifying how long financial assistance from such parties will be provided to tenants after prepayment.

(7) A statement affirming that units in the property applying for prepayment will continue to be available for rent by eligible residents during the prepayment process.

(c) The Agency will review complete requests to determine if:

(1) The loan is eligible for prepayment under § 3560.652(b);

(2) The borrower has the ability to prepay; and

(3) The borrower has complied or has the ability to comply with applicable Federal, state, and local laws related to the prepayment request.

(d) If a prepayment request lacks full and complete information on any item, the Agency will return the prepayment request to the borrower with a letter citing the deficiencies in the prepayment request. The Agency will offer borrowers an opportunity, within 30 days following the date of the return, to address the reasons given by the Agency for the return of the prepayment request and will allow the borrower to submit a revised prepayment request.

(e) If the Agency determines that the prepayment request appropriately satisfies all the conditions listed in paragraph (d) of this section, the Agency will process the prepayment request and make a reasonable effort to enter into a new restrictive-use agreement with the borrower in accordance with § 3560.662 or § 3560.655. If the Agency determines that a loan is ineligible for prepayment or the borrower does not have the ability to prepay, the Agency will return the prepayment request to the borrower with a written explanation of the Agency's determinations.

[69 FR 69106, Nov. 26, 2004, as amended at 73 FR 65506, Nov. 4, 2008]

§ 3560.654 Tenant notification requirements.

(a) Within 30 calendar days of receiving a complete prepayment request, the Agency will send a prepayment request notice to each tenant in the housing project. Borrowers must post the Agency's prepayment request notice in public areas throughout the housing project from the date of the notice until the final resolution of the prepayment request. The prepayment request notice will establish a date and place where tenants may meet with the Agency to discuss the prepayment request and will advise tenants that:

(1) They may review all information submitted with the prepayment request except financial information regarding the borrower entity, which the Agency will withhold from tenant review unless given written permission for the release of the information from the borrower; and,

(2) They have 30 days from the date of the prepayment request notice to give the Agency comments on the prepayment request.

(b) Borrowers may provide a prepayment request notice of their own directly to tenants and may establish a date and place where tenants may meet with the borrower to discuss the prepayment request. The Agency and other providers of housing assistance for very-low, low, and moderate-income households may attend a borrower's prepayment request meeting with tenants.

(c) If the Agency agrees to accept prepayment on a loan, the Agency will send a prepayment acceptance notice to each tenant in the housing project at least 60 days prior to the prepayment date. Borrowers must post copies of the Agency's prepayment acceptance notice in public areas throughout the housing project until prepayment is made. If the prepayment acceptance was based on a borrower's agreement

to comply with restrictive-use provisions, the notice will describe the restrictive-use provisions that will apply to the housing project after prepayment and the tenant's rights to enforcement of the provisions.

(d) If the borrower withdraws the prepayment request, the Agency will provide a prepayment request cancellation notice to each tenant in the housing project. Borrowers must post copies of the prepayment request cancellation notice in the public areas throughout the housing project for a period of 60 days following the date of the prepayment request cancellation notice.

(e) If the borrower agrees to accept incentives and restrictive-use provisions, the Agency will notify each tenant, in writing, of the agreement and provide a description of the restrictive-use provision.

(f) If a borrower agrees to sell a housing project involved in a prepayment request to a nonprofit organization or public body, the Agency will notify each tenant, in writing, of the proposed sale to a nonprofit organization or public body and will explain the timeframes involved with the proposed sale, any potential impact on tenants, and the actions tenants may take to alleviate any adverse impact. Borrowers must post copies of the Agency's proposed sale notice in public areas throughout the housing project until the housing project is sold or the offer to sell is withdrawn.

(g) If a tenant applicant signs a lease in a housing project for which a prepayment request has been submitted, the borrower must provide the tenant with copies of all notifications provided to tenants by the Agency or the borrower prior to the tenant's occupancy in the housing project.

(h) If a borrower is unable to sell a housing project involved in a prepayment request to a nonprofit organization or public body within 180 days as specified in § 3560.659, the Agency will send a notice to each tenant in the housing project explaining the potential impact of the borrower's inability to sell the housing project on tenants and the actions tenants may take to alleviate any adverse impact. Borrowers must post the Agency's notice in public areas throughout the housing project for a period of 60 days following the date of the notice.

§ 3560.655 Agency requested extension.

Before accepting an offer to prepay from a borrower with a restricted loan, the Agency must first make a reasonable effort to enter into a new restrictive-use agreement with the borrower. Under this agreement, the borrower would make a binding commitment to extend the low-income use of the housing and related facilities for 20 years for loans with interest credit, beginning on the date on which the new agreement is executed. If the borrower is unwilling to enter into a new restrictive-use provisions and restrictive-use agreement, the Agency should proceed to take the actions described in § 3560.658.

§ 3560.656 Incentives offers.

(a) The Agency will offer a borrower, who submits a prepayment request meeting the conditions of § 3560.653(d), incentives to agree to the restrictive-use period in § 3560.662 if the following conditions are met:

(1) The market value of the housing project is determined by the Agency, based on an appraisal conducted in accordance with subpart P of this part.

(2) There are no restrictive-use agreements or prepayment prohibitions in effect.

(b) Specific incentives offered will be based on the Agency's assessment of:

(1) The value of the housing project as determined by the Agency based on an ''as-is'' market value appraisal conducted in accordance with subpart P of this part;

(2) An incentive amount that will provide a fair return to the borrower;

(3) An incentive amount that will not cause basic rents at the housing project to exceed conventional rents for comparable units; except that when determined necessary by the Agency to allow for decent, safe and sanitary housing to be provided in market areas where conventional rents are not sufficient to cover necessary operating, maintenance, and reserve costs. Basic rents may be allowed to exceed comparable rents for conventional units, but in no case by more than 150% of the

comparable rent for conventional unit rent level; and

(4) An incentive amount that will be the least costly alternative for the Federal Government while being consistent with the Agency's commitment to the preservation of housing for very-low, low, and moderate income households in rural areas.

(c) The Agency may offer the following incentives:

(1) The Agency may increase the borrower's annual return on equity by one of the following two methods. The actual withdrawal of the return remains subject to the procedures and conditions for withdrawal specified in subpart G of this part.

(i) The Agency may recognize the borrower's current equity in the housing project. The equity will be determined using an Agency accepted appraisal based on the housing project's value as unsubsidized conventional housing.

(ii) When a current appraisal indicates an equity loan can not be made, the Agency may recognize the borrower's current equity in the housing project at the higher of the original rate of return or the current 15-year Treasury bond rate plus 2 percent rounded to the nearest one-quarter percent. The equity will be determined using the most recent Agency accepted appraisal of the housing project prior to receiving the prepayment request.

(2) The Agency may agree to convert projects without interest credit or with Plan I interest credit to Plan II interest credit or increase the interest credit subsidy for loans with Section 8 assistance to lower the interest rate on the loan and make basic rents more financially feasible.

(3) The Agency may offer additional rental assistance, or an increase in assistance provided under existing contracts under §§ 521(a)(2), 521(a)(5) of the Housing Act of 1949 (42 U.S.C. 1490a(a)(2)) or section 8 of the United States Housing Act of 1937 (42 U.S.C. § 1437f).

(4) The Agency may make an equity loan to the borrower. The equity loan must not adversely affect the borrower's ability to repay other Agency loans held by the borrower and must be made in conformance with the following requirements:

(i) The equity loan must not exceed the difference between the current unpaid loan balance and 90 percent of the housing project's value as determined by an ''as-is'' market value appraisal conducted in accordance with subpart P of this part.

(ii) Borrowers with farm labor housing loans are not eligible to receive equity loans as incentives.

(iii) If an incentive offer for an equity loan is accepted, the equity loan may be processed and closed with the borrower or any eligible transferee.

(iv) Excess reserve funds will be used to reduce the amount of an equity loan offered to a borrower.

(v) Equity loans may not be offered unless the Agency determines that other incentives are not adequate to provide a fair return on the investment of the borrower to prevent prepayment of the loan or to prevent displacement of project tenants.

(5) The Agency will offer rental assistance to protect tenants from rent overburden caused by any rent increase as a result of a borrower's acceptance of an incentive offer or tenants who are currently overburdened.

(6) In housing projects with project-based section 8 assistance, the Agency may permit the borrower to receive rents in excess of the amounts determined necessary by the Agency to defray the cost of long-term repair or maintenance of such a project.

(d) The Agency must determine that the combination of assistance provided is necessary to provide a fair return on the investment of the borrower and is the least costly alternative for the Federal Government.

(e) At the time a specific incentive offer is developed, the Agency must take into consideration the costs of any deferred maintenance, items in the housing project's operating budget, and any expected long-term repair or replacement costs based on a capital needs assessment developed in accordance with § 3560.103(c). Deferred maintenance may include specific items identified in previous Agency inspections where the borrower has had the opportunity and resources available to take corrective actions and did not.

(1) Deferred maintenance does not include routine repair and replacement that results from normal wear and tear of the physical asset. The amount required for the reserve account to be considered fully funded will be adjusted accordingly. To determine if basic rents exceed conventional rents for comparable units in the area, monthly contributions necessary to obtain the adjusted fully funded reserve account will be included in the calculation of basic rents.

(2) Deferred maintenance including any deficiencies identified in project compliance with section 504 of the Rehabilitation Act of 1973 must be addressed as part of the development of the incentive and must be completed as part of an acceptance agreement of any incentive.

(f) Existing loans must be consolidated, provided consolidation retains the Agency's lien position, and reamortized in accordance with subparts I and J of this part, provided it maintains feasibility of the housing for the tenants or reduces the debt service or the level of monthly rental assistance.

(g) The borrower must accept or reject the incentive offer within 30 days. If no answer to the offer is received within 30 days, the Agency may consider the incentive offer to be rejected.

(1) If the borrower accepts the incentive offer, procedures outlined in § 3560.657 must be followed.

(2) If the borrower rejects the incentive offer, the borrower must comply with requirements listed in § 3560.658.

[69 FR 69106, Nov. 26, 2004, as amended at 73 FR 65506, Nov. 4, 2008]

§ 3560.657 Processing and closing incentive offers.

(a) *Borrower responsibilities.* If a borrower accepts the Agency's offer of incentives, the borrower must complete the following actions:

(1) Subject to the Agency's approval, the borrower must legally restrict the use of the project in accordance with and for the number of years stated in § 3560.662.

(2) If the incentive offer accepted includes an equity loan, the borrower must complete an application for the equity loan, and the borrower must continue to qualify as an eligible borrower or transferee in accordance with subpart B of this part.

(3) If the incentive offer accepted includes rent increases, the borrower must follow the rent increase requirements established in subpart E of this part.

(b) *Waiting lists.* If funds for components of incentive offers are limited, the Agency will establish a waiting list of accepted incentive offers for funding in the date order that the complete prepayment request was received.

(c) *Unfunded incentive offers.* If the borrower accepts the incentive offer but the Agency is unable to fund the incentive within 15 months, the borrower may choose one of the following actions:

(1) The borrower may offer to sell the housing project in accordance with § 3650.659. In this case the borrower will be removed from the list of borrowers awaiting incentives.

(2) The borrower may stay on the list of borrowers awaiting incentives until the borrower's incentive offer is funded. The Agency will not negotiate the incentive offer; but, at a borrower's request, may adjust the incentive amount to reflect an updated appraisal, loan balance, and terms of third party financing.

(3) The borrower may withdraw the prepayment request and be removed from the list of borrowers awaiting incentives and either continue operating the housing project for program purposes and in accordance with Agency requirements or continue processing their prepayment process in accordance with § 3560.658. If the borrower chooses to withdraw their request, the borrower may resubmit an updated prepayment request, at any time, and repeat the prepayment process in accordance with this subpart.

(4) The borrower may elect to obtain a third-party equity loan provided rents will not exceed comparable rents in the market area.

§ 3560.658 Borrower rejection of the incentive offer.

(a) If a borrower rejects the incentive package offered by the Agency or an Agency request to extended restrictive-use provisions, made in accordance with § 3560.662, the loan will only be

prepaid if the borrower elects to agree to the following:

(1) The borrower agrees to sign restrictive-use provisions to extend restrictive-use by 10 years from the date of prepayment, and at the end of the restrictive-use period offer to sell the housing to a qualified nonprofit organization or public body in accordance with § 3560.659.

(2) If housing opportunities for minorities would be lost as a result of prepayment, the borrower will offer to sell the housing to a qualified nonprofit organization or public body in accordance with § 3560.659.

(b) If the borrower does not elect or agree to enter an agreement in accordance with paragraph (a) of this section, then the Agency will assess the impact of prepayment on two factors: housing opportunities for minorities and the supply of decent, safe, sanitary, and affordable housing in the market area. The Agency will review relevant information to determine the availability of comparable affordable housing for existing tenants in the market area and if minorities in the project, on the waiting list or in the market area will be disproportionately adversely affected by the loss of the affordable rental housing units.

(1) If restrictive-use provisions are in place, the borrower will agree to sign the restrictive-use provisions, as determined by the Agency, and at the end of the restrictive-use period, offer to sell the housing to a qualified nonprofit organization or public body in accordance with § 3560.659.

(2) If the Agency determines that prepayment will have an adverse impact on minorities, then the borrower must offer to sell to a qualified nonprofit organization or public body in accordance with the provisions of paragraph (a) of this section.

(3) If the Agency determines that the prepayment will not have an adverse effect on housing opportunities for minorities but there is not an adequate supply of decent, safe, and sanitary rental housing affordable to program eligible tenant households in the market area, the loan may be prepaid only if the borrower agrees to sign restrictive-use provisions, as determined by the Agency, to protect tenants at the time of prepayment.

(4) If the Agency determines that there is no adverse impact on minorities and there is an adequate supply of decent, safe, and sanitary rental housing affordable to program eligible tenant households in the market area the prepayment will be accepted with no further restriction.

(c) If the borrower agrees to the restrictive-use provisions, as determined by the Agency, the applicable language must be included in the release documents and the borrower must execute a restrictive-use agreement acceptable to the Agency and a deed restriction.

(d) If the borrower will not agree to applicable restrictive-use provisions, as determined by the Agency, the borrower must offer to sell to a nonprofit or public body in accordance with § 3560.659 or withdraw their prepayment request.

[69 FR 69106, Nov. 26, 2004, as amended at 73 FR 65506, Nov. 4, 2008]

§ 3560.659 Sale or transfer to nonprofit organizations and public bodies.

(a) *Sales price.* For the purposes of establishing a sales price when a borrower is required or elects to sell a housing project to a nonprofit organization or public body, two independent appraisals will be ordered, one by the Agency and one by the borrower. Both appraisals will conclude market value and be in accordance with subpart P of this part. If the borrower's assessment of the Agency's appraised market value indicates that no further appraisal is needed, the borrower may agree to accept the Agency's appraisal.

(1) The expense of the borrower's appraisal shall be borne by the borrower. The appraiser selected may not have an identity of interest with the borrower.

(2) If the two appraisers fail to agree on the market value, the Agency and the borrower will jointly select an appraiser whose appraisal will be binding on the Agency and the borrower. The Agency and the borrower shall jointly fund the cost of the appraisal.

(b) *Marketing to nonprofit organizations and public bodies.* If a borrower must offer the property for sale to a nonprofit organization or public body under this paragraph, the borrower

must take the following actions to inform appropriate entities of the sale:

(1) The borrower must advertise and offer to sell the project for a minimum of 180 days. The borrower may choose to suspend advertising and other sales efforts while eligibility of an interested purchaser is determined. If the purchaser is determined to be ineligible, the borrower must resume advertising for the balance of the required 180 days.

(2) The Agency will assist the borrower in initially notifying nonprofit organizations and public bodies.

(3) The borrower must provide the nonprofit organizations and public bodies contacted with sufficient information regarding the housing project and its operations for interested purchasers to make an informed decision. The information provided must include the minimum value of the housing project based on the market value determined in accordance with paragraph (a) of this section.

(4) If an interested purchaser requests additional information concerning the housing project, the borrower must promptly provide the requested materials.

(c) *Preference for local nonprofit and public bodies.* Local nonprofit organizations and public bodies have priority over regional and national nonprofit organizations and public bodies. The Agency may determine that no local nonprofit organizations or public bodies are available to purchase the housing project. After this determination, the borrower may accept an offer from a regional or national nonprofit organization or public body.

(d) *Eligible nonprofit organizations.* To be eligible to purchase properties under the conditions of this subpart, nonprofit organizations may not have among its officers or directorate any persons or parties with an identity-of-interest (or any persons or parties related to any person with identity-of-interest) in loans financed under section 515 that have been prepaid. In addition to local nonprofit organizations, eligible nonprofit organizations include regional or national nonprofit organizations or public bodies provided no part of the net earnings of which accrue to the benefit of any member, founder, contributor or individual.

(e) *Requirements for nonprofit organizations and public bodies.* To purchase and operate a housing project, a nonprofit organization or public body must meet the following requirements:

(1) The purchaser must agree to maintain the housing project for very low- and low-income families or persons for the remaining useful life of the housing and related facilities. However, currently eligible moderate-income tenants will not be required to move.

(2) The purchaser must agree that no subsequent transfer of the housing project will be permitted for the remaining useful life of the housing project unless the Agency determines that the transfer will further the provision of housing for low-income households, or there is no longer a need for the housing project. Language to be included in the deed, conveyance instrument, loan resolution, and assumption agreement (as applicable) is provided in § 3560.662.

(3) The purchaser must demonstrate financial feasibility of the housing project including anticipated funding.

(4) The purchaser must certify to the Agency that no identity-of-interest relationships in accordance with § 3560.102(g). The purchaser must not have any identity of interest with the seller or any borrower that has previously prepaid or requested prepayment of an Agency MFH loan.

(5) The purchaser must complete an Agency-approved application and obtain Agency approval in accordance with subpart B of this part.

(6) The purchaser must make a ;good faith offer taking into consideration the value of the housing project as determined in accordance with paragraph (a) of this section.

(f) *Selection priorities.* If more than one qualified nonprofit organization or public body submits an offer to purchase the project at the same time, priority will be given to local nonprofit organizations and public bodies over regional and national nonprofit organizations or public bodies. When selecting between offers equally meeting all other criteria, the borrower will first consider the success of the nonprofit organization's or public body's previous experience in developing and maintaining subsidized housing, with

preference given to the most successful. If the offers continue to be equal, the borrower will then consider the number of years experience that the nonprofit organization or public body has had in developing and maintaining subsidized housing, with preference given to the greater number of years.

(g) *Loans made by the Agency or other sources to nonprofit organizations and public bodies.* Agency loans to nonprofit organizations or public bodies may be made for the purposes described in this paragraph. Agency loans will be processed in accordance with subpart B of this part. Loans from other sources will be approved by the Agency in accordance with subpart I of this part.

(1) Agency loans to nonprofit organizations or public bodies for the purchase of a housing project will be based on the appraised value determined in accordance with paragraph (a) of this section.

(2) With proper justification, an Agency loan may be made to help the nonprofit organization or public body meet the housing project's first year operating expenses if there are insufficient funds in the housing project's general operating and expense account to meet such expenses. An Agency loan, for the purpose of covering first year operating expenses, may not exceed 2 percent of the housing project's appraised value determined in accordance with paragraph (c) of this section.

(h) *Advances for nonprofit organizations and public bodies.* The Agency may make advances, in accordance with section 502(c)(5)(c)(i), not in excess of limits established by Congress to nonprofit organizations or public bodies that are purchasing housing under this subpart. Grant funds may be used to cover any direct costs other than the purchase price, incurred by nonprofit organizations or public bodies in purchasing and assuming responsibility for the housing project.

(i) *Waiting list.* If funds for sales to nonprofit organizations and public bodies are limited, the Agency will add the funding requests to the waiting list for incentives and follow the process established in § 3560.657(b) and (c).

(j) *Withdrawal from sales process.* A borrower may withdraw the prepayment request at any time prior to the sale of the property. The borrower will be responsible for any damages associated with breaking a sales contract established with a nonprofit organization or public body.

(k) *When no offer to purchase is received.* Prepayment with no further restriction may be accepted by the Agency when the borrower agrees to offer the housing project for sale to a nonprofit organization or public body in accordance with § 3560.659 and no good faith offer is received within 180 days from the date that the housing project was advertised for sale to a nonprofit organization or public body, or a good faith offer was received within 180 days from the advertisement date but the offeror was unable to fulfill the terms of the offer within 24 months of the offer date, provided the owner cooperated with the potential purchaser.

[69 FR 69106, Nov. 26, 2004, as amended at 73 FR 65506, Nov. 4, 2008]

§ 3560.660 Acceptance of prepayments.

(a) When the Agency agrees to accept prepayment, the Agency will notify borrowers, in writing, of the conditions under which the Agency will accept prepayment including the specific restrictive-use provisions to which the borrower has agreed and the date by which the borrower must make the prepayment.

(1) Prepayment must be made 180 days from the date of the Agency's prepayment acceptance notice to the borrower.

(2) If the borrower's prepayment is not received within 180 days of the prepayment acceptance notice and the Agency has not agreed to an alternative date based on a written request from the borrower, the Agency may cancel the prepayment acceptance agreement.

(b) Tenants will be notified of the prepayment acceptance agreement in accordance with § 3560.654(c). If a prepayment is anticipated to result in increased net tenant contributions, displacements or involuntary relocations, the tenants, who are affected by such a circumstance, may request a Letter Of Priority Entitlement (LOPE) in accordance with § 3560.159(c). Tenants must request a LOPE within one year

of the prepayment acceptance notice date.

(c) Owners will provide certification stating that they will meet state and local laws prior to prepayment acceptance.

§ 3560.661 Sale or transfers.

(a) If a sale or transfer is to take place in conjunction with the Agency incentive offer, the sale or transfer must comply with the processing provisions of subpart I of this part.

(b) If a proposed transferee is determined not to be eligible for the transfer and assumption, the borrower will be given an additional 45 days to find another transferee.

(c) In cases where the existing owner is in program non-compliance or default, the Agency may make an offer of incentives contingent on the successful transfer of the housing to an acceptable purchaser. The Agency may offer a smaller incentive or no incentive if the borrower does not agree to transfer the project to an acceptable purchaser, or if the transfer does not take place.

§ 3560.662 Restrictive-use provisions and agreements.

All restrictions require Agency approval and must be in accordance with the following restrictions:

(a) The undersigned, and any successors in interest, agree to use the property (described herein) in compliance with 42 U.S.C. 1484 or 1485, whichever is applicable, and applicable regulations and the subsequent amendments, for the purpose of housing:

(1) Very low-, or low-income households when required by § 3560.658(a)(2), or

(2) Very low-, low-, or moderate-income households.

(b) The period of the restriction will be inserted in accordance with the following:

(1) 10 years if required by § 3560.658(a)(1);

(2) The last existing tenant (that occupied the property on the date of prepayment) voluntarily vacates if required by § 3560.658(b)(3);

(3) 30 years if required by § 3560.406(g);

(4) Remaining period of existing restrictive-use provisions and any agreed extension if required by § 3560.655 or § 3560.658 (b)(1);

(5) The remaining useful life of the housing and related facilities if required by § 3560.658(a)(2); and

(6) 20 years in all other cases.

(c) When required by § 3560.658(a)(1) or (a)(2), the undersigned agrees that at the end of the expiration of the period described in paragraph (b) of this section, the property will be offered for sale to a qualified nonprofit organization or public body, in accordance with previously cited statutes and regulations.

(d) The Agency and eligible tenants or applicants may enforce these restrictions.

(e) The undersigned also agrees to:

(1) To set rents, other charges, and conditions of occupancy in a manner to meet these restrictions;

(2) To post an Agency approved notice of this restriction for the tenants of the property;

(3) To adhere to applicable local, state, and Federal laws; and

(4) To obtain Agency concurrence for any rental procedures that deviate from those approved at the time of prepayment, prior to implementation.

(f) The undersigned will be released from these obligations before the termination period in paragraph (b) of this section only when the Agency determines that there is no longer a need for the housing or that financial assistance provided the residents of the housing will no longer be provided due to no fault, action or lack of action on the part of the borrower.

[69 FR 69106, Nov. 26, 2004, as amended at 73 FR 65506, Nov. 4, 2008]

§ 3560.663 Post-payment responsibilities for loans subject to continued restrictive-use provisions.

(a) If a borrower prepays a loan and the housing project remains subject to restrictive-use provisions, the requirements of this section apply after prepayment.

(b) Owners of prepaid housing projects will be responsible for ensuring that the restrictive-use provisions agreed to as a condition of prepayment are observed.

(c) Owners must maintain appropriate documentation to demonstrate

compliance with the restrictive-use provisions and must make the documentation and the housing project site available for Federal Government inspection upon request.

(1) Owners must document rent increases in accordance with subpart G of this part.

(2) Owners must document tenant eligibility in accordance with § 3560.152.

(3) In an Agency approved format, owners must provide the agency with a signed and dated certification within 30 days of the beginning of each calendar year for the full period of the restrictive-use provisions establishing that the restrictive-use provisions are being met.

(d) Owners must observe Agency policies on tenant grievances as described in § 3560.160. The Agency may enforce restrictive-use provisions through administrative and legal actions. Tenants may enforce the restrictive-use provisions by contacting the Agency or through legal action. The Agency will release the restrictive-use provisions when the Agency conditions have been met.

§§ 3560.664–3560.699 [Reserved]

§ 3560.700 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart O—Unauthorized Assistance

§ 3560.701 General.

(a) This subpart contains the policies for recapturing unauthorized assistance when the Agency determines that a borrower or tenant was ineligible for, or improperly used, assistance received from the Agency.

(b) The Agency may seek repayment of any unauthorized assistance provided to a borrower or tenant, plus the cost of collection, regardless of whether the unauthorized assistance was due to errors by the Agency, the borrower, or the tenant.

§ 3560.702 Unauthorized assistance sources and situations.

(a) Unauthorized assistance can be received by a borrower or tenant in the form of loans, grants, interest credit, rental assistance, or other assistance provided by the Agency including assistance received as a result of an incorrect interest rate being applied to an Agency loan. Agency officials may pursue identification and recapture of unauthorized assistance through any legal remedies available.

(b) Unauthorized assistance may result from situations such as:

(1) Assistance being provided to an ineligible borrower or tenant;

(2) Assistance to an eligible borrower or tenant being used for an unauthorized purpose;

(3) Assistance being obtained as a result of inaccurate, incomplete, or fraudulent information provided by a borrower or tenant; or

(4) Assistance being obtained as a result of errors by the Agency, borrower, or tenant.

§ 3560.703 Identification of unauthorized assistance.

(a) The Agency will use all available means to identify unauthorized assistance, including Agency monitoring activities, OIG reports, GAO reports, and reports from any source, if the information provided can be substantiated by the Agency.

(b) Borrowers have the primary responsibility for identifying repayment of unauthorized assistance received by tenants.

§ 3560.704 Unauthorized assistance determination notice.

(a) The Agency will notify borrowers, in writing, when a determination has been made that unauthorized assistance was received by the borrower.

Borrowers will notify tenants, in writing, when a determination is made that unauthorized assistance was received by the tenant and will simultaneously send the Agency of copy of the written notice to the tenant.

(b) The unauthorized assistance determination notice is a preliminary notice, not a demand letter. The unauthorized assistance determination notice will:

(1) Specify the reasons the assistance was determined to be unauthorized;

(2) State the amount of unauthorized assistance to be repaid and specify the party responsible for repayment of the unauthorized assistance (*i.e.*, the tenant or borrower) according to the provision of § 3560.708;

(3) Establish a place and time when the person receiving the unauthorized assistance determination notice may meet with the Agency or, in the case of tenants, may meet with the borrower, to discuss issues related to the unauthorized assistance notice such as the establishment of a repayment schedule; and

(4) Advise the borrower or tenant that they may present facts, figures, written records, or other information within a specified period of time which might alter the determination that the assistance received was unauthorized.

(c) Upon request, the Agency or borrower, in the case of tenants, will grant additional time for discussions related to an unauthorized assistance determination notice. Borrowers must notify the Agency of schedule revisions when additional time is granted to a tenant in unauthorized assistance claims.

§ 3560.705 Recapture of unauthorized assistance.

(a) The Agency will seek repayment of all unauthorized assistance received by a borrower or tenant, plus the cost of collection, to the fullest extent permitted by law. Agency efforts to collect unauthorized assistance may include offsets, the use of private or public collection agents, and any other remedies available. Agency findings related to unauthorized assistance determinations will be referred to credit reporting bureaus and other federal, state, or local agencies with jurisdictions related to the unauthorized assistance findings for suspension, debarment, civil or criminal action to the fullest extent permitted by law.

(b) If a borrower or tenant agrees to repay unauthorized assistance, the amount due will be the amount stated in the unauthorized assistance determination notice unless another amount has been approved by the Agency.

(c) Repayment may be made either with a lump sum payment or through payments made over a period of time. If a borrower or tenant agrees to repay unauthorized assistance, the borrower or tenant proposed repayment schedule must be approved by Agency prior to implementation. Agency approval of a repayment schedule will take into consideration the best interest of the borrower, the tenant, and the Federal Government.

(d) Borrowers must retain copies of all correspondence and a record of all conversations between the borrower and a tenant regarding unauthorized assistance received by a tenant.

(e) When a tenant, who has received unauthorized assistance due to tenant error or fraud as determined by the Agency, moves out of a housing project, the borrower is no longer responsible for recapturing the unauthorized assistance provided that the borrower notifies the Agency of the tenant's move and transfers all records related to the tenant's unauthorized assistance to the Agency within 30 days of the tenant's move. The Agency will pursue collection of the unauthorized assistance from the tenant.

(f) If a borrower refuses to enter into an unauthorized assistance repayment schedule with the Agency, the Agency will initiate liquidation procedures, in accordance with § 3560.456, or other enforcement actions, such as suspension, debarment, civil, or criminal penalties, in accordance with § 3560.461. If a tenant refuses to enter into an unauthorized assistance repayment schedule, the Agency will initiate recovery actions against the tenant.

(g) Borrowers may not use housing project funds to pay amounts due to the Agency as a result of unauthorized assistance due to borrower fraud.

§ 3560.706 Offsets.

Offsets and any other available remedies may be used by the Agency to recapture unauthorized assistance. Guidance concerning use of offsets can be found at 7 CFR 3550.210.

§ 3560.707 Program participation and corrective actions.

(a) With Agency approval, a borrower or tenant, who has received unauthorized assistance, may continue to participate in the project if they have the legal and financial capabilities to do so. Approval considerations for such forbearance and repayment are in § 3560.705.

(b) A borrower or tenant who was responsible for the circumstances causing the unauthorized assistance must take appropriate action to correct the problem within 90 days of the unauthorized assistance determination notice date, unless an alternative date is agreed to by the Agency.

(c) When the interest rate shown in a debt instrument resulted in the receipt of unauthorized assistance, the debt instrument will be modified to the correct interest rate. All payments made by the borrower at the incorrect interest rate will be reapplied at the correct interest rate, and remaining payments due on the loan will be recalculated on the basis of the correct interest rate, plus any amounts due to the Agency as a result of the use of an incorrect interest rate, unless the Agency agrees to a separate repayment process.

§ 3560.708 Unauthorized assistance received by tenants.

(a) Tenant actions that require tenant repayment of unauthorized assistance received by tenants include, but are not limited to:

(1) Knowingly or mistakenly misrepresenting income, assets, adjustments to income, or household status to the borrower as required under subpart D of this part; or

(2) Failure to properly report changes in income, assets, adjustments to income, or household status to the borrower as required in subpart D of this part.

(b) Borrower actions that require borrower repayment of unauthorized assistance received by tenants include, but are not limited to:

(1) Incorrect determination of tenant income or household status by the borrower, resulting in rental assistance or interest credit that is not allowable under the provisions of subparts D, E, or F of this part, as applicable; or

(2) Assignment of rental assistance to a household that is ineligible under the requirements of subpart F of this part.

(c) When it is determined that a tenant has received unauthorized assistance, the borrower shall notify the tenant and the Agency through the procedure specified in § 3560.704.

(d) Borrowers may not charge tenants to pay amounts due to the Agency as a result of unauthorized assistance to tenants through borrower error.

(e) Borrowers must notify the Agency of all collections from tenants as repayments for unauthorized assistance and must remit or credit the amounts collected to applicable housing project accounts.

(f) When rental assistance was improperly assigned to a tenant, for any reason, the rental assistance benefit must be canceled and reassigned.

(1) Before a borrower notifies a tenant of rental assistance cancellation, the borrower must request Agency approval. If the Agency determines that the unauthorized rental assistance was received by the tenant due to borrower fraud or error, the borrower must give the tenant 30 days notice, in writing, that the unit was assigned in error and that the rental assistance benefit will be canceled effective on date that the next monthly rental payment is due after the end of the 30-day notice period.

(2) Tenants also must be notified, in writing, that they may cancel their lease without penalty at the time the rental assistance is canceled. Tenants must be offered an opportunity to meet with a borrower to discuss the rental assistance cancellation.

§ 3560.709 Demand letter.

(a) If a borrower fails to respond to an unauthorized assistance determination notice or fails to agree to a repayment schedule, the Agency will send the borrower a demand letter specifying:

(1) The amount of unauthorized assistance to be repaid and the basis for the unauthorized assistance determination; and

(2) The actions to be taken by the Agency if repayment is not made by a specified date.

(b) If a tenant fails to respond to the unauthorized assistance determination notice or fails to agree to a repayment schedule, the borrower will send the tenant a demand letter specifying:

(1) The amount of unauthorized assistance to be repaid and the basis for the unauthorized assistance determination;

(2) The actions to be taken if repayment is not made by a specified date, including termination of tenancy; and

(3) The appeal rights of the tenant as specified in § 3560.160.

(c) A demand letter may be sent to a borrower or tenant, in lieu of an unauthorized assistance determination notice, when the evidence documenting the unauthorized assistance determination is deemed to be conclusive by the Agency or borrower sending the letter.

§§ 3560.710–3560.749 [Reserved]

§ 3560.750 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart P—Appraisals

§ 3560.751 General.

This subpart sets forth appraisal policies for Agency-financed multifamily housing (MFH) projects consisting of five or more rental units. Agency-financed housing projects with fewer than five rental units may be appraised in accordance with the Agency's single family housing appraisal policies established under 7 CFR 3550.62.

§ 3560.752 Appraisal use, request, review, and release.

(a) *Appraisal uses.* The Agency will use appraisals to determine whether the security offered by an applicant or borrower is adequate to secure a loan or determine appropriate servicing or preservation decisions. Appraisals used for Agency decision-making must be current, unless the Agency and the applicant, or borrower, mutually agree to the use of an appraisal that is not current. A current appraisal is an appraisal with a report date that is not more than one year old.

(b) *Appraisal requests.* Appraisal requests must be in writing and must specify the client and other intended users, the intended use, the purpose, and the scope of work of the appraisal, including the type and definition of the value(s) to be developed.

(1) *Type of Value.* The appraisal request must indicate whether the ''market value'', the ''market value, subject to restricted rents'', or any other type of value of the housing project and related facilities is to be concluded.

(i) A request for ''market value, subject to restricted rents'' means the appraisal will take into consideration any rent limits, rent subsidies, expense abatements, or restrictive-use conditions that will affect the property as a result of an agreement with the Agency or any other financing source. Each type of financing involved, including, but not limited to, interest credit subsidy, low-interest loans from other sources, tax-exempt bond financing, tax credits, and grants, must be valued separately in the appraisal.

(ii) A request for ''market value'' means the appraisal will take into consideration the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified

date and the passing of title from seller to buyer under conditions whereby:

(A) Buyer and seller are typically motivated;

(B) Both parties are well informed or well advised and acting in what they consider their best interests;

(C) A reasonable time is allowed for exposure in the open market;

(D) Payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and

(E) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(2) *''As-is' Value'' or ''Prospective Value''*. The appraisal request must indicate whether the '''as-is' value'' or ''prospective value'' of the housing is to be concluded.

(i) '''As-is' value'' means the value of the housing and related facilities as of the effective date of the appraisal. It relates to what physically exists and is legally permissible at the time of the appraisal and excludes all hypothetical conditions.

(ii) ''Prospective value'' means the forecasted value of the housing and related facilities as of a specified future date. For Agency appraisals, this date will typically be the projected completion date of proposed new construction or rehabilitation.

(3) *Section 8 project-based assistance*. Depending on the intended use of the appraisal, the Agency will specify whether or not section 8 project-based assistance will be considered in the valuation of the housing. The remaining term of the section 8 contract and the probability of subsequent renewal terms being authorized will be taken into consideration when making this determination.

(4) *Low-Income Housing Tax Credit (LIHTC) and other financing sources*. Depending on the intended use of the appraisal, the Agency will specify whether or not tax credits and other financing sources involved in the housing will be considered in the valuation of the housing.

(c) *Appraisal review*. All MFH appraisals that were not written by an Agency appraiser will be reviewed by an Agency appraiser, who will write and file a technical review report that complies with the Uniform Standards of Professional Appraisal Practice (USPAP) and Agency requirements.

(d) *Release of appraisals*. MFH appraisals procured by the Agency will be released to owners/applicants, from their own files, upon their request.

§ 3560.753 Agency appraisal standards and requirements.

(a) *General*. The Agency recognizes USPAP as the basic standards for appraisals. Appraisals used by the Agency must comply with USPAP and this subpart.

(b) *Appraisers*. MFH appraisals prepared for the Agency will be written by Agency appraisers or independent fee appraisers who are state certified general appraisers, certified in the state where the property is located. Technical review reports will be written by Agency state certified general appraisers.

(c) *Appraisal report*. The appraisal report format may be a form appraisal or a narrative appraisal. The Agency will specify the appraisal format that is most appropriate for the scope of work involved when the appraisal is requested.

(1) *Form appraisal reports*. The Agency will accept appraisal report forms that meet generally accepted industry standards, comply with USPAP, and have been approved by the Agency.

(2) *Narrative appraisal reports*. Narrative appraisal reports must, at a minimum, contain the following items:

(i) Transmittal letter;

(ii) Factual information about the property;

(iii) Regional and neighborhood data;

(iv) Description of the subject property;

(v) Description of existing and planned improvements;

(vi) A highest and best use analysis;

(vii) A statement regarding any environmental issues, such as potential contamination of the property from hazardous substances, hazardous wastes, or petroleum products;

(viii) A cost approach analysis (if applicable);

(ix) A sales comparison approach analysis (if applicable);

(x) An income approach analysis (if applicable);

(xi) A reconciliation of the value indications derived from the included approaches to value; and

(xii) A signed and dated certification of value.

(3) At the time an appraisal is requested, the Agency will specify either a complete or a limited appraisal and one of the following types of appraisal reports, based upon the complexity of the appraisal assignment.

(i) A self-contained report that comprehensively describes all information significant to the solution of the appraisal problem;

(ii) A summary report that summarizes all information significant to the solution of the appraisal problem; or

(iii) A restricted use report, intended for Agency use only, that briefly states all information significant to the solution of the appraisal problem.

(d) *Highest and best use statement and analysis.* The highest and best use is to be concluded for the subject site as though it was vacant, and for the subject property as improved, if improvements have been made. If the highest and best use of a subject property is for something other than MFH, the appraisal report must provide this information to the Agency for consideration in the loan process. In addition to being reasonably probable and appropriately supported, the highest and best use of both the land as though vacant and the property as improved must meet four implicit criteria. The highest and best use must be:

(1) Physically possible;

(2) Legally permissible;

(3) Financially feasible; and

(4) Maximally productive.

(e) *Valuation methods and variances.* The final opinion of value presented in an appraisal report must have considered a cost approach, a sales comparison approach, and an income approach. If one of these standard approaches is not used, the reconciliation narrative will provide a full and complete explanation of the reasons the approach was excluded. The reconciliation will fully discuss and reconcile variances in the value indications concluded by each approach.

(f) *Real estate history.* Appraisals must contain a 5-year ownership and sales history for the housing project being appraised.

(g) *Reserve accounts.* Funds in the housing project's reserve account will not be considered in the valuation of the housing project.

(h) *Escrow accounts.* Short-term prepaid escrow accounts for general operating expenses, such as taxes and insurance, shall not be considered in the valuation of the housing project.

(i) *Rental rates comparison.* The appraisal report must document whether the housing project's basic rents are less than, equal to, or greater than market rents for comparable conventional, or non-subsidized, units in the area where the housing is located.

(j) *Description of housing and property rights.* The appraisal report must identify and describe both the real estate, which is the land and improvements, and the real property, or property rights, being appraised.

(k) *Exclusion of rental units from valuation.* The Agency will provide appraisers with instructions and supporting information on any rental units that do not produce rental income at the time of the appraisal.

(l) *Non-contiguous sites.* When a housing project has real property located on non-contiguous sites, a separate appraisal must be developed for each site.

§§ 3560.754–3560.799 [Reserved]

§ 3560.800 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

PART 3565—GUARANTEED RURAL RENTAL HOUSING PROGRAM

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AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

SOURCE: 63 FR 39458, July 22, 1998, unless otherwise noted.

Subpart A—General Provisions

§ 3565.1 Purpose.

The purpose of the Guaranteed Rural Rental Housing Program (GRRHP) is to increase the supply of affordable rural rental housing, through the use of loan guarantees that encourage partnerships between the Rural Housing Service, private lenders and public agencies.

§ 3565.2 Applicability and authority.

The regulation prescribes the policies, authorizations, and procedures for the guarantee of multifamily loans under section 538 of the Housing Act of 1949.

§ 3565.3 Definitions.

Administrator. The Administrator of the Rural Housing Service, or his or her designee.

Agency. The Rural Housing Service, or a successor agency.

Allowable claim amount. The total losses incurred by the lender, as calculated pursuant to subpart J of this part.

Applicable Federal Rate (AFR). The interest rate set by the federal government for federal financing programs pursuant to section 42 of the Internal Revenue Code.

Approved lender. An eligible lender who has been authorized by the Agency to originate and service guaranteed multifamily loans under the program.

Assignment. The delivery by a lender to the Agency of the note and any other security instruments securing the guaranteed loan; and any and all liens, interest, or claims the lender may have against the borrower.

Assistance. Financial assistance in the form of a loan guarantee or interest credit received from the Agency.

Borrower. The individuals or entities responsible for repaying the loans.

Claim. The presentation to the Agency of a demand for payment for losses incurred on a loan guaranteed under the program.

Conditional commitment. The written commitment by the Agency to guarantee a loan subject to the stated terms and conditions.

Construction and permanent loan. A loan which provides advances during the construction period and remains in place as a permanent loan at the completion of construction.

Construction contingency reserve. A cash reserve of at least two percent of the construction contract, inclusive of the contractor's fee and all hard and soft costs that must be set up and fully funded by the closing of the construction loan. This reserve will be held by the lender, and funds will only be disbursed for change order requests approved by the Agency and the lender. Unused funds from the construction contingency reserve will be held in the operating and maintenance reserve and cannot be released to the borrower until the project reaches an occupancy of 90% for 90 consecutive days. In addition the reserve accounts established in the conditional commitment must be fully funded prior to the release of the construction contingency reserve. These requirements remain in effect regardless of whether the lender has established a lease-up reserve in lieu of the occupancy requirement.

Correspondent relationship. A contractual relationship between an approved

lender and a non-approved lender or mortgage broker in which the correspondent performs certain origination, underwriting or servicing functions for the approved lender.

Default. Failure by a borrower to meet any obligation or term of a loan, grant, or regulatory agreement, or any program requirement.

Delinquency. Failure to make a timely payment under the terms of the promissory note or regulatory agreement.

Department of Housing and Urban Development (HUD). A federal agency which may be a partner in some of the Agency guarantees.

Due diligence. The process of evaluating real estate in the context of a real estate transaction for the presence of contamination from release of hazardous substances, petroleum products, or other environmental hazards and determining what effect, if any, the contamination has on the regulatory status or security value of the property.

Eligible borrower. A borrower who meets the requirements of subpart D of this part.

Eligible lender. A lender who meets the requirements of subpart C of this part or any successor regulation.

Eligible loan. A loan that meets the requirements of subpart E of this part or any successor regulation.

Eligible rural area. An eligible rural area is an area which meets the requirements of part 3550 of this chapter or any successor regulation.

Fannie Mae. A Federally chartered, publicly owned enterprise created by Congress to purchase, sell or otherwise facilitate the purchase or sale of mortgages in the secondary mortgage market.

Federal Home Loan Bank System. A system of member savings and loans, banks and other lenders whose primary business is the making of housing loans.

Final claim payment. The amount due to the lender (or the Agency) after disposition of the collateral is complete and the proceeds from liquidation, as well as any other claim payments, are applied against the allowable claim amount.

Foreclosure. The process by which the ownership interest of a borrower in a mortgaged property is extinguished and the security is liquidated with the proceeds applied to the loan.

Freddie Mac. A Federally chartered, publicly owned enterprise created to purchase, sell or otherwise facilitate the purchase or sale of mortgages in the secondary mortgage market.

Ginnie Mae. Ginnie Mae is a reference to the Government National Mortgage Association.

Government National Mortgage Association. The Government National Mortgage Association (Ginnie Mae) is a government corporation within the Department of Housing and Urban Development. Ginnie Mae guarantees privately issued securities backed by mortgages or loans which are insured or guaranteed by the Federal Housing Administration (FHA), the Department of Veterans Affairs (VA), or the Rural Housing Service (RHS) and certain other loans or mortgages guaranteed or insured by the Government.

GRRHP. Guaranteed Rural Rental Housing Program.

Guarantee fees. The fees paid by the lender to the Agency for the loan guarantee.

(1) An initial guarantee fee is due at the time the guarantee is issued.

(2) An annual guarantee fee is due at the beginning of each year that the guarantee remains in effect.

Guaranteed loan. Any loan for which the Agency provides a loan guarantee.

Holder. A person or entity, other than the lender, who owns all or part of the guaranteed portion of the loan with no servicing responsibilities. When the single note option is used and the lender assigns a part or all of the guaranteed note to an assignee, the assignee becomes a Holder only when the Agency receives notice and the transaction is completed through use of an assignment guarantee agreement form approved by the Agency.

Housing Finance Agency (HFA). A state or local government instrumentality authorized to issue housing bonds or otherwise provide financing for housing. Identity of interest. With respect to a project, an actual or apparent financial interest of any type, that exists or will exist among the borrower, contractor, lender, syndicator,

management agent, suppliers of materials or services, including professional services, or vendors (including servicing and property disposal), in any combination of relationships which may result in an actual or perceived conflict of interest

Income eligibility. A determination that the income of a tenant at initial occupancy does not exceed 115 percent of the area median income as such area median income is defined by HUD or a successor agency.

Indian tribe. Any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation, as defined by or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians pursuant to the Indian Self-Determination and Education Assistance Act of 1975 (25 U.S.C. 450 *et seq.*); or any entity established by the governing body of an Indian tribe, as described in this definition, for the purpose of financing economic development.

Interest credit. A subsidy available to eligible borrowers that reduces the effective interest rate of the loan to the Applicable Long Term Monthly AFR.

Land lease. A written agreement between a landowner and a borrower for the possession and use of real property for a specified period of time.

Lease. A contract containing the rights and obligations of a tenant or cooperative member and a borrower, including the amount of the monthly occupancy charge and other terms under which the tenant will occupy the housing.

Lease-up period. The period of time that begins when the first unit in the project receives a certificate of occupancy until the time that occupancy of 90% of the units for a minimum of 90 consecutive days is achieved.

Lease-up reserve. A cash deposit which is available to a property to help pay operating costs and debt service at the initiation of operations while units are being leased to their initial occupants.

Lender. A bank or other financial institution, including a housing finance agency, that originates or services the guaranteed loan.

Lender agreement. The written agreement between the Agency and the lender containing the requirements the lender must meet on a continuing basis to participate in the program.

Loan. A mechanism by which a lender funds the acquisition and development of a multifamily project. A loan in this context is secured by a mortgage executed by the lender and borrower.

Loan guarantee. A pledge to pay part of the loss incurred by a lender in the event of default by the borrower.

Loan guarantee agreement. The written agreement between the Agency and the lender containing the terms and conditions of the guarantee with respect to an individual loan.

Loan participation. A loan made by more than one lender wherein each lender funds an individual portion of the loan.

Loan-to-cost ratio. The amount of the loan divided by the total cost to develop the project.

Loan-to-value ratio. The amount of the loan divided by the appraised market value of the project.

Maximum guarantee payment. The maximum payment by the Agency under the guarantee agreement computed by applying the guarantee percentage times the allowable claim amount, but not to exceed original principal amount.

Mortgage. A written instrument evidencing or creating a lien against real property for the purpose of providing collateral to secure the repayment of a loan. For program purposes, this may include a deed of trust or any similar document.

Multifamily project. A project designed with five or more living units.

Negligent servicing or origination. Negligent servicing or origination is a failure to perform those services which a reasonably prudent lender would perform in servicing or originating its own portfolio and includes not only the failure to act but also the failure to act in a timely manner.

NOFA. A ''Notice of Funding Availability'' published in the FEDERAL REGISTER to inform interested parties of the availability of assistance and other

non-regulatory matters pertinent to the program.

Non-monetary default. A default that does not involve the payment of money.

Note. Any note, bond, assumption agreement, or other evidence of indebtedness pertaining to a guaranteed loan.

Office of Inspector General (OIG). The agency of USDA established under the Inspector General Act.

Operating and maintenance reserve. A cash reserve required of all projects of at least two percent of the loan amount held by the lender that is used for the up-keep of the project.

Payment effective date. For the month payment is due, the day of the month on which payment will be effectively applied to the account by the lender, regardless of the date payment is received.

Permanent loan. A permanent loan is defined as a mortgage loan usually covering development costs, interim loans, construction loans, financing expenses, marketing, administrative, legal, and other Agency approved costs. This loan differs from the construction loan in that financing goes into place after the project is completely constructed and open for occupancy. It is a long-term obligation, generally for a period of no less than 25 years and no more than 40 years.

Prepayment. The payment of the outstanding balance on a loan prior to the note's maturity date.

Project. The total number of rental housing units and related facilities subject to a guaranteed loan that are operated under one management plan and one Regulatory Agreement.

Program requirements. Any requirements contained in any loan document, guarantee agreement, statute, regulation, handbook, or administrative notice.

Promissory note. See ''Note''.

Qualified alien. For the purposes of this part, qualified alien refers to any person lawfully admitted into the country who meets the criteria of 42 U.S.C. 1436a.

Real estate owned. Denotes real estate that has been acquired by the lender or the Agency (often known as ''inventory property'').

Recourse. The lender's right to seek satisfaction from the borrower's personal financial resources or other resources for monetary default.

Regulatory agreement. The agreement that establishes the relationship among the Agency, the lender, and the borrower; and contains the borrower's responsibilities with respect to all aspects of the management and operation of the project.

RHS. The Rural Housing Service within the Rural Development mission area, or a successor agency, which administers section 538 guarantees.

Rural area. A geographic area as defined in section 520 of the Housing Act of 1949.

Rural Development. A mission area within USDA which includes RHS, Rural Utilities Service, and Rural Business-Cooperative Service.

Servicing. The broad scope of activities undertaken to manage the performance of a loan throughout its term and to assure compliance with the program requirements.

Single asset ownership. A borrower who owns only one project.

Surplus cash. The borrower's remaining funds at the project's fiscal year end, after making all required payments, excluding required reserves and escrows.

Tenant. The individual that holds the right to occupy a unit in accordance with the terms of a lease executed with the project owner.

U.S. citizen. An individual who resides as a citizen in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Marinas, the Federated States of Micronesia, the Republic of Palau, or the Republic of the Marshall Islands.

USDA. The United States Department of Agriculture.

[63 FR 39458, July 22, 1998, as amended at 67 FR 16970, April 9, 2002; 70 FR 2930, Jan. 19, 2005; 76 FR 3, Jan. 3, 2011]

§ 3565.4 Availability of assistance.

The Agency's authority to enter into commitments, guarantee loans, or provide interest credits is limited to the extent that appropriations are available to cover the cost of the assistance.

The Agency will publish a NOFA in the FEDERAL REGISTER to notify interested parties of the availability of assistance.

§ 3565.5 Ranking and selection criteria.

(a) *Threshold criteria*. Applications for loan guarantee submitted by lenders must include a loan request for a project that meets all of the following threshold criteria:

(1) The project must involve an owner and a development team with qualifications and experience sufficient to carry out development, management, and ownership responsibilities, and the owner and development team must not be under investigation or suspension from any government programs;

(2) The project must involve the financing of a property located in an eligible rural area;

(3) Demonstrate a readiness, for the project to proceed, including submission of a complete application for a loan guarantee and evidence of financing;

(4) Demonstrate market and financial feasibility; and

(5) Include evidence that the credit risk is reasonable, taking into account conventional lending practices, and factors related to concentration of risk in a given market and with a given borrower.

(b) *Priority projects*. Priority will be given to projects: in smaller rural communities, in the most needy communities having the highest percentage of leveraging, having the lowest interest rate, having the highest ratio of 3–5 bedroom units to total units, or located in Empowerment Zones/Enterprise Communities or on tribal lands. In addition, the Agency may, at its sole discretion, set aside assistance for or rank projects that meet important program goals. Assistance will include both loan guarantees and interest credits. Priority projects must compete for set-aside funds. The Agency will announce any assistance set aside and selection criteria in the NOFA.

[63 FR 39458, July 22, 1998, as amended at 64 FR 32371, June 16, 1999]

§ 3565.6 Inclusion of tax-exempt debt.

Tax-exempt financing can be used a source of capital for the guaranteed loan.

[64 FR 32371, June 16, 1999]

§ 3565.7 Agency environmental requirements.

The Agency will take into account potential environmental impacts of proposed projects by working with applicants, other federal agencies, Indian tribes, State and local governments, and interested citizens and organizations in order to formulate actions that advance the program goals in a manner that will protect, enhance, and restore environmental quality. Actions taken by the Agency under this subpart are subject to an environmental review conducted in accordance with the requirements of 7 CFR part 1940, subpart G or any successor regulations.

§ 3565.8 Civil rights compliance.

(a) All actions taken by the Agency, or on behalf of the Agency, by a lender will be conducted without regard to race, color, religion, national origin, sex, marital status, age, income from public assistance or having exercised their right under the Consumer Credit Protection Act, and in accordance with the Equal Credit Opportunity Act (ECOA).

(b) Any action related to the sale, rental or advertising of dwellings; in the provision of brokerage services; or in making available residential real estate transactions involving Agency assistance, must be in accordance with the Fair Housing Act, which prohibits discrimination on the basis of race, color, religion, sex, national origin, familial status or handicap. It is unlawful for a lender or borrower participating in the program to:

(1) Refuse to make accommodations in rules, policies, practices, or services if such accommodations are necessary to provide a person with a disability an opportunity to use or continue to use a dwelling unit and all public and common use areas; and

(2) Refuse to allow an individual with a disability to make reasonable modifications to a unit at his or her expense, if such modifications may be

necessary to afford the individual full enjoyment of the unit.

(c) Any resident or prospective resident seeking occupancy or use of a unit, property or related facility for which a loan guarantee has been provided, and who believes that he or she is being discriminated against may file a complaint with the lender, the Agency or the Department of Housing and Urban Development. A written complaint should be sent to the Secretary of Agriculture or of the Department of Housing and Urban Development in Washington, DC.

(d) Lenders and borrowers that fail to comply with the requirements of title VIII of the Civil Rights Act of 1968, as amended (the Fair Housing Act), are liable for those sanctions authorized by law.

(e) For guaranteed loans with ''interest credit,'' the following additional civil rights laws will apply and be enforced by the agency delivering this guarantee program: title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, Age Discrimination Act of 1975, and title IX of the Education Amendments of 1972.

(f) In accordance with title VI, borrowers will be subjected to compliance reviews for projects that receive interest credit.

[64 FR 32371, June 16, 1999]

§ 3565.9 Compliance with federal requirements.

The Agency and the lender are responsible for ensuring that the application is in compliance with all applicable federal requirements, including the following specific statutory requirements:

(a) *Intergovernmental review*. 7 CFR part 3015, subpart V, ''Intergovernmental Review of Department of Agriculture Programs and Activities'', or successor regulation, including the Agency supplemental administrative instruction, RD Instruction 1970–I, 'Intergovernmental Review,' available in any Agency office or on the Agency's Web site.

(b) *National flood insurance*. The National Flood Insurance Act of 1968, as amended by the Flood Disaster Protection Act of 1973; the National Flood Insurance Reform Act of 1994; and 7 CFR part 1806, subpart B, or successor regulation.

(c) *Clean Air Act and Water Pollution Control Act Requirements*. For any contract, all applicable standards, orders or requirements issued under section 306 of the Clean Air Act; section 508 of the Clean Water Act; Executive Order 11738; and EPA regulations at part 32, of title 40.

(d) *Historic preservation requirements*. The provisions of 7 CFR part 1901, subpart F or successor regulation.

(e) *Lead-based paint requirements*. The provisions of 7 CFR part 1924, subpart A, or successor regulation.

[63 FR 39458, July 22, 1998, as amended at 64 FR 32372, June 16, 1999; 76 FR 80731, Dec. 27, 2011]

§ 3565.10 Conflict of interest.

(a) *Objective*. It is the objective within the Rural Development mission area to maintain the highest standards of honesty, integrity, and impartiality by employees.

(b) *Rural Development requirement*. To reduce the potential for employee conflict of interest, all Rural Development activities will be conducted in accordance with 7 CFR part 1900, subpart D, or successor regulation by Rural Development employees who:

(1) Are not themselves a beneficiary;

(2) Are not family members or known relatives of any beneficiary; and

(3) Do not have any business or personal relationship with any beneficiary or any employee of a beneficiary.

(c) *Rural Development employee responsibility*. Rural Development employees must disclose any known relationship or association with a lender or borrower or their agents, regardless of whether the relationship or association is known to others. Rural Development employees or members of their families may not purchase a Real Estate Owned property, security property from a borrower, or security property at a foreclosure sale.

(d) *Loan closing agent responsibility*. Loan closing agents (or members of their families) who have been involved with a particular property are precluded from purchasing such properties.

(e) *Lender and borrower responsibility.* Lenders, borrowers, and their agents must identify any known relationship or association with a Rural Development employee.

§§ 3565.11–3565.12 [Reserved]

§ 3565.13 Exception authority.

An Agency official may request and the Administrator or designee may make an exception to any requirement or provision, or address any omission of this part, if the Administrator determines that application of the requirement or provision, or failure to take action, would adversely affect the government's interest or the program objectives, and provided that such an exception is not inconsistent with any applicable law or statutory requirement.

[64 FR 32372, June 16, 1999]

§ 3565.14 Review and appeals.

Whenever RHS makes a decision that is adverse to a lender or a borrower, RHS will provide written notice of such adverse decision and of the right to a USDA National Appeals Division hearing in accordance with 7 CFR part 11 or successor regulations. The lender or borrower may request an informal review with the decision maker and the use of available alternative dispute resolution or mediation programs as a means of resolution of the adverse decision. Any adverse decision, whether appealable or non-appealable may also be reviewed by the next level RHS supervisor. Adverse decisions affecting project tenants or applicants for tenancy will be handled in accordance with 7 CFR part 1944, subpart L or successor regulations.

§ 3565.15 Oversight and monitoring.

The lender, borrower, and all parties involved in any manner with any guarantee under this program must cooperate fully with all oversight and monitoring efforts of the Agency, Office of Inspector General, the U.S. General Accounting Office, and the U.S. Department of Justice or their representatives including making available any records concerning this transaction. This includes the annual eligibility audit and any other oversight or monitoring activities. If the Agency implements a requirement for an electronic transfer of information, the lender and borrower must cooperate fully.

§ 3565.16 [Reserved]

§ 3565.17 Demonstration programs.

To test ways to expand the availability or enhance the effectiveness of the guarantee program, or for similar purposes, the Agency may, from time to time, propose demonstration programs that use loan guarantees or interest credit. Toward this end, the Agency may enter into special partnerships with lenders, financial intermediaries, or others to carry out one or more elements of a demonstration program. Demonstration programs will be publicized by notices in the FEDERAL REGISTER.

§§ 3565.18–3565.49 [Reserved]

§ 3565.50 OMB control number.

According to the Paperwork Reduction Act of 1995, no party is required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575–0174.

Subpart B—Guarantee Requirements

§ 3565.51 Eligible loans and advances.

Upon approval of an application from an eligible or approved lender, the Agency will commit to providing a guarantee for a permanent loan or a construction and permanent loan, subject to the availability of funds.

[76 FR 3, Jan. 3, 2011]

§ 3565.52 Conditions of guarantee.

A loan guarantee under this part will be evidenced by a Loan Note Guarantee issued by the Agency. Each lender will execute a Lender's Agreement. If a valid Lender's Agreement already exists, it is not necessary to execute a new Lender's Agreement with each loan guarantee.

(a) *Rights and liabilities.* A guarantee under this part is backed by the full faith and credit of the United States

and is incontestable except for fraud or misrepresentation of which the lender had knowledge at the time the lender acquired the guarantee or assigned the loan, or in which a lender participates or condones. The guarantee will be unenforceable by the lender to the extent any loss is occasioned by a violation of usury laws, negligent servicing or origination by the lender, including a failure to acquire required security, or as a result of a use of loan funds for purposes other than those authorized by the Agency. The acts in the previous sentence constitute grounds for the refusal to make full payment under the guarantee to the lender, and will not be taken until the Agency gives the lender notice of the acts or omissions that it considers to constitute such grounds, specifying the applicable provisions of the Statute, Regulations, Loan Note Guarantee, or Lender's Agreement; the lender has not cured the acts or omissions within 90 calendar days after such notice; and the acts or omissions can reasonably be expected to have a material adverse effect on the credit quality of the guaranteed mortgage or the physical condition of the property securing the guaranteed mortgage. If such acts or omissions cannot be cured within a 90 calendar day period, the 90 calendar day cure period automatically shall be extended so long as curative activities are commenced during the 90 calendar day period. At no time shall the curative period extend more than 270 calendar days from the expiration of the original 90 calendar day cure period. When a guaranteed portion of a loan is sold to a Holder, the Holder shall succeed to all rights of the lender under the Loan Note Guarantee to the extent of the portion purchased. The lender will remain bound to all obligations under the Loan Note Guarantee, Lender's Agreement, and the Agency program regulations.

(b) *Liability of the Holder*. The Holder shall not be liable for the actions of the lender including, but not limited to, negligence, fraud, abuse, misrepresentation or misuse of funds, and its rights under the guarantee shall be fully enforceable notwithstanding the actions of the lender, unless the Holder has knowledge of fraud, misrepresentation or misuse of funds when it becomes the Holder or condones or participates in such actions.

(c) *Types of guarantees*. The Agency may provide a lesser guarantee based upon its evaluation of the credit quality of the loan. Penalties incurred as a result of default are not covered by the guarantee. The Agency liability under any guarantee will decrease or increase, in proportion to any increase or decrease in the amount of the unpaid portion of the loan, up to the maximum amount specified in the Loan Note Guarantee. The Agency will not guarantee construction loans only. The Agency offers the following types of guarantees:

(1) *Option One*. The Agency may guarantee permanent loans subject to the conditions specified in § 3565.303(d). The maximum guarantee for a permanent loan will be 90 percent [unless the Agency establishes a different percent and announces this different percent through a Notice in the FEDERAL REGISTER] of the unpaid principal and interest up to default and accrued interest 90 calendar days from the date the liquidation plan is approved by the Agency, as defined in § 3565.452.

(2) *Option Two*. The Agency may provide a guarantee which will cover construction loan advances (advances) during construction. The maximum guarantee of construction advances related to a construction and permanent loan will not at any time exceed the lesser of 90 percent [or the percent established by the Agency and announced through a Notice in the FEDERAL REGISTER] of the amount of principal and accrued interest up to default for amounts which exceed the original advance if for eligible uses of loan proceeds or 90 percent of the original principal amount and accrued interest up to default of the loan. The Agency's guarantee will cover losses to the extent aforementioned once all sureties/insurances and/or performance and payment bonds have fully performed their contractual obligations. A construction contingency reserve is required. This guarantee will be enforceable during the construction period but will cease to be enforceable once construction is completed unless and until the requirements for the continuation

of the guarantee contained in the Conditional Commitment and this part are completed and approved by the Agency by the date stated in the Conditional Commitment and any Agency approved extension(s). The Agency will provide written confirmation to the lender when all of the requirements for continuation of the guarantee to cover the permanent loan have been satisfied. Any losses sustained while the guarantee is unenforceable (after the end of the construction period and, if applicable, before the continuation of the guarantee) are not covered by the guarantee. For purposes of this guarantee, the construction period will end on the earlier of:

(i) Twenty-four months from the closing of the construction loan, if the certificates of occupancy for all units in the project have not been issued by then, or

(ii) The date of the issuance of the last certificate of occupancy, if the certificates of occupancy for all units in the project are issued on or before 24 months from the closing of the construction loan.

(3) *Option Three.* The Agency may provide a single, continuous guarantee for construction and permanent loans. Only projects that have low loan-to-cost ratios, which will be defined by the Agency in a Notice published periodically in the FEDERAL REGISTER, are eligible for this type of guarantee. A construction contingency reserve is required. The Agency may require that a lease-up reserve, in an amount established by the Agency and announced through a Notice in the FEDERAL REGISTER, be set-aside prior to closing the construction loan. This lease-up reserve is an additional amount, over and above the required initial operating and maintenance contribution. The maximum guarantee of construction advances will not at any time exceed the lesser of 90 percent [or the percent established by the Agency and announced through a Notice in the FEDERAL REGISTER] of the amount of principal and interest up to default advanced for eligible uses of loan proceeds or 90 percent of the original principal amount and interest up to default.

(d) *Maximum loss payment.* The maximum loss payment to a lender or holder is as follows:

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

(2) To the lender, the lesser of:

(i) Any loss sustained by the lender on the guaranteed portion, including principal and up to 90 days of accrued interest as evidenced by the notes or assumption agreements and secured advances for protection and preservation of collateral made with the Agency's authorization; or

(ii) The guaranteed principal advanced to or assumed by the borrower and any interest and accrued interest up to 90 days due thereon.

(e) *Funding of reserves.* For each Option under paragraph (c) of this section, the lender must require an operating and maintenance reserve and provide the Agency adequate evidence of the funding of all required reserves.

(1) For Option 1 under paragraph (c) of this section, the funding schedule for the lease-up reserve and the operating and maintenance reserve must be included in the Agency-approved construction budget and be fully funded before the issuance of the permanent guarantee.

(2) For Option 2 under paragraph (c) of this section, the funding schedule for the lease-up reserve and the operating and maintenance reserve must be included in the Agency-approved construction budget and be fully funded before the issuance of the permanent guarantee.

(3) For Option 3 under paragraph (c) of this section, the operating and maintenance reserve must be fully funded before the issuance of the guarantee. The lease-up reserve must be funded 30 days before the first Certificate of Occupancy is anticipated.

[70 FR 2930, Jan. 19, 2005, as amended at 76 FR 3, Jan. 3, 2011]

§ 3565.53 Guarantee fees.

As a condition of receiving a loan guarantee, the Agency will charge the following guarantee fees to the lender.

(a) *Initial guarantee fee.* The Agency will charge an initial guarantee fee equal to one percent of the guarantee

amount. For purposes of calculating this fee, the guarantee amount is the product of the percentage of the guarantee times the initial principal amount of the guaranteed loan.

(b) *Annual guarantee fee.* An annual guarantee fee of at least 50 basis points (one-half percent) of the outstanding principal amount of the loan will be charged each year or portion of a year that the guarantee is in effect. This fee will be collected on February 28, of each calendar year.

(c) *Surcharge for guarantees on construction advances.* The Agency may, at its sole discretion, charge an additional fee on the portion of the loan advanced during construction. This fee will be charged in advance at the start of construction and will be announced in NOFA before loan approval.

[63 FR 39458, July 22, 1998, as amended at 64 FR 32372, June 16, 1999; 73 FR 11812, Mar. 5, 2008]

§ 3565.54 Transferability of the guarantee.

A lender must receive the Agency's approval prior to any sale or transfer of the loan guarantee.

§ 3565.55 Participation loans.

Loans involving multiple lenders are eligible for a guarantee when one of the lenders is an approved lender and agrees to act as the lead lender with responsibility for the loan under the loan guarantee agreement.

§ 3565.56 Suspension or termination of loan guarantee agreement.

A guarantee agreement will terminate when one of the following actions occurs: (In accordance with subpart H of this part, use restrictions on the property will remain if the following actions take place prior to the term of the loan and RHS determines the restrictions apply.)

(a) *Voluntary termination.* A lender and borrower voluntarily request the termination of the loan guarantee.

(b) *Agency withdrawal of guarantee.* The Agency withdraws the loan guarantee in the event of fraud, misrepresentation, abuse, negligence, or failure to meet the program requirements.

(c) *Mortgage pay-off.* The loan is paid.

(d) *Settlement of claim.* Final settlement of the claim.

§ 3565.57 Modification, extension, reinstatement of loan guarantee.

To protect its interest or further the objectives of the program, the Agency may, at its sole discretion, modify, extend, or reinstate a loan guarantee. In making this decision the Agency will consider potential losses under the program, impact on the tenants and the public reaction that may be received regarding the action. Further, the Agency may authorize a guarantee on a new loan that is originated as a part of a workout agreement.

§§ 3565.58–3565.99 [Reserved]

§ 3565.100 OMB control number.

According to the Paperwork Reduction Act of 1995, no party is required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575–0174.

Subpart C—Lender Requirements

§ 3565.101 Responsibility of lenders.

A participating lender must originate and service a guaranteed loan in accordance with the regulation and program requirements throughout the life of a loan or guarantee, whichever is less. When it is in the best interests of the Agency, the Agency may permit the transfer of servicing from the originating lender to a servicer.

§ 3565.102 Lender eligibility.

An eligible lender must be a licensed business entity or HFA in good standing in the state or states where it conducts business; be approved by the Agency; and meet at least one of the criteria contained below. Lenders who are not eligible may participate in the program if they maintain a correspondent relationship with a lender who is eligible. An eligible lender must:

(a) Meet the qualifications of, and be approved by, the Secretary of HUD to make multifamily housing loans that are to be insured under the National Housing Act;

(b) Meet the qualifications and be approved by Fannie Mae, Freddie Mac or Ginnie Mae to make multifamily housing loans that are to be sold to or securitized by such corporations;

(c) Be a state or local HFA, or a member of the Federal Home Loan Bank system, with a demonstrated ability to underwrite, originate, process, close, service, manage, and dispose of multifamily housing loans in a prudent manner;

(d) Be a lender who meets the requirements for Agency approval contained in this subpart and has a demonstrated ability to underwrite, originate, process, close, service, manage, and dispose of multifamily housing loans in a prudent manner; or

(e) Be a lender who meets the following requirements in addition to the other requirements of this subpart and of subpart I of this part:

(1) Have qualified staff to perform multifamily housing servicing and asset management;

(2) Have facilities and systems that support servicing and asset management functions; and

(3) Have documented procedures for carrying out servicing and asset management responsibilities.

[63 FR 39458, July 22, 1998, as amended at 70 FR 2931, Jan. 19, 2005]

§ 3565.103 Approval requirements.

The Agency will establish and maintain a ''list of approved lenders''. To be an approved lender, eligible lenders must meet the following requirements and maintain them on a continuing basis at a level consistent with the nature and size of their portfolio of guaranteed loans.

(a) *Commitment*. A lender must have a commitment for a guaranteed loan or an agreement to purchase a guaranteed loan.

(b) *Audited statement*. A lender must provide the Agency with an annual audited financial statement conducted in accordance with generally accepted government auditing standards.

(c) *Previous participation*. A lender may not be delinquent on a federal debt or have an outstanding finding of deficiency in a federal housing program.

(d) *Ongoing requirements*. A lender must meet the following requirements at initial application and on a continuing basis thereafter:

(1) Overall financial strength, including capital, liquidity, and loan loss reserves, to have an acceptable level of financial soundness as determined by a lender rating service (such as Sheshunoff, Inc.); or to be an approved Fannie Mae, Freddie Mac, Ginnie Mae or HUD Federal Housing Administration multifamily lender; or, if a state housing finance agency, to have a top tier rating by a rating agency (such as Standard and Poor's Corporation);

(2) Bonding and insurance to cover business related losses, including directors and officers insurance, business income loss insurance, and bonding to secure cash management operations;

(3) A minimum of two years experience in originating and servicing multifamily loans;

(4) A positive record of past performance when participating in RHS or other federal loan programs;

(5) Adequate staffing and training to perform the program obligations; the head underwriter must have 3 years of experience and all staff must receive annual multifamily training;

(6) Demonstrated overall financial stability of the business over the past five years;

(7) Evidence of reasonable and prudent business practices for management of the program; and

(8) No negative information on Dunn & Bradstreet or similar type report.

[63 FR 39458, July 22, 1998, as amended at 64 FR 32372, June 16, 1999; 70 FR 2931, Jan. 19, 2005; 76 FR 4, Jan. 3, 2011]

§ 3565.104 Application requirements.

Eligible lenders must submit a lender approval application, in a format prescribed by the Agency. The lender approval application submission must occur at the time the lender submits its first application for a loan guarantee, or its first application to purchase a guaranteed loan. The application must include documentation of lender compliance with § 3565.103. A non-refundable application fee will be charged for each review of a lender's application. The amount of the fee will be announced in NOFA.

§ 3565.105 Lender compliance.

A lender will remain an approved lender unless terminated by the Agency. To maintain approval, the lender must comply with the following requirements.

(a) Maintain eligibility in accordance with §§ 3565.102 and 3565.103;

(b) Comply with all applicable statutes, regulations, and procedures;

(c) Inform the Agency of any material change in the lender's staffing, policies and procedures, or corporate structure;

(d) Cooperate fully with all program or Agency monitoring and auditing policies and procedures, including the Agency's annual audit of approved lenders; and

(e) Maintain active participation in the multifamily guaranteed loan program by initiating a new loan guarantee or holding a loan guaranteed under this program.

§ 3565.106 Construction lender requirements.

A lender making a construction loan, as part of a construction and permanent loan, must demonstrate an ability to originate and service construction loans, in addition to meeting the other requirements of this subpart.

[63 FR 39458, July 22, 1998, as amended at 76 FR 4, Jan. 3, 2011]

§ 3565.107 [Reserved]

§ 3565.108 Responsibility for actions of agents and mortgage brokers.

An approved lender is responsible for the actions of its agents and mortgage brokers.

§ 3565.109 Minimum loan prohibition.

A lender must not establish a minimum loan amount for loans under this program.

§ 3565.110 Insolvency of lender.

The Agency may require a lender to transfer a guaranteed loan or loans to another approved lender prior to a determination of insolvency by the lender. If the lender fails to transfer a loan when required, the guarantee will be considered null and void.

§ 3565.111 Lobbying activities.

An approved lender must comply with RD Instruction 1940-Q (available in any Rural Development Office) regarding lobbying activities.

§§ 3565.112–3565.149 [Reserved]

§ 3565.150 OMB control number.

According to the Paperwork Reduction Act of 1995, no party is required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575–0174.

Subpart D—Borrower Eligibility Requirements

§ 3565.151 Eligible borrowers.

Guaranteed loans must be made to an eligible borrower whose intention is to provide and maintain rural rental housing. The ownership entity must be a valid entity in good standing under the laws of the jurisdiction in which it is organized. Eligible borrowers shall include individuals, corporations, state or local public agencies or an instrumentality thereof, partnerships, limited liability companies, trusts, Indian tribes, or any organization deemed eligible by the Agency. Eligible borrowers must be U.S. citizens or permanent legal residents; a U.S. owned corporation, or a limited liability company, or partnership in which the principals are U.S. citizens or permanent legal residents.

§ 3565.152 Control of land.

At time of application, the lender must have evidence of site control by the borrower (option to purchase, lease, deed or other evidence acceptable to the Agency). At the time of loan closing, the lender's closing docket must provide documentary evidence that the borrower owns or has a long-term lease on the land on which the housing is or will be located. The form of ownership or the leasehold agreement must meet Agency requirements. Notwithstanding any investment in the site, the site may not be accepted based on the Agency's environmental assessment.

§ 3565.153 Experience and capacity of borrower.

At the time of application, the lender must certify that the borrower:

(a) Has the ability and experience to construct or rehabilitate multifamily housing that meets the requirements established by the Agency, the lender and the loan agreement;

(b) Has the legal and financial capacity to meet all of the obligations of the loan; and

(c) Has the ability and experience to meet the property management requirements established by the Agency, the lender, and the loan agreement.

§ 3565.154 Previous participation in state and federal programs.

Loans to borrowers who are delinquent on a federal debt may not be guaranteed. Furthermore, borrowers or principals thereof who have defaulted on state or local government loans will not be eligible for a guarantee unless the Agency determines that the default was beyond the borrower's control, and that the identifiable reasons for the default no longer exist. At the time of application, the lender must obtain from the borrower a certification that the borrower is not under any state or federal order suspending or debarring participation in state or federal loan programs and that the borrower is not delinquent on any non-tax obligation to the United States.

§ 3565.155 Identity of interest.

At the time of application, the lender must certify that it has disclosed any and all identity of interest relationships and preexisting conditions with respect to its relationships and that of the borrower, or that no identity of interest relationships exists. Identity of interest relationships include any financial or other relationship that exists or will exist between a lender, borrower, management agent, supplier, or any agent of any of these entities, that could influence, give the appearance of influencing or have the potential to influence the actions of the parties in carrying out their responsibilities under the program. Disclosure will be in a form and manner established by the Agency.

§ 3565.156 Certification of compliance with federal, state, and local laws and with Agency requirements.

At the time of application, the lender must obtain from the borrower a certification of compliance with all applicable federal, state, and local laws, and with Agency requirements regarding discrimination and equal opportunity in housing, including title VIII of the Civil Rights Act of 1968, and the Fair Housing Amendments Act of 1988. The borrower must also certify that it is not the subject of any federal, state, or local sanction or punitive action.

§§ 3565.157–3565.199 [Reserved]

§ 3565.200 OMB control number.

According to the Paperwork Reduction Act of 1995, no party is required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575–0174.

Subpart E—Loan Requirements

§ 3565.201 General.

To be eligible for a guarantee, a loan must comply with the provisions of this subpart and be originated by an approved lender.

§ 3565.202 Tenant eligibility.

(a) *Limits on income of tenants.* The housing units subject to a guaranteed loan must be available for occupancy only by low or moderate-income families or individuals whose incomes at the time of initial occupancy do not exceed 115 percent of the area median income. After initial occupancy, a tenant's income may exceed these limits.

(b) *Citizenship status.* A tenant must be a United States citizen or a noncitizen who is a qualified alien as defined in § 3565.3.

§ 3565.203 Restrictions on rents.

The rent for any individual housing unit, including any tenant-paid utilities, must not exceed an amount equal to 30 percent of 115 percent of area median income, adjusted for family size. In addition, on an annual basis, the average rent for a project, taking into account all individual unit rents, must

not exceed 30 percent of 100 percent of area median income, adjusted for family size.

§ 3565.204 Maximum loan amount.

(a) *Section 207(c) limits and exceptions.* For that part of the property that is attributable to dwelling use, the principal obligation of each guaranteed loan must not exceed the applicable maximum per-unit limitations under section 207(c) of the National Housing Act.

(b) *Loan-to-value limits.* (1) In the case of a borrower that is a nonprofit organization or an agency or body of any State, local or tribal government, each guaranteed loan must involve a principal obligation that does not exceed the lesser of 97 percent of:

(i) The development costs of the housing and related facilities, or

(ii) The lender's determination of value not to exceed the appraised value of the housing and facilities.

(2) In the case of a borrower that is a for-profit entity or other entity not referred to in paragraph (b)(1) of this section, each guaranteed loan must involve a principal obligation that does not exceed the lesser of 90 percent of:

(i) The development costs of the housing and related facilities, or

(ii) The lender's determination of value not to exceed the appraised value of the housing and facilities.

(3) To protect the interest of the Agency or to further the objectives of the program, the Agency may establish lower loan-to-value limits or further restrict the statutory maximum limits based upon its evaluation of the credit quality of the loan.

(c) *Necessary assistance review.* (1) A lender requesting a loan guarantee must review all loans to determine the appropriate amount of assistance necessary to complete and maintain the project. The lender shall recommend to the Agency an adjustment in the loan amount if appropriate as a result of this review.

(2) Where the project financing combines a guaranteed loan with Low-Income Housing Tax Credits or other Federal assistance, the project must conform to the policies regarding necessary assistance in 7 CFR 3560.63 (d) or successor provision.

[63 FR 39458, July 22, 1998, as amended at 69 FR 69176, Nov. 26, 2004]

§ 3565.205 Eligible uses of loan proceeds.

Eligible uses of loan proceeds must conform with standards and conditions for housing and facilities contained in 7 CFR part 1924, subpart A or successor provision, except that the Agency, at its sole discretion, may approve, in advance, a higher level of amenities, construction, and fees for projects proposed for a guaranteed loan provided the costs and features are reasonable and customary for similar housing in the market area.

(a) *Use of loan proceeds.* The proceeds of a guaranteed loan may be used for the following purposes relating to the project.

(1) New construction costs of the project;

(2) Moderate or substantial rehabilitation of buildings and acquisition costs when related to the rehabilitation of a building as described in paragraph (b) of this section;

(3) Acquisition of existing buildings, when approved by the Agency, for projects that serve a special housing need;

(4) Acquisition and improvement of land on which housing will be located;

(5) Development of on-site and off-site improvements essential to the use of the property;

(6) Development of related facilities such as community space, recreation, storage or maintenance structures, except that any high cost recreational facility, such as swimming pools and exercise clubs or similar facilities, must be specifically approved in advance by the Agency;

(7) Construction of on-site management or maintenance offices and living quarters for operating personnel for the property being financed;

(8) Purchase and installation of appliances and certain approved decorating items, such as window blinds, shades, or wallpaper;

(9) Development of the surrounding grounds, including parking, signs, landscaping and fencing;

(10) Costs associated with commercial space provided that:

(i) The project is designed primarily for residential use;

(ii) The commercial use consists of essential tenant service type facilities, such as laundry rooms, that are not otherwise conveniently available;

(iii) The commercial space does not exceed 10 percent of the gross floor area of the residential units and common areas, unless a higher level is specifically approved in writing by the Agency; and

(iv) The commercial activity is compatible with the use of the project and that the income is not more than 10 percent of the total annual operating income of the project.

(11) Costs for feasibility determination, loan application fees, appraisals, environmental documentation, professional fees or other fees determined by the Agency to be necessary to the development of the project;

(12) Technical assistance to and by non-profit entities to assist in the formation, development, and packaging of a project, or formation or incorporation of a borrower entity;

(13) Education programs for a board of directors, both before and after incorporation of a cooperative that will serve as the borrower;

(14) Construction interest accrued on the construction loan;

(15) Relocation assistance in the case of rehabilitation projects;

(16) Developers' fees; and

(17) Repaying applicant debts in the following cases:

(i) When the Agency authorizes in writing in advance the use of loan funds to pay debts for work, materials, land purchase, or other fees and charges before the loan is closed; or

(ii) When the Agency concurs in writing with a determination by the lender that costs for work, fees and charges incurred prior to loan application are integral to development of the guarantee application and project.

(b) *Rehabilitation requirements.* Rehabilitation work must be classified as either moderate or substantial as defined in exhibit K of 7 CFR part 1924, subpart A or a successor document. In all cases, the building or project must be structurally sound, and improvements must be necessary to meet the requirements of decent, safe, and sanitary living units. Applications must include a structural analysis, along with plans and specifications describing the type and amount of planned rehabilitation. The project as rehabilitated must meet the applicable development standards contained in 7 CFR part 1924, subpart A or a successor regulation, as well as any applicable historic preservation requirements. All proposed rehabilitation projects are subject to an environmental review completed in accordance with 7 CFR part 1940, subpart G or a successor regulation.

§ 3565.206 Ineligible uses of loan proceeds.

Loan proceeds must not be used for the following:

(a) Specialized equipment for training and therapy;

(b) Housing in military impact areas;

(c) Housing that serves primarily temporary and transient residents;

(d) Nursing homes, special care facilities and institutional type homes that require licensing as a medical care facility;

(e) Operating capital for central dining facilities or for any items not affixed to the real estate, such as special portable equipment, furnishings, kitchen ware, dining ware, eating utensils, movable tables and chairs, etc.;

(f) Payment of fees, salaries and commissions or compensation to borrowers (except developers' fees); or

(g) Refinancing of an outstanding debt, except in the case of an existing guaranteed loan where the Agency determines that the refinancing is in the government's interest or furthers the objectives of the program. The term and amount of any loan for refinancing must not exceed the maximum loan amount or term limits.

§ 3565.207 Form of lien.

The loan originated by the lender for a guarantee must be secured by a first lien against the property.

§ 3565.208 Maximum loan term.

(a) *Statutory term limit.* The lender may set the term of the loan, but in no instance may the term of a guaranteed

loan exceed the lesser of 40 years or the remaining economic life of the project.

(b) *Prepayment of loans.* A guaranteed loan may be prepaid in whole or in part at the determination of the lender, and upon the lender's written notice to the Agency at least 30 days prior to the expected date of prepayment. The Agency will not pay any lockout or prepayment penalty assessed by the lender. The lender must certify the following in the notice of prepayment:

(1) The lease documents used by the borrower or its agent prohibit the abrogation of tenant leases in the event of prepayment; and

(2) The borrower has notified tenants of the request to prepay the loan, including notice of the prohibition against abrogation of the lease and the policy and procedure for handling complaints regarding compliance with the long-term use restriction as contained in subpart H of this part.

§ 3565.209 Loan amortization.

Each guaranteed loan shall be made for a period of not less than 25 nor greater than 40 years from the date the loan was made and may provide for amortization of the loan over a period of not to exceed 40 years with a final payment of the balance due at the end of the loan term.

[67 FR 16970, April 9, 2002]

§ 3565.210 Maximum interest rate.

The interest rate for a guaranteed loan must not exceed the maximum allowable rate specified by the Agency in NOFA. Such rate must be fixed over the term of the loan.

§ 3565.211 Interest credit.

(a) *Limitation.* For at least 20 percent of the loans made during each fiscal year, the Agency will provide assistance in the form of interest credit, to the extent necessary to reduce the agreed-upon rate of interest to the AFR as such term is used in section 42(I)(2)(D) of the Internal Revenue Code of 1986, 26 U.S.C. 7805, § 1.42–1T.

(b) *Selection criteria.* The Agency will select projects to receive interest credits using any of such criteria as the Agency may establish for priority projects as contained in subpart A of this part.

§ 3565.212 Multiple guaranteed loans.

The Agency may guarantee more than one loan on any project if all guaranteed loans, in the aggregate, comply with these regulations, including without limitation:

(a) In the aggregate, loans do not exceed the maximum guaranteed loan amount and loan-to-value limits, as contained in § 3565.204;

(b) In the aggregate, loans are all to be secured equally by a first lien as the Agency may, at its sole discretion, determine necessary to ensure repayment of the loans; and

(c) If different lenders originate the loans, each lender has executed an intercreditor agreement in form and substance acceptable to the Agency.

[63 FR 39458, July 22, 1998, as amended at 70 FR 2931, Jan. 19, 2005]

§ 3565.213 Geographic distribution.

The Agency may refuse to guarantee a loan in an area where there is undue risk due to a concentration in the market of properties subject to a Agency guaranteed loan. The Agency will consider the credit quality of the loan and overall market conditions in making a determination of undue risk. If any of the Agency guaranteed loans in the market are experiencing vacancy rates in excess of 15% and the vacancy is due to market conditions, the Agency will invoke this provision and not guarantee the loan.

§ 3565.214 [Reserved]

§ 3565.215 Special conditions.

(a) *Use of third party funds.* As a condition of receiving a guaranteed loan, the Agency, or the lender if designated by the Agency, must review the terms and conditions of any secondary financing or funding of projects, including loans, capital grants or rental assistance.

(b) *Recourse.* If required by the lender, loans guaranteed under this program may be made on a recourse or nonrecourse basis, or with any personal or special borrower guarantees on collateralization.

§§ 3565.216–3565.249 [Reserved]

§ 3565.250 OMB control number.

According to the Paperwork Reduction Act of 1995, no party is required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575–0174.

Subpart F—Property Requirements

§ 3565.251 Eligible property.

To be eligible for a guaranteed loan, a property must be used primarily for residential dwelling purposes and must meet the following requirements or the requirements of this subpart:

(a) *Property location.* All the property must be located in a rural area.

(b) *Minimum size of development.* The property must consist of at least five rental dwelling units.

(c) *Non-contiguous sites.* For a loan secured by two or more non-contiguous parcels of land, all sites must meet each of the following requirements:

(1) Located in one market area;

(2) Managed under one management plan with one loan agreement or resolution for all of the sites; and

(3) Consist of single asset ownership.

(d) *Compliance with statutes.* All properties must comply with the applicable requirements in section 504 of the Rehabilitation Act of 1973, the Fair Housing Act, the Americans with Disabilities Act, and other applicable statutes.

§ 3565.252 Housing types.

The property may include new construction or rehabilitation of existing structures. The units may be attached, detached, semi-detached, row houses, modular or manufactured houses, or multifamily structures. Manufactured housing must meet Agency requirements contained in 7 CFR part 1924, subpart A or a successor regulation. The Agency will guarantee proposals for new construction or acquisition with moderate or substantial rehabilitation of at least $6,500 per dwelling unit. The portion of guaranteed funds available for acquisition with rehabilitation may be limited in the annual Notice of Fund Availability.

[70 FR 2931, Jan. 19, 2005]

§ 3565.253 Form of ownership.

The property must be owned in fee simple or be subject to a ground lease or other legal right in land acceptable to the Agency.

§ 3565.254 Property standards.

(a) *Housing quality and site and neighborhood standards.* The property must meet the site and neighborhood requirements established by the state or locality, and those standards contained under 7 CFR part 1924, subparts A and C or any successor regulations.

(b) *Third party assessments.* As part of the application for a guaranteed loan, the lender must provide documentation of qualified third parties' assessments of the property's physical condition and any environmental conditions or hazards which may have a bearing on the market value of the property. These assessments must include:

(1) An acceptable property appraisal.

(2) A Phase I Environmental Site Assessment (American Society of Testing and Materials).

(3) A Standard Flood Hazard Determination.

(4) In the case of the purchase of an existing structure, rehabilitation or refinancing, a physical needs assessment.

§ 3565.255 Environmental requirements.

Under the National Environmental Policy Act, the Agency is required to assess the potential impact of the proposed actions on protected environmental resources. Measures to avoid or at least mitigate adverse impacts to protected resources may require a change in site or project design. A site will not be approved until the Agency has completed the environmental review in accordance with 7 CFR part 1940, subpart G or successor regulation.

§ 3565.256 Architectural services.

Architectural services must be provided for the project in accordance with 7 CFR part 1924, subpart A or successor regulation, including plan certifications.

§ 3565.257 Procurement actions.

All construction procurement actions, whether by sealed bid or by negotiation, must be conducted in a manner that provides maximum open and free competition.

§§ 3565.258–3565.299 [Reserved]

§ 3565.300 OMB control number.

According to the Paperwork Reduction Act of 1995, no party is required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575–0174.

Subpart G—Processing Requirements

§ 3565.301 Loan standards.

An approved lender must originate and underwrite the loan and appraise the subject property in accordance with prudent lending practices and Agency criteria addressing the following factors:

(a) Borrower qualifications and creditworthiness;

(b) Property, vacancy, market vacancy or collection loss;

(c) Rental concessions and rent levels;

(d) Tenant demand and housing supply;

(e) Property operating and maintenance expense;

(f) Property requirements as contained in subpart F of this part;

(g) Debt coverage ratio;

(h) Operating and long-term capital requirements;

(i) Loan-to-value ratio;

(j) Return on borrower equity; and

(k) Estimated long-term marketability of the project.

§ 3565.302 Allowable fees.

(a) *Lender fees*. The lender is authorized to charge reasonable and necessary fees in connection with a borrower's application for a guaranteed loan.

(b) *Agency fees*. The Agency will charge one or more types of fees deemed appropriate as reimbursement for reasonable and necessary costs incurred in connection with applications received from lenders for monitoring or annual renewal fees. These fees will be published in NOFA. Agency fees may include, but are not limited to the following:

(1) *Site assessment and market analysis or preliminary feasibility fee*. A fee for review of an application for a determination of preliminary feasibility.

(2) *Application fee*. A fee submitted in conjunction with the application for a loan guarantee.

(3) *Inspection fee*. A fee for inspection of the property in conjunction with a loan guarantee.

(4) *Transfer fee*. A fee in connection with a request for approval of a transfer of physical assets or a change in the composition of the ownership entity.

(5) *Extension or reopening fees*. A fee to extend the guarantee commitment or to reopen an application when a commitment has expired.

§ 3565.303 Issuance of loan guarantee.

(a) *Preliminary feasibility review*. During the initial processing of a loan, the lender may request a preliminary feasibility review by the Agency when required loan documentation is submitted.

(b) *Conditional commitment to guarantee a loan*. The Agency will issue a conditional commitment to guarantee a loan. This commitment will be good for such time frame as the Agency deems appropriate based on project requirements. The commitment to guarantee a loan, will specify any conditions necessary to obtain a determination by the Agency that all program requirements have been met. A conditional commitment can be issued, subject to the availability of funds, *after*:

(1) Completion by the Agency of an environmental review in accordance with 7 CFR part 1940, subpart G or successor regulation, and the National Environmental Policy Act; and

(2) Selection of the proposed project for funding by the Agency in accordance with ranking and selection criteria.

(c) *Guarantee during construction*. When requesting a guarantee on construction loan advances under § 3565.52(c)(2) and (c)(3), Options 2 and 3, the Agency will only issue a guarantee

to an approved lender that the Agency determines is eligible under § 3565.106 of this part.

(1) This guarantee will be subject to the limits contained in subpart B of this part and in the loan closing documentation.

(2) In all cases, the lender must obtain one of the following protections:

(i) Surety bonding or performance and payment bonding acceptable to the Agency;

(ii) An irrevocable letter of credit acceptable to the Agency; or

(iii) A pledge to the lender of collateral that is acceptable to the Agency.

(3) The lender must verify amounts expended prior to each payment for completed work and certify that an independent inspector has inspected the property and found it to be in conformance with Agency standards. The lender must provide verification that all subcontractors have been paid and no liens have been filed against the property.

(d) *Permanent loan guarantee.* The guarantee of a permanent loan provided under § 3565.52(c)(1) or (c)(2) will be issued once the following items have been submitted to and approved by the Agency:

(1) Certification from the lender stating that the lender or its qualified representative inspected the property and found that the construction meets the Government's requirements for the standards and conditions for housing and facilities in 7 CFR part 1924, subpart A and the standards for site development in 7 CFR part 1924, subpart C, or its successor regulations;

(2) Cash flow certification—the lender certifies, in writing, the project's cash flow assumptions are still valid and depict compliance with the section 538 program's debt service coverage ratio requirement of at least 1.15, based on the lender's analysis of current market conditions and comparable properties in the project's market area;

(3) Documentation that either:

(i) The project has attained a minimum level of acceptable occupancy of 90% for 90 continuous days within the 120-day period immediately preceding the issuance of the permanent guarantee, or

(ii) Additional funds, supplementing the funds required under § 3565.303(d), have been added to the lease-up reserve in an amount the Agency determines is necessary to cover projected shortfalls.

(4) A new appraisal based upon completion of construction. Upon a lender's written request, the Agency may exempt a project from this requirement if requested by the lender and the project meets the following criteria:

(i) *Original appraisal*—the original appraisal that meets the Agency's appraisal requirements with a valuation date no older than 36 months;

(ii) *Valuation*—the appraisal's lowest valuation, regardless of valuation approach and rent restrictions considered, is greater than the section 538 guaranteed loan amount; and

(iii) *Guaranteed loan balance*—the Agency's guaranteed loan's principal balance does not exceed 50 percent [unless a different percent has been announced in a Notice published in the FEDERAL REGISTER] of the project's total development costs.

(5) A certificate of substantial completion;

(6) A certificate of occupancy or similar evidence of local approval;

(7) A final inspection conducted by a qualified Agency representative;

(8) A final cost certification in a form acceptable to the Agency;

(9) A submission to the Agency of the complete closing docket;

(10) A certification by the lender that the project has reached an acceptable minimum level occupancy;

(11) An executed regulatory agreement;

(12) The Lender certifies that it has approved the borrower's management plan and assures that the borrower is in compliance with Agency standards regarding property management contained in subparts E and F of this part;

(13) Necessary information to complete an updated necessary assistance review by the Agency under § 3565.204(c); and

(14) Compliance with all conditions contained in the conditional commitment for guarantee.

(e) *Modification of guarantee amount after commitment.* The Agency may modify the guarantee amount or decline to issue a loan guarantee when a

lender fails to honor obligations or to fulfill representations made under the guarantee commitment.

(f) *Continuous Guarantee Compliance.* The continuous guarantee will remain in effect once construction is completed. In order to remain in compliance with 7 CFR part 3565, the following items must be submitted to and approved by the Agency. These items will be submitted to the Agency by the date stated in the Conditional Commitment and any Agency approved extension(s).

(1) Certification from the lender stating that the lender or its qualified representative inspected the property and found that the construction meets the Government's requirements for the standards and conditions for housing and facilities in 7 CFR part 1924, subpart A and the standards for site development in 7 CFR part 1924, subpart C, or its successor regulations;

(2) Cash flow certification—the lender certifies in writing the project's cash flow assumptions are still valid and depict compliance with the section 538 program's debt service coverage ratio requirement of at least 1.15, based on the lender's analysis of current market conditions and comparable properties in the project's market area;

(3) Documentation that either:

(i) The project has attained a minimum level of acceptable occupancy of 90% for 90 continuous days within the 120-day period immediately preceding the issuance of the permanent guarantee, or

(ii) Additional funds, supplementing the funds required under § 3565.303(d), have been added to the lease-up reserve in an amount the Agency determines is necessary to cover projected shortfalls.

(4) An appraisal of the property;

(5) A certificate of substantial completion;

(6) A certificate of occupancy or similar evidence of local approval;

(7) A final inspection conducted by a qualified Agency representative;

(8) A final cost certification in a form acceptable to the Agency;

(9) A submission to the Agency of the complete closing docket;

(10) A certification by the lender that the project has reached an acceptable minimum level occupancy;

(11) An executed regulatory agreement;

(12) The Lender certifies that it has approved the borrower's management plan and assures that the borrower is in compliance with Agency standards regarding property management contained in subparts E and F of this part;

(13) Necessary information to complete an updated necessary assistance review by the Agency under § 3565.204(c); and

(14) Compliance with all conditions contained in the conditional commitment for guarantee.

[63 FR 39458, July 22, 1998, as amended at 64 FR 32372, June 16, 1999; 76 FR 4, Jan. 3, 2011]

§ 3565.304 Lender loan processing responsibilities.

(a) *Application.* The lender will be responsible for submitting an application for a loan guarantee in a format prescribed by the Agency. Lenders may submit an application at the feasibility stage or when they request a conditional commitment.

(b) *Project servicing, management and disposition.* Unless otherwise permitted by the Agency, the originating lender must perform all loan functions during the period of the guarantee. These functions include servicing, asset management, and, if necessary, property disposition. The lender must maintain and service the loan in accordance with the provisions of subpart I of this part and Agency servicing procedures.

§ 3565.305 Mortgage and closing requirements.

It is the lender's responsibility to ensure that the loan closing statement and required loan documents are in a form acceptable to the Agency and included in the closing docket. The lender is responsible for resolving any underwriting and loan closing deficiencies that are found. The Agency's review of the lender's loan closing documentation does not constitute a waiver of fraud, misrepresentation, or failure of judgment by the lender.

§§ 3565.306–3565.349 [Reserved]

§ 3565.350 OMB control number.

According to the Paperwork Reduction Act of 1995, no party is required to

respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575–0174.

Subpart H—Project Management

§ 3565.351 Project management.

As a condition of the guarantee, the lender is to obtain borrower certification that the project is in compliance with local, state, federal laws and program requirements.

(a) *Regulatory agreement*. A regulatory agreement between the borrower and lender must be executed at the time of loan closing and contain the following covenants:

(1) That it is binding upon the borrower and any of its successors and assigns, as well as upon the lender and any of its successors and assigns, for the duration of the guaranteed loan;

(2) That the borrower makes all payments due under the note and to the required escrow and reserve accounts;

(3) That the borrower maintains the project as affordable housing in accordance with the purposes and for the duration defined in the statute;

(4) That the borrower maintains the project in good physical and financial condition at all times;

(5) That the borrower obtains and maintains property insurance and any other insurance coverage required to protect the security;

(6) That the borrower maintains complete project books and financial records, and provides the Agency and the lender with an annual audited financial statement after the end of each fiscal year;

(7) That the borrower makes project books and records available for review by the Office of Inspector General, Rural Development staff, General Accounting Office, and the Department of Justice, or their representatives or successors upon appropriate notification;

(8) That the borrower prepares and complies with the Affirmative Fair Housing Marketing Plan and all other Fair Housing requirements;

(9) That the borrower operates as a single asset ownership entity, unless otherwise approved by the Agency;

(10) That the borrower complies with applicable federal, state and local laws; and

(11) That the borrower provides management satisfactory to the lender and to the Agency and complies with an approved management plan for the project.

(b) *Management plan*. The lender must approve the borrower's management plan and assure that the borrower is in compliance with Agency standards regarding property management, including the requirements contained in subparts E and F of this part.

(c) *Tenant protection and grievance procedures*. Tenants in properties subject to a guaranteed loan are entitled to the grievance and appeal rights contained in 7 CFR part 3560, subpart D or successor regulation. The borrower must inform tenants in writing of these rights.

(d) *Financial management*—(1) *Borrower reporting requirements*. At a minimum, the lender must obtain, on an annual basis, an audited annual financial statement conducted in accordance with generally accepted government auditing standards.

(2) *Lender reporting requirements*. The lender must review the financial reports to assure that the property is in sound fiscal condition and the borrower is in compliance with financial requirements. The lender must report findings to the Agency as follows:

(i) *Annual reports*. The lender must submit to the Agency a copy of the annual financial audit of the project and must report on the nature and status of any findings. To the extent that outstanding findings or issues remain, the lender must submit to the Agency a copy of a plan of action for any unresolved findings.

(ii) *Monthly reports*. The lender must submit monthly reports to the Agency on all loans that are either in default, delinquent, or not in compliance with program requirements. This report must provide information on the financial condition of each loan, the physical condition of the property, the amount of delinquency, any other noncompliance with program requirements and the proposed actions and timetable to resolve the delinquency, default or non-compliance.

(3) *Reserve releases.* The lender is responsible for approving or disapproving all borrower requests for release of funds from the reserve and escrow accounts. Security deposit accounts will not be considered a reserve or escrow account.

(4) *Insurance requirements.* At loan closing, the borrower will provide the lender with documentary evidence that Agency insurance requirements have been met. The borrower must maintain insurance in accordance with Agency requirements until the loan is repaid and the lender must be named as the insurance policy's beneficiary. The lender must obtain insurance on the secured property if the borrower is unable or unwilling to do so and charge the cost as an advance.

(5) *Distribution of surplus cash.* Prior to the distribution of surplus cash to the owner, the lender must certify that the property is in good financial and physical condition and in compliance with the regulatory agreement. Such compliance includes payment of outstanding obligations, debt service, and required funding of reserve and escrow accounts.

(e) *Physical maintenance.* The lender must annually inspect the property to ensure that it is in compliance with state and local codes and program requirements. The lender must certify to the Agency that a property is in such compliance, or report to the Agency on any non-compliance items and proposed actions and timetable for resolution. Failure to provide responsive corrective action can result in reduction or cancellation of the guarantee by the Agency.

[63 FR 39458, July 22, 1998, as amended at 64 FR 32372, June 16, 1999; 69 FR 69176, Nov. 26, 2004]

§ 3565.352 Preservation of affordable housing.

(a) *Original purpose.* During the period of the guarantee, owners are prohibited from using the housing or related facilities for any purpose other than an approved program purpose.

(b) *Use restriction.* For the original term of the guaranteed loan, the housing must remain available for occupancy by low and moderate income households, in accordance with subpart E of this part. This requirement will be included in a deed restriction or other instrument acceptable to the Agency. The restriction will apply unless the housing is acquired by foreclosure or an instrument in lieu of foreclosure, or the Agency waives the applicability of this requirement after determining that each of the following three circumstances exist.

(1) There is no longer a need for low- and moderate-income housing in the market area in which the housing is located;

(2) Housing opportunities for low-income households and minorities will not be reduced as a result of the waiver; and

(3) Additional federal assistance will not be necessary as a result of the waiver.

§ 3565.353 Affirmative fair housing marketing.

As a condition of the guarantee, the lender must ensure that the lender and borrower are in compliance with the approved Affirmative Fair Housing Marketing Plan. This plan must be reviewed annually by the lender to ensure that the borrower remains in compliance and to recommend modifications, as necessary.

§ 3565.354 Fair housing accommodations.

The lender must ensure that the borrower is in compliance with the applicable fair housing laws in the development of the property, the selection of applicants for housing, and ongoing management. See subpart A of this part.

§ 3565.355 Changes in ownership.

Any change in ownership, in whole or in part, must be approved by the lender and the Agency before such change takes effect.

§§ 3565.356–3565.399 [Reserved]

§ 3565.400 OMB control number.

According to the Paperwork Reduction Act of 1995, no party is required to respond to a collection of information unless it displays a valid OMB control

number. The valid OMB control number for this information collection is 0575–0174.

Subpart I—Servicing Requirements

§ 3565.401 Servicing objectives.

The participating lender is responsible for servicing the guaranteed loan throughout the term of the loan or guarantee, whichever is less. In all cases, the lender remains responsible for liquidation of the property in accordance with the Loan Note Agreement, unless otherwise determined by the Agency. A lender-servicing plan must be designed and implemented to achieve the following objectives.

(a) To preserve the value of the loan and the real estate;

(b) To avoid a loss to the lender or the Agency and to limit exposure to potential loss;

(c) To protect the interests of the tenants; and

(d) To further program objectives.

§ 3565.402 Servicing responsibilities.

The lender must service the loan in accordance with this subpart and perform the services contained in this section in a reasonable and prudent manner. The lender is responsible for the actions of its agents and representatives.

(a) *Funds management.* The lender must have a funds management system to receive and process borrower payments, including the following.

(1) All principal and interest (P&I) funds and guarantee fees collected and deposited into the appropriate custodial accounts.

(2) Payments to custodial escrow accounts for taxes and insurance premiums, assessments that might impair the security (such as ground rent), and reserve accounts for repair and capital improvement of the property.

(b) *Asset management.* The lender must ensure that the property securing the guaranteed loan remains in good physical and financial condition, in accordance with project management requirements contained in subpart H of this part.

(c) *Management of delinquencies and defaults.* Each month the lender must report to the Agency any delinquencies and defaults in accordance with subpart H of this part.

§ 3565.403 Special servicing.

Special servicing must be initiated when regular servicing actions are insufficient to resolve borrower default or property deficiencies.

(a) *Repurchase from Holder.* For securitized loans, the Holder may require the lender or Government to repurchase the security in accordance with the provisions of § 3565.405.

(b) *Responsibility of lender.* It is the lender's responsibility during special servicing to make a special effort to ensure that maintenance of the property meets Agency requirements and the tenants' rights are protected, until such time that the property is liquidated by the lender, the loan is paid in full, or the loan is assigned to the Agency. The lender must update the Agency monthly until the default is cured or a claim is filed. The lender must maintain adequate records of any and all efforts to cure the default or to foreclose.

(c) *Initiating special servicing.* When special servicing is initiated, the lender must submit for Agency review a special servicing plan that includes proposed actions to cure the deficiencies and a timeframe for completion. The special servicing plan will specify the proposed terms of any workout agreement recommended by the lender. The lender must obtain Agency approval of the terms of any workout agreement with the borrower. The workout agreement may include a loan modification, transfer of physical assets, or partial payment of claim and reamortization of the loan. Failure to comply with terms contained in the executed workout agreement will be considered a default of the guaranteed loan.

(1) *Loan modification.* The borrower and lender may agree to a loan modification when such action will improve the financial viability of the project and its operations, and when a circumstance exists that is beyond the borrower's control. The Agency must approve in advance any loan modification that extends the life of the loan or requires an increase in the amount of the guarantee. All changes must be

within the requirements of section 538 of the Housing Act of 1949.

(2) *Change in ownership and transfer of physical assets*. A default or delinquency may be resolved by a change of the ownership entity in whole or in part. The Agency must approve all changes in ownership prior to the effective date of the transfer, and may require additional resources from the lender or borrower to resolve project deficiencies.

(3) *Partial payment of claims*. The lender may request a partial payment of claim as a result of a loss experienced by the lender as a means to work out a troubled loan. The Agency will accept such claim if it determines that it is in the best interest of the government. In applying the partial payment, the lender must assign the obligation covered by the partial payment to the Agency, and, if required by the Agency, reamortize the obligation using the amount of the remaining obligation over an agreed-upon term.

(d) *Claims processing*. In the event of a loss, the lender must submit claims under the guarantee in accordance with subpart J of this part. Prior to submitting a claim, the lender must exhaust all possibilities of collection on the loan.

(e) *Displacement prevention*. The actions of the lender must not harm the property's tenants through displacement.

[63 FR 39458, July 22, 1998, as amended at 67 FR 16971, April 9, 2002; 70 FR 2931, Jan. 19, 2005]

§ 3565.404 Transfer of loans or mortgage servicing.

Transfer of servicing is prohibited unless the Agency determines that circumstances warrant such action, the proposed lender is an eligible lender approved by the Agency, and the transfer of servicing is approved by the Agency in advance.

§ 3565.405 Repurchase of guaranteed loans.

(a) *Repurchase by lender*. The Holder may make written demand on the lender to repurchase the unpaid guaranteed portion of the loan when the borrower is in default not less than 60 calendar days on principal or interest due on the loan; or the lender has failed to remit to the Holder its pro rata share of any payment made by the borrower within 30 calendar days of receipt by the lender. The Holder must concurrently send a copy of the demand letter to the Agency. The lender will notify the Holder and the Agency of its decision to repurchase within 10 business days from the date of the written demand letter by the Holder. The lender may agree to repurchase the unpaid portion of the entire loan from the Holder, even though the guarantee does not cover any unguaranteed portion of the loan held by the Holder. If the lender decides to repurchase, the lender has 30 calendar days from the date of the Holder's written demand letter to do so. The guarantee does not cover any unguaranteed portion of the loan or the note interest to the Holder on the guaranteed loan accruing after 90 calendar days from the date of the Holder's demand letter to the lender requesting the repurchase. The lender may deduct the lender's servicing fee from the repurchase amount. The lender will accept an assignment without recourse from the Holder upon repurchase. The lender is encouraged to repurchase the loan to facilitate the accounting of funds, resolve problems, and to prevent default where and when reasonable.

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

Holders of Loan Note Guarantees that have been issued prior to the effective date of this final rule may opt to adhere to the terms and conditions of the Loan Note Guarantee then in effect. In case of loan default, the Holder of a Loan Note Guarantee issued prior to the effective date of this final rule

will stipulate, in a written demand for repurchase, its preference for repurchase in accordance with the Loan Note Guarantee issued prior to the effective date of this final rule. If the demand for repurchase does not stipulate a preference for repurchase in accordance with the Loan Note Guarantee issued prior to the effective date of this final rule, the Agency will process the demand for repurchase as stated in this final rule. The Holder must stipulate a preference for repurchase in accordance with the Loan Note Guarantee issued prior to the effective date of this final rule in the first demand for repurchase. The Holder of the Loan Note Guarantee issued prior to the effective date of this final rule cannot make a subsequent demand for repurchase changing the preference stipulated in the original demand for repurchase.

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

(3) The Agency will notify the lender of its receipt of the Holder's demand for payment. The lender must provide the Agency with the information necessary for the Agency to determine the appropriate amount due the Holder within 10 business days from the date of the written demand letter to the lender from the Holder requesting repurchase of the guaranteed portion. The lender will furnish a current statement certified by an appropriate authorized officer of the lender stating the unpaid principal and interest then owed by the borrower on the loan and the amount then owed to any Holder. Any discrepancy between the amount claimed by the Holder and the information submitted by the lender must be resolved between the lender and the Holder before payment will be approved. The Agency will coordinate the resolution of the discrepancy. Such conflict will suspend the running of the 30 calendar day payment requirement.

(4) Purchase by the Agency does not change, alter, or modify any of the lender's obligations to the Agency arising from the loan or guarantee nor does it waive any of the Agency's rights against the lender. As Holder, the Agency will have the right to set-off any payments the Agency owes the lender.

[70 FR 2931, Jan. 19, 2005]

§§ 3565.406–3565.449 [Reserved]

§ 3565.450 OMB control number.

According to the Paperwork Reduction Act of 1995, no party is required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575–0174.

Subpart J—Assignment, Conveyance, and Claims

§ 3565.451 Preclaim requirements.

(a) *Lender certifications*. After borrower default and before filing a claim or assignment of the loan to the Agency, the lender must make every reasonable and prudent effort to resolve the default. The lender must provide the Agency with an accounting of all proposed and actual actions taken to cure the default. The lender must certify that all reasonable efforts to cure the default have been exhausted. Where the lender fails to comply with the terms of the loan guarantee agreement and the corresponding regulations and guidance with regard to liquidating the property, the Agency, at its option, may take possession of the security collateral and dispose of the property.

(b) *Due diligence by lender*. For all loan servicing actions where a market, net recovery or liquidation value determination is required, guaranteed lenders shall perform due diligence in conjunction with the appraisal and submit

it to the Agency for review. The Phase I Environmental Site Assessment published by the American Society of Testing and Materials is considered an acceptable format for due diligence.

(c) *Environmental review*. The Agency is required to complete an environmental review under the National Environmental Policy Act, in accordance with 7 CFR part 1940, subpart G or a successor regulation, prior to disposition of inventory property, if title is held by the Agency, and prior to any authorization to the guaranteed lender to foreclose and dispose of property, and for any other servicing action requiring Agency approval or consent.

§ 3565.452 Decision to liquidate.

(a) A decision to liquidate shall be made when it is determined that the default cannot be cured through actions contained in § 3565.403 or it has been determined that it is in the best interest of the Agency and the lender to liquidate. For interest accrual purposes, interest will accrue for 90 calendar days after the date the liquidation plan is approved by the Agency. If within 20 calendar days of the Agency's receipt of the liquidation plan, the Agency fails to respond to the lender's proposal or advise the lender to make revisions to the plan that was submitted, the liquidation plan will be approved by default, and the 90 calendar day period for interest accrual will commence.

(b) In the event of a default involving a loan to an Indian tribe or tribal corporation made under this section which is secured by an interest in land within such tribe's reservation (as determined by the Secretary of the Interior), including a community in Alaska incorporated by the Secretary of the Interior pursuant to the Indian Reorganization Act (25 U.S.C. 461 *et seq.*), the lender shall only pursue liquidation after offering to transfer the account to an eligible tribal member, the tribe, or the Indian housing authority serving the tribe. If the lender subsequently proceeds to liquidate the account, the lender shall not sell, transfer, or otherwise dispose of or alienate the property except to one of the entities described in the preceding sentence.

[67 FR 16971, April 9, 2002, as amended at 70 FR 2932, Jan. 19, 2005]

§ 3565.453 Disposition of the property.

(a) Submission of the liquidation plan. The lender will, within 30 calendar days after a decision to liquidate, submit to the Agency in writing, its proposed detailed plan of liquidation. The Agency will inform the lender, in writing, whether the Agency concurs in the lender's liquidation plan. Should the Agency and the lender not agree on the liquidation plan, negotiations will take place between the Agency and the lender to resolve the disagreement. When the liquidation plan is approved by the Agency, the lender will proceed expeditiously with liquidation. The liquidation plan submitted to the Agency by the lender shall include:

(1) Satisfactory proof of the lender's ownership of the guaranteed loan promissory note and related security instruments.

(2) A copy of the payment ledger or equivalent which reflects the current loan balance and accrued interest to date and the method of computing the interest.

(3) A full and complete list of all collateral including any personal and corporate guarantees.

(4) The recommended liquidation methods for making the maximum collection possible on the indebtedness and the justification for such methods, including recommended actions for:

(i) Obtaining an appraisal of the collateral;

(ii) Acquiring and disposing of all collateral;

(iii) Collecting from guarantors;

(iv) Setting the proposed date of foreclosure; and

(v) Setting the proposed date of liquidation.

(5) Necessary steps for protection of the tenants and preservation of the collateral.

(6) Copies of the borrower's latest available financial statements.

(7) Copies of the guarantor's latest available financial statements.

(8) An itemized list of estimated liquidation expenses expected to be incurred along with justification for each expense.

(9) A schedule to periodically report to the Agency on the progress of liquidation.

(10) Estimated protective advance amounts with justification.

(11) Proposed protective bid amounts on collateral to be sold at auction and a breakdown to show how the amounts were determined.

(12) If a voluntary conveyance is considered, the proposed amount to be credited to the guaranteed debt.

(13) Any legal opinions supporting the decision to liquidate.

(14) The lender will obtain a complete appraisal report on all collateral securing the loan, which will reflect the fair market value and potential liquidation value, and an examination of the title on the collateral. In order to formulate a liquidation plan, which maximizes recovery, collateral must be evaluated for hazardous substances, petroleum products, or other environmental hazards, which may adversely impact the market value of the collateral.

(b) A transfer and assumption of the borrower's operation can be accomplished before or after the loan goes into liquidation. However, if the collateral has been purchased through foreclosure or the borrower has conveyed title to the lender, no transfer and assumption is permitted.

(c) A protective bid may be made by the lender, with prior Agency written approval, at a foreclosure sale to protect the lender's and the Agency's interest. The protective bid will not exceed the amount of the loan, including expenses of foreclosure, and should be based on the liquidation value considering estimated expenses for holding and reselling the property. These expenses include, but are not limited to, expenses for resale, interest accrual, length of weatherization, and prior liens.

(d) Filing an estimated loss claim. When the lender is conducting the liquidation and owns any or all of the guaranteed portion of the loan, the lender will file an estimated loss claim with the liquidation plan if the lender expects liquidation to exceed 90 calendar days. The estimated loss payment will be based on the outstanding loan amount minus the liquidation value of the collateral. For the purpose of reporting and loss claim computation, the loss claim will be promptly processed in accordance with applicable Agency regulations, as set forth in this section. The loss claim calculation will include 90 calendar days of interest accrual on the defaulted loan at the time the estimated loss claim is paid by the Agency. If the lender estimates that there will be no loss after considering the costs of liquidation, the lender submits an estimated loss claim of zero. Interest accrual will cease 90 calendar days after the date the liquidation plan is approved by the Agency.

(e) Property disposition. Once the liquidation plan has Agency approval, the lender must make every effort to liquidate the property in a manner that will yield the highest market value consistent with the protections afforded to tenants in 7 CFR part 1944, subpart L or successor regulation.

(f) Accounting and reports. When the lender conducts liquidation, the lender will account for funds during the period of liquidation and provide the Agency with reports at least quarterly on the progress of liquidation, including disposition of collateral, resulting costs, and additional procedures necessary for successful completion of the liquidation.

(g) Transmitting payments and proceeds to the Agency. When the Agency is the Holder of a portion of the guaranteed loan, the lender will transmit to the Agency its pro rata share of any payments received from the borrower, liquidation, or elsewhere.

[70 FR 2932, Jan. 19, 2005]

§ 3565.454 [Reserved]

§ 3565.455 Alternative disposition methods.

The Agency, in its sole discretion, may choose to obtain an assignment of the loan from the lender or conveyance of title obtained by the lender through foreclosure or a deed-in-lieu of foreclosure.

(a) *Assignment*. In the case of an assignment of the loan, the assignment

of the security instruments or the security must be in written and recordable form. Completion of the assignment will occur once the following transactions are completed to the Agency's satisfaction.

(1) Conveyance to the Agency of all the lender's rights and interests arising under the loan.

(2) Assignment to the Agency of all claims against the borrower or others arising out of the loan transactions, including:

(i) All collateral agreements affecting financing, construction, use or operation of the property; and

(ii) All insurance or surety bonds, or other guarantees, and all claims under them.

(3) Certification that the collateral has been evaluated for the presence of contamination from the release of hazardous substances, petroleum products or other environmental hazards which may adversely impact the market value of the property and the results of that evaluation.

(b) *Conveyance of title.* In the case of a conveyance of title to the property, the lender must inform the Agency in advance of how it plans to acquire title and a timetable for doing so. The Agency will accept the conveyance upon receipt of an assignment to the Agency of all claims of the lender against the property and assignment of the lender's rights to any operating funds and any reserves or escrows established for the maintenance of the property or the payment of property taxes and insurance.

§ 3565.456 Filing a claim.

Once the lender has disposed of the property or the Agency has agreed to accept an assignment of the loan or conveyance of title to the property, the lender may file a claim for the guaranteed portion of allowable losses. All claim amounts must be calculated in accordance with this subpart and be approved by the Agency.

§ 3565.457 Determination of claim amount.

In all liquidation cases, final settlement will be made with the lender after the collateral is liquidated, unless otherwise designated as a future recovery or after settlement and compromise of all parties has been completed.

(a) *Report of loss form.* An Agency approved form will be used for calculations of all estimated and final loss determinations. Estimated loss payments will only be paid by the Agency after it has approved a liquidation plan.

(b) *Estimated loss.* An estimated loss claim based on liquidation appraisal value will be prepared and submitted by the lender.

(1) The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment paid by the Agency will be applied by the lender on the loan debt. Such application does not release the borrower from liability.

(2) The Government's written authorization is required for all protective advances in excess of $5,000. Protective advances include, but are not limited to, advances made for property taxes, annual assessments, ground rent, hazard or flood insurance premiums affecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance. A protective advance claim will be paid only at the time of the final report of loss payment except in certain transfer and assumption situations with Agency approval.

(c) *Final loss.* Within 30 calendar days after liquidation of all collateral, except for certain unsecured personal or corporate guarantees (as provided for in this section) is completed, a final report of loss on a form approved by the Agency must be prepared and submitted by the lender to the Agency. Before approval by the Agency of any final loss report, the lender must account for all funds during the period of liquidation, disposition of the collateral, all costs incurred, and any other information necessary for the successful completion of liquidation. Upon receipt of the final accounting and report of loss, the Agency may audit all applicable documentation to determine the final loss. The lender will make its records available and otherwise assist the Agency in making any investigation. The documentation accompanying the report of loss must support

the amounts shown on the report of loss form.

(1) A determination must be made regarding the collectability of unsecured personal and corporate guarantees. If reasonably possible, such guarantees should be promptly collected prior to completion of the final loss report. However, in the event that collection from the guarantors appears unlikely or will require a prolonged period of time, the report of loss will be filed when all other collateral has been liquidated, and unsecured personal or corporate guarantees will be treated as a future recovery with the net proceeds to be shared on a pro rata basis by the lender and the Agency.

(2) The lender must document that all of the collateral has been accounted for and properly liquidated and that liquidation proceeds have been properly accounted for and applied correctly to the loan.

(3) The lender will show a breakdown of any protective advance amount as to the payee, purpose of the expenditure, date paid, and evidence that the amount expended was proper and that payment was actually made.

(4) The lender will show a breakdown of liquidation expenses as to the payee, purpose of the expenditure, date paid, and evidence that the amount expended was proper and that payment was actually made. Liquidation expenses are recoverable only from collateral proceeds.

(5) Accrued interest will be supported by documentation as to how the amount was accrued.

(6) Loss payments will be paid by the Agency within 60 calendar days after the receipt of the final loss report and accounting of the collateral.

(7) Should there be a circumstance where the lender cannot or will not sign a final report of loss, the State Director may complete the final report of loss and submit it to the Finance Office without the lender's signature. Before this action can be taken, all collateral must be disposed of or accounted for; there must be no evidence of fraud, misrepresentation, or negligent servicing by the lender; and all efforts to obtain the cooperation of the lender must have been exhausted and documented.

(d) *Maximum guarantee payment.* The maximum guarantee payment will not exceed the amount of guarantee percentage as contained in the guarantee agreement (but in no event more than 90%) times the allowable loss amount.

(e) *Rent.* Any net rental or other income that has been received by the lender from the collateral will be applied on the guaranteed loan debt after paying operating expenses of the property.

(f) *Liquidation costs.* Liquidation costs will be deducted from the proceeds of the disposition of primary collateral. If changed circumstances after submission of the liquidation plan require a substantial revision of liquidation costs, the lender will procure the Agency's written concurrence prior to proceeding with the proposed changes.

(g) *Payment.* When the Agency finds the final report of loss to be proper in all respects, it will approve the form and proceed as follows:

(1) If the loss is greater than any estimated loss payment, the Agency will pay the additional amount owed by the Agency to the lender.

(2) If the loss is less than the estimated loss payment, the lender will reimburse the Agency for the overpayment.

(3) If the Agency determines that it is in the Government's best interest to take assignment of the loan and conduct liquidation, as stipulated in 42 U.S.C. 1490(i)(3), Assignment by Secretary, the Agency will pay the lender in accordance with the Loan Note Guarantee.

(h) *Date of loss.* The date of loss is the date on which the collateral will be liquidated in the liquidation plan, unless an alternative date is approved by the Agency. Where the Agency chooses to accept an assignment of the loan or conveyance of title, the date of loss will be the date on which the Agency accepts assignment of the loan or conveyance of title.

(i) *Allowable claim amount.* The allowable claim amount must be calculated by:

(1) Adding to the unpaid principal and interest on the date of loss, an amount approved by the Agency for payments made by the lender for

amounts due and owning on the property, including:

(i) Property taxes and other protective advances as approved by the Agency;

(ii) Water and sewer charges and other special assessments that are liens prior to the guaranteed loan;

(iii) Insurance of the property; and

(iv) Reasonable liquidation expenses.

(2) And by deducting the following items:

(i) Any amount received by the lender on the account of the guaranteed loan after the date of default;

(ii) Any net income received by the lender from the secured property after the date of default; and

(iii) Any cash items retained by the lender, except any amount representing a balance of the guaranteed loan not advanced to the borrower. Any loan amount not advanced will be applied by the lender to reduce the outstanding principal on the loan.

(j) *Lender certification.* The lender must certify that all possibilities of collection have been exhausted and that all of the items specified in paragraph (c) of this section have been identified and reported to the Agency as a condition for payment of claim.

[70 FR 2933, Jan. 19, 2005, as amended at 76 FR 5, Jan. 3, 2011]

§ 3565.458 Withdrawal of claim.

If the lender provides timely written notice to the Agency of withdrawal of the claim, the guarantee will continue as if the default had not occurred if the borrower cures the default prior to foreclosure or prior to acceptance of a deed-in-lieu of foreclosure.

§§ 3565.459–3565.499 [Reserved]

§ 3565.500 OMB control number.

According to the Paperwork Reduction Act of 1995, no party is required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575–0174.

Subpart K—Agency Guaranteed Loans That Back Ginnie Mae Guaranteed Securities

SOURCE: 70 FR 2934, Jan. 19, 2005, unless otherwise noted.

§ 3565.501 Applicability.

The provisions of this subpart apply when Agency guaranteed loans are used to back Ginnie Mae securities. In instances where this subpart applies, the provisions of this subpart prevail over any other provisions of this part.

§ 3565.502 Incontestability.

In the case of loans that back Ginnie Mae securities or loans that are acquired by Ginnie Mae as a consequence of its guaranty, the Agency guarantee under this part is incontestable except that the guarantee may not be enforced by a lender who commits fraud or misrepresentation or by a lender who had knowledge of the fraud or misrepresentation at the time such a lender acquired the guarantee or was assigned the loan.

§ 3565.503 Repurchase.

Lenders and security Holders must comply with Ginnie Mae requirements regarding the repurchase of loans from pools backing Ginnie Mae guaranteed securities.

§ 3565.504 Transfers.

(a) Loans and/or mortgage servicing on loans backing Ginnie Mae guaranteed securities may only be transferred to a Ginnie Mae issuer and may only be transferred with prior Ginnie Mae approval.

(b) Agency approval shall not be required for transfer of the servicing on the guaranteed mortgages to Ginnie Mae.

§ 3565.505 Liability.

(a) Ginnie Mae shall not be liable for the actions of the lender including, but not limited to, negligence, fraud, abuse, misrepresentation or misuse of funds, property condition, or violations of usury laws.

(b) Ginnie Mae's rights under the guarantee shall be fully enforceable

notwithstanding the actions of the lender.

§§ 3565.506–3565.549 [Reserved]

§ 3565.550 OMB control number.

According to the Paperwork Reduction Act of 1995, no party is required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575–0174.

PART 3570—COMMUNITY PROGRAMS

Subpart A [Reserved]

Subpart B—Community Facilities Grant Program

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AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1989.

SOURCE: 62 FR 16469, Apr. 7, 1997, unless otherwise noted.

Subpart A [Reserved]

Subpart B—Community Facilities Grant Program

SOURCE: 64 FR 32388, June 17, 1999, unless otherwise noted.

§ 3570.51 General.

(a) This subpart contains Rural Housing Service (RHS) policies and authorizations and establishes procedures for making essential Community Facilities Grants (CFG) authorized under section 306(a)(19) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)(19)).

(b) Funds allocated for use in accordance with this subpart are also to be considered for use by federally recognized Indian tribes within a State regardless of whether State development strategies include Indian reservations within the State's boundaries. Indian tribes must have equal opportunity along with other rural residents to participate in the benefits of this program.

(c) Federal statutes provide for extending RHS financial assistance without regard to race, color, religion, sex, national origin, age, disability, and marital or familial status. To file a complaint, write the Secretary of Agriculture, U.S. Department of Agriculture, Washington DC 20250, or call 1–800–245–6340 (voice) or (202) 730–1127 (TDD). Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

(d) Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to Agency employees, members of their families, close relatives, or business or close personal associates is subject to the provisions of 7 CFR part 1900, subpart D. Applications for assistance are required to identify any relationship or association with an RHS employee.

(e) Copies of all forms referenced in this subpart are available in the Agency's National Office or any Rural Development field office.

(f) An outstanding judgment obtained against an applicant by the United

States in a Federal Court (other than in the United States Tax Court), shall cause the applicant to be ineligible to receive any grant or loan until the judgment is paid in full or otherwise satisfied. Grant funds may not be used to satisfy the judgment.

(g) Grants made under this subpart will be administered under, and are subject to, 7 CFR parts 3015, 3016, or 3019, as appropriate.

(h) The income data used to determine median household income must be that which accurately reflects the income of the population to be served by the proposed facility. The median household income of the service area and the nonmetropolitan median household income for the State will be determined using income data from the most recent decennial Census of the United States. If there is reason to believe that the census data is not an accurate representation of the median household income within the area to be served, this will be documented and the applicant may furnish, or the Agency may obtain, additional information regarding such median household income. Information will consist of reliable data from local, regional, State, or Federal sources or from a survey conducted by a reliable impartial source.

(i) CFG funds can be used for up to 75 percent of the cost to develop the facility, notwithstanding that other contributions may be from other Federal sources.

§ 3570.52 Purpose.

The purpose of CFG program is to assist in the development of essential community facilities in rural areas. The Agency will authorize grant funds on a graduated basis. Eligible applicants located in smaller communities with lower populations and lower median household incomes may receive a higher percentage of grant funds. The amount of CFG funds provided for a facility shall not exceed 75 percent of the cost of developing the facility.

§ 3570.53 Definitions.

Agency. The Rural Housing Service (RHS), an agency of the U.S. Department of Agriculture, or a successor agency.

Approval official. An official who has been delegated loan or grant approval authorities within applicable programs, subject to certain dollar limitations.

CF. Community Facilities.

CFG. Community Facilities Grant.

Essential community facilities. Those public improvements requisite to the beneficial and orderly development of a community that is operated on a nonprofit basis. (See § 3570.62(a)(1)). An essential community facility must:

(1) Serve a function customarily provided by a local unit of government;

(2) Be a public improvement needed for the orderly development of a rural community;

(3) Not include private affairs or commercial or business undertakings (except for limited authority for industrial parks) unless it is a minor part of the total facility;

(4) Be within the area of jurisdiction or operation for the public bodies eligible to receive assistance or a similar local rural service area of a not-for-profit corporation; and

(5) Be located in a rural area.

Facility. The physical structure financed by the Agency or the resulting service provided to rural residents.

Grantee. An entity with whom the Agency has entered into a grant agreement under this program.

Instructions. Agency internal procedures available in any Rural Development office and variously referred to as Rural Development Instructions, RD Instructions.

Minor part. No more than 15 percent of the total floor space of the proposed facility.

Nonprofit corporations. Any corporation that is not organized or maintained for the making of a profit and that meets the eligibility requirements for RHS financial assistance in accordance with § 3570.61(a)(2).

Processing office. The office designated by the State program official to accept and process applications for CF projects.

Project cost. The cost of completing the proposed facility. (Facilities previously constructed will not be considered in determining project costs.) Total project cost will include only those costs eligible for CFG assistance.

Poverty line. The level of income for a family of four as defined by section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

Public body. Any State, county, city, township, incorporated town or village, borough, authority, district, economic development authority, or federally recognized Indian tribe in rural areas.

Reasonable rates and terms. The rates and terms customarily charged public and nonprofit type borrowers in similar circumstances in the ordinary course of business and subject to Agency review.

RHS. The Rural Housing Service, an agency of the United States Department of Agriculture, or a successor agency.

Rural and rural area. For fiscal year 1999, the terms ''rural'' and ''rural area'' include a city or town with a population of 20,000 or less inhabitants according to the latest decennial census of the United States. There is no limitation placed on population in open rural areas. After fiscal year 1999, the terms ''rural'' and ''rural area'' include a city, town, or unincorporated area that has a population of 50,000 inhabitants or less, other than an urbanized area immediately adjacent to a city, town, or unincorporated area that has a population in excess of 50,000 inhabitants.

Rural Development. A mission area within USDA which includes Rural Housing Service, Rural Utilities Service, and Rural Business-Cooperative Service.

RUS. The Rural Utilities Service, an agency of USDA or a successor agency.

Service area. The area reasonably expected to be served by the facility.

State. The term ''State'' means each of the 50 States, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, the Marshall Islands, the Republic of Palau, and the Federated States of Micronesia.

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

State nonmetropolitan median household income. The median household income of the State's nonmetropolitan counties and portions of metropolitan counties outside of cities, towns or places of 50,000 or more population.

State strategic plan. A plan developed by each State for Rural Development initiatives and the type of assistance required. Plans shall identify goals, methods, and benchmarks for measuring success.

[64 FR 32388, June 17, 1999, as amended at 69 FR 65519, Nov. 15, 2004]

§§ 3570.54–3570.60 [Reserved]

§ 3570.61 Eligibility for grant assistance

The essential community facility must primarily serve rural areas, be located in a rural area, and the median household income of the population to be served by the proposed facility must be below the higher of the poverty line or the eligible percentage (60, 70, 80, or 90) of the State nonmetropolitan median household income (see § 3570.63(b)).

(a) *Eligible applicant*. An applicant must be a:

(1) Public body, such as a municipality, county, district, authority, or other political subdivision of a State;

(2) Nonprofit corporation or association. Applicants, other than nonprofit utility applicants, must have significant ties with the local rural community. Such ties are necessary to ensure to the greatest extent possible that a facility under private control will carry out a public purpose and continue to primarily serve rural areas. Ties may be evidenced by items such as:

(i) Association with, or controlled by, a local public body or bodies, or broadly based ownership and control by members of the community; or

(ii) Substantial public funding through taxes, revenue bonds, or other local government sources or substantial voluntary community funding, such as would be obtained through a community-wide funding campaign.

(3) Federally recognized Indian tribe in a rural area.

(b) *Eligible facilities*. Essential community facilities must be:

(1) Located in rural areas, except for utility-type services, such as telecommunications or hydroelectric, serving both rural and non-rural areas. In

such cases, RHS funds may be used to finance only that portion serving rural areas, regardless of facility location.

(2) Necessary for orderly community development and consistent with the State Strategic Plan.

(c) *Credit elsewhere*. The approval official must determine that the applicant is unable to finance the proposed project from its own resources, or through commercial credit at reasonable rates and terms, or other funding sources without grant assistance under this subpart. The applicant must certify to such status in writing.

(d) *Economic feasibility*. All projects financed under the provisions of this section must be based on satisfactory sources of revenues as outlined in 7 CFR 1942.17(h) and 1942.116. The amount of CFG assistance must be the minimum amount sufficient for feasibility which will provide for facility operation and maintenance, reasonable reserves, and debt repayment. The applicant's available excess funds must be used to supplement eligible project costs.

(e) *Legal authority and responsibility*. Each applicant must have, or will obtain, prior to the grant award, the legal authority necessary to own, construct, operate, and maintain the proposed facility. The applicant shall be responsible for operating, maintaining, and managing the facility and providing for its continued availability and use at reasonable rates and terms. This responsibility shall be the applicant's even though the facility may be operated, maintained, or managed by a third party under contract or management agreement. If an applicant does not have the authority to borrow funds, but owns, operates, and maintains the facility, the applicant is eligible for CFG funds.

(f) *Facilities for public use*. All facilities shall be for the benefit of the public at large without discrimination as to race, color, religion, sex, national origin, disability, and marital or familial status.

§ 3570.62 Use of grant funds.

Grants of up to 75 percent of the cost of developing essential community facilities may be used to supplement financial assistance authorized in accordance with 7 CFR parts 1942, subparts A and C, and 3575, subpart A. Eligible CFG purposes are those listed in paragraphs (a), (b), (c), and (d) of this section. Funding for the balance of the project may consist of other CF financial assistance, applicant contributions, or loans and grants from other sources. CFGs may be used to:

(a) Construct, enlarge, extend, or otherwise improve essential community facilities providing essential service primarily to rural residents and rural businesses. Rural businesses include facilities such as educational and other publicly owned facilities.

(1) ''Essential community facilities'' are those public improvements requisite to the beneficial and orderly development of a community operated on a nonprofit basis including, but not limited to:

(i) Fire, rescue, and public safety;

(ii) Health services;

(iii) Community, social, or cultural services;

(iv) Transportation facilities such as streets, roads, and bridges;

(v) Hydroelectric generating facilities and related connecting systems and appurtenances, when not eligible for RUS financing;

(vi) Telecommunications equipment as it relates to medical and educational telecommunications links;

(vii) Supplemental and supporting structures for other rural electrification or telephone systems (including facilities such as headquarters and office buildings, storage facilities, and maintenance shops) when not eligible for RUS financing;

(viii) Natural gas distribution systems; and

(ix) Industrial park sites, but only to the extent of land acquisition and necessary site preparation, including access ways and utility extensions to and throughout the site. Funds may not be used in connection with industrial parks to finance on-site utility systems, or business and industrial buildings.

(2) ''Otherwise improve'' includes, but is not limited to, the following:

(i) The purchase of major equipment (such as solid waste collection trucks, telecommunication equipment, necessary maintenance equipment, fire

service equipment, X-ray machines) which will in themselves provide an essential service to rural residents; and

(ii) The purchase of existing facilities when it is necessary either to improve or to prevent a loss of service.

(b) Construct or relocate public buildings, roads, bridges, fences, or utilities and to make other public improvements necessary to the successful operation or protection of facilities authorized in paragraph (a) of this section.

(c) Relocate private buildings, roads, bridges, fences, or utilities, and other private improvements necessary to the successful operation or protection of facilities authorized in paragraph (a) of this section.

(d) Pay the following expenses, but only when such expenses are a necessary part of a project to finance facilities authorized in paragraphs (a), (b), and (c) of this section:

(1) Reasonable fees and costs such as legal, engineering, architectural, fiscal advisory, recording, environmental impact analyses, archeological surveys and possible salvage or other mitigation measures, planning, establishing or acquiring rights.

(2) Costs of acquiring interest in land; rights, such as water rights, leases, permits, and rights-of-way; and other evidence of land or water control necessary for development of the facility.

(3) Purchasing or renting equipment necessary to install, maintain, extend, protect, operate, or utilize facilities.

(4) Obligations for construction incurred before grant approval. Construction work should not be started and obligations for such work or materials should not be incurred before the grant is approved. However, if there are compelling reasons for proceeding with construction before grant approval, applicants may request Agency approval to pay such obligations. Such requests may be approved if the Agency determines that:

(i) Compelling reasons exist for incurring obligations before grant approval;

(ii) The obligations will be incurred for authorized grant purposes;

(iii) Contract documents have been approved by the Agency;

(iv) All environmental requirements applicable to the Agency and the applicant have been met; and

(v) The applicant has the legal authority to incur the obligations at the time proposed, and payment of the debts will remove any basis for any mechanic's, material, or other liens that may attach to the security property.

The Agency may authorize payment of such obligations at the time of grant closing. The Agency's authorization to pay such obligations, however, is on the condition that it is not committed to make the grant; it assumes no responsibility for any obligations incurred by the applicant; and the applicant must subsequently meet all grant approval requirements. The applicant's request and the Agency's authorization for paying such obligations shall be in writing.

§ 3570.63 Grant limitations.

(a) Grant funds may not be used to:

(1) Pay initial operating expenses or annual recurring costs, including purchases or rentals that are generally considered to be operating and maintenance expenses (unless a CF loan is part of the funding package);

(2) Construct or repair electric generating plants, electric transmission lines, or gas distribution lines to provide services for commercial sale;

(3) Refinance existing indebtedness;

(4) Pay interest;

(5) Pay for facilities located in nonrural areas, except as noted in § 3570.61(b)(1).

(6) Pay any costs of a project when the median household income of the population to be served by the proposed facility is above the higher of the poverty line or eligible percent (60, 70, 80, or 90) of the State nonmetropolitan median household income (see § 3570.63(b));

(7) Pay project costs when other loan funding for the project is not at reasonable rates and terms;

(8) Pay an amount greater than 75 percent of the cost to develop the facility;

(9) Pay costs to construct facilities to be used for commercial rental unless it is a minor part of the total facility;

(10) Construct facilities primarily for the purpose of housing State, Federal, or quasi-Federal agencies; and

(11) Pay for any purposes restricted by 7 CFR 1942.17(d)(2).

(b) Grant assistance will be provided on a graduated scale with smaller communities with the lowest median household incomes being eligible for projects with a higher proportion of grant funds. Grant assistance is limited to the following percentages of eligible project costs:

(1) 75 percent when the proposed project is:

(i) Located in a rural community having a population of 5,000 or less; and

(ii) The median household income of the population to be served by the proposed facility is below the higher of the poverty line or 60 percent of the State nonmetropolitan median household income.

(2) 55 percent when the proposed project is:

(i) Located in a rural community having a population of 12,000 or less; and

(ii) The median household income of the population to be served by the proposed facility is below the higher of the poverty line or 70 percent of the State nonmetropolitan median household income.

(3) 35 percent when the proposed project is:

(i) Located in a rural community having a population of 20,000 or less; and

(ii) The median household income of the population to be served by the proposed facility is below the higher of the poverty line or 80 percent of the State nonmetropolitan median household income.

(4) 15 percent when the proposed project is:

(i) Located in a rural community having a population of 50,000 or less; and

(ii) The median household income of the population to be served by the proposed facility is below the higher of the poverty line or 90 percent of the State nonmetropolitan median household income.

(5) 60 percent when the proposed project is:

(i) Located in a rural community having a population of 20,000 or less; and

(ii) The median household income of the population to be served by the proposed facility is below the higher of the poverty line or 90 percent of the State non-metropolitan median household income. The 60 percent grants are only available to communities impacted by a disaster that has resulted in a loss of 60 percent of the community's population and is located in a rural community designated as a major disaster area by the President.

(6) Grant assistance cannot exceed the higher of the applicable percentages contained in this section which the applicant is eligible to receive and may be further limited due to availability of funds or by the maximum grant assistance allowable determined in accordance with § 3570.66.

[64 FR 32388, June 17, 1999, as amended at 73 FR 14173, Mar. 17, 2008]

§ 3570.64 Applications determined ineligible.

If, at any time, an application is determined ineligible, the processing office will notify the applicant in writing of the reasons. The applicant will be advised that it may appeal the decision. (See 7 CFR part 11.)

§ 3570.65 Processing preapplications and applications.

For combination proposals for loan and grant funds, only one preapplication package and one application package should be prepared and submitted. Preapplications and applications for grants will be developed in accordance with applicable portions of 7 CFR 1942.2, 1942.104, and 3575.52.

(a) *Preapplications.* Applicants will file an original and one copy of ''Application for Federal Assistance (For Construction),'' with the appropriate Agency office. This form is available in all Agency offices. The preapplication and supporting documentation are used to determine applicant eligibility and priority for funding.

(1) All preapplications shall be accompanied by:

(i) Evidence of applicant's legal existence and authority; and

(ii) Appropriate clearinghouse agency comments.

(b) *Application processing*. Upon notification on ''Notice of Preapplication Review Action'' that the applicant is eligible for CFG funding, the applicant will be provided forms and instructions for filing a complete application. The forms required for a complete application, including the following, will be submitted to the processing office by the applicant:

(1) Updated ''Application for Federal Assistance (For Construction).''

(2) Financial feasibility report.

(c) *Discontinuing the processing of the application*. If the applicant fails to submit the application and related material by the date shown on ''Notice of Preapplication Review Action'' (normally 60 days from the date of this form), the Agency will discontinue consideration of the application.

§ 3570.66 Determining the maximum grant assistance.

(a) *Responsibility*. State Directors are responsible for determining the applicant's eligibility for grant assistance.

(b) *Maximum grant assistance*. Grant assistance cannot exceed the lower of:

(1) Qualifying percentage of eligible project cost determined in accordance with § 3570.63(b);

(2) Minimum amount sufficient to provide for economic feasibility as determined in accordance with § 3570.61(d); or

(3) Either 50 percent of the annual State allocation or $50,000, whichever is greater, unless an exception is made by the RHS Administrator in accordance with § 3570.90.

§ 3570.67 Project selection priorities.

Applications are scored on a priority basis. Points will be distributed as follows:

(a) *Population priorities*. The proposed project is located in a rural community having a population of:

(1) 5,000 or less—30 points;

(2) Between 5,001 and 12,000, inclusive—20 points;

(3) Between 12,001 and 20,000, inclusive—10 points; or

(4) Between 20,001 and 50,000, inclusive, when applicable—5 points.

(b) *Income priorities*. The median household income of the population to be served by the proposed project is below the higher of the poverty line or:

(1) 60 percent of the State nonmetropolitan median household income—30 points;

(2) 70 percent of the State nonmetropolitan median household income—20 points;

(3) 80 percent of the State nonmetropolitan median household income—10 points; or

(4) 90 percent of the State nonmetropolitan median household income—5 points.

(c) *Other priorities*. Points will be assigned for one or more of the following initiatives:

(1) Project is consistent with, and is reflected in, the State Strategic Plan—10 points;

(2) Project is for health care—10 points; or

(3) Project is for public safety—10 points.

(d) *Discretionary*. (1) The State Director may assign up to 15 points to a project in addition to those that may be scored under paragraphs (a) through (c) of this section. These points are to address unforeseen exigencies or emergencies, such as the loss of a community facility due to an accident or natural disaster or the loss of joint financing if Agency funds are not committed in a timely fashion. In addition, the points will be awarded to projects benefiting from the leveraging of funds in order to improve compatibility and coordination between the Agency and other agencies' selection systems and for those projects that are the most cost effective.

(2) In selecting projects for funding at the National Office level, additional points will be awarded based on the priority assigned to the project by the State Office. These points will be awarded in the manner shown below. Only the three highest priority projects for a State will be awarded points. The Administrator may assign up to 30 additional points to account for geographic distribution of funds, emergency conditions caused by economic problems, natural disasters, or leveraging of funds.

Priority	Points
1	5
2	3
3	1

§ 3570.68 Selection process.

Each request for grant assistance will be carefully scored and prioritized to determine which projects should be selected for further development and funding.

(a) *Selection of applications for further processing.* The approval official will, subject to paragraph (b) of this section, authorize grants for those eligible preapplications with the highest priority score. When selecting projects, the following circumstances must be considered:

(1) Scoring of project and scores of other applications on hand;

(2) Funds available in the State allocation; and

(3) If other Community Facilities financial assistance is needed for the project, the availability of other funding sources.

(b) *Lower scoring projects.* (1) In cases when preliminary cost estimates indicate that an eligible, high-scoring application is not feasible, or would require grant assistance exceeding 50 percent of a State's current annual allocation, or an amount greater than that remaining in the State's allocation, the approval official may instead select the next lower-scoring application for further processing provided the high-scoring applicant is notified of this action and given an opportunity to review the proposal and resubmit it prior to selection of the next application.

(2) If it is found that there is no effective way to reduce costs, the approval official, after consultation with the applicant, may request an additional allocation of funds from the National office.

§ 3570.69 Environmental review, intergovernmental review, and public notification.

All grants awarded under this subpart, including grant-only awards, are subject to the environmental requirements of 7 CFR part 1940, subpart G, to the intergovernmental review requirements of 7 CFR 3015, subpart V and RD Instruction 1970–I, 'Intergovernmental Review,' available in any Agency office or on the Agency's Web site. and the public information process in 7 CFR 1942.17(j)(9).

[64 FR 32388, June 17, 1999, as amended at 76 FR 80732, Dec. 27, 2011]

§ 3570.70 Other considerations.

Each application must contain the comments, necessary certifications, and recommendations of appropriate Federal or State regulatory or other agency or institution having expertise in the planning, operation, and management of similar facilities as required by 7 CFR parts 1942, subparts A and C, and 3575, subpart A. Proposals for facilities financed in whole or in part with Agency funds will be coordinated with appropriate Federal, State, and local agencies as required by the following:

(a) Grants under this subpart are subject to the provisions of 7 CFR 1942.17(k) which include title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, Americans with Disability Act of 1990, and the regulations issued thereto. Certain housing-related projects, such as nursing homes, group homes, or assisted-living facilities, must comply with the requirements of the Fair Housing Act.

(b) Governmentwide debarment and suspension (nonprocurement) and requirements for drug-free workplace are applicable to CFG and grantees. See 7 CFR part 3017 and RD Instruction 1940–M (available in any Rural Development office) for further guidance.

(c) Restrictions on lobbying. Grantees must comply with the lobbying restrictions set forth in 7 CFR part 3018.

(d) Civil Rights Impact Analysis, RD Instruction 2006–P (available in any Rural Development office), and ''Civil Rights Impact Analysis Certification.''

§§ 3570.71–3570.74 [Reserved]

§ 3570.75 Grantee contracts.

The requirements of 7 CFR 1942.4, 1942.17(e), 1942.17(l), 1942.118, and 1942.119 will be applicable when agreements between grantees and third parties are involved.

§ 3570.76 Planning, bidding, contracting, and construction.

Planning, bidding, contracting, and construction will be handled in accordance with 7 CFR 1942.9, 1942.18, and 1942.126.

§§ 3570.77–3570.79 [Reserved]

§ 3570.80 Grant closing and delivery of funds.

(a) ''Community Facilities Grant Agreement'' will be used as the grant agreement between the Agency and the grantee and will be signed by the grantee before grant funds are advanced.

(b) Approval officials may require applicants to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal grant funds and that use and disposition conditions apply to the property as provided by 7 CFR parts 3015, 3016, or 3019, as subsequently modified.

(c) Agency grant funds will be disbursed and monitored in accordance with 7 CFR 1942.17(p), 1942.123, and 1942.127.

(d) Grant funds will not be disbursed until they are actually needed by the applicant and all borrower, Agency, or other funds are expended, except when:

(1) Interim financing of the total estimated amount of loan funds needed during construction is arranged,

(2) All interim funds have been disbursed, and

(3) Agency grant funds are needed before RHS or other loans can be closed.

(e) If grant funds are available from other agencies and are transferred for disbursement by RHS, these grant funds will be disbursed in accordance with the agreement governing such other agencies' participation in the project.

§§ 3570.81–3570.82 [Reserved]

§ 3570.83 Audits.

(a) Audits will be conducted in accordance with 7 CFR 1942.17(q)(4), except as provided in this section.

(b) Grantees who are not required to submit an audit report will, within 60 days following the end of the fiscal year in which any grant funds were expended, furnish RHS with annual financial statements, consisting of a verification of the organization's balance sheet and statement of income and expense report signed by an appropriate official of the organization or other documentation as determined appropriate by the approval official.

§ 3570.84 Grant servicing.

Grants will be serviced in accordance with 7 CFR part 1951, subparts E and O.

§ 3570.85 Programmatic changes.

The grantee shall obtain prior Agency approval for any change to the objectives of the approved project. (For construction projects, a material change in approved space utilization or functional layout shall be considered such a change.) Failure to obtain prior approval of changes to the approved project or budget may result in suspension, refund, or termination of grant funds.

§ 3570.86 [Reserved]

§ 3570.87 Grant suspension, termination, and cancellation.

Grants may be suspended or terminated for cause or convenience in accordance with 7 CFR parts 3015, 3016, or 3019, as applicable.

§ 3570.88 Management assistance.

Grant recipients will be supervised to the extent necessary to ensure that facilities are constructed in accordance with approved plans and specifications and to ensure that funds are expended for approved purposes.

§ 3570.89 [Reserved]

§ 3570.90 Exception authority.

An RHS official may request, and the Administrator or designee may make, in individual cases, an exception to any requirement or provision of this subpart or address any omission of this subpart if the Administrator determines that application of the requirement or provision, or failure to take action in the case of an omission, would adversely affect the Government's interest.

§ 3570.91 Regulations.

Grants under this part will be in accordance with 7 CFR parts 3015, 3016, or 3019, as applicable, and any conflicts between those parts and this part will be resolved in favor of applicable 7 CFR parts 3015, 3016, or 3019.

§ 3570.92 [Reserved]

§ 3570.93 Regional Commission grants.

(a) Grants are sometimes made by Federal Regional Commissions (designated under Title V of the Public Works and Economic Development Act of 1965) for projects eligible for RHS assistance. RHS has agreed to administer such funds in a manner similar to administering RHS assistance.

(b) The transfer of funds from a Federal Regional Commission to RHS will be based on specific applications determined to be eligible for an authorized purpose in accordance with the requirements of RHS and the Federal Regional Commission.

(c) The Appalachian Regional Commission (ARC) is authorized under the Appalachian Regional Development Act of 1965 to serve the Appalachian region. ARC grants are handled in accordance with the ARC Agreement which applies to all ARC grants administered by Rural Development. Therefore, a separate Project Management Agreement between RHS and ARC is not needed for each ARC grant.

(d) Grants by other Federal Regional Commissions are handled in accordance with a separate Project Management Agreement between the respective Federal Regional Commission and RHS for each Commission grant or class of grants administered by RHS.

(e) When the Agency has funds in the project, no charge will be made for administering Federal Regional Commission grant funds.

(f) When RHS has no loan or grant funds in the project, an administrative charge will be made pursuant to the Economy Act (31 U.S.C. 1535).

§§ 3570.94–3570.99 [Reserved]

§ 3570.100 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0173. You are not required to respond to this collection of information unless it displays a valid OMB control number.

PART 3575—GENERAL

Subpart A—Community Programs Guaranteed Loans

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Subpart B [Reserved]

AUTHORITY: 5 U.S.C. 301, 7 U.S.C. 1989.

SOURCE: 64 FR 28337, May 26, 1999, unless otherwise noted.

Subpart A—Community Programs Guaranteed Loans

§ 3575.1 General.

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

(b) The purpose of the Community Programs guaranteed loan program is to improve, develop, or finance essential community facilities in rural areas. This purpose is achieved through bolstering the existing private credit structure through the guarantee of quality loans which will provide lasting community benefits.

§ 3575.2 Definitions.

The following general definitions are applicable to the terms used in this subpart:

Agency. The Rural Housing Service which is within the Rural Development mission area of the United States Department of Agriculture or its successor agencies with authority delegated by the Secretary of Agriculture to administer the Community Facilities programs.

Application. An Agency prescribed form to request an Agency guarantee (available in any Agency office).

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

Assignment Guarantee Agreement. The signed agreement among the Agency, the lender, and the holder setting forth the terms and conditions of an assignment of the guaranteed portion of a loan or any part thereof (available in any Agency office).

Borrower. The entity that borrows money from the lender.

Collateral. Property pledged to secure the guaranteed loan.

Community facility (essential). The term ''facility'' as used in this subpart refers to both the physical structure financed and the resulting service provided to rural residents. An essential community facility must:

(1) Be a function customarily provided by a local unit of government;

(2) Be a public improvement needed for the orderly development of a rural community;

(3) Not include private affairs or commercial or business undertakings (except for limited authority for industrial parks);

(4) Be within the area of jurisdiction or operation for eligible public bodies or a similar local rural service area of a not-for-profit corporation; and

(5) Be located in a rural area.

Conditional Commitment for Guarantee. The Agency's written statement to the lender that the material submitted is approved subject to the completion of all conditions and requirements contained in the commitment (available in any Agency office).

Guaranteed loan. A loan made and serviced by a lender for which the Agency and lender have entered into a Lender's Agreement and for which the Agency has issued a Loan Note Guarantee.

Holder. The person or entity (other than the lender) who holds all or a part of the guaranteed portion of the loan with no servicing responsibilities. When the lender assigns part or all of the guaranteed portion of the loan to an assignee, the assignee becomes a holder when the Assignment Guarantee Agreement is signed by all parties.

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

In-house expenses. In-house expenses include, but are not limited to, employees' salaries, staff lawyers, travel, and overhead.

Insurance. Fire, windstorm, lightning, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, builder's risk, liability, property damage, flood or mudslide, worker's compensation, fidelity bond, malpractice, or any similar insurance that is available and needed to protect the security or that is required by law.

Joint financing. Two or more lenders (or any combination of lenders and other financial sources) making separate relatively contemporaneous loans to supply the funds required by one borrower. For example, such joint financing may consist of the Agency's financial assistance with the Economic Development Administration, Department of Housing and Urban Development (HUD), or other Federal and State agencies, and private and quasi-public financial institutions.

Lender. The person or organization making and responsible for servicing the loan. The lender is also referred to in this subpart as the applicant who is requesting a guarantee during the preapplication and application stage of processing.

Lender's Agreement. The signed agreement between the Agency and the lender containing the lender's responsibilities when the Loan Note Guarantee is issued (available in any Agency office).

Loan classification system. The process by which loans are examined and categorized by degree of potential loss in the event of default.

Loan Note Guarantee. The signed commitment issued by the Agency containing the terms and conditions of the guarantee of an identified loan (available in any Agency office).

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

Note. An evidence of debt. In those instances where the Agency guarantees a bond issue, ''note'' shall also be construed to include a bond or other evidence of indebtedness, as appropriate.

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

Principals of borrowers. The owners, officers, directors, entities, and supervisors directly involved in the operation and management of the borrower.

Problem loan. A loan which is not complying with its terms and conditions.

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

Public body. A municipality, county, or other political subdivision of a State, special purpose district, an Indian tribe on a Federal or State reservation, or another federally recognized Indian tribe.

Report of loss. A form used by lenders when reporting a loss under an Agency guarantee (available in any Agency office).

Rural and rural area. (1) For fiscal year 1999, the terms ''rural'' and ''rural area'' mean a city, town, or unincorporated area with 20,000 inhabitants or less according to the latest decennnial census.

(2) For later fiscal years, the terms ''rural'' and ''rural area'' mean a city, town, or unincorporated area that has a population of 50,000 inhabitants or less according to the latest decennial census of the United States, other than

an urbanized area immediately adjacent to a city, town, or unincorporated area that has a population in excess of 50,000 inhabitants.

Service area. The area reasonably expected to be served by the facility being financed by the guaranteed loan.

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

State Bond Banks and State Bond Pools. An entity authorized by the State to issue State debt instruments and utilize the funds received to finance essential community facilities.

State Director. The Rural Development State Director or the staff member who has been delegated authority to perform action on behalf of the State Director.

Substantive change. Any change in the purpose of the loan or any change in the financial condition of the borrower or the collateral which would jeopardize the performance of the loan.

Transfer and assumption. The conveyance by a debtor to an assuming party of the assets, collateral, and liabilities of the loan in return for the assuming party's binding promise to pay the outstanding debt.

§ 3575.3 Full faith and credit.

The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is not contestable except for fraud or misrepresentation (including negligent misrepresentation) of which the lender or holder has actual knowledge, participates in, or condones. A note which provides for the payment of interest on interest shall not be guaranteed and any Loan Note Guarantee or Assignment Guarantee Agreement attached to, or relating to, a note which provides for payment of interest on interest is void. The Loan Note Guarantee will not be enforceable by the lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which the Agency acquires knowledge of the foregoing. Any losses occasioned will not be enforceable by the lender to the extent that loan funds are used for purposes other than those specifically approved by the Agency in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act, but also not acting in a timely manner, acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity, or until a final loss is paid. The Loan Note Guarantee or Assignment Guarantee Agreement in the hands of a holder shall not cover interest accruing 90 days after the holder has demanded repurchase by the lender, nor shall the Loan Note Guarantee or Assignment Guarantee Agreement in the hands of a holder cover interest accruing 90 days after the lender or Agency has requested the holder to surrender the evidence of debt for repurchase.

§ 3575.4 Conditions of guarantee.

A loan guarantee under this part will be evidenced by a Loan Note Guarantee issued by the Agency. Each lender will also execute a Lender's Agreement.

(a) The entire loan will be secured by the same security with equal lien priority for the guaranteed and non-guaranteed portions of the loan. The non-guaranteed portion of the loan will not be paid first nor given any preference or priority over the guaranteed portion.

(b) The lender will be responsible for servicing the entire loan and will remain mortgagee or secured party of record notwithstanding the fact that another party may hold a portion of the loan.

(c) When a guaranteed portion of a loan is sold to a holder, the holder shall have all rights of the lender under the Loan Note Guarantee to the extent of the portion purchased. The lender will remain bound by all the obligations under the Loan Note Guarantee, Lender's Agreement, and Agency program regulations. If the Agency makes

a payment to a holder, then the lender must reimburse the Agency.

(d) A lender will receive all payments of principal and interest on the account of the entire loan and will promptly remit to each holder a pro rata share, less any lender servicing fee.

(e) The lender may retain all of the unguaranteed portion of the loan or may sell part of the unguaranteed portion of the loan through participation. However, the lender is required to retain 5 percent of the loan amount from the unguaranteed portion in their portfolio.

§§ 3575.5–3575.7 [Reserved]

§ 3575.8 Access to lender's records.

Upon request by the Agency, the lender will permit representatives of the Agency (or other agencies of the U.S. Department of Agriculture authorized by that Department or the U.S. Government) to inspect and make copies of any of the records of the lender pertaining to the guaranteed loans. Such inspection and copying may be made during regular office hours of the lender or at any other time the lender and the Agency agree upon.

§ 3575.9 Environmental requirements.

Requirements for an environmental review or mitigation actions are contained in part 1940, subpart G, of this title. The lender must assist the Agency to ensure that the lender's applicant complies with any mitigation measures required by the Agency's environmental review for the purpose of avoiding or reducing adverse environmental impacts of construction or operation of the facility financed with the guaranteed loan. This assistance includes ensuring that the lender's applicant is to take no actions (for example, initiation of construction) or incur any obligations with respect to their proposed undertaking that would either limit the range of alternatives to be considered during the Agency's environmental review process or which would have an adverse effect on the environment. If construction is started prior to completion of the environmental review and the Agency is deprived of its opportunity to fulfill its obligation to comply with applicable environmental requirements, the application for financial assistance may be denied. Satisfactory completion of the environmental review process must occur prior to Agency approval of the applicant's request or any commitment of Agency resources.

§§ 3575.10–3575.11 [Reserved]

§ 3575.12 Inspections.

The lender will notify the Agency of any scheduled field inspections during construction and after issuance of the Loan Note Guarantee. The Agency may attend such field inspections. Any inspections or review conducted by the Agency, including those with the lender, are for the benefit of the Agency only and not for the benefit of other parties of interest. Agency inspections do not relieve any parties of interest of their responsibilities to conduct necessary inspections.

§ 3575.13 Appeals.

Only the borrower, lender, or holder can appeal an Agency decision. In cases where the Agency has denied or reduced the amount of final loss payment to the lender, the adverse decision may be appealed only by the lender. A decision by a lender adverse to the interest of the borrower is not a decision by the Agency, whether or not concurred in by the Agency. Appeals will be handled in accordance with the regulations of the National Appeals Division, U.S. Department of Agriculture, published at 7 CFR part 11.

§§ 3575.14–3575.16 [Reserved]

§ 3575.17 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart provided the Administrator determines that application of the requirement or provision, or failure to take action in the case of an omission, would adversely affect the Government's financial interest. Requests for exceptions must be in writing by the State Director.

§§ 3575.18–3575.19 [Reserved]

§ 3575.20 Eligibility.

(a) *Availability of credit from other sources.* The Agency must determine that the borrower is unable to obtain the required credit without the loan guarantee from private, commercial, or cooperative sources at reasonable rates and terms for loans for similar purposes and periods of time. This determination shall become a part of the Agency casefile. The Agency must also determine if an outstanding judgment obtained by the United States in a Federal Court (other than the U.S. Tax Court) has been entered against the borrower or if the borrower has an outstanding delinquent debt with any Federal agency. Such judgment or delinquency shall cause the potential borrower to be ineligible to receive a loan guarantee until the judgment is paid in full or otherwise satisfied or the delinquency is cured.

(b) *Legal authority and responsibility.* (1) Each borrower must have, or will obtain, the legal authority necessary to construct, operate, and maintain the proposed facility and services. They must also have legal authority for obtaining security and repaying the proposed loan.

(2) The borrower shall be responsible for operating, maintaining, and managing the facility and services, and providing for the continued availability and use of the facility and services at reasonable rates and terms.

(i) These responsibilities must be exercised by the borrower even though the facility may be operated, maintained, or managed by a third party under contract, management agreement, or written lease.

(ii) Leases may only be used when this is the only feasible way to provide the service, is the customary practice to provide such service in the State, and must provide for the borrower's management control of the facility.

(iii) Contracts, management agreements, or leases must not contain options or other provisions for transfer of ownership.

(3) The lender is responsible for reviewing any contracts, management agreements, or leases to determine that they will not adversely impact the borrower's repayment ability or the security value of the guaranteed loan.

(c) *Borrower.* (1) A public body such as a municipality, county, district, authority, or other political subdivision of a State located in a rural area.

(2) An organization operated on a not-for-profit basis such as an association, cooperative, or private corporation. For-profit corporations operated as not-for-profit corporations are eligible borrowers as long as they operate as a not-for-profit corporation for the duration of their guaranteed loans. Single member corporations or corporations owned or substantially controlled by other corporations or associations are not eligible organizations. Before a loan is made to a borrower other than a public body, the articles of incorporation or the loan agreement will include a condition similar to the following:

> If the corporation dissolves or ceases to perform the community facility objectives and functions, the board of directors shall distribute all business property and assets to one or more nonprofit corporations or public bodies. This distribution must be approved by 75 percent of the users or members and must serve the public welfare of the community. The assets may not be distributed to any members, directors, stockholders, or others having financial or managerial interest in the corporation. Nothing herein shall prohibit the corporation from paying its debts.

(3) A private nonprofit essential community facility (other than utilities) must have significant ties with the local rural community. Such ties are necessary to ensure to the greatest extent possible that a facility under private control will carry out a public purpose and continue to primarily serve rural areas. Ties may be evidenced by items such as:

(i) Association with, or controlled by, a local public body or bodies or broadly based ownership and controlled by members of the community.

(ii) Substantial public funding through taxes, revenue bonds, or other local government sources, or substantial voluntary community funding such as would be obtained through a community-wide funding campaign.

(4) Indian tribes on Federal and State reservations and other federally recognized Indian tribes.

(d) *Facility location.* Facilities must be located in rural areas, except:

(1) For utility services such as natural gas or hydroelectric serving both rural and non-rural areas. In such cases, Agency funds may be used to finance only that portion serving rural areas, regardless of facility location.

(2) Telecommunication projects. The part of the facility located in a non-rural area must be necessary to provide the essential services to rural areas.

(e) *Facilities for public use.* All facilities financed under the provisions of this subpart shall be for public purposes.

(1) Facilities will be installed to serve any user within the service area who desires service and can be feasibly and legally served.

(2) In no case will boundaries for the proposed service area be chosen in such a way that any user or area will be excluded because of race, color, religion, sex, marital status, age, disability, or national origin. This does not preclude:

(i) Financing or constructing projects in phases when it is not practical to finance or construct the entire project at one time, and

(ii) Financing or constructing facilities where it is not economically feasible to serve the entire area, provided economic feasibility is determined on the basis of the entire system or facility and not by considering the cost of separate extensions to, or parts thereof. Additionally, the borrower must publicly announce a plan for extending service to areas not initially receiving service. Also, the borrower must provide written notice to potential users located in the areas not to be initially served.

(3) The lender will determine that, when feasible and legally possible, inequities within the proposed project's service area for the same type service proposed (*i.e.*, gas distribution system) will be remedied by the owner on, or before, completion of the project. Inequities are defined as unjustified variations in availability, adequacy, or quality of service. User rate schedules for portions of existing systems or facilities that were developed under different financing, rates, terms, or conditions do not necessarily constitute inequities.

§§ 3575.21–3575.23 [Reserved]

§ 3575.24 Eligible loan purposes.

(a) Funds may be used to construct, enlarge, extend, or otherwise improve other essential community facilities providing essential service primarily to rural residents and rural businesses.

(1) Essential community facilities include, but are not limited to:

(i) Fire, rescue, and public safety,

(ii) Health services,

(iii) Community, social, or cultural services,

(iv) Transportation facilities such as streets, roads, and bridges,

(v) Telecommunication equipment,

(vi) Hydroelectric generating facilities and related connecting systems and appurtenances only when not eligible for financing under the authorities of the Rural Utilities Service. Funds may not be used to finance other types of electrical generating or transmitting facilities,

(vii) Supplemental and supporting structures for other rural electrification or telephone systems (including facilities such as headquarters and office buildings, storage facilities, and maintenance shops) only when not eligible for financing under the authorities of the Rural Utilities Service,

(viii) Natural gas distribution systems,

(ix) Industrial park sites (but only to the extent of land acquisition and necessary site preparation) including access ways and utility extensions to and throughout the site. Funds may not be used in connection with industrial parks to finance on-site utility systems or business and industrial buildings, and

(x) Recreational facilities.

(2) Otherwise improve includes, but is not limited to, the following:

(i) The purchase of major equipment (such as telecommunication equipment and X-ray machines) which will in themselves provide an essential service to rural residents,

(ii) The purchase of existing facilities, when necessary, either to improve or to prevent a loss of service, and

(iii) Payment of tap fees and other utility connection charges as provided in utility purchase contracts.

(b) Funds also may be used:

(1) To construct or relocate public buildings, roads, bridges, fences, or utilities and to make other public improvements necessary to the successful operation or protection of facilities authorized by paragraph (a) of this section.

(2) To relocate private buildings, roads, bridges, fences, or utilities, and other private improvements necessary to the successful operation or protection of facilities authorized in paragraph (a) of this section.

(3) To pay the following expenses (but only when such expenses are a necessary part of a loan to finance facilities authorized in paragraph (a) of this section):

(i) Reasonable fees and costs such as origination fee, loan guarantee fee, legal, engineering, architectural, fiscal advisory, recording, environmental impact analyses, archaeological surveys, possible salvage or other mitigation measures, planning and establishing or acquiring rights.

(ii) Interest on loans until the facility is self-supporting, but not for more than 2 years unless a longer period is approved by the Agency; interest on loans secured by general obligation bonds until tax revenues are available for payment, but not for more than 2 years unless a longer period is approved by the Agency's National Office; and interest on interim financing.

(iii) Costs of acquiring interest in land; rights such as water rights, leases, permits, rights-of-way, and other evidence of land or water control necessary for development of the facility.

(iv) Purchasing or renting equipment necessary to install, maintain, extend, protect, operate, or utilize facilities.

(v) Initial operating expenses for a period ordinarily not exceeding 1 year when the borrower is unable to pay such expenses.

(vi) Refinancing debts incurred by, or on behalf of, a community when all of the following conditions exist:

(A) The debts being refinanced are less than 50 percent of the total loan,

(B) The debts were incurred for the facility or service being financed or any part thereof (such as interim financing, construction expenses, etc.), and

(C) Arrangements cannot be made with the creditors to extend or modify the terms of the debts so that a sound basis will exist for making a loan.

(4) To pay obligations for construction incurred prior to filing a preapplication and application with the Agency. Construction work must not be started (and obligations for such work or materials must not be incurred) before the Conditional Commitment for Guarantee is issued. If there are compelling reasons for proceeding with construction before the Conditional Commitment for Guarantee is issued, lenders may request Agency approval to pay such obligations and not jeopardize a guarantee from the Agency. Such request must comply with the following:

(i) Provide conclusive evidence that the contract was entered into without intent to circumvent the Agency regulations. However, the Agency is not required or obligated to pay a loss unless a written guarantee is issued,

(ii) Modify the outstanding contract to conform with the provisions of this subpart. Where this is not possible, modifications will be made to the extent practicable and, as a minimum, the contract must comply with all State and local laws and regulations as well as statutory requirements and executive orders related to the Agency financing. When construction is complete and it is impracticable to modify the contract, the borrower and lender must provide the certification required by paragraph (b)(4)(iii) of this section,

(iii) Provide a certification by an engineer or architect that any construction performed complies fully with the plans and specifications, and

(iv) The borrower and the contractor must have complied with all statutory and executive order requirements related to Agency financing for construction already performed even though the requirements may not have been included in the contract documents.

§ 3575.25 Ineligible loan purposes.

Loan funds may not be used to finance:

(a) Properties to be used for commercial rental when the borrower has no

control over tenants and services offered except for industrial-site infrastructure development,

(b) Facilities primarily for the purpose of housing Federal or State agencies,

(c) Community antenna television services or facilities,

(d) Telephone systems,

(e) Facilities which are not modest in size, design, and cost,

(f) Finder's and packager's fees,

(g) Projects located within the Coastal Barriers Resource System that do not qualify for an exception as defined in section 6 of the Coastal Barriers Resource Act, 16 U.S.C. 3501 *et seq.* (available in any Agency office),

(h) New combined sanitary and storm water sewer facilities, or

(i) Projects that are located in a special flood or mudslide hazard area as designated by the Federal Emergency Management Agency in a community that is not participating in the National Flood Insurance Program.

§ 3575.26 [Reserved]

§ 3575.27 Eligible lenders.

(a) *Eligible lenders.* Eligible lenders (as defined in this section) may participate in the loan guarantee program. These lenders must be subject to credit examination and supervision by an appropriate agency of the United States or a State that supervises and regulates credit institutions. A lender must have the capability to adequately service loans for which a guarantee is requested. Eligible lenders are:

(1) Any Federal or State chartered bank or savings and loan association;

(2) Any mortgage company that is a part of a bank holding company;

(3) Bank for Cooperatives, National Rural Utilities Cooperative Finance Corporation, Farm Credit Bank of the Federal Land Bank, or other Farm Credit System institution with direct lending authority authorized to make loans of the type guaranteed by this subpart;

(4) An insurance company regulated by a State or National insurance regulatory agency;

(5) State Bond Banks or State Bond Pools; and

(6) Other lenders that possess the legal powers necessary and incidental to making and servicing guaranteed loans involving community development-type projects. These lenders must also be subject to credit examination and supervision by either an appropriate agency of the United States or a State that supervises and regulates credit institutions and provide documentation acceptable to the Agency that they have the ability to service the loan. Lenders under this category must be approved by the National Office prior to the issuance of the loan guarantee.

(b) *Conflict of interest.* When the lender's officers, stockholders, directors, or partners (including their immediate families) or the borrower, its officers, stockholders, directors, or partners (including their immediate families) own, or have management responsibilities in each other, the lender must disclose such business or ownership relationships. The Agency will determine if such relationships are likely to result in a conflict of interest. This does not preclude lender officials from being on the borrower's board of directors.

§ 3575.28 Transfer of lenders or borrowers (prior to issuance of Loan Note Guarantee).

(a) Prior to issuance of the loan guarantee, the Agency may approve the transfer of an outstanding Conditional Commitment for Guarantee from the present lender to a new eligible lender, provided:

(1) The former lender states in writing why it does not wish to continue to be the lender for this project;

(2) No substantive changes in ownership or control of the borrower has occurred;

(3) No substantive changes in the borrower's written plan, scope of work, or changes in the purpose or intent of the project has occurred; and

(4) No substantive changes in the loan agreement or Conditional Commitment for Guarantee are required.

(b) The substitute lender must execute a new application for loan and guarantee (available in any Agency office).

(c) If approved, the Agency will issue a letter of amendment to the original

Conditional Commitment for Guarantee reflecting the new lender who will acknowledge acceptance of the offer in writing.

(d) Once the Conditional Commitment for Guarantee is issued, the Agency will not approve any substitution of borrowers, including changes in the form of the legal entity. Exceptions to a change in the legal entity may be requested when the original borrower is replaced with substantially the same individuals or officers with the same interest as originally approved.

§ 3575.29 Fees and charges by lender.

(a) *Routine charges and fees.* The lender may establish the charges and fees for the loan, provided they do not exceed those charged other borrowers for similar types of transactions. ''Similar types of transactions'' mean those transactions involving the same type of loan for which a non-guaranteed loan borrower would be assessed charges and fees.

(b) *Late payment fees.* Late payment charges will not be covered by the Loan Note Guarantee. Such charges may not be added to the principal and interest due under any guaranteed note. Late payment charges may be made only if:

(1) They are routinely made by the lender in all types of loan transactions;

(2) Payment has not been received within the customary timeframe allowed by the lender; or

(3) The lender agrees with the borrower, in writing, that the rate or method of calculating the late payment charges will not be changed to increase charges while the Loan Note Guarantee is in effect.

(c) *Guarantee fees.* The guaranteed loan fee will be the applicable guarantee fee rate multiplied by the principal loan amount multiplied by the percent of guarantee. The one-time guarantee fee is paid when the Loan Note Guarantee is issued.

(1) The fee will be paid to the Agency by the lender and is nonreturnable. The lender may pass the fee to the borrower.

(2) The guarantee fee rates are available in any Agency office.

§ 3575.30 Loan guarantee limitations.

The percentage of guarantee, up to the maximum allowed by this section, is a matter for negotiation between the lender and the Agency.

(a) The maximum guarantee is 90 percent of eligible loss.

(b) The lender will retain a minimum of 5 percent of the total loan amount. The retained amount must be from the unguaranteed portion of the loan and cannot be participated to another lender.

§§ 3575.31–3575.32 [Reserved]

§ 3575.33 Interest rates.

(a) *General.* Rates will be negotiated between the lender and the borrower.

They may be either fixed or variable rates. Interest rates will be those rates customarily charged borrowers in similar circumstances in the ordinary course of business and are subject to Agency review and approval.

(b) *Variable rate publication.* A variable interest rate must be tied to a base rate published periodically in a recognized national or regional financial publication specifically agreed to by the lender and borrower. Such an agreement must be documented in the borrower or lender loan agreement.

(1) Interest rate caps and incremental adjustment limitations will also be negotiated between the lender and the borrower. Notice of any interest rate change proposed by the lender should allow a sufficient time period for the borrower to obtain any required State or other regulatory approval and to implement any user rate adjustments necessary as a result of the interest rate change. The intervals between interest rate adjustments will be specified in the loan agreement (but not more often than quarterly).

(2) The lender must incorporate within the variable rate note, the provision for adjustment of payments coincident with an interest rate adjustment. This will ensure the outstanding principal balance is properly amortized within the prescribed loan maturity and eliminate the possibility of a balloon payment at the end of the loan.

(c) *Changes.* Any change in the interest rate between the date of issuance of

the Conditional Commitment for Guarantee and before the issuance of the Loan Note Guarantee must be approved by the Agency. Approval of such change will be shown as an amendment to the Conditional Commitment for Guarantee.

(d) *Different rates on guaranteed and unguaranteed portion of the loan.* It is permissible to have one interest rate on the guaranteed portion of the loan and another interest rate on the unguaranteed portion of the loan, provided the lender and borrower agree, and:

(1) The rate on the unguaranteed portion does not exceed that currently being charged on loans for similar purposes to borrowers under similar circumstances; and,

(2) The rate on the guaranteed portion of the loan will not exceed the rate on the unguaranteed portion. This requirement does not apply when the unguaranteed rate is variable and the guaranteed portion is fixed.

(e) *Multi-rates.* When multi-rates are used, the lender will provide the Agency with the overall effective interest rate for the entire loan. Multi-rate loans may be either fixed, variable, or a combination of fixed and variable. When a combination of fixed and variable interest rates are used, the interest rate for the unguaranteed portion will not be lower than the guaranteed portion of the loan.

§ 3575.34 Terms of loan repayment.

(a) *General.* Principal and interest on the loan will be due and payable as provided in the note except, any interest accrued as the result of the borrower's default on the guaranteed loan over and above that which would have accrued at the note rate on the guaranteed loan will not be guaranteed by the Agency. The lender will structure repayments as established in the loan agreement between the lender and borrower. Ordinarily, such installments will be scheduled for payment as agreed upon by the lender and borrower on terms that reasonably ensure repayment of the loan. However, the first installment to include a repayment of principal may be scheduled for payment after the project is operable and has begun to generate income. Such installment must be due and payable within 3 years from the date of the note and at least annually thereafter. Interest will be due at least annually from the date of the note. Monthly payments will be required except for borrowers with income limited to less frequent intervals.

(b) *Term length.* The maximum time allowable for final maturity for a guaranteed CP loan will be limited to the useful life of the facility, not to exceed 40 years.

(c) *Balloon payments.* The principal balance should be properly amortized within the prescribed loan maturity. Balloon payments at the end of the loan are prohibited.

§§ 3575.35–3575.36 [Reserved]

§ 3575.37 Insurance and fidelity bonds.

The lender must provide evidence that the borrower has adequate insurance and fidelity bond coverage by loan closing or start of construction, whichever occurs first. Adequate coverage must be maintained for the life of the loan and is subject to Agency review and approval.

§§ 3575.38–3575.39 [Reserved]

§ 3575.40 Equal opportunity and Fair Housing Act requirements.

(a) *Equal Credit Opportunity Act.* The lender will comply with the requirements of title V of the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*). (See the Federal Reserve Board Regulation, 12 CFR part 202.)

(b) *Fair Housing Act.* Certain housing-related projects such as nursing homes, group homes, or assisted-living facilities must comply with the requirements of the Fair Housing Act (42 U.S.C. 3601 *et seq.*). This includes completion of an Affirmative Fair Housing Marketing Plan and compliance with the Housing and Urban Development accessibility guidelines except for areas open to the public which are covered by the Americans with Disabilities Act (42 U.S.C. 12181 *et seq.*). The lender will determine that the borrower has a valid plan in effect at all times.

§ 3575.41 [Reserved]

§ 3575.42 Design and construction requirements.

The lender will provide the Agency with a written certification at the end of construction that all funds were utilized for authorized purposes. The borrower and the lender will authorize designs and plans based upon the preliminary architectural and engineering reports or plans approved by the lender and concurred in by the Agency. The borrower will take into consideration any lender or Agency comments when the facility is being designed.

(a) *Architectural and engineering practices.* All project facilities must be designed utilizing accepted architectural and engineering practices and must conform to applicable Federal, State, and local codes and requirements. The lender must ensure that the planned project will be completed within the available funds and, once completed, will be suitable for the borrower's needs.

(b) *Construction monitoring.* The lender will monitor the progress of construction and undertake the reviews and inspections necessary to ensure that construction proceeds in accordance with the approved plans, specifications, and contract documents and that funds are used for eligible project costs. The lender must expeditiously report any problems in project development to the Agency.

(c) *Equal employment opportunities.* For all construction contracts in excess of $10,000, the contractor must comply with Executive Order 11246 entitled ''Equal Employment Opportunity'' as amended and as supplemented by applicable Department of Labor regulations (41 CFR part 60–1). The borrower and lender are responsible for ensuring that the contractor complies with these requirements.

(d) *Americans with Disabilities Act.* Community Facilities loans which involve the construction of, or addition to, facilities that accommodate the public and commercial facilities as defined by the Americans with Disabilities Act (42 U.S.C. 12181—*et seq.*) must comply with that Act. The lender and borrower are responsible for compliance.

§ 3575.43 Other Federal, State, and local requirements.

In addition to the specific requirements of this subpart and beginning on the date of issuance of the Loan Note Guarantee, proposals for facilities financed in whole or in part with a loan guaranteed by the Agency will be coordinated with all appropriate Federal, State, and local agencies. Borrowers and lenders will be required to comply with any Federal, State, or local laws or regulatory commission rules which are in existence and which affect the project including, but not limited to:

(a) Organization and authority to design, construct, develop, operate, and maintain the proposed facilities;

(b) Borrowing money, giving security, and raising revenues for repayment;

(c) Land use zoning;

(d) Health, safety, and sanitation standards; and

(e) Protection of the environment and consumer affairs.

§§ 3575.44–3575.46 [Reserved]

§ 3575.47 Economic feasibility requirements.

All projects financed under the provisions of this section must be based on taxes, assessments, revenues, fees, or other sources of revenues in an amount sufficient to provide for facility operation and maintenance, a reasonable reserve, and debt payment. Other sources of revenue or guarantors are particularly important in considering the feasibility of recreation-type loans. The lender is responsible for determining the credit quality and economic feasibility of the proposed loan and must address all elements of the credit quality in a written financial feasibility analysis which includes adequacy of equity, cash flow, security, history, and management capabilities. Financial feasibility reports must take into consideration any interest rate adjustment which may be instituted under the terms of the note. The lender's financial credit analysis may also serve as the feasibility analysis when sufficient evidence is included to determine economic feasibility as well as financial viability.

(a) *Financial feasibility*. The borrower, lender, or other qualified entity must prepare the financial feasibility analysis (suggested financial feasibility guidelines are available in any Agency office) in the following instances:

(1) Facilities primarily used for fire and rescue services;

(2) Facilities that are not dependent on facility revenues for debt payment;

(3) Loans of less than $500,000; or

(4) Projects in which the borrower has operated similar facilities on a financially successful basis.

(b) *Utility projects*. The borrower's consulting engineer may complete the financial feasibility analysis for utility systems.

(c) *Other community facilities*. Financial feasibility reports for all other facilities must be prepared by a qualified entity not having a direct interest in the management of the facility. The lender may prepare the feasibility study if qualified staff is available.

(d) *Exceptions*. The Agency loan approval official may exempt the lender from the requirement for an independent financial feasibility report (when requested by the borrower and the lender) provided the approval official determines that the financial feasibility analysis prepared by the borrower fairly represents the financial feasibility of the facility and the financial feasibility analysis contains an accurate projection of the usage, revenues, and expenses of the facility.

(e) *Insufficient information*. When the lender or Agency has insufficient information to determine the borrower's repayment ability, an independent feasibility analysis is required.

§ 3575.48 Security.

(a) *Lender responsibility*. The lender is responsible for obtaining and maintaining proper and adequate security to protect the interest of the lender, the holder, and the Government.

(b) *Type of security*. Security must be of such a nature that repayment of the loan is reasonably ensured when considered with the integrity and ability of project management, soundness of the project, and the borrower's prospective earnings. The security may include, but is not limited to, the following: General obligation bonds, revenue bonds, pledge of taxes or assessments, assignment of facility revenue, land, easements, rights-of-way, water rights, buildings, machinery, equipment, accounts receivable, contracts, cash, or other accounts or assignments of leases or leasehold interest.

(c) *Separate security*. All security must secure the entire loan. The lender will not take separate security to secure only the unguaranteed portion of the loan. The lender will not require compensating balances or certificates of deposit as a means of eliminating the lender's exposure on the unguaranteed portion of the loan.

§§ 3575.49–3575.51 [Reserved]

§ 3575.52 Processing.

(a) *Preapplications*. (1) The preapplication package must be submitted either alone or the necessary information may be submitted simultaneously with the application. The preapplication package will contain:

(i) An Application for Federal Assistance on a form provided by the Agency (available in any Agency office);

(ii) State intergovernmental or other type review comments and recommendations for the borrower's project (clearinghouse comments, if applicable);

(iii) Supporting documentation necessary to make an eligibility determination such as financial statements, audits, copies of organizational documents, existing debt instruments, etc.; and

(iv) Documentation of lender eligibility in accordance with § 3575.27.

(2) If the Agency determines that the project may meet requirements and is likely to be funded, the lender must submit a complete application if it has not previously submitted one. The Agency must do an environmental review before further processing will be completed.

(b) *Applications*. Contents of application package:

(1) Application for Loan and Guarantee on a form prescribed by the Agency (available in any Agency office);

(2) Proposed loan agreement;

(3) Request for Environmental Information (available in any Agency office);

(4) Preliminary architectural or engineering report;

(5) Cost estimates;

(6) Appraisal reports (as appropriate);

(7) Credit reports;

(8) Financial feasibility analysis and report; and

(9) Any additional information required.

§ 3575.53 Evaluation of application.

If the Agency determines that the borrower is eligible, the proposed loan is for an eligible purpose, there is reasonable assurance of repayment ability, sufficient collateral and equity exists, the proposed loan complies with all applicable statutes and regulations, the environmental review is complete and considered in determining compliance, and adequate funds are available, the Agency will provide the lender and the borrower with the Conditional Commitment for Guarantee, listing all conditions for the guarantee. Applicable requirements will include the following:

(a) Approved use of guaranteed loan funds (source and use of funds);

(b) Rates and terms of the loan;

(c) Scheduling of payments;

(d) Number of customers;

(e) Security and lien priority;

(f) Appraisals;

(g) Insurance and bonding;

(h) Financial reporting;

(i) Equal opportunity and nondiscrimination;

(j) Environment or mitigation;

(k) Americans with Disabilities Act;

(l) By-laws and articles of incorporation changes; and

(m) Other requirements necessary to protect the Government.

§§ 3575.54–3575.58 [Reserved]

§ 3575.59 Review of requirements.

(a) *Lender and borrower*. The lender and borrower must complete and sign the Acceptance of Conditions and return a copy to the Agency as soon as possible. Notwithstanding the preceding sentence, if certain conditions cannot be met, the lender and borrower may propose alternate conditions for Agency consideration.

(b) *Cancellation*. If the lender decides at any time after receiving a Conditional Commitment for Guarantee that it no longer wants a guarantee, the lender must immediately advise the Agency of the cancellation.

(c) *Modifications*. The lender agrees that once the Conditional Commitment for Guarantee is issued and accepted by the lender and borrower, it will not be modified as to the scope of the project, overall facility concept, project purpose, use of proceeds, or other terms and conditions.

§§ 3575.60–3575.62 [Reserved]

§ 3575.63 Conditions precedent to issuance of the Loan Note Guarantee.

The Loan Note Guarantee will not be issued until:

(a) The lender certifies that:

(1) No changes have been made in the lender's loan conditions and requirements since the issuance of the Conditional Commitment for Guarantee except those approved in the interim by the Agency in writing.

(2) All planned property acquisition has been completed and all development has been substantially completed in accordance with plans, specifications, and applicable building codes. No costs have exceeded the amounts approved by the lender and the Agency.

(3) Required insurance is in effect.

(4) All equal opportunity and Fair Housing Plan requirements have been met.

(5) The loan has been properly closed and the required security instruments have been obtained on any after-acquired property that cannot be covered initially under State statutory provisions.

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

(7) When required, the entire amount of the loan for working capital has been disbursed except in cases where the Agency has approved disbursement over an extended time.

(8) All other requirements of the Conditional Commitment for Guarantee have been met.

(9) Lien priorities are consistent with requirements of the Conditional Commitment for Guarantee.

(10) The loan proceeds have been disbursed for purposes and in amounts consistent with the Conditional Commitment for Guarantee and as specified on the application for the guaranteed loan. A copy of a detailed statement by the lender detailing the use of loan funds will be attached to support this certification.

(11) There has been no substantive adverse change in the borrower's financial condition nor any other adverse change in the borrower during the period of time from the Agency's issuance of the Conditional Commitment for Guarantee to issuance of the Loan Note Guarantee. The lender's certification must address all adverse changes of the borrower and the guarantors. For purposes of this paragraph, the term borrower includes any parent, affiliate, or subsidiary of the borrower.

(12) All Federal, State, and local design and construction requirements have been met.

(13) The lender understands and will meet the requirements of the Debt Collection Act (chapter 37 of title 31 of the United States Code).

(14) The lender would not make the loan without an Agency guarantee.

(b) The lender has executed and delivered the Lender's Agreement and closing report for the guaranteed loan along with the appropriate guarantee fee.

(c) The lender has advised the Agency of plans to sell or assign any part of the loan as provided in the Lender's Agreement.

(d) Where applicable, the lender must certify that the borrower has obtained:

(1) A legal opinion relative to the title to rights-of-way and easements. Lenders are responsible for ensuring that borrowers have obtained valid, continuous, and adequate rights-of-way and easements needed for the construction, operation, and maintenance of a facility.

(2) A title opinion or title insurance showing ownership of the land and all mortgages or other lien defects, restrictions, or encumbrances, if any. It is the responsibility of the lender to ensure that the borrower has obtained and recorded such releases, consents, or subordinations to such property rights from holders of outstanding liens or other instruments as may be necessary for the construction, operation, and maintenance of the facility and to provide the required security. For example, when a site is for major structures for utility-type facilities (such as a gas distribution system) and the lender and borrower are able to obtain only a right-of-way or easement on such a site rather than a fee simple title, such a title opinion must be requested.

(e) For loans exceeding $150,000, the lender has certified its compliance with the Anti-Lobby Act (18 U.S.C. 1913). Also, if any funds have been, or will be, paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to guarantee a loan, the lender shall completely disclose such lobbying activities in accordance with 31 U.S.C. 1352.

(f) If the Loan Note Guarantee cannot be issued before the Conditional Commitment expires, the lender must submit a written request for an extension of the expiration date. The lender must document and certify to paragraph (a)(1) and (a)(11) of this section specifically identifying any modifications.

(g) Coincident with, or immediately after, loan closing, the lender will contact the Agency and provide those documents and certifications required in this section. For loans to public bodies, lenders may require an opinion from recognized bond counsel regarding the adequacy of the preparation and issuance of the debt instruments. Only when the Agency is satisfied that all conditions for the guarantee have been met will the Loan Note Guarantee be executed.

§ 3575.64 Issuance of Lender's Agreement, Loan Note Guarantee, and Assignment Guarantee Agreement.

(a) *Lender's Agreement.* If the Agency finds that all requirements have been met, the lender and the Agency will execute the Lender's Agreement. The original will be retained by the Agency and a signed duplicate original will be retained by the lender. A separate Lender's Agreement must be executed for each loan to be guaranteed by the Agency.

(b) *Loan Note Guarantee.* (1) Upon receipt of the executed Lender's Agreement and after all requirements have been met, the Agency will execute the Loan Note Guarantee. All originals of the Loan Note Guarantee will be provided to the lender and attached to the note.

(2) If the lender has selected the multi-note system, a Loan Note Guarantee will be prepared and attached to each note the borrower issues. All the notes will be listed on the Loan Note Guarantee. Not more than ten notes will be issued for the guaranteed portion (unless the Agency and borrower agree otherwise) and one note issued for the unguaranteed portion.

(c) *Assignment of guarantee.* In the event the lender assigns the guaranteed portion of the loan to a holder, the lender, holder, and Agency will execute an Agency prescribed Assignment Guarantee Agreement.

(d) *Failure to meet conditions.* If the Agency determines that it cannot execute the Loan Note Guarantee because all requirements have not been met, the lender will have a reasonable period within which to satisfy the objections. If the lender satisfies the objections within the time allowed, the guarantee will be issued.

(e) *Loan closing report.* The lender will prepare and deliver a guaranteed loan closing report for each loan to be guaranteed and a guarantee fee to the Agency in return for the Loan Note Guarantee.

§ 3575.65 Lender's sale or assignment of the guaranteed portion of loan.

The lender may retain all of the guaranteed loan. The lender must not sell or participate any amount of the guaranteed or non-guaranteed portion of the loan to the borrower or to members of the borrower's immediate families, the borrower's officers, directors, stockholders, other owners, or a subsidiary or affiliate. Disposition of the guaranteed portion of a loan may not be made prior to full disbursement, completion of construction, and acquisition of real estate and equipment without the prior written approval of the Agency. If the lender desires to market all or part of the guaranteed portion of the loan at, or subsequent to, loan closing, the loan must not be in default.

(a) *Assignment.* Any sale or assignment by the lender of the guaranteed portion of the loan must be accomplished in accordance with the conditions in the Lender's Agreement.

(b) *Participation.* The lender may obtain participation in the loan under its normal operating procedures.

(c) *Minimum retention.* The lender is required to hold in its own portfolio or retain a minimum of 5 percent of the total loan amount. This amount must be of the non-guaranteed portion of the loan and cannot be participated to another. The lender may sell the remaining amount of the non-guaranteed portion of the loan only through participation.

§§ 3575.66–3575.68 [Reserved]

§ 3575.69 Loan servicing.

(a) *Lender responsibilities.* The lender is responsible for servicing the entire loan in accordance with the lender's loan agreement. The unguaranteed portion of the loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan. The lender is responsible for taking all servicing actions that a prudent lender would perform in servicing a portfolio of loans that are not guaranteed. This responsibility includes, but is not limited to, the collection of payments; obtaining compliance with the covenants and provisions in the note, loan agreement, security instrument, or any supplemental agreements; obtaining and analyzing financial statements; verifying the payment of taxes and insurance premiums; and maintaining liens on collateral. The lender

must notify the Agency of any violation of the loan agreement with the borrower within 30 days of such violation.

(b) *Financial reports.* The lender must obtain the financial statements required by the Loan Agreement. The lender must submit the borrower's annual financial statements to the Agency within 120 days of the end of the borrower's fiscal year. The lender must analyze the financial statements and provide the Agency with a written summary of the lender's analysis and conclusions, including trends, strengths, weaknesses, extraordinary transactions, and other indications of the financial condition of the borrower. Additionally, when applicable, the lender will require an audit in accordance with Office of Management and Budget (OMB) circulars (available in any Agency office).

(c) *Delinquent loans.* The lender will service delinquent loans in accordance with the Lender's Agreement and reasonable and prudent lending standards.

(d) *Loan balances.* The lender must report to the Agency the outstanding principal and interest balance on each guaranteed loan semiannually.

(e) *Collateral inspections.* The lender will inspect the collateral as often as necessary to properly service the loan.

§§ 3575.70–3575.72 [Reserved]

§ 3575.73 Replacement of loss, theft, destruction, mutilation, or defacement of Loan Note Guarantee or Assignment Guarantee Agreement.

(a) *Replacement of Loan Note Guarantee.* The Agency may issue a replacement Loan Note Guarantee or Assignment Guarantee Agreement which may have been lost, stolen, destroyed, mutilated, or defaced to the lender or holder upon receipt of a certificate of loss and an indemnity bond in accordance with this section.

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

(1) A certificate of loss properly notarized which includes:

(i) Legal name and present address of either the lender or the holder who is requesting the replacement forms;

(ii) Legal name and address of the lender of record;

(iii) Capacity of person certifying;

(iv) Full identification of the Loan Note Guarantee or Assignment Guarantee Agreement, including the name of the borrower, Agency case number, date of the Loan Note Guarantee, Assignment Guarantee Agreement, face amount of the evidence of debt purchased, date of evidence of debt, present balance of the loan, percentages of guarantee and, if Assignment Guarantee Agreement, the original named holder and the percentage of the guaranteed portion of the loan assigned to that holder. Any existing parts of the document to be replaced must be attached to the certificate;

(v) A full statement of circumstances of the loss, theft, or destruction of the Loan Note Guarantee or Assignment Guarantee Agreement; and

(vi) The holder shall present evidence demonstrating current ownership of the Loan Note Guarantee and Note or Assignment Guarantee Agreement. If the present holder is not the same as the original holder, a copy of the endorsement of each successive holder in the chain of transfer from the initial holder to present holder must be included. If copies of the endorsement cannot be obtained, best available records of transfer must be presented to the Agency (e.g., order confirmation, canceled checks, etc.).

(2) An indemnity bond acceptable to the Agency shall accompany the request for replacement except when the holder is the United States, a Federal Reserve Bank, a Federal Government corporation, a State or Territory, or the District of Columbia.

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

expenses which might be sustained or incurred by reasons of the loss or replacement of the instruments.

§ 3575.74 [Reserved]

§ 3575.75 Defaults by borrower.

(a) *Lender notification to Agency*. The lender must notify the Agency when a borrower is 30 days past due on a payment, has not met its responsibilities of providing the required financial statements, or is otherwise in default. The lender will continue to keep the Agency informed on a bimonthly basis until such time as the loan is no longer in default. If a monetary default exceeds 60 days, the lender will arrange a meeting with the borrower to resolve the default. The lender will provide a summary of the meeting and any decisions or actions agreed upon.

(b) *Servicing options*. In considering servicing options, the prospects for providing a permanent cure without adversely affecting the risks to the Agency and the lender must be the paramount objective. Temporary curative actions (such as payment deferments or collateral subordination) must strengthen the loan and be in the best financial interest of the lender and the Agency. Some of these actions may require concurrence of the holder.

(c) *Multi-note*. If the loan was closed with the multi-note option, the lender may need to possess all notes to take some servicing actions. In those situations when the Agency is holder of some of the notes, the Agency may endorse the notes back to the lender, provided a proper receipt is received from the lender which defines the reason for the transfer. Under no circumstances will the Agency endorse the original Loan Note Guarantee to the lender.

§§ 3575.76–3575.77 [Reserved]

§ 3575.78 Repurchase of loan.

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

(b) *Agency repurchase*. (1) If the lender does not repurchase as provided in paragraph (a) of this section, the Agency will purchase from the holder the unpaid principal balance of the guaranteed portion together with accrued interest to date of repurchase (less the lender's servicing fee) within 30 days after written demand to the Agency. The guarantee will not cover the note interest to the holder on the guaranteed loan accruing after 90 days from the date of the original demand letter. The lender shall not charge the Agency any servicing fees nor are any such fees collectible from the Agency.

(2) The holder's demand to the Agency must include a copy of the written demand made upon the lender. The holder or duly authorized agent must also include evidence of the right to require payment from the Agency. Such evidence will consist of either the original of the Loan Note Guarantee properly endorsed to the Agency or the original of the Assignment Guarantee Agreement properly assigned to the Agency without recourse including all rights, title, and interest in the loan. The Agency will be subrogated to all rights of the holder. The holder must include in the demand the amount due including unpaid principal, unpaid interest to date of demand, and interest subsequently accruing from the date of demand to the proposed payment date. Unless otherwise agreed to by the Agency, such proposed payment will not be later than 30 days from the date of demand.

(3) The lender must promptly provide the Agency with the information necessary for the Agency's determination of the appropriate amount due the holder upon the Agency's notification to the lender of the holder's demand for payment. This information must be certified by an authorized officer of the lender. Any discrepancy between the amount claimed by the holder and the information submitted by the lender must be resolved before payment will be approved. The Agency will notify both parties and such conflict will suspend the running of the 30-day payment requirement.

(4) Any purchase by the Agency does not change, alter, or modify any of the lender's obligations to the Agency arising from the loan or guarantee nor does it waive any of the Agency's rights against the lender. The Agency may set off against the lender all rights inuring to the Agency as the holder of the instrument against the Agency's obligation to the lender under the Loan Note Guarantee.

(c) *Repurchase for servicing*. When the lender determines that repurchase of the guaranteed portion of the loan is necessary to service the loan, the holder must sell the guaranteed portion to the lender for the unpaid principal and interest balance (less the lender's servicing fee). The guarantee does not cover interest accruing after 90 days from the date the lender's or Agency's letter requesting the holder to tender its guaranteed portion. The lender must not repurchase from the holder for arbitrage purposes to further its own financial gain. Any repurchase must be made only after the lender obtains the Agency written approval. If the lender does not repurchase the portion from the holder, the Agency may, at its option, purchase such guaranteed portion for servicing purposes.

§ 3575.79 [Reserved]

§ 3575.80 Interest rate changes after loan closing.

(a) *General*. Subject to the restrictions below, the borrower, lender, and holder (if any) may collectively effect a permanent reduction in the interest rate on the guaranteed loan at any time during the life of the loan on written agreement by all of the applicable parties. After such a permanent reduction, the Loan Note Guarantee will only cover losses of interest at the reduced interest rate. The Agency must be notified by the lender, in writing, within 10 calendar days of the change. When the Agency is a holder, it will concur only when it is demonstrated that the change is more viable than liquidation and that the Government's financial interests are not adversely affected. Factors which will be considered in making such determination are the Government's cost of borrowing money and the project's enhancement of rural development. The monetary recovery must be greater than the liquidation recovery, and a financial feasibility analysis must show the project's continued viability.

(1) Fixed rates cannot be changed to variable rates to reduce the interest rate to the borrower unless the variable rate has a ceiling which is less than the original fixed rate.

(2) Variable rates can be changed to a lower fixed rate. In a final loss settlement when qualifying rate changes are made with the required written agreements and notification, the interest will be calculated for the periods the given rates were in effect. The lender must maintain records which adequately document the accrued interest claimed.

(3) The lender is responsible for the legal documentation of interest rate changes. However, the lender may not issue a new note.

(b) *Increases*. No increases in interest rates will be permitted under the loan guarantee except the normal fluctuations in approved variable interest rate loans.

§ 3575.81 Liquidation.

Liquidation will occur when the lender concludes that liquidation of the guaranteed loan is necessary because of default or third party actions that the borrower cannot, or will not, cure or eliminate within a reasonable period of time and the Agency concurs with the lender; or the Agency, at any time, independently concludes that liquidation is necessary. The lender will proceed as expeditiously as possible, including giving any notices or taking

any legal actions required by the security instruments.

(a) *General.* If a lender has made a loan guaranteed by the Agency under previous regulations, the lender has the option to liquidate the loan under the provisions of this subpart or under the provisions of previous regulations. The lender will notify the Agency in writing within 10 days after its decision to liquidate, which regulatory provisions it chooses to use. The lender may not choose some provisions of one regulation and other provisions of the other regulation.

(b) *Acquiring property titles.* If a lender acquires title to property, the Agency may elect to permit the lender the option of calculating the final loss settlement using the net proceeds received at the time of the ultimate disposition of the property. The lender must submit to the Agency a written request to use this option within 15 days of acquiring title and the Agency must agree, in writing, prior to the lender submitting any request for estimated loss payment.

(c) *Liquidation plan.* The lender will (within 30 days after a decision to liquidate) submit to the Agency, in writing, a proposed, detailed liquidation plan. Upon approval by the Agency of the liquidation plan, the lender will commence liquidation. The lender's liquidation plan must include, but is not limited to, the following:

(1) Such proof as the Agency requires to establish the lender's ownership of the guaranteed loan notes and related security instruments, a copy of the payment ledger or other documentation which reflects the outstanding loan balance and accrued interest to date, and the method of computing the interest;

(2) A complete list of collateral;

(3) The recommended liquidation methods for making the maximum collection possible on the indebtedness and the justification for such methods, including the recommended action for acquiring and disposing of all collateral;

(4) Necessary steps for preservation of the collateral;

(5) Copies of the borrower's latest available financial statements;

(6) An itemized list of estimated liquidation expenses expected to be incurred and justification for each expense;

(7) A schedule to periodically report to the Agency on the progress of the liquidation;

(8) Estimated protective advance amounts with justification;

(9) Proposed protective bid amounts on collateral to be sold at auction and a discussion of how the amounts were determined;

(10) If a voluntary conveyance is considered, the proposed amount to be credited to the guaranteed debt;

(11) Legal opinions, as needed; and

(12) If the outstanding balance of principal and interest is less than $250,000, the lender will obtain an estimate of fair market and potential liquidation value of the collateral. If the outstanding balance of principal and interest is $250,000 or more, the lender will obtain an independent appraisal report on all collateral securing the loan which will reflect the fair market value and potential liquidation value. The independent appraiser's fee will be shared equally by the Agency and the lender.

(d) *Partial liquidation plan.* If actions are necessary to immediately preserve and protect the collateral, a partial liquidation plan may be submitted and, when approved, must be followed by a complete liquidation plan prepared by the lender.

(e) *Disposition of collateral.* Disposition of collateral acquired by the lender must be approved, in writing, by the Agency when:

(1) The lender's cost to acquire the collateral of a borrower exceeds the potential recovery value of the security and the lender proposes abandoning the collateral in lieu of liquidation; or

(2) The acquired collateral is to be sold to the borrower, borrower's stockholders or officers, or the lender or lender's stockholders or officers.

(f) *Agency liquidation.* The Agency will liquidate at its option only when it is a holder and there is reason to believe the lender is not likely to initiate liquidation efforts that will result in maximum recovery. When the Agency

liquidates, reasonable liquidation expenses will be assessed against the proceeds derived from the sale of the collateral.

(g) *Final loss payment*. Final loss payments will be made only after all collateral has been properly accounted for and liquidation expenses are determined to be reasonable and within approved limits. Any estimated loss payments made to the lender will be credited against the final loss on the guaranteed loan. The amount of an estimated loss payment must be credited as a deduction from the principal balance of the loan.

§ 3575.82 [Reserved]

§ 3575.83 Protective advances.

Protective advances can only be added to the loan account for purposes of requirements to preserve the value of the security. Protective advances constitute an indebtedness of the borrower to the lender and must be secured by collateral to the same extent as principal and interest. Protective advances include, but are not limited to, advances made for taxes, annual assessments, ground rent, hazard and flood insurance premiums affecting the collateral (including any other expenses necessary to protect the collateral). Attorney fees are not a protective advance.

(a) *Agency approval*. The Agency must approve, in writing, all protective advances on loans within its loan approval authority which exceed a total cumulative advance amount of $5,000 to the same borrower. Protective advances must be reasonable when associated with the value of the collateral being preserved.

(b) *Preserving collateral*. When considering protective advances, sound judgment must be exercised in determining that the additional funds advanced will actually preserve collateral and recovery is actually enhanced by making the advance.

§ 3575.84 Additional loans or advances.

The lender will not make additional expenditures or new loans to the borrower without first obtaining the written approval of the Agency even though such expenditures or loans will not be guaranteed.

§ 3575.85 Bankruptcy.

(a) *Calculating losses*. Report of Loss form (available in any Agency office) will be used for calculating estimated and final loss determinations.

(b) *Lender responsibility*. The lender is responsible for protecting the guaranteed loan debt and all the collateral securing it in bankruptcy proceedings. These responsibilities include, but are not limited to, the following:

(1) Filing a proof of claim, where necessary, and all necessary papers and pleadings;

(2) Attending and, where necessary, participating in meetings of the creditors and all court proceedings;

(3) Immediately seeking adequate protection of the collateral if it is subject to being used by the trustee in bankruptcy or the debtor in possession;

(4) Where appropriate, seeking involuntary conversion of a pending chapter 11 case to a liquidation proceeding or seeking dismissal of the proceedings; and

(5) Keeping the Agency adequately and regularly informed, in writing, of all aspects of the proceedings.

(c) *Appraisals*. In a chapter 9 or chapter 11 reorganization, the lender must obtain an independent appraisal of the collateral if the Agency believes an independent appraisal is necessary. The Agency and the lender will share the appraisal fee equally.

(d) *Liquidation expenses*. Only expenses authorized by the court of chapter 11 reorganizations, or chapters 11 or 7 liquidation (unless the liquidation is by the lender), may be deducted from the collateral proceeds.

(e) *Repurchase from the holder*. The Agency or the lender, with the approval of the Agency, may initiate the repurchase of the unpaid guaranteed portion of the loan from the holder. If the lender is the holder, an estimated loss payment may be filed at the initiation of a chapter 7 proceeding or after a chapter 11 proceeding becomes a liquidation proceeding. Any loss payment on loans in bankruptcy must be approved by the Agency.

(f) *Chapter 11 bankruptcy*. If a borrower has filed for protection under

chapter 11 of the United States Code for a reorganization (but not chapter 13) and all or a portion of the debt has been discharged, the lender may request an estimated loss payment of the guaranteed portion of the accrued interest and principal discharged by the court. If the court approves revisions to the chapter 11 reorganization plan, subsequent estimated loss payments may be requested in accordance with the court approved changes. Once the reorganization plan has been satisfactorily completed, the lender is responsible for submitting the documentation necessary for the Agency to review and adjust the estimated loss claim to reflect any actual discharge of principal and interest and to reimburse the lender for any court ordered interest-rate reduction under the terms of the reorganization plan.

(g) *Agency approval of estimated liquidation expenses*. The Agency must approve, in advance and in writing, the lender's estimated liquidation expenses of collateral in a liquidation if the liquidation is performed by the lender. These expenses must be reasonable and customary and not include in-house expenses of the lender.

(h) *Reconciliation*. In the event that the estimated loss payment exceeds the actual loss, the lender will reimburse the Agency the amount in excess of the actual loss plus interest at the note rate from the date of the estimated loss payment.

§§ 3575.86–3575.87 [Reserved]

§ 3575.88 Transfers and assumptions.

(a) *General*. For all transfers and assumptions, the lender must concur in the plans for disposition of funds in the transferor's debt service, reserve, and operation and maintenance account. The Agency will approve, in writing, transfers and assumptions of loans to transferees who will continue the original purpose of the guaranteed loan subject to the following applicable provisions:

(1) When the transaction is to a member of the borrower's organization, it will be at an amount which will not result in a loss to the lender.

(2) Transfers to eligible borrowers will receive preference if recovery to the lender from the sale price is not less than it would be if the transfer was to an ineligible borrower.

(3) The present borrower is unable or unwilling to accomplish the objectives of the guaranteed loan, and the transfer will be to the lender's and Agency's advantage.

(4) The transferee will assume an amount at least equal to either the present market value or the debt, whichever is less.

(b) *Transfers to an eligible borrower*. (1) The total indebtedness may be transferred to an eligible borrower on the same terms.

(2) The total indebtedness may be transferred to another eligible borrower on different terms not to exceed those terms for which an initial guaranteed loan can be made.

(3) Less than the total indebtedness may be transferred to another eligible borrower on the same or different terms and the pro rata share of any eligible loss paid to the lender.

(4) A guaranteed loan for which the transferee is eligible may be made in connection with a transfer subject to the policies and procedures governing the type of loan being made.

(5) If the transferor is to receive a payment for the equity, the total debt must be assumed.

(c) *Ineligible borrower*. Transfers to ineligible borrowers are considered only when needed as a method for servicing problem cases when an eligible transferee is not available. Transfers should not be considered as a means by which members can obtain equity or as a method of providing a source of easy credit for purchasers. Transfers must meet the following requirements:

(1) All transfers to ineligible borrowers will include a one-time nonrefundable transfer fee to the Agency of no more than one percent. Transfer fees will be collected, and payments applied, in accordance with paragraph (d) of this section.

(2) For all loans covered by this subpart, the Agency may approve a transfer of indebtedness to, and assumption of, a loan by a transferee who does not meet the eligibility requirements for the kind of loan being assumed when the ineligible borrower will:

(i) Make a significant down payment, and

(ii) Agree to pay the remaining balance within not more than 15 years. Installments will be at least equal to the amount amortized over a period not greater than the remaining life of the debt being transferred, and the balance will be due the fifteenth year.

(3) Interest rates to ineligible transferees will be the rate specified in the note of the transferor or the rates customarily charged borrowers in similar circumstances in the ordinary course of business and are subject to Agency review and approval. The rates may be either fixed or variable.

(i) Transferees must have the ability to repay as determined by the lender the debt according to the Assumption Agreement and must have the legal authority to enter into the contract. The transferee will submit a current balance sheet to the lender. The lender will obtain and analyze the credit history of the transferee.

(ii) The transferor may receive equity payments only when the full amount of the debt is assumed. However, equity payments will not be made on more favorable terms than those on which the balance of the debt will be paid.

(d) *Transfer fees*. Transfer fees are a one-time nonrefundable cost to be collected by the lender at the time of application or proposal.

(1) The transfer fees will be a standard fee plus the cost of the appraisal.

(2) The lender will collect and submit the fee to the Agency.

(3) The Agency may waive the transfer fee if it determines that such waiver is in the best interest of the Agency.

(e) *Processing transfers and assumptions*. (1) In any transfer and assumption case, the transferor (including any guarantor) may be released from liability by the lender only with prior Agency written concurrence and only when the value of the collateral being transferred is at least equal to the amount of the loan, or part of the loan, being assumed. If the transfer is for less than the entire debt:

(i) The Agency must determine that the transferor and any guarantor have no reasonable debt-paying ability considering their assets and income at the time of transfer, and

(ii) The lender must certify that the transferor has cooperated in good faith, used due diligence to maintain the collateral against loss, and has otherwise fulfilled all of the regulations of this subpart to the best of the borrower's ability.

(2) The lender will make, in all cases, a complete credit analysis to determine viability of the project (subject to the Agency review and approval) including any requirement for deposit in an escrow account as security to meet the determined equity requirements for the project.

(3) The lender will confirm that the transaction can be properly transferred and the conveyance instruments will be filed, registered, or recorded as appropriate and legally permissible.

(4) The assumption will be made on the lender's form of Assumption Agreement and will contain the Agency case number of the transferor and transferee.

(5) Loan terms cannot be changed by the Assumption Agreement unless previously approved in writing by the Agency with the concurrence of holder and the transferor (including guarantor if it has not been released from personal liability). Any new loan terms cannot exceed those authorized in this subpart. The lender's request will be supported by:

(i) An explanation of the reasons for the proposed change in the loan terms, and

(ii) Certification that the lien position securing the guaranteed loan will be maintained or improved, and proper hazard insurance will be continued in effect.

(6) In the case of a transfer and assumption, it is the lender's responsibility to see that all such transfers and assumptions will be noted on all originals of the Loan Note Guarantee. The lender will provide the Agency a copy of the Transfer and Assumption Agreement.

(7) If a loss should occur upon a complete transfer of assets and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantor) is released from personal liability (as provided in

paragraph (e) of this section), the lender (if holding the guaranteed portion) may file an estimated Report of Loss to recover their pro rata share of the actual loss at that time. Approved protective advances and accrued interest made during the arrangement of a transfer and assumption, if not assumed by the transferee, will be entered on the estimated Report of Loss.

§ 3575.89 Mergers.

(a) *General.* The Agency may approve mergers or consolidations (herein referred to as ''mergers'') when the resulting organization will be eligible for an Agency guaranteed loan and assumes all the liabilities and acquires all the assets of the merged borrower. Mergers may be approved when:

(1) The merger is in the best interest of the Government and the merging borrower;

(2) The resulting borrower can meet all required conditions as contained in specific loan note agreements; and

(3) All property can be legally transferred to the resulting borrower.

(b) *Distinguishing mergers from transfers and assumptions.* Mergers occur when one entity combines with another entity in such a way that the first entity ceases to exist as a separate entity while the other continues. In a consolidation, two or more entities combine to form a new, consolidated entity with the original entity ceasing to exist. Such transactions must be distinguished from transfers and assumptions in which a transferor will not necessarily go out of existence, and the transferee will not always take all the transferor's assets nor assume all the transferor's liabilities.

§ 3575.90 Disposition of acquired property.

(a) *General.* When the lender acquires title to the collateral and the final loss claim is not paid until final disposition, the lender must proceed as quickly as possible to develop a plan to fully protect the collateral, and the lender must dispose of the collateral without delay.

(b) *Re-title collateral.* Any collateral accepted by the lender *must not* be titled in the Agency's name in whole or in part. The Agency's position is that of a guarantor relating to losses, not a lender.

(c) *Collateral preservation.* After acquiring the collateral, the lender must protect the collateral from deterioration (weather, vandalism, etc.). Hazard insurance in an amount necessary to cover the fair market value of the collateral must be maintained.

(d) *Collateral sale.* (1) The lender will prepare and submit to the Agency a plan on the best method of sale, keeping in mind any prospective purchasers. The Agency must approve the plan in writing. If an existing approved liquidation plan addresses the disposition of acquired property, no further review is required unless modification of the plan is needed.

(2) Anytime there is a case when the conversion of collateral to cash can reasonably be expected to result in a negative net recovery amount, abandonment of the collateral should be considered. The Agency must approve abandonment in writing.

§§ 3575.91–3575.93 [Reserved]

§ 3575.94 Determination and payment of loss.

In all liquidation cases, final settlement will be made with the lender after the collateral is liquidated. The Agency will have the right to recover losses paid under the guarantee from any liable party.

(a) *General.* If the lender takes title to collateral, any loss will be based on the collateral value at the time the lender obtains title.

(b) *Loss calculations.* The Report of Loss form (available in any Agency office) will be used for calculations of all estimated and final loss determinations. Estimated loss payments may only be approved after the lender has submitted a liquidation plan approved by the Agency.

(c) *Estimated loss payments.* When the lender is conducting the liquidation and owns any of the guaranteed portion of the loan, it may request an estimated loss payment by submitting an estimate of loss that will occur in connection with liquidation of the loan. An estimated loss payment may be approved after the Agency has approved the liquidation plan.

(1) The lender will prepare and submit a Report of Loss using the appraised value in lieu of amount received from sale of collateral.

(2) The estimated loss payment shall be calculated as of the date of such payment. The total amount of the loss payment remitted by the Agency will be applied by the lender on the guaranteed portion of the loan debt. Such application does not release the borrower from liability. At the time of final loss settlement, the lender may notify the borrower that the loss payment has been so applied.

(3) After liquidation has been completed, a final Report of Loss will be submitted by the lender to the Agency.

(d) *Final report of loss.* In all cases, a final Report of Loss must be submitted to the Agency. Before Agency approval of any final loss report, the lender must account for all funds obtained, disposition of the collateral, all costs incurred, and any other information necessary for the successful completion of liquidation. Upon receipt of the final accounting and Report of Loss, the Agency may conduct an may audit and will determine the final loss. The lender will make its records available to, and otherwise assist, the Agency in making any audit it requires of the Report of Loss. The documentation accompanying the Report of Loss must support the loss claimed.

(1) The lender must document and show that all of the collateral has been accounted for and properly liquidated and that liquidation proceeds have been properly accounted for and applied correctly on the loan. The Agency must be satisfied that the lender has accomplished this in the manner contained herein and that the lender has maximized the collections in conducting the liquidation.

(2) The lender must show a breakdown on any protective advance amount as to the payee, purpose of the expenditure, date paid, evidence that the amount expended was proper, and that the amount was actually paid.

(3) The lender must show a breakdown of liquidation expenses as to the payee, purpose of the expenditure, date paid, evidence that the amount expended was proper, and that the amount was actually paid.

(4) Accrued interest should be supported by attachments showing how the amount was accrued by the lender. A copy of the promissory note and ledger will be attached. If the interest rate was a variable rate, the lender must include documentation of changes in the selected base rate and when the changes in the loan rate became effective.

(e) *Liquidation income.* Any net rental or other income that has been received by the lender from the collateral will be applied on the guaranteed loan debt.

(f) *Liquidation costs.* Certain reasonable liquidation costs will be allowed during the liquidation process. The liquidation costs must be submitted as a part of the liquidation plan. Such costs will be deducted from gross proceeds received from the disposition of collateral unless the costs have been previously determined by the lender (with Agency concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the lender will obtain the Agency's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the lender will be allowed.

(g) *Protective advance losses.* In those instances where the lender made authorized protective advances, the lender may claim recovery for the guaranteed portion of any loss of monies advanced as well as interest resulting from such protective advances. These claims shall be included in the final Report of Loss.

(h) *Final loss approval.* After the final Report of Loss has been tentatively approved:

(1) If the actual loss is greater than any estimated loss payment, such loss will be paid by the Agency;

(2) If the actual loss is less than any estimated loss payment, the lender will reimburse the Agency;

(3) If the Agency conducted the liquidation, it will provide an accounting to the lender and will pay the lender in accordance with the Loan Note Guarantee.

(i) *Loss limits.* The amount payable by the Agency to the lender cannot exceed the limits contained in the Loan Note Guarantee. If the Agency conducts the

liquidation, loss occasioned by accruing interest will be covered by the guarantee only to the date the Agency accepts this responsibility. When the liquidation is conducted by the lender, loss occasioned by accruing interest will be covered to the extent of the guarantee to the date of final settlement provided the lender proceeds expeditiously with the liquidation plan approved by the Agency.

§ 3575.95 Future recovery.

After a loan has been liquidated and a final loss has been paid by the Agency, any future funds which may be recovered by the lender will be pro-rated between the Agency and the lender in accordance with the guaranteed percentage even if the Loan Note Guarantee has been terminated.

§ 3575.96 Termination of Loan Note Guarantee.

The Loan Note Guarantee under this subpart will terminate automatically:

(a) Upon full payment of the guaranteed loan; or

(b) Upon full payment of any loss obligation or negotiated loss settlement except for future recovery provisions; or

(c) Upon written request from the lender to the Agency, provided that the lender holds all of the guaranteed portion and the original Loan Note Guarantee is returned to the Agency.

§§ 3575.97–3575.99 [Reserved]

§ 3575.100 OMB control number.

The report and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0137.

Subpart B [Reserved]

CHAPTER XXXVI—NATIONAL AGRICULTURAL STATISTICS SERVICE, DEPARTMENT OF AGRICULTURE

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PART 3600—ORGANIZATION AND FUNCTIONS

Sec.
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3600.4 Authority to act for the Administrator.
APPENDIX A TO PART 3600—LIST OF STATE STATISTICAL OFFICES

AUTHORITY: 5 U.S.C. 301 and 552: and 7 CFR 2.85.

SOURCE: 60 FR 57534, Nov. 16, 1995, unless otherwise noted.

§ 3600.1 General.

The National Agricultural Statistics Service (NASS) was established on April 17, 1986, by Secretary's Memorandum 1020–24, which renamed the Statistical Reporting Service concurrent with an internal restructuring. Primary NASS responsibilities are development and dissemination of national and State agricultural statistics, statistical research, and coordination of Department statistical programs.

§ 3600.2 Organization.

The headquarters organization consists of: The Administrator and Associate Administrator; Deputy Administrator for Field Operations; Four Divisions: Estimates, Survey Management, Research, and Systems and Information; and the Agricultural Statistics Board. In the field, each of the 45 State Statistical Offices, serving the 50 States, is under a State Statistician.

§ 3600.3 Functions.

(a) *Administrator*. The Administrator is responsible for the formulation of current, intermediate, and long-range policies and plans to carry out a broad statistical program for the agricultural sector and Departmental functions and activities assigned to NASS. Specific functions are:

(1) Administering an agricultural statistics program which includes estimates of production, marketings, inventories, and selected economic characteristics of the U.S. agricultural and rural economy.

(2) Administering a methodological research program to improve agricultural data collection and processing, data management, estimation, and forecasting.

(3) Administering programs to conduct surveys for other agencies, improve statistics through statistical standards for the Department, and coordinate statistical methods and techniques within the Federal Government.

(4) Administering statistical programs jointly developed through cooperative agreements with State agencies, universities, private groups, and other Federal agencies.

(5) Administering selected international agricultural statistics programs which provide foreign technical assistance, training on statistical methodology for developing countries, and exchange of information.

(b) *Associate Administrator*. The Associate Administrator is responsible for advising and counseling the Administrator and high-level policy officials on matters related to programs of NASS. Major functions include:

(1) Chairing Agricultural Statistics Board activities, designating Board membership, presiding at Board sessions, and formulating specific procedures.

(2) Chairing the NASS Strategic Planning Council which coordinates long-range planning, information resources management, and research reviews.

(3) Chairing the Resource Management Council which coordinates NASS hiring, promotion, and training activities.

(c) *Deputy Administrator for Field Operations*. The Deputy Administrator manages and coordinates data collection and estimating programs carried out by State Statistical Offices. This includes supervision of statistical programs with cooperating State and private groups, universities, and other Federal agencies. Major functions include:

(1) Formulating policies and programs that relate to functions and responsibilities of State Statistical Offices.

(2) Directing agricultural statistics programs established through cooperative agreements with State Departments of Agriculture, Land-Grant colleges and universities, or appropriate private organizations.

(3) Establishing and maintaining relationships with respondents, producers, commodity groups, data users, and other interested groups to gain cooperation in providing useful, timely, and reliable information.

(d) *Director, Estimates Division.* The Director is responsible for NASS estimating and forecasting programs. Major functions include:

(1) Defining input and output requirements, estimators and variances to be utilized, statistical standards, editing and summarization requirements, and analytic procedures.

(2) Collaborating with the Chairperson of the Agricultural Statistics Board to establish the annual programs of statistical reports.

(3) Developing appropriate systems parameters; processing, summarizing, and presenting current survey and related historical data for Agricultural Statistics Board analysis; and preparing official estimates and forecasts.

(e) *Director, Survey Management Division.* The Director is responsible for application of survey design and data collection methodologies to the agricultural statistics program. Major functions include:

(1) Constructing and maintaining appropriate sampling frames for agricultural and rural surveys.

(2) Designing, testing, and establishing survey techniques and standards, including sample design, sample selection, questionnaires, data collection methods, survey materials, and training methods for NASS.

(3) Reviewing specifications for special data collection activities for programs of other Federal or State agencies.

(f) *Director, Research Division.* The Director is responsible for researching statistical methodology for survey design, data collection, processing, estimating, and forecasting. Major functions include:

(1) Conducting statistical research to develop new and improved sampling techniques, develop improved data collection methods, and identify methods of controlling sampling and nonsampling errors.

(2) Researching statistical computing methods and developing efficient uses of computer technology including telecommunications, networking, and other applications.

(3) Developing new statistical theory and models and solving statistical problems, including numerical methods involving advanced mathematical statistics.

(g) *Director, Systems and Information Division.* The Director is responsible for NASS information management system and processing services. Specific functions are:

(1) Designing, maintaining, and providing access to an integrated and standardized information management system containing sampling frames, survey data, estimates, and administrative records utilized by NASS.

(2) Providing appropriate support for assisting users of the information management system through documentation, evaluation, training, and resolution of information management problems.

(3) Designing and issuing all reports releasing official State and national estimates and forecasts from NASS.

(h) *Chairperson, Agricultural Statistics Board.* The Chairperson reviews, prepares, and issues on specific dates, following approval by the Secretary of Agriculture as provided by law (7 U.S.C. 411a) and Departmental Regulation, the official State and national estimates relating to crop production, livestock and livestock products, dairy and dairy products, poultry and poultry products, stocks of agricultural commodities, value of farm products, farm inputs, and other assigned agricultural aspects.

§ 3600.4 Authority to act for the Administrator.

In the absence of the Administrator, the following officials are designated to serve as Acting Administrator in the order indicated:

Associate Administrator
Deputy Administrator for Field Operations
Director, Estimates Division
Director, Survey Management Division
Director, Systems and Information Division

Director, Research Division

APPENDIX A TO PART 3600—LIST OF STATE STATISTICAL OFFICES

Section 1. General

Information concerning NASS statistics programs and activities related to individual States may be obtained from the State Statistician, State Statistical Office, NASS, in the locations listed below.

Section 2. List of Addresses

Alabama, Sterling Centre, Suite 200, 4121 Carmichael Road, Montgomery, AL 36106–2872
Alaska, 809 South Chugach Street, Suite 4, Palmer, AK 99645
Arizona, 3003 North Central Avenue, Suite 950, Phoenix, AZ 85012
Arkansas, 3408 Federal Office Building, Little Rock, AR 72201
California, 1220 ''N'' Street, Room 243, Sacramento, CA 95814
Colorado, 645 Parfet Street, Suite W–201, Lakewood, CO 80215–5517
Delaware, Delaware Department of Agriculture Building, 2320 South Dupont Highway, Dover, DE 19901
Florida, 1222 Woodward Street, Orlando, FL 32803
Georgia, Stephens Federal Building, Suite 320, Athens, GA 30613
Hawaii, State Department of Agriculture Building, 1428 South King Street, Honolulu, HI 96814
Idaho, 2224 Old Penitentiary Road, Boise, ID 83712
Illinois, Illinois Department of Agriculture Building, 801 Sangamon Avenue, Room 54, Springfield, IL 62702
Indiana, 1148 AGAD Building, Purdue University, Room 223, West Lafayette, IN 47907–1148
Iowa, 833 Federal Building, 210 Walnut Street, Des Moines, IA 50309
Kansas, 632 S.W. Van Buren, Room 200, Topeka, KS 66603
Kentucky, Gene Snyder & Courthouse Building, 601 W. Broadway, Room 645, Louisville, KY 40202
Louisiana, 5825 Florida Boulevard, Baton Rouge, LA 70806
Maryland, 50 Harry S Truman Parkway, Suite 202, Annapolis, MD 21401
Michigan, 201 Federal Building, Lansing, MI 48904
Minnesota, 8 East 4th Street, Suite 500, St. Paul, MN 55101
Mississippi, 121 North Jefferson Street, Jackson, MS 39201
Missouri, 601 Business Loop West, Suite 240, Columbia, MO 65203
Montana, Federal Building & U.S. Court House, Room 398, 301 S. Park Avenue, Helena, MT 59626
Nebraska, 100 Centennial Mall N., Room 273 Federal Building, Lincoln, NE 68508
Nevada, Max C. Fleischmann Agriculture Building, Room 232, University of Nevada, Reno, NV 89557
New Hampshire, 22 Bridge Street, Room 301, Concord, NH 03301
New Jersey, Health and Agriculture Building, Room 205, CN–330 New Warren Street, Trenton, NJ 08625
New Mexico, 2507 North Telshor Boulevard, Suite 4, Las Cruces, NM 88001
New York, Department of Agriculture & Markets, 1 Winners Circle, Albany, NY 12235
North Carolina, 2 W. Edenton Street, Raleigh, NC 27601–1085
North Dakota, 1250 Albrecht Boulevard, NDSU, Room 448, Fargo, ND 58105
Ohio, 200 N. High Street, New Federal Building, Room 608, Columbus, OH 43215
Oklahoma, 2800 North Lincoln Boulevard, Oklahoma City, OK 73105
Oregon, 1220 S.W. Third Avenue, Room 1735, Portland, OR 97204
Pennsylvania, 2301 N. Cameron Street, Room G–19, Harrisburg, PA 17110
South Carolina, 1835 Assembly Street, Room 1008, Columbia, SC 29201
South Dakota, 3528 S. Western Avenue, Sioux Falls, SD 57117
Tennessee, 440 Hogan Road, Holeman Office Building, Ellington Agricultural Center, Nashville, TN 37220–1626
Texas, 300 E. 8th Street, Federal Building, Room 504, Austin, TX 78701
Utah, 176 N. 2200 West—Suite 260, Salt Lake City, UT 84116
Virginia, 1100 Bank Street, Room 706, Richmond, VA 23219
Washington, 1111 Washington Street, SE, Olympia, WA 98504
West Virginia, 1900 Kanawha Boulevard E, Charleston, WV 25305
Wisconsin, 2811 Agriculture Drive, Madison, WI 53704
Wyoming, 504 W. 17th Street, Suite 250, Cheyenne, WY 82001

PART 3601—PUBLIC INFORMATION

Sec.
3601.1 General statement.
3601.2 Public inspection, copying, and indexing.
3601.3 Requests for records.
3601.4 Multitrack processing.
3601.5 Denials.
3601.6 Appeals.
3601.7 Requests for published data and information.

AUTHORITY: 5 U.S.C. 301, 552; 7 CFR part 1, subpart A and appendix A thereto.

SOURCE: 66 FR 57843, Nov. 19, 2001, unless otherwise noted.

§ 3601.1 General statement.

This part is issued in accordance with the regulations of the Secretary of Agriculture in part 1, subpart A of this title and appendix A thereto, implementing the Freedom of Information Act (FOIA) (5 U.S.C. 552), and governs the availability of records of the National Agricultural Statistics Service (NASS) to the public.

§ 3601.2 Public inspection, copying, and indexing.

5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying and that a current index of these materials be published quarterly or otherwise be made available. Members of the public may request access to such materials maintained by NASS at the following office: Information Staff, ARS, REE, USDA, Room 1–2248, Mail Stop 5128, 5601 Sunnyside Avenue, Beltsville, MD 20705–5128; Telephone (301) 504–1640 or (301) 504–1655; TTY-VOICE (301) 504–1743. Office hours are 8 a.m. to 4:30 p.m. Information maintained in our electronic reading room can be accessed at *http://www.ars.usda.gov/is/foia/#Electronic*.

§ 3601.3 Requests for records.

Requests for records of NASS under 5 U.S.C. 552(a)(3) shall be made in accordance with §1.5 of this title and submitted to the FOIA Coordinator, Information Staff, ARS, REE, USDA, Mail Stop 5128, 5601 Sunnyside Avenue, Beltsville, MD 20705–5128; Telephone (301) 504–1640 or (301) 504–1655; TTY-VOICE (301) 504–1643; Facsimile (301) 504–1648; e-mail *vherberger@ars.usda.gov* or *shutchison@ars.usda.gov*. The FOIA Coordinator is delegated authority to make determinations regarding such requests in accordance with §1.3(c) of this title.

§ 3601.4 Multitrack processing.

(a) When NASS has a significant number of requests, the nature of which precludes a determination within 20 working days, the requests may be processed in a multitrack processing system, based on the date of receipt, the amount of work and time involved in processing the request, and whether the request qualifies for expedited processing.

(b) NASS may establish as many processing tracks as appropriate; processing within each track shall be based on a first-in, first-out concept, and rank-ordered by the date of receipt of the request.

(c) A requester whose request does not qualify for the fastest track may be given an opportunity to limit the scope of the request in order to qualify for the fastest track. This multitrack processing system does not lessen agency responsibility to exercise due diligence in processing requests in the most expeditious manner possible.

(d) NASS shall process requests in each track on a ''first-in, first-out'' basis, unless there are unusual circumstances as set forth in §1.16 of this title, or the requester is entitled to expedited processing as set forth in §1.9 of this title.

§ 3601.5 Denials.

If the FOIA Coordinator determines that a requested record is exempt from mandatory disclosure and that discretionary release would be improper, the FOIA Coordinator shall give written notice of denial in accordance with §1.7(a) of this title.

§ 3601.6 Appeals.

Any person whose request is denied shall have the right to appeal such denial. Appeals shall be made in accordance with §1.13 of this title and should be addressed as follows: Administrator, NASS, U.S. Department of Agriculture, Washington, DC 20250.

§ 3601.7 Requests for published data and information.

(a) Published data and reports produced by NASS since 1995 are available via the NASS Web site at *http://www.usda.gov/nass/* or an e-mail subscription may be established via the website under Publications. Searching on the website is available by topic, by title, or by date. The titles displayed in the search include NASS's published periodicals and annual reports. Full text of all the titles is available at no cost (PDF Files beginning 1999). Printed copies and reports published after 1996 can be purchased from the ERS-NASS sales desk at the National Technical Information Center at 1 (800) 999–

6779 (8:30 a.m.–5 p.m. Eastern Time, M-F).

(b) Information on published data, printed subscription rates, and historic publications is available from the Secretary, Agricultural Statistics Board, NASS, U.S. Department of Agriculture, Washington, DC 20250. This information is also available from the NASS website under Publications, NASS Catalog, NASS Periodicals and Annual Reports. Published data, from each State Statistical Office, are available via the NASS website under State Information or by e-mail subscription. Published data subscription forms are available from the State Statistician at each State Statistical Office. Addresses are listed in appendix A to part 3600 of this chapter.

CHAPTER XXXVII—ECONOMIC RESEARCH SERVICE, DEPARTMENT OF AGRICULTURE

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PART 3700—ORGANIZATION AND FUNCTIONS

Sec.
3700.1 General.
3700.2 Organization.
3700.3 Functions.
3700.4 Authority to act for the Administrator.

AUTHORITY: 5 U.S.C. 301 and 552, and 7 CFR 2.67.

SOURCE: 61 FR 1827, Jan. 24, 1996, unless otherwise noted.

§ 3700.1 General.

The Economic Research Service (ERS), originally established in 1961 under the authority of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), was reestablished as an agency of the U.S. Department of Agriculture of September 30, 1981 (46 FR 47747), in response to Secretary's Memorandum 1000–1 of June 17, 1981, entitled ''Reorganization of Department.'' The mission of ERS is to provide economic and other social science information and analysis for pubic and private decisions on agriculture, food, natural resources, and rural America. Its primary customers are USDA policy officials and program administrators, the Office of the While House, Congress, and environmental, consumer, and rural public interest groups, including farm groups and industry.

§ 3700.2 Organization.

ERS maintains its offices at 1301 New York Avenue, NW., Washington, DC 20005–4788. The organization consists of:

(a) The Administrator;

(b) Associate Administrator;

(c) Five Divisions; Commercial Agriculture Division, Food and Consumer Economics Division, Information Services Division, Natural Resources and Environment Division, and Rural Economy Division; and

(d) Office of Energy and New Uses.

§ 3700.3 Functions.

(a) *Administrator and Associate Administrator*. The Administrator and Associate Administrator are responsible for developing and implementing policies and plans in support of a program of economic and social science research, analysis, and data dissemination. General functions are: Conducting research and staff analysis, and developing short to long-term outlook analysis and economic indicators.

(b) *Director, Commercial Agriculture Division*. The Director, Commercial Agriculture Division, is responsible for conducting a program of economic research; economic intelligence gathering, analysis, and reporting; and data development and dissemination on economic conditions, U.S. and foreign policies, and agriculture production, trade, and marketing. General functions are:

(1) Developing and monitoring current intelligence and indicators on domestic and international agricultural markets and related farm and trade developments and short to long-term forecasts of domestic and world agricultural markets.

(2) Assessing the technological, economic, and institutional forces influencing U.S. and world agricultural markets.

(3) Conducting special analyses of U.S. and world agricultural markets for policy officials to assist in policy development and the operation of USDA programs.

(4) Collecting necessary information and performing international, national, and regional macroeconomics analysis to estimate the effects of macro economic trends and events in the global economy on the American farm sector.

(c) *Director, Food and Consumer Economic Division*. The Director, Food and Consumer Economic Division, is responsible for providing economic research, monitoring and statistical indicators, and staff and the policy analysis of consumer and food marketing issues, including: Consumption determinants and trends; consumer demand for food quality, safety, and nutrition; food security; market competition; vertical coordination; nutrition education and food assistance programs; and food safety regulation. General functions are:

(1) Analyzing consumer behavior and food choices, including research regarding the socio-demographic and economic determinants of food and nutrient consumption; consumer valuation

of quality, safety, and nutrition characteristics; and the role of information in determining food choices.

(2) Examining food assistance and nutrition programs, nutritional adequacy of diets, and food security, including costs and benefits of food assistance and nutrition programs, program and policy alternatives, the extent and social cost of good insecurity, and the role of food assistance in meeting larger goals of welfare programs.

(3) Analyzing the food processing and distribution sector, including the ability of the sector to meet changing consumer demand; the effect of government market interventions to facilitate that response; and the effect of government interventions and rapid changes in the sector on consumer and producer welfare.

(4) Analyzing food safety issues, including consumer benefits from risk reduction, production tradeoffs in reducing hazards, impact of proposed regulations and international harmonization, and policy alternatives.

(5) Developing and monitoring indicators of individual, household, and market level food consumption, expenditures, and nutrients; food marketing costs, marketing margins, and farm-retail price spreads; and food safety hazards, their effects, and mitigation.

(d) *Director, Information Services Division.* The Director, Information Services Division, is responsible for managing and directing agencywide information technology, communications, and administrative activities in support of the economic research and analysis mission of ERS. General functions are:

(1) Developing and managing information technology infrastructure and training.

(2) Developing and managing communications, publication, and dissemination programs, policies, and procedures.

(3) Providing operations and management services, including liaison with the ARS's Administrative and Financial Management unit.

(e) *Director, Natural Resources and Environment Division.* The Director, Natural Resources and Environment Division, is responsible for providing economic research, monitoring and statistical indicators, and staff and policy analysis of agricultural resource and environment issues including the relationship between agriculture—its practices, technologies, policies, and resource use—and the environment, including effects on the sustainability of the natural resource base, preservation of species and genetic diversity, and environmental quality. General functions are:

(1) Developing and disseminating data for assessing the use of agricultural resources and technologies by agricultural producers. These data include use and ownership of land, use of agricultural chemicals and equipment, and water use.

(2) Evaluating the implications of alternative agricultural and resource conservation policies and programs on commodity prices, consumer welfare, competitiveness, and long-range maintenance of agricultural land and water resources.

(3) Analyzing the costs, benefits, and distributional impacts of alternative policies to reduce environmental and health risk externalities associated with agriculture.

(4) Monitoring and analyzing the uses and conditions of the nation's water resources and the economic consequences of agricultural and environmental policies affecting water supply, use, and quality.

(5) Analyzing the impacts of national and global developments and domestic and international policies on the use and value of land, water, capital assets, and other agricultural production decisions.

(6) Assessing the possible impacts of proposed or anticipated domestic policy and program changes on agricultural production decisions.

(7) Assessing the effects of technology on input use and markets and evaluating the factors affecting input productivity and technology adoption.

(8) Analyzing the implications of global environmental change and sustainable development for U.S. agriculture.

(f) *Director, Rural Economy Division.* The Director, Rural Economy Division, is responsible for conducting a program of economic and social science research

and analysis on national rural and agricultural conditions and trends, and identifying and assessing the potential impact of public and private sector actions and policies that affect rural areas and the agricultural sector. General functions are:

(1) Analyzing and reporting on current economic and demographic issues facing rural areas and agricultural, especially how changes in the national and global economies affect rural areas and the agriculture sector.

(2) Determining the effects of economic, social, and governmental events and actions on the demand for and supply of rural local government services, the quality of such services, and the relationships between local services and the viability of rural communities.

(3) Developing and disseminating information on current trends in the non-metropolitan and farm populations, the number, location and characteristics of such people, and the factors associated with these trends.

(4) Developing estimates and analyzing labor force trends in rural labor markets, including analyses of unemployment and employment by industry and occupational groups, including farm labor.

(5) Developing data on the income situation of rural people and evaluating the effectiveness of alternative public policies and programs in improving incomes of rural people, especially people in disadvantaged groups.

(6) Monitoring information on and analyzing the development of rural portions of geographic regions of the United States, including changes in industry mix, impacts of energy costs, credit availability, and other economic activities.

(7) Analyzing and reporting on developments in rural and agricultural financial markets and in Federal tax laws, and their consequences for agriculture and rural economies.

(8) Collecting and disseminating financial information on farms and farm enterprises, and developing techniques necessary to measure and describe the financial condition of the agriculture sector and its components.

[61 FR 1827, Jan. 24, 1996, as amended at 64 FR 40736, July 28, 1999]

§ 3700.4 Authority to act for the Administrator.

In the absence of the Administrator, the following officials are designated to serve as Acting Administrator in the order indicated:

Associate Administrator
Director, Commercial Agriculture Division
Director, Food and Consumer Economics Division
Director, Natural Resources and Environment Division
Director, Rural Economy Division
Director, Information Services Division
Director, Office of Energy and New Uses

PART 3701—PUBLIC INFORMATION

Sec.
3701.1 General statement.
3701.2 Public inspection, copying, and indexing.
3701.3 Requests for records.
3701.4 Multitrack processing.
3701.5 Denials.
3701.6 Appeals.
3701.7 Requests for published data and information.

AUTHORITY: 5 U.S.C. 301, 552; 7 CFR part 1, subpart A and appendix A thereto.

SOURCE: 66 FR 57845, Nov. 19, 2001, unless otherwise noted.

§ 3701.1 General statement.

This part is issued in accordance with the regulations of the Secretary of Agriculture in part 1, subpart A of this title and appendix A thereto, implementing the Freedom of Information Act (FOIA) (5 U.S.C. 552). The Secretary's regulations, as implemented by the regulations in this part, govern the availability of records of the Economic Research Service (ERS) to the public.

§ 3701.2 Public inspection, copying, and indexing.

5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying and that a current index of these materials be published quarterly or otherwise be made available. Members of the public may request access to such materials maintained by ERS at the following office: Information Staff, ARS, REE, USDA, Room 1–2248, Mail Stop 5128, 5601 Sunnyside Avenue, Beltsville, MD 20705–5128; Telephone (301) 504–1640 or

(301) 504–1655; TTY-VOICE (301) 504–1743. Office hours are 8 a.m. to 4:30 p.m. Information maintained in our electronic reading room can be accessed at *http://www.ars.usda.gov/is/foia/#Electronic*.

§ 3701.3 Requests for records.

Requests for records of ERS under 5 U.S.C. 552(a)(3) shall be made in accordance with §1.5 of this title and submitted to the FOIA Coordinator, Information Staff, ARS, REE, USDA, Mail Stop 5128, 5601 Sunnyside Avenue, Beltsville, MD 20705–5128; Telephone (301) 504–1640 or (301) 504–1655; TTY-VOICE (301) 504–1743; Facsimile (301) 504–1648; e-mail *vherberger@ars.usda.gov* or *shutchison@ars.usda.gov*. The FOIA Coordinator is delegated authority to make determinations regarding such requests in accordance with §1.3(c) of this title.

§ 3701.4 Multitrack processing.

(a) When ERS has a significant number of requests, the nature of which precludes a determination within 20 working days, the requests may be processed in a multitrack processing system, based on the date of receipt, the amount of work and time involved in processing the request, and whether the request qualifies for expedited processing.

(b) ERS may establish as many processing tracks as appropriate; processing within each track shall be based on a first-in, first-out concept, and rank-ordered by the date of receipt of the request.

(c) A requester whose request does not qualify for the fastest track may be given an opportunity to limit the scope of the request in order to qualify for the fastest track. This multitrack processing system does not lessen agency responsibility to exercise due diligence in processing requests in the most expeditious manner possible.

(d) ERS shall process requests in each track on a ''first-in, first-out'' basis, unless there are unusual circumstances as set forth in §1.16 of this title, or the requester is entitled to expedited processing as set forth in §1.9 of this title.

§ 3701.5 Denials.

If the FOIA Coordinator determines that a requested record is exempt from mandatory disclosure and that discretionary release would be improper, the FOIA Coordinator shall give written notice of denial in accordance with §1.7(a) of this title.

§ 3701.6 Appeals.

Any person whose request is denied shall have the right to appeal such denial. Appeals shall be made in accordance with §1.14 of this title and should be addressed as follows: Administrator, ERS, U.S. Department of Agriculture, Washington, DC 20250.

§ 3701.7 Requests for published data and information.

Published data and reports produced by ERS since 1996 are available on the ERS Web site at *http://www.ers.usda.gov*. Searching on the website is available by topic, by title, or by date. The titles displayed in the search include ERS's separately published research reports as well as articles in ERS-produced periodicals. Full text of all the titles are available at no cost (usually in PDF Files). Printed copies and reports published before 1996 (while supplies last) can be purchased from the ERS-NASS sales desk at the National Technical Information Center at 1–800–999–6779 (8:30 a.m.–5 p.m., Eastern Standard Time, M-F).

CHAPTER XXXVIII—WORLD AGRICULTURAL OUTLOOK BOARD, DEPARTMENT OF AGRICULTURE

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PART 3800—ORGANIZATION AND FUNCTIONS

Sec.
3800.1 General.
3800.2 Organization.
3800.3 Functions.
3800.4 Authority to act for the Chairperson.

AUTHORITY: 5 U.S.C. 301 and 552, and 7 CFR 2.86, except as otherwise stated.

SOURCE: 53 FR 5358, Feb. 24, 1988, unless otherwise noted.

§ 3800.1 General.

The World Agricultural Outlook Board (WAOB) was established on June 3, 1977, by Secretary's Memorandum 1920, entitled ''World Food and Agricultural Outlook and Situation Board.'' The primary responsibility of WAOB is to coordinate and review all commodity and aggregate agricultural and food data and analyses used to develop outlook and situation material within the Department of Agriculture.

§ 3800.2 Organization.

The central and only office of WAOB is located in Washington, DC, and consists of the Chairperson, Deputy Chairperson, and supporting staff.

§ 3800.3 Functions.

The WAOB has four major areas of responsibility:

(a) *Agricultural outlook and situation.* (1) Coordinate and review all crop and commodity data used to develop outlook and situation material within the Department of Agriculture.

(2) Oversee and clear for consistency of analytical assumptions and results, all estimates and analyses which significantly relate to international and domestic commodity supply and demand. This includes such estimates and analyses prepared for public distribution by the Foreign Agricultural Service, the Economic Research Service, or by any other agency or office of the Department.

(3) Participate in planning and developing research programs relating to improving the Department's forecasting and estimating capabilities.

(4) Provide liaison between the Department and Commodity Futures Trading Commission to assure that the futures market serves the best interest of agriculture and the public.

(5) Plan and participate in Departmental, interdepartmental, regional and international outlook conferences and briefings, to maintain an awareness of current and upcoming economic issues significant to the food and agricultural system.

(b) *Interagency commodity estimates.* (1) Establish Interagency Commodity Estimates Committees to bring together estimates and analyses from supporting agencies and to develop official estimates of supply, utilization, and prices for commodities.

(2) Review for consistency of analytical assumptions and results, all proposed decisions made by the Interagency Commodity Estimates Committee prior to any release outside the Department.

(c) *Weather and climate.* (1) Serve as a focal point within the Department for coordination of weather, climate, and related crop monitoring activities.

(d) *Remote sensing.* (1) Provide technical assistance, coordination, and guidance to Department agencies in planning, developing, and carrying out satellite remote sensing activities to assure full consideration and evaluation of advanced technology.

(2) Coordinate administrative, management, and budget information relating to Department's remote sensing activities.

§ 3800.4 Authority to act for the Chairperson.

When the Chairperson is absent or temporarily unavailable, the Deputy Chairperson is authorized to act for the Chairperson.

PART 3801—AVAILABILITY OF INFORMATION TO THE PUBLIC

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AUTHORITY: 5 U.S.C. 301 and 552; 7 CFR 1.1–1.23 and Appendix A.

SOURCE: 53 FR 5358, Feb. 24, 1988, unless otherwise noted.

§ 3801.1 General.

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

§ 3801.2 Public inspection, copying, and indexing.

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

§ 3801.3 Requests for records.

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

§ 3801.4 Denials.

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

§ 3801.5 Appeals.

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

§ 3801.6 Requests for published data and information.

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

CHAPTER XLI [RESERVED]

CHAPTER XLII—RURAL BUSINESS-COOPERATIVE SERVICE AND RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE

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

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PART 4274—DIRECT AND INSURED LOANMAKING

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4274.400 OMB control number.

AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1932 note; 7 U.S.C. 1989.

SOURCE: 63 FR 6053, Feb. 6, 1998, unless otherwise noted.

Subparts A–C [Reserved]

Subpart D—Intermediary Relending Program (IRP)

§ 4274.301 Introduction.

(a) This subpart contains regulations for loans made by the Agency to eligible intermediaries and applies to borrowers and other parties involved in making such loans. The provisions of this subpart supersede conflicting provisions of any other subpart. The servicing and liquidation of such loans will be in accordance with part 1951, subpart R, of this title.

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

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

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

§ 4274.302 Definitions and abbreviations.

(a) *General definitions*. The following definitions are applicable to the terms used in this subpart:

Agency. The Federal agency within the USDA with responsibility assigned by the Secretary of Agriculture to administer IRP. At the time of publication of this rule, that Agency was the Rural Business-Cooperative Service (RBS).

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

an IRP revolving fund directly provided by the Agency IRP loan. Agency IRP loan funds are Federal funds.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

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

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

[63 FR 6053, Feb. 6, 1998, as amended at 69 FR 65519, Nov. 15, 2004]

§§ 4274.303–4274.306 [Reserved]

§ 4274.307 Eligibility requirements—Intermediary.

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

(1) Private nonprofit corporations.

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

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

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

(b) The intermediary must:

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

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

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

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

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

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

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

(4) Have capitalization acceptable to the Agency.

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

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

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

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

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

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

§ 4274.308 Eligibility requirements—Ultimate recipients.

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

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

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

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

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

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

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

§§ 4274.309–4274.313 [Reserved]

§ 4274.314 Loan purposes.

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

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

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

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

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

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

(5) Pollution control and abatement.

(6) Transportation services.

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

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

(9) Feasibility studies.

(10) Debt refinancing.

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

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

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

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

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

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

(13) Educational institutions.

(14) Revolving lines of credit: *Provided*,

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

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

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

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

(A) Interest calculations on varying balances, and

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

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

(15) Aquaculture-based rural small businesses.

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

§§4274.315–4274.318 [Reserved]

§4274.319 Ineligible loan purposes.

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

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

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

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

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

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

(f) Agricultural production.

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

(h) Community antenna television services or facilities.

(i) Any illegal activity.

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

(k) Lending and investment institutions and insurance companies.

(l) Golf courses, race tracks, or gambling facilities.

(m) For any line of credit.

(n) For any legitimate business activity when more than 10 percent of the annual gross revenue is derived from legalized gambling activity.

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

§ 4274.320 Loan terms.

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

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

§§ 4274.321–4274.324 [Reserved]

§ 4274.325 Interest rates.

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

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

§ 4274.326 Security.

(a) *Intermediaries.* Security for all loans to intermediaries must be such that the repayment of the loan is reasonably assured, when considered along with the intermediary's financial condition, work plan, and management ability. It is the responsibility of the intermediary to make loans to ultimate recipients in such a manner that will fully protect the interests of the intermediary and the Government.

(1) Security for such loans may include, but is not limited to:

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

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

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

(3) In addition to normal security documents, a first lien interest in the intermediary's revolving fund account will be accomplished by a control agreement satisfactory to RBS. The control agreement does not have to require RBS signature for withdrawals. The depository bank shall waive its offset and recoupment rights against the

depository account to RBS and subordinate any liens it may have against the IRP depository bank account. The use of Form RD 402–1, ''Deposit Agreement,'' or similar form developed by the State Regional Office of the General Counsel is acceptable.

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

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

§§ 4274.327–4274.330 [Reserved]

§ 4274.331 Loan limits.

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

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

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

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

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

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

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

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

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

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

(1) $250,000; or

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

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

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

§ 4274.332 Post award requirements.

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

(b) *Maintenance of IRP revolving fund.* For as long as any part of an IRP loan to an intermediary remains unpaid, the intermediary must maintain the IRP revolving fund. All Agency IRP loan funds received by an intermediary

must be deposited into an IRP revolving fund. The intermediary may transfer additional assets into the IRP revolving fund. All cash of the IRP revolving fund shall be deposited in a separate bank account or accounts. No other funds of the intermediary will be commingled with such money. All moneys deposited in such bank account or accounts shall be money of the IRP revolving fund. Loans to ultimate recipients are advanced from the IRP revolving fund. The receivables created by making loans to ultimate recipients, the intermediary's security interest in collateral pledged by ultimate recipients, collections on the receivables, interest, fees, and any other income or assets derived from the operation of the IRP revolving fund are a part of the IRP revolving fund.

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

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

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

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

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

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

§§ 4274.333–4274.336 [Reserved]

§ 4274.337 Other regulatory requirements.

(a) *Intergovernmental consultation.* The IRP is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. The approval of a loan to an intermediary will be the subject of intergovernmental consultation. For each ultimate recipient to be assisted with a loan from Agency IRP loan funds and for which the State in which the ultimate recipient is to be located has elected to review the program under their intergovernmental review process, the State Single Point of Contact must be notified. Notification, in the form of a project description, must be initiated by the intermediary or the ultimate recipient. Any

comments from the State must be included with the intermediary's request to use the Agency loan funds for the ultimate recipient. Prior to the Agency's decision on the request, compliance with the requirements of intergovernmental consultation must be demonstrated for each ultimate recipient. These requirements are set forth in U.S. Department of Agriculture regulations 7 CFR part 3015, subpart V, and RD Instruction 1970–I, 'Intergovernmental Review,' available in any Agency office or on the Agency's Web site.

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

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

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

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

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

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

(d) *Seismic safety of new building construction.* (1) The Intermediary Relending Program is subject to the provisions of Executive Order 12699 that requires each Federal agency assisting in the financing, through Federal grants or loans, or guaranteeing the financing, through loan or mortgage insurance programs, of newly constructed buildings to assure appropriate consideration of seismic safety.

(2) All new buildings financed with Agency IRP loan funds shall be designed and constructed in accordance with the seismic provisions of one of the following model building codes or the latest edition of that code providing an equivalent level of safety to that contained in the latest edition of the National Earthquake Hazard Reduction Programs (NEHRP) Recommended Provisions for the Development of Seismic Regulations for New Building (NEHRP Provisions):

(i) 1991 International Conference of Building Officials (ICBO) Uniform Building Code;

(ii) 1993 Building Officials and Code Administrators International, Inc. (BOCA) National Building Code; or

(iii) 1992 Amendments to the Southern Building Code Congress International (SBCCI) Standard Building Code.

(3) The date, signature, and seal of a registered architect or engineer and the identification and date of the model building code on the plans and specifications shall be evidence of compliance with the seismic requirements of the appropriate code.

[63 FR 6053, Feb. 6, 1998, as amended at 70 FR 38573, July 5, 2005; 76 FR 80732, Dec. 27, 2011]

§ 4274.338 Loan agreements between the Agency and the intermediary.

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

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

(1) The amount of the loan;

(2) The interest rate;

(3) The term and repayment schedule;

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

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

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

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

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

default'' in the sole discretion of the Agency:

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

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

(iii) The occurrence of;

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

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

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

(v) Failure of the intermediary to remedy any material adverse change in its financial or other condition (such as the representational character of its board of directors or policymaking body) arising since the date of the Agency's award of assistance hereunder, which condition was an inducement to Agency's original award.

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

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

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

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

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

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

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

(C) Intermediaries must provide evidence of adequate fidelity bond and other appropriate insurance coverage by loan closing. Adequate coverage in

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

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

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

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

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

(4) To Agency reporting requirements by providing:

(i) An annual audit;

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

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

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

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

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

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

(D) An annual report on the extent to which increased employment, income and ownership opportunities are provided to low-income persons, farm families, and displaced farm families for each loan made by such intermediary.

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

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

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

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

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

(6) To obtain written approval of the Agency before making any significant changes in forms, security policy, or the work plan. The servicing officer

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

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

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

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

[63 FR 6053, Feb. 6, 1998, as amended at 70 FR 38573, July 5, 2005; 73 FR 54307, Sept. 19, 2008]

§§ 4274.339–4274.342 [Reserved]

§ 4274.343 Application.

(a) The application will consist of:

(1) An application form provided by the Agency.

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

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

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

(iii) Demonstrate a need for loan funds. As a minimum, the intermediary should identify a sufficient number of proposed and known ultimate recipients it has on hand to justify Agency funding of its loan request, or include

well developed targeting criteria for ultimate recipients consistent with the intermediary's mission and strategy for IRP, along with supporting statistical or narrative evidence that such prospective recipients exist in sufficient numbers to justify Agency funding of the loan request;

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

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

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

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

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

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

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

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

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

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

(7) An agreement on a form provided by the Agency assuring compliance with

Title VI of the Civil Rights Act of 1964;

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

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

(10) Latest audit report, if available;

(11) A form provided by the Agency in which the applicant certifies its understanding of the Federal collection policies for consumer or commercial debts;

(12) A Department of Agriculture form containing a certification regarding debarment, suspension, and other responsibility matters for primary covered transactions; and

(13) A statement on a form provided by the Agency regarding lobbying, as required by 7 CFR part 3018.

(b) Applications from intermediaries that already have an active IRP loan may be streamlined as follows:

(1) The requirements of paragraphs (a)(6), (a)(8), and (a)(10) of this section may be omitted;

(2) A statement that the new loan would be operated in accordance with the work plan on file for the previous loan may be submitted in lieu of a new work plan; and

(3) The financial information required by paragraph (a)(5) of this section may be limited to projections for the proposed new IRP revolving loan fund.

§4274.344 Filing and processing applications for loans.

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

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

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

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

(i) The intermediary will obtain non-Federal loan or grant funds to pay part of the cost of the ultimate recipients' projects. The amount of funds from other sources will average:

(A) At least 10% but less than 25% of the total project cost—5 points;

(B) At least 25% but less than 50% of the total project cost—10 points; or

(C) 50% or more of the total project cost—15 points.

(ii) The intermediary will provide loans to ultimate recipients from its project contribution funds to pay part of the costs of ultimate recipient projects. Project contribution funds must be separate and distinct from any loan or grant dollars provided to the intermediary under the IRP, as well as the intermediary's equity contribution. When evaluating an application for initial or supplemental funding, the Agency will consider the level of the applicant's project contribution and award points as follows:

(A) At least 10% but less than 25% of the total project costs—5 points;

(B) At least 25% but less than 50% of total project costs—10 points; or

(C) 50% or more of total project costs—15 points.

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

(i) The median household income in the service area of the proposed intermediary equals the following percentage of the poverty line for a family of four:

(A) At least 150% but not more than 175%—5 points;

(B) At least 125% but less than 150%—10 points; or

(C) Below 125%—15 points.

(ii) The following percentage of the loans the intermediary makes from Agency IRP loan funds will be in counties with median household income below 80 percent of the statewide nonmetropolitan median household income. (To receive priority points under this category, the intermediary must provide a list of counties in the service area that have qualifying income):

(A) At least 50% but less than 75%—5 points;

(B) At least 75% but less than 100%—10 points; or

(C) 100%—15 points.

(iii) The unemployment rate in the intermediary's service area equals the following percentage of the national unemployment rate:

(A) At least 100% but less than 125%—5 points;

(B) At least 125% but less 150%—10 points; or

(C) 150% or more—15 points.

(iv) The intermediary will require, as a condition of eligibility for a loan to an ultimate recipient from Agency IRP loan funds, that the ultimate recipient certify in writing that it will employ the following percentage of its workforce from members of families with income below the poverty line:

(A) At least 10% but less than 20% of the workforce—5 points;

(B) At least 20% but less than 30% of the workforce—10 points; or

(C) 30% of the workforce or more—15 points.

(v) The intermediary has a demonstrated record of providing assistance to members of underrepresented groups, has a realistic plan for targeting loans to members of underrepresented groups, and, based on the intermediary's record and plans, it is expected that the following percentages of its loans made from Agency IRP loan funds will be made to entities owned by members of underrepresented groups:

(A) At least 10% but less than 20%—5 points;

(B) At least 20% but less than 30%—10 points; or

(C) 30% or more—15 points.

(vi) The population of the service area according to the most recent decenial census was lower than that recorded by the previous decenial census by the following percentage:

(A) At least 10 percent but less than 20 percent—5 points;

(B) At least 20 percent but less than 30 percent—10 points; or

(C) 30 percent or more—15 points.

(3) *Intermediary contribution*. All assets of the IRP revolving fund will serve as security for the IRP loan, and the intermediary will contribute funds not derived from the Agency into the IRP revolving fund along with the proceeds of the IRP loan. The amount of non-Agency derived funds contributed to the IRP revolving fund will equal the following percentage of the Agency IRP loan:

(i) At least 5% but less than 15%—15 points;

(ii) At least 15% but less than 25%—30 points; or

(iii) 25% or more—50 points.

(4) *Experience*. The intermediary has actual experience in making and servicing commercial loans, with a successful record, for the following number of full years:

(i) At least 1 but less than 3 years—5 points;

(ii) At least 3 but less than 5 years—10 points;

(iii) At least 5 but less than 10 years—20 points; or

(iv) 10 or more years—30 points.

(5) *Community representation*. The service area is not more than 14 counties and the intermediary utilizes local opinions and experience by including community representatives on its board of directors or equivalent oversight board. For purposes of this section, community representatives are people, such as civic leaders, business representatives, or bankers, who reside in the service area and are not employees of the intermediary. Points will be assigned as follows:

(i) At least 10% but less than 40% of the board members are community representatives—5 points;

(ii) At least 40% but less than 75% of the board members are community representatives—10 points; or

(iii) At least 75% of the board members are community representatives—15 points.

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

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

§§ 4274.345–4274.349 [Reserved]

§ 4274.350 Letter of conditions.

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

§§ 4274.351–4274.354 [Reserved]

§ 4274.355 Loan approval and obligating funds.

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

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

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

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

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

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

§ 4274.356 Loan closing.

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

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

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

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

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

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

§§ 4274.357–4274.360 [Reserved]

§ 4274.361 Requests to make loans to ultimate recipients.

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

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

(1) Certification by the intermediary that;

(i) The proposed ultimate recipient is eligible for the loan;

(ii) The proposed loan is for eligible purposes;

(iii) The proposed loan complies with all applicable statutes and regulations;

(iv) The ultimate recipient is unable to finance the proposed project through commercial credit or other Federal, State, or local programs at reasonable rates and terms; and

(v) The intermediary and its principal officers (including immediate family) hold no legal or financial interest or influence in the ultimate recipient, and the ultimate recipient and its principal officers (including immediate family) hold no legal or financial interest or influence in the intermediary except the interest and influence of a cooperative member when the intermediary is a cooperative;

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

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

(4) Copies of sufficient material from the ultimate recipient's application and the intermediary's related files, to allow the Agency to determine the:

(i) Name and address of the ultimate recipient;

(ii) Loan purposes;

(iii) Interest rate and term;

(iv) Location, nature, and scope of the project being financed;

(v) Other funding included in the project; and

(vi) Nature and lien priority of the collateral.

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

§§ 4274.362–4274.372 [Reserved]

§ 4274.373 Appeals.

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

§§ 4274.374–4274.380 [Reserved]

§ 4274.381 Exception authority.

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

§§ 4274.382–4274.399 [Reserved]

§ 4274.400 OMB control number.

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

PART 4279—GUARANTEED LOANMAKING

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AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1932(a); and 7 U.S.C. 1989.

SOURCE: 61 FR 67633, Dec. 23, 1996, unless otherwise noted.

Subpart A—General

§ 4279.1 Purpose.

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

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

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

§ 4279.2 Definitions and abbreviations.

(a) *Definitions.*

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

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

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

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

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

Biogas. Biomass converted to gaseous fuel.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Qualified Intellectual Property. Trademarks, patents or copyrights included on current (within one year) audited balance sheets for which an audit opinion has been received that states the financial reports fairly represent the values therein and the reported value

has been arrived at in accordance with GAAP standards for valuing intellectual property. The supporting work papers must be satisfactory to the Administrator.

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

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

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

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

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

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

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

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

(b) *Abbreviations.*

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

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

[71 FR 33187, June 8, 2006]

§§ 4279.3–4279.14 [Reserved]

§ 4279.15 Exception authority.

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

§4279.16 Appeals.

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

§§4279.17–4279.28 [Reserved]

§4279.29 Eligible lenders.

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

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

(1) Such a lender must:

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

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

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

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

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

(iii) Information on lending experience, including length of time in the lending business; range and volume of lending and servicing activity; status of loan portfolio including delinquency rate, loss rate as a percentage of loan amounts, and other measures of success; experience of management and loan officers; audited financial statements not more than 1 year old; sources of funds for the proposed loans; office location and proposed lending

area; and proposed rates and fees, including loan origination, loan preparation, and servicing fees. Such fees must not be greater than those charged by similarly located commercial lenders in the ordinary course of business.

(iv) An estimate of the number and size of guaranteed loan applications the lender will develop.

(c) *Expertise*. Loan guarantees will only be approved for lenders with adequate experience and expertise to make, secure, service, and collect B&I loans.

§ 4279.30 Lenders' functions and responsibilities.

(a) *General*. (1) Lenders have the primary responsibility for the successful delivery of the B&I loan program. All lenders obtaining or requesting a B&I loan guarantee are responsible for:

(i) Processing applications for guaranteed loans,

(ii) Developing and maintaining adequately documented loan files,

(iii) Recommending only loan proposals that are eligible and financially feasible,

(iv) Obtaining valid evidence of debt and collateral in accordance with sound lending practices,

(v) Supervising construction

(vi) Distribution of loan funds,

(vii) Servicing guaranteed loans in a prudent manner, including liquidation if necessary,

(viii) Following Agency regulations, and

(ix) Obtaining Agency approvals or concurrence as required.

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

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

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

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

§§ 4279.31–4279.42 [Reserved]

§ 4279.43 Certified Lender Program.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Conviction for acts in connection with any loan transaction whether or not the loan was guaranteed by the Agency;

(5) Violation of usury laws in connection with any loan guaranteed by the Agency;

(6) Failure to obtain the required security for any loan guaranteed by the Agency;

(7) Using loan funds guaranteed by the Agency for purposes other than those specifically approved by the Agency in the Conditional Commitment;

(8) Violation of any term of the Lender's Agreement;

(9) Failure to correct any cited deficiency in loan documents in a timely manner;

(10) Failure to submit reports required by the Agency in a timely manner;

(11) Failure to process Agency guaranteed loans in a reasonably prudent manner;

(12) Failure to provide for adequate construction planning and monitoring in connection with any loan to ensure that the project will be completed with the available funds and, once completed, will be suitable for the borrower's needs;

(13) Repetitive recommendations for guaranteed loans with marginal or substandard credit quality or that do not comply with Agency requirements;

(14) Repetitive recommendations for servicing actions that do not comply with Agency requirements;

(15) Negligent servicing; or

(16) Failure to conduct any approved liquidation of a loan guaranteed by the Agency or its predecessors in a timely and effective manner and in accordance with the approved liquidation plan.

(f) *General loan processing and servicing guidelines*. All requests for guaranteed loans will be processed and serviced under subparts A and B of this part and subpart B of part 4287 of this chapter except as modified by this section. When determining whether or not to request a guarantee for a proposed loan, lenders must consider the priorities set forth in § 279.155 of subpart B of this part.

(1) Prior to processing an application, the CLP lender may give written notice to the State Director of its intention to submit an application. Upon receipt of such written notice, the Agency will notify the CLP lender whether or not there is sufficient guarantee authority for the loan. Such guarantee authority will be held for 30 days pending receipt of the application. If a complete application for which guarantee authority is being held is not received within 30 days of the notice of intent to file or is rejected, the guarantee authority for this application will no longer be held in reserve. Notwithstanding the preceding, no guarantee authority will be held in reserve the last 60 days of the Agency's fiscal year.

(2) Refinancing of existing lender debt in accordance with § 4279.113(q) of subpart B of this part will not be permitted without prior Agency approval.

(3) CLP lenders will process all guaranteed loans as a ''complete application'' by obtaining and completing all items required by § 4279.161(b) of subpart B of this part. The CLP lender must maintain all information required by § 4279.161(b) in its loan file and determine that such material complies with all requirements.

(4) CLP lenders will make all material relating to any guarantee application available to the Agency upon request.

(5) At the time of the Agency's issuance of the Loan Note Guarantee, the CLP lender will provide the Agency with copies of the following documents:

(i) Executed Loan Agreement;

(ii) Executed Promissory Notes; and

(iii) Executed security documents including personal and corporate guarantees.

(g) *Unique characteristics of the CLP*. A proposed loan by a CLP lender requires a review by the Agency of the information submitted by the lender, plus satisfactory completion of the environmental review process by the Agency. The Agency may rely on the lender's credit analysis.

(1) The following will constitute a complete application submitted by a CLP lender:

(i) Form 4279–1, ''Application for Loan Guarantee (Business and Industry),'' (marked with the letters ''CLP'' at the top) completed in its entirety and executed by the borrower and CLP lender;

(ii) Copy of the proposed Loan Agreement or a list of proposed requirements;

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

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

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

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

(2) The Agency will make the final credit decision based primarily on a review of the credit analysis submitted by the lender and approval of the Agency's completed environmental analysis, if required, except that refinancing of existing lender debt in accordance with §4279.113(q) of subpart B of this part will not be approved without a credit analysis by the Agency of the borrower's complete financial statements; and completion by the Agency of the environmental analysis. The Agency may request such additional information as it determines is needed to make a decision.

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

§4279.44 Access to records.

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

§§4279.45–4279.57 [Reserved]

§4279.58 Equal Credit Opportunity Act.

In accordance with title V of Public Law 93–495, the Equal Credit Opportunity Act, with respect to any aspect of a credit transaction, neither the lender nor the Agency will discriminate against any applicant on the basis of race, color, religion, national origin, sex, marital status or age (providing the applicant has the capacity to contract), or because all or part of the applicant's income derives from a public assistance program, or because the applicant has, in good faith, exercised any right under the Consumer Protection Act. The lender will comply with the requirements of the Equal Credit Opportunity Act as contained in the Federal Reserve Board's Regulation implementing that Act (see 12 CFR part 202). Such compliance will be accomplished prior to loan closing.

§4279.59 [Reserved]

§4279.60 Civil Rights Impact Analysis.

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

§§4279.61–4279.70 [Reserved]

§4279.71 Public bodies and nonprofit corporations.

Any public body or nonprofit corporation that receives a guaranteed loan that meets the thresholds established by OMB Circulars A–128 or A–133 or successor regulations or circulars

must provide an audit in accordance with the applicable circular or regulation for the fiscal year (of the borrower) in which the Loan Note Guarantee is issued. If the loan is for development or purchases made in a previous fiscal year through interim financing, an audit will also be provided for the fiscal year in which the development or purchases occurred. Any audit provided by a public body or nonprofit corporation in compliance with OMB Circulars A–128 or A–133 or their successors will be considered adequate to meet the audit requirements of the B&I program for that year.

§ 4279.72 Conditions of guarantee.

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

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

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

(2) To the lender, the lesser of:

(i) Any loss sustained by the lender on the guaranteed portion, including principal and interest evidenced by the notes or assumption agreements and secured advances for protection and preservation of collateral made with the Agency's authorization; or

(ii) The guaranteed principal advanced to or assumed by the borrower and any interest due thereon.

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

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

[61 FR 67633, Dec. 23, 1996, as amended at 76 FR 42470, July 19, 2011]

§§ 4279.73–4279.74 [Reserved]

§ 4279.75 Sale or assignment of guaranteed loan.

The lender may sell all or part of the guaranteed portion of the loan on the

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

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

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

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

(1) Written approval of the Agency is obtained;

(2) The borrower agrees and executes the new notes;

(3) The interest rate does not exceed the interest rate in effect when the loan was closed;

(4) The maturity date of the loan is not changed;

(5) The Agency will not bear or guarantee any expenses that may be incurred in reference to such reissuances of notes;

(6) There is adequate collateral securing the notes;

(7) No intervening liens have arisen or have been perfected and the secured lien priority is better or remains the same; and

(8) All holders agree.

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

§4279.76 Participation.

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

§4279.77 Minimum retention.

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

§4279.78 Repurchase from holder.

(a) *Repurchase by lender.* A lender has the option to repurchase the unpaid guaranteed portion of the loan from a holder within 30 days of written demand by the holder when the borrower

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

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

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

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

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

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

the Agency may, at its option, purchase such guaranteed portion for servicing purposes.

§§ 4279.79–4279.83 [Reserved]

§ 4279.84 Replacement of document.

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

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

(1) A certificate of loss, notarized and containing a jurat, which includes:

(i) Name and address of owner;

(ii) Name and address of the lender of record;

(iii) Capacity of person certifying;

(iv) Full identification of the Loan Note Guarantee or Assignment Guarantee Agreement including the name of the borrower, the Agency's case number, date of the Loan Note Guarantee or Assignment Guarantee Agreement, face amount of the evidence of debt purchased, date of evidence of debt, present balance of the loan, percentage of guarantee, and, if an Assignment Guarantee Agreement, the original named holder and the percentage of the guaranteed portion of the loan assigned to that holder. Any existing parts of the document to be replaced must be attached to the certificate;

(v) A full statement of circumstances of the loss, theft, or destruction of the Loan Note Guarantee or Assignment Guarantee Agreement; and

(vi) For the holder, evidence demonstrating current ownership of the Loan Note Guarantee and Note or the Assignment Guarantee Agreement. If the present holder is not the same as the original holder, a copy of the endorsement of each successive holder in the chain of transfer from the initial holder to present holder must be included if in existence. If copies of the endorsement cannot be obtained, best available records of transfer must be submitted to the Agency (e.g., order confirmation, canceled checks, etc.).

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

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

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

§§ 4279.85–4279.99 [Reserved]

§ 4279.100 OMB control number.

The information collection requirements contained in this regulation have been approved by OMB and have been assigned OMB control number 0575–0171. Public reporting burden for

this collection of information is estimated to vary from 1 hour to 8 hours per response, with an average of 4 hours per response, including time for reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Officer, OIRM, Stop 7630, Washington, D.C. 20250. You are not required to respond to this collection of information unless it displays a currently valid OMB control number.

Subpart B—Business and Industry Loans

§ 4279.101 Introduction.

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

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

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

§ 4279.102 Definitions.

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

§§ 4279.103 Exception authority.

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

§ 4279.104 Appeals.

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

§ 4279.105–4279.106 [Reserved]

§ 4279.107 Guarantee fees.

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

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

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

(2) Is located in a rural community that:

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

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

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

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

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

(1) The rate of the annual renewal fee (a specified percentage) is established by Rural Development in an annual notice published in the FEDERAL REGISTER, multiplied by the outstanding principal loan balance as of December 31 of each year, multiplied by the percent of guarantee. The rate is the rate

in effect at the time the loan is obligated, and will remain in effect for the life of the loan.

(2) Annual renewal fees are due on January 31. Payments not received by April 1 are considered delinquent and, at the Agency's discretion, may result in cancellation of the guarantee to the lender. Holders' rights will continue in effect as specified in the Loan Note Guarantee and Assignment Guarantee Agreement. Any delinquent annual renewal fees will bear interest at the note rate and will be deducted from any loss payment due the lender. For loans where the Loan Note Guarantee is issued between October 1 and December 31, the first annual renewal fee payment will be due January 31 of the second year following the date the Loan Note Guarantee was issued.

[70 FR 57486, Oct. 3, 2005]

§4279.108 Eligible borrowers.

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

(1) Provide employment;

(2) Improve the economic or environmental climate;

(3) Promote the conservation, development, and use of water for aquaculture; or

(4) Reduce reliance on nonrenewable energy resources by encouraging the development and construction of solar energy systems and other renewable energy systems (including wind energy systems, geothermal energy systems, and anaerobic digesters for the purpose of energy generation).

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

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

(1) A city or town that has a population of greater than 50,000 inhabitants; and

(2) The urbanized area contiguous and adjacent to such a city or town, as defined by the U.S. Bureau of the Census using the latest decennial census of the United States.

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

(2) Cooperative organizations that are headquartered in a non-rural area may be eligible for a B&I loan if the loan is used for a project or venture that is located in a rural area.

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

(i) The primary purpose of the loan is for a facility to provide value-added processing for agricultural producers

that are located within 80 miles of the facility;

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

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

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

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

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

[61 FR 67633, Dec. 23, 1996, as amended at 67 FR 78130, Dec. 23, 2002; 69 FR 64830, Nov. 9, 2004]

§§ 4279.109–4279.112 [Reserved]

§ 4279.113 Eligible loan purposes.

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

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

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

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

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

(e) Pollution control and abatement.

(f) Transportation services incidental to industrial development.

(g) Startup costs and working capital.

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

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

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

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

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

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

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

(k) Aquaculture, including conservation, development, and utilization of water for aquaculture.

(l) Commercial fishing.

(m) Commercial nurseries engaged in the production of ornamental plants and trees and other nursery products such as bulbs, flowers, shrubbery, flower and vegetable seeds, sod, and the growing of plants from seed to the transplant stage.

(n) Forestry, which includes businesses primarily engaged in the operation of timber tracts, tree farms, and forest nurseries and related activities such as reforestation.

(o) The growing of mushrooms or hydroponics.

(p) Interest (including interest on interim financing) during the period before the first principal payment becomes due or when the facility becomes income producing, whichever is earlier.

(q) Feasibility studies.

(r) To refinance outstanding debt when it is determined that the project is viable and refinancing is necessary to improve cash flow and create new or save existing jobs. Except as provided for in §4279.108(d)(4) of this subpart, existing lender debt may be included provided that, at the time of application, the loan has been current for at least the past 12 months (unless such status is achieved by the lender forgiving the borrower's debt) and the lender is providing better rates or terms. Subordinated owner debt is not eligible under this paragraph. Unless the amount to be refinanced is owed directly to the Federal government or is federally guaranteed, the existing lender debt refinancing must be a secondary part (less than 50 percent) of the overall loan.

(s) Takeout of interim financing. Guaranteeing a loan after project completion to pay off a lender's interim loan will not be treated as debt refinancing provided that the lender submits a complete preapplication or application which proposes such interim financing prior to completing the interim loan. A lender that is considering an interim loan should be advised that the Agency assumes no responsibility or obligation for interim loans advanced prior to the Conditional Commitment being issued.

(t) Fees and charges for professional services and routine lender fees.

(u) Agency guarantee fee.

(v) Tourist and recreation facilities, including hotels, motels, and bed and breakfast establishments, except as prohibited under ineligible purposes.

(w) Educational or training facilities.

(x) Community facility projects which are not listed as an ineligible loan purpose such as convention centers.

(y) Constructing or equipping facilities for lease to private businesses engaged in commercial or industrial operations.

(z) The financing of housing development sites provided that the community demonstrates a need for additional housing to prevent a loss of jobs in the area or to house families moving to the area as a result of new employment opportunities.

(aa) Community antenna television services or facilities.

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

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

[61 FR 67633, Dec. 23, 1996, as amended at 69 FR 64831, Nov. 9, 2004; 71 FR 33189, June 8, 2006; 72 FR 12705, Mar. 19, 2007]

§4279.114 Ineligible purposes.

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

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

(c) Projects in excess of $1 million that would increase direct employment

by more than 50 employees, if the project would result in an increase in the production of goods for which there is not sufficient demand, or if the availability of services or facilities is insufficient to meet the needs of the business.

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

(e) Lending and investment institutions and insurance companies.

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

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

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

(i) Any illegal business activity.

(j) Prostitution.

(k) Any line of credit.

(l) The guarantee of lease payments.

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

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

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

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

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

(r) Golf courses.

§ 4279.115 Prohibition under Agency programs.

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

§§ 4279.116–4279.118 [Reserved]

§ 4279.119 Loan guarantee limits.

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

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

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

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

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

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

(2) The Secretary, whose authority may not be redelegated, may approve

guaranteed loans in excess of $25 million, at the Secretary's discretion, for rural cooperative organizations that process value-added agricultural commodities in accordance with §4279.108(d)(1) of this subpart.

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

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

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

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

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

[61 FR 67633, Dec. 23, 1996, as amended at 69 FR 64831, Nov. 9, 2004]

§4279.120 Fees and charges.

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

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

§§4279.121–4279.124 [Reserved]

§4279.125 Interest rates.

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

(a) A variable interest rate agreed to by the lender and borrower must be a rate that is tied to a base rate agreed to by the lender and the Agency. The variable interest rate may be adjusted at different intervals during the term of the loan, but the adjustments may not be more often than quarterly and must be specified in the Loan Agreement. The lender must incorporate, within the variable rate Promissory Note at loan closing, the provision for adjustment of payment installments coincident with an interest-rate adjustment. The lender will ensure that the outstanding principal balance is properly amortized within the prescribed loan maturity to eliminate the possibility of a balloon payment at the end of the loan.

(b) Any change in the interest rate between the date of issuance of the

Conditional Commitment and before the issuance of the Loan Note Guarantee must be approved in writing by the Agency approval official. Approval of such a change will be shown as an amendment to the Conditional Commitment.

(c) It is permissible to have one interest rate on the guaranteed portion of the loan and another rate on the unguaranteed portion of the loan provided that the rate on the guaranteed portion does not exceed the rate on the unguaranteed portion.

(d) A combination of fixed and variable rates will be allowed.

§ 4279.126 Loan terms.

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

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

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

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

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

§§ 4279.127–4279.130 [Reserved]

§ 4279.131 Credit quality.

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

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

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

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

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

(d) *Equity*. (1) A minimum of 10 percent tangible balance sheet equity will be required for existing businesses at loan closing. A minimum of 20 percent tangible balance sheet equity will be required for new businesses at loan closing. For energy projects, the minimum tangible balance sheet equity requirement range will be between 25 percent and 40 percent. Criteria for considering the minimum equity required for an individual application will be based on: existing businesses with successful financial and management history vs. start-up businesses; personal/corporate guarantees offered; contractual relationships with suppliers and buyers;

credit rating; and strength of the business plan/feasibility study. Where the application is a request to refinance outstanding Federal direct or guaranteed loans, without any new financing, the equity requirement may be determined using adjusted tangible net worth. An application that combines a refinancing guarantee request with a new loan guarantee request is subject to the standard, unadjusted, equity requirement except as provided in paragraphs (d)(1)(i) or (d)(1)(ii) of this section. Increases or decreases in the equity requirements may be imposed or granted as follows:

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

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

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

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

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

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

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

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

[61 FR 67633, Dec. 23, 1996, as amended at 71 FR 33189, June 8, 2006]

§§4279.132–4279.136 [Reserved]

§4279.137 Financial statements.

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

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

§§4279.138–4279.142 [Reserved]

§4279.143 Insurance.

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

(b) *Life*. The lender may require life insurance to insure against the risk of death of persons critical to the success of the business. When required, coverage will be in amounts necessary to provide for management succession or

to protect the business. The cost of insurance and its effect on the applicant's working capital must be considered as well as the amount of existing insurance which could be assigned without requiring additional expense.

(c) *Worker compensation*. Worker compensation insurance is required in accordance with State law.

(d) *Flood*. National flood insurance is required in accordance with 7 CFR, part 1806, subpart B (FmHA Instruction 426.2, available in any field office or the National Office).

(e) *Other*. Public liability, business interruption, malpractice, and other insurance appropriate to the borrower's particular business and circumstances will be considered and required when needed to protect the interests of the borrower.

§ 4279.144 Appraisals.

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

[69 FR 64831, Nov. 9, 2004]

§§ 4279.145–4279.148 [Reserved]

§ 4279.149 Personal and corporate guarantee.

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

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

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

§ 4279.150 Feasibility studies.

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

§§ 4279.151–4279.154 [Reserved]

§ 4279.155 Loan priorities.

Applications and preapplications received by the Agency will be considered in the order received; however, for

the purpose of assigning priorities as described in paragraph (b) of this section, the Agency will compare an application to other pending applications.

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

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

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

(2) *Community priority*. The priority score for community will be the total score for the following categories:

(i) Located in an eligible area of long term population decline and job deterioration based on reliable statistical data (5 points).

(ii) Located in a rural community that has remained persistently poor over the last 60 years (5 points).

(iii) Located in a rural community that is experiencing trauma as a result of natural disaster or experiencing fundamental structural changes in its economic base (5 points).

(iv) Located in a city or county with an unemployment rate 125 percent of the statewide rate or greater (5 points).

(3) *Empowerment Zone/Enterprise Community (EZ/EC)*. (i) Located in an EZ/EC designated area (10 points).

(ii) Located in a designated Champion Community (5 points). A Champion Community is a community which developed a strategic plan to apply for an EZ/EC designation, but not selected as a designated EZ/EC Community.

(4) *Loan features*. The priority score for loan features will be the total score for the following categories:

(i) Lender will price the loan at the Wall Street Journal published Prime Rate plus 1.5 percent or less (5 points).

(ii) Lender will price the loan at the Wall Street Journal published Prime Rate plus 1 percent or less (5 points).

(iii) The Agency guaranteed loan is less than 50 percent of project cost (5 points).

(iv) Percentage of guarantee is 10 or more percentage points less than the maximum allowable for a loan of its size (5 points).

(5) *High impact business investment priorities*. The priority score for high impact business investment will be the total score for the following three categories:

(i) *Industry*. The priority score for industry will be the total score for the following, except that the total score for industry cannot exceed 10 points.

(A) Industry that has 20 percent or more of its sales in international markets (5 points).

(B) Industry that is not already present in the community (5 points).

(ii) *Business*. The priority score for business will be the total score for the following:

(A) Business that offers high value, specialized products and services that command high prices (2 points).

(B) Business that provides an additional market for existing local business (3 points).

(C) Business that is locally owned and managed (3 points).

(D) Business that will produce a natural resource value-added product (2 points).

(iii) *Occupations*. The priority score for occupations will be the total score for the following, except that the total score for job quality cannot exceed 10 points:

(A) Business that creates jobs with an average wage exceeding 125 percent of the Federal minimum wage (5 points).

(B) Business that creates jobs with an average wage exceeding 150 percent of the Federal minimum wage (10 points).

(6) *Administrative points*. The State Director may assign up to 10 additional points to an application to account for such factors as statewide distribution of funds, natural or economic emergency conditions, or area economic development strategies. An explanation of the assigning of these points by the

State Director will be appended to the calculation of the project score maintained in the case file. If an application is considered in the National Office, the Administrator may also assign up to an additional 10 points. The Administrator may assign the additional points to an application to account for items such as geographic distribution of funds and emergency conditions caused by economic problems or natural disasters.

§ 4279.156 Planning and performing development.

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

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

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

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

§§ 4279.157–4279.160 [Reserved]

§ 4279.161 Filing preapplications and applications.

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

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

(1) A letter signed by the borrower and lender containing the following:

(i) Borrower's name, organization type, address, contact person, and federal tax identification and telephone numbers.

(ii) Amount of the loan request, percent of guarantee requested, and the proposed rates and terms.

(iii) Name of the proposed lender, address, telephone number, contact person, and lender's Internal Revenue Service (IRS) identification number.

(iv) Brief description of the project, products, services provided, and availability of raw materials and supplies.

(v) Type and number of jobs created or saved.

(vi) Amount of borrower's equity and a description of collateral, with estimated values, to be offered as security for the loan.

(vii) If a corporate borrower, the names and addresses of the borrower's parent, affiliates, and subsidiary firms, if any, and a description of the relationship.

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

(3) For existing businesses, a current balance sheet and a profit and loss statement not more than 90 days old

and financial statements for the borrower and any parent, affiliates, and subsidiaries for at least the 3 most recent years.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Restriction on dividend payments.

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

(iv) Limitation on compensation of officers and owners.

(v) Minimum working capital or current ratio requirement.

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

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

(viii) Limitations on selling the business without the concurrence of the lender.

(ix) Repayment and amortization of the loan.

(x) List of collateral and lien priority for the loan including a list of persons and corporations guaranteeing the loan

with a schedule for providing the lender with personal and corporate financial statements. Financial statements on the corporate and personal guarantors must be updated at least annually.

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

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

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

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

(13) Independent feasibility study, if required.

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

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

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

(17) Any additional information required by the Agency.

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

[61 FR 67633, Dec. 23, 1996, as amended at 69 FR 64831, Nov. 9, 2004]

§§ 4279.162–4279.164 [Reserved]

§ 4279.165 Evaluation of application.

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

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

§§ 4279.166–4279.172 [Reserved]

§ 4279.173 Loan approval and obligating funds.

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

(b) If certain conditions of the Conditional Commitment cannot be met, the

lender and applicant may propose alternate conditions. Within the requirements of the applicable regulations and instructions and prudent lending practices, the Agency may negotiate with the lender and the applicant regarding any proposed changes to the Conditional Commitment.

§4279.174 Transfer of lenders.

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

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

§4279.175 Domestic lamb industry adjustment assistance program set aside.

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

[65 FR 64597, Oct. 30, 2000]

§§4279.176–4279.179 [Reserved]

§4279.180 Changes in borrower.

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

§4279.181 Conditions precedent to issuance of Loan Note Guarantee.

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

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

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

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

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

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

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

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

(h) When required, the entire amount of the loan for working capital has been disbursed except in cases where the Agency has approved disbursement over an extended period of time.

(i) When required, personal, partnership, or corporate guarantees have been obtained.

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

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

pending or threatened that would adversely affect the collateral when the security instruments are filed.

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

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

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

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

§§ 4279.182–4279.185 [Reserved]

§ 4279.186 Issuance of the guarantee.

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

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

(2) Executed Lender's Agreement.

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

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

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

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

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

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

§ 4279.187 Refusal to execute Loan Note Guarantee.

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

satisfies the objections within the time allowed, the guarantee will be issued.

§§ 4279.188–4279.199 [Reserved]

§ 4279.200 OMB control number.

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

Subpart C—Biorefinery Assistance Loans

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

§ 4279.201 Purpose and scope.

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

§ 4279.202 Compliance with §§ 4279.1 through 4279.84.

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

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

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

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

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

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

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

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

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

(vii) Other fuel derived from cellulosic biomass.

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

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

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

(i) Composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials; or

(ii) An intermediate ingredient or feedstock.

Biofuel. A fuel derived from renewable biomass.

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

Borrower. Any party that borrows or seeks to borrow money from the lender, including any party or parties liable

for the guaranteed loan except guarantors.

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

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

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

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

Eligible technology. Eligible technology is defined as either:

(i) A technology that is being adopted in a viable commercial-scale operation of a biorefinery that produces an advanced biofuel; or

(ii) A technology not described in paragraph (i) of this definition that has been demonstrated to have technical and economic potential for commercial application in a biorefinery that produces an advanced biofuel.

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

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

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

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

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

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

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

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

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

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

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

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

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

Protective advances. Advances made by the lender for the purpose of preserving and protecting the collateral where the debtor has failed to, and will

not or cannot, meet its obligations to protect or preserve collateral.

Renewable biomass.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Tangible net worth. Tangible assets minus liabilities.

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

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

(A) Feedstocks;

(B) Process engineering;

(C) Siting;

(D) Technology;

(E) Energy production; and

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

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

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

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

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

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

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

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

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

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

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

(i) Its revenue will be sufficient to recover the full cost of the project over the term of the loan and result in an anticipated annual rate of return sufficient to encourage investors or lenders to provide funding for the project;

(ii) It will be able to operate profitably without public and private sector subsidies upon completion of construction (volumetric excise tax is not included as a subsidy);

(iii) Contracts for feedstocks are adequate to address proposed off-take from the biorefinery;

(iv) It has the ability to achieve market entry, suitable infrastructure to transport the advanced biofuel to its market is available, and the advanced biofuel technology and related products are generally competitive in the market;

(v) It can be easily replicated and that replications can be sited at multiple facilities across a wide geographic area based on the proposed deployment plan; and

(vi) The advanced biofuel technology has at least a 12-month (four seasons) successful operating history at semi-work scale, which demonstrates the ability to operate at a commercial scale.

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

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

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

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

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

(i) Total Risk-Based Capital ratio of 10 percent or higher;

(ii) Tier 1 Risk-Based Capital ratio of 6 percent or higher; and

(iii) Tier 1 Leverage Capital ratio of 5 percent or higher.

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

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

risk of loss posed by the cease and desist order.

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

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

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

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

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

(3) Lenders must ensure that the borrower has:

(i) Provided the necessary environmental information to enable the Agency to undertake its environmental review process in accordance with 7 CFR part 1940, subpart G, or successor regulations, including the provision of all required Federal, State, and local permits;

(ii) Complied with any mitigation measures required by the Agency; and

(iii) Not taken any actions or incurred any obligations with respect to the proposed project that will either limit the range of alternatives to be considered during the Agency's environmental review process or which will have an adverse effect on the environment.

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

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

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

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

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

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

(i) *Conditions of guarantee.* All loan guarantees under this subpart are subject to the provisions of § 4279.72, except for § 4279.72(b), and the provisions specified in paragraphs (i)(1) through (i)(5) of this section.

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

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

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

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

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

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

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

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

§§4279.203–4279.223 [Reserved]

§4279.224 Loan processing.

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

§4279.225 Ineligible loan purposes.

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

§4279.226 Fees.

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

(a) *Guarantee fee*. The guarantee fee will be paid to the Agency by the lender and is nonrefundable. The fee may be passed on to the borrower. Issuance of the Loan Note Guarantee is conditioned on payment of the guarantee fee by closing. The guarantee fee will be the percentage specified in paragraphs (a)(1) or (a)(2) of this section, as applicable, unless otherwise specified by the Agency in a notice published in the FEDERAL REGISTER, multiplied by the principal loan amount multiplied by the percent of guarantee and will be paid one time only at the time the Loan Note Guarantee is issued.

(1) For loans receiving a 90 percent guarantee, the guarantee fee is three percent.

(2) For loans receiving less than a 90 percent guarantee, the guarantee fee is:

(i) Two percent for guarantees on loans greater than 75 percent of total project costs.

(ii) One and one-half percent for guarantees on loans of greater than 65 percent but less than or equal to 75 percent of total project costs.

(iii) One percent for guarantees on loans of 65 percent or less of total project costs.

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

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

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

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

§ 4279.227 Borrower eligibility.

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

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

(1) *Type of borrower.* The borrower must be one of the following:

(i) An individual;

(ii) An entity;

(iii) An Indian tribe;

(iv) A unit of State or local government;

(v) A corporation;

(vi) A farm cooperative;

(vii) A farmer cooperative organization;

(viii) An association of agricultural producers;

(ix) A National Laboratory;

(x) An institution of higher education;

(xi) A rural electric cooperative;

(xii) A public power entity; or

(xiii) A consortium of any of the above entities.

(2) *Legal authority and responsibility.* Each borrower must have, or obtain before loan closing, the legal authority necessary to construct, operate, and maintain the proposed facility and services and to obtain, give security for, and repay the proposed loan.

(b) *Ineligible entities.* A borrower will be considered ineligible for a guarantee if the borrower, any owner with more than 20 percent ownership interest in the borrower, or any owner with more than 3 percent ownership interest in the borrower if there is no owner with more than 20 percent ownership interest in the borrower:

(1) Has an outstanding judgment obtained by the U.S. in a Federal Court (other than U.S. Tax Court),

(2) Is delinquent on the payment of Federal income taxes,

(3) Is delinquent on a Federal debt, or

(4) Is debarred or suspended from receiving Federal assistance.

§ 4279.228 Project eligibility.

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

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

(b) The project must be for either:

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

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

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

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

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

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

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

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

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

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

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

§4279.229 Guaranteed loan funding.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Construction or retrofitting.

(3) Permit and license fees.

(4) Working capital.

(5) Land acquisition.

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

(7) Any other item identified by the Agency in a notice published in the FEDERAL REGISTER.

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

§ 4279.230 [Reserved]

§ 4279.231 Interest rates.

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

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

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

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

§ 4279.232 Terms of loan.

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

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

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

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

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

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

§4279.233 [Reserved]

§4279.234 Credit evaluation.

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

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

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

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

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

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

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

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

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

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

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

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

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

Bradstreet or Robert Morris Associates) to the extent industrial standards are available.

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

§§ 4279.235–4279.236 [Reserved]

§ 4279.237 Financial statements.

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

§§ 4279.238–4279.243 [Reserved]

§ 4279.244 Appraisals.

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

§§ 4279.245–4279.249 [Reserved]

§ 4279.250 Feasibility studies.

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

§§ 4279.251–4279.254 [Reserved]

§ 4279.255 Loan priorities.

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

§ 4279.256 Construction planning and performing development.

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

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

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

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

(d) *New draw certifications.* The following three certifications are required for each new draw:

(1) Certification by the project engineer to the lender that the work referred to in the draw has been successfully completed;

(2) Certification from the lender that all debts have been paid and all mechanics' liens have been waived; and

(3) Certification from the lender that the borrower is complying with the Davis-Bacon Act.

(e) *Surety.* Surety, as the term is commonly used in the industry, will be required in cases when the guarantee

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

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

§§ 4279.257–4279.258 [Reserved]

§ 4279.259 Borrower responsibilities.

(a) *Federal, State, and local regulations.* Borrowers must comply with all Federal, State, and local laws and rules that are in existence and that affect the project including, but not limited to:

(1) Land use zoning;

(2) Health, safety, and sanitation standards as well as design and installation standards; and

(3) Protection of the environment and consumer affairs.

(b) *Permits, agreements, and licenses.* Borrowers must obtain all permits, agreements, and licenses that are applicable to the project.

(c) *Insurance.* The borrower is responsible for maintaining all hazard, flood, liability, worker compensation, and personal life insurance, when required, on the project.

(d) *Access to borrower's records.* Except as provided by law, upon request by the Agency, the borrower will permit representatives of the Agency (or other Federal agencies as authorized by the Agency) to inspect and make copies of any of the records of the borrower pertaining to any Agency-guaranteed loan. Such inspection and copying may be made during regular office hours of the borrower or at any other time agreed upon between the borrower and the Agency.

(e) *Access to the project.* The borrower must allow the Agency access to the project and its performance information until the loan is repaid in full and permit periodic inspections of the project by a representative of the Agency.

§ 4279.260 Guarantee applications—general.

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

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

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

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

(d) *Application withdrawal.* During the period between the submission of an application and the execution of documents, the lender must notify the Agency, in writing, if the project is no longer viable or the borrower is no longer requesting financial assistance

for the project. When the lender so notifies the Agency, the selection will be rescinded or the application withdrawn.

§ 4279.261 Application for loan guarantee content.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) *Financial statements*. Financial statements as follows:

(1) For businesses that have been in existence for one or more years,

(i) The most recent audited financial statements of the borrower if the guaranteed loan is $3 million or more, unless alternative financial statements are authorized by the Agency; or

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

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

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

assumptions showing the basis for the projections.

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

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

(e) *Appraisals*. An appraisal conducted as specified under §4279.244.

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

TABLE 1—FEASIBILITY STUDY COMPONENTS

(A) Executive Summary:
- Introduction/Project Overview (Brief general overview of project location, size, etc.).
- Economic feasibility determination.
- Market feasibility determination.
- Technical feasibility determination.
- Financial feasibility determination.
- Management feasibility determination.
- Recommendations for implementation.

(B) Economic Feasibility:
- Information regarding project site;
- Availability of trained or trainable labor;
- Availability of infrastructure, including utilities, and rail, air and road service to the site.
- Feedstock:
  - Feedstock source management;
  - Estimates of feedstock volumes and costs;
  - Collection, Pre-Treatment, Transportation, and Storage; and
  - Feedstock risks.
- Documentation that woody biomass feedstock from National Forest system lands or public lands cannot be used for a higher-value product.
- Impacts on existing manufacturing plants or other facilities that use similar feedstock if the borrower's proposed biofuel production technology is adopted.
- Projected impact on resource conservation, public health, and the environment.
- Detailed analysis of project costs including:
  - Project management and professional services;
  - Resource assessment;
  - Project design and permitting;
  - Land agreements and site preparation;
  - Equipment requirements and system installation;
  - Startup and shakedown; and
  - Warranties, insurance, financing, and operation and maintenance costs.
- Overall economic impact of the project, including any additional markets created for agricultural and forestry products and agricultural waste material and the potential for rural economic development.
- Feasibility/plans of project to work with producer associations or cooperatives, including estimated amount of annual feedstock, biofuel, and byproduct purchased from or sold to producer associations and cooperatives.

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

TABLE 1—FEASIBILITY STUDY COMPONENTS—Continued

Specific market risks; and
Competitive threats and advantages.

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

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

(F) Management Feasibility:
- Borrower and/or management's previous experience concerning:
  - Biofuel production;
  - Acquisition of feedstock;
  - Marketing and sale of off-take; and
  - The receipt of Federal financial assistance, including amount of funding, date received, purpose, and outcome.
- Management plan for procurement of feedstock and labor, marketing of the off-take, and management succession.
- Risks related to:
  - Borrower as a company (e.g., development-stage);
  - Conflicts of interest; and
  - Management strengths and weaknesses.

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

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

(1) The borrower's experience;

(2) The borrower's succession planning, addressing both ownership and management;

(3) The names and a description of the relationship of the borrower's parent, affiliates, and subsidiaries;

(4) The borrower's business strategy;

(5) Possible vendors and models of major system components;

(6) The availability of the resources (e.g., labor, raw materials, supplies) necessary to provide the planned products and services;

(7) Site location and its relation to product distribution (e.g., rail lines or highways) and any land use or other permits necessary to operate the facility;

(8) The market for the product and its competition, including any and all competitive threats and advantages;

(9) Projected balance sheets, income and expense statements, and cash flow statements for a period of not less than 3 years of stabilized operation; and

(10) A description of the proposed use of funds.

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

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

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

(ii) Discuss the manufacturers of major components of advanced biofuels technology equipment being considered

in terms of the length of time in business and the number of units installed at the capacity and scale being considered;

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

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

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

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

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

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

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

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

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

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

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

(i) The application must include a concise but complete description of the project, including location of the project; resource characteristics, including the kind and amount of feedstocks; biorefinery specifications; kind, amount, and quality of the output; and monitoring equipment. Address performance on a monthly and annual basis. Describe the uses of or the market for the advanced biofuels produced by the biorefinery. Discuss the impact of reduced or interrupted feedstock availability on the biorefinery's operations.

(ii) The application must include:

(A) A description of the project site that addresses issues such as site access, foundations, and backup equipment when applicable;

(B) A completed Form RD 1940–20 and an environmental assessment prepared in accordance with Exhibit H of 7 CFR part 1940, subpart G; and

(C) Identification of any unique construction and installation issues.

(iii) Sites must be controlled by the eligible borrower for at least the financing term of the loan note guarantee.

(5) *Project development schedule*. The application must describe each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline including resource assessment, project and site design, permits and agreements, equipment procurement, and project construction from excavation through startup and shakedown.

(6) *Equipment procurement*. The application must demonstrate that equipment required by the biorefinery is available and can be procured and delivered within the proposed project development schedule. Biorefineries may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and onsite storage or inventory.

(7) *Equipment installation*. The application must provide a full description of the management of and plan for site development and systems installation, details regarding the scheduling of major installation equipment needed for project construction, and a description of the startup and shakedown specification and process and the conditions required for startup and shakedown for each equipment item individually and for the biorefinery as a whole.

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

(i) Information regarding available biorefinery and component warranties and availability of spare parts;

(ii) A description of the routine operations and maintenance requirements of the proposed biorefinery, including maintenance schedules for the mechanical, piping, and electrical systems and system monitoring and control requirements, as well as provision of information that supports expected useful life of the biorefinery and timing of major component replacement or rebuilds;

(iii) A discussion of the costs and labor associated with operating and maintaining the biorefinery and plans for in-sourcing or outsourcing. A description of the opportunities for technology transfer for long-term project operations and maintenance by a local entity or owner/operator; and

(iv) Provision and discussion of the risk management plan for handling large, unanticipated failures of major components.

(9) *Decommissioning*. A description of the decommissioning process, when the project must be uninstalled or removed. A description of any issues, requirements, and costs for removal and disposal of the biorefinery.

(i) *Scoring information*. The application must contain information in a format that is responsive to the scoring criteria specified in §4279.265(d).

(j) *Loan Agreement*. A proposed loan agreement or a sample loan agreement with an attached list of the proposed loan agreement provisions as specified in §4279.161(b)(11).

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

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

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

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

(o) *Other information*. Any other information determined by the Agency to

be necessary to evaluate the application.

§§ 4279.262–4279.264 [Reserved]

§ 4279.265 Guarantee application evaluation.

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

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

(1) If the borrower, lender, or the project is determined to be ineligible for any reason, the Agency will inform the lender, in writing, of the reasons. No further evaluation of the application will occur.

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

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

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

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

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

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

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

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

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

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

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

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

(i) If the area that will supply the feedstock to the proposed biorefinery

does not have any other similar advanced biofuel biorefineries, 5 points will be awarded.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

be awarded. Based on what the borrower has provided in either the application or the feasibility study, points to be awarded will be determined as follows:

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

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

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

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

(7) Whether the borrower can establish that, if adopted, the biofuels production technology proposed in the application will not have any economically significant negative impacts on existing manufacturing plants or other facilities that use similar feedstocks. A maximum of 10 points can be awarded. Points to be awarded will be determined as follows:

(i) If the borrower has not established, through an independent third party feasibility study, that the biofuels production technology proposed in the application, if adopted, will not have any economically significant negative impacts on existing manufacturing plants or other facilities that use similar feedstocks, 0 points will be awarded.

(ii) If the borrower has established, through an independent third party feasibility study, that the biofuels production technology proposed in the application, if adopted, will not have any economically significant negative impacts on existing manufacturing plants or other facilities that use similar feedstocks, 10 points will be awarded.

(iii) If the feedstock is wood pellets, no points will be awarded under this criterion.

(8) The potential for rural economic development. If the project is located in a rural area and the business creates jobs with an average wage that exceeds the County median household wages where the biorefinery will be located, 10 points will be awarded.

(9) The level of local ownership of the biorefinery proposed in the application. A maximum of 5 points can be awarded. Points to be awarded will be determined as follows:

(i) If local owners have an ownership interest in the biorefinery of more than 20 percent but less than or equal to 50 percent, 3 points will be awarded.

(ii) If local owners have an ownership interest in the biorefinery of more than 50 percent, 5 points will be awarded.

(10) Whether the project can be replicated. A maximum of 10 points can be awarded. Points to be awarded will be determined as follows:

(i) If the project can be commercially replicated regionally (e.g., Northeast, Southwest, etc.), 5 points will be awarded.

(ii) If the project can be commercially replicated nationally, 10 points will be awarded.

(11) If the project uses a particular technology, system, or process that is not currently operating in the advanced biofuel market as of October 1 of the fiscal year for which the funding is available, 5 points will be awarded.

(12) The Administrator can award up to a maximum of 10 bonus points to applications that promote partnerships and other activities that assist in the development of new and emerging technologies for the development of advanced biofuels so as to increase the energy independence of the United States; promote resource conservation, public health, and the environment; diversify markets for agricultural and forestry products and agriculture waste material; and create jobs and enhance the economic development of the rural economy. These partnerships and other activities will be identified in a FEDERAL REGISTER notice each fiscal year. However, the Administrator's bonus points may not raise an applicant's score to more than 100 points.

(e) *Ranking of applications*. The Agency will rank all scored applications to create a priority list of scored applications for the program. Unless otherwise specified in a notice published in the FEDERAL REGISTER, the Agency will rank applications by approximately January 31 for complete and eligible

applications received on or before November 1 and by approximately July 31 for complete and eligible applications received on or before May 1.

(1) All applications received on or before November 1 and May 1 will be ranked by the Agency and will be competed against the other applications received on or before such date. All applications that are ranked will be considered for selection for funding for that application cycle.

(2) When an application scored in first set of applications is carried forward into the second set of applications, it will be competed against all of the applications in the second set using its score from the first set of applications.

(f) *Selection of applications for funding.* Using the priority list created under paragraph (e) of this section, the Agency will select applications for funding based on the criteria specified in paragraphs (f)(1) through (f)(3) of this section. The Agency will notify, in writing, lenders whose applications have been selected for funding.

(1) *Ranking.* The Agency will consider the score an application has received compared to the scores of other applications in the priority list, with higher scoring applications receiving first consideration for funding. A minimum score of 55 points is required in order to be considered for a guarantee.

(2) *Availability of budgetary authority.* The Agency will consider the size of the request relative to the budgetary authority that remains available to the program during the fiscal year.

(i) If there is insufficient budgetary authority during a particular funding period to select a higher scoring application, the Agency may elect to select the next highest scoring application for further processing. Before this occurs, the Agency will provide the borrower of the higher scoring application the opportunity to reduce the amount of its request to the amount of budgetary authority available. If the borrower agrees to lower its request, it must certify that the purposes of the project can be met, and the Agency must determine the project is financially feasible at the lower amount.

(ii) If the amount of funding required is greater than 25 percent of the program's outstanding budgetary authority, the Agency may elect to select the next highest scoring application for further processing, provided the higher scoring borrower is notified of this action and given an opportunity to revise their application and resubmit it for an amount less than or equal to 25 percent of the program's outstanding budgetary authority.

(3) *Availability of other funding sources.* If other financial assistance is needed for the project, the Agency will consider the availability of other funding sources. If the lender cannot demonstrate that funds from these sources are available at the time of selecting applications for funding or potential funding, the Agency may instead select the next highest scoring application for further processing ahead of the higher scoring application.

(g) *Ranked applications not funded.* A ranked application that is not funded in the application cycle in which it was submitted will be carried forward one additional application cycle, which may be in the next fiscal year. The Agency will notify the lender in writing. If an application has been selected for funding, but has not been funded because additional information is needed, the Agency will notify the lender of what information is needed, including a timeframe for the lender to provide the information. If the lender does not provide the information within the specified timeframe, the Agency will remove the application from further consideration and will so notify the lender.

(h) *Wage rates.* As a condition of receiving a loan guaranteed under this subpart, each borrower shall ensure that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with guaranteed loan funds under this subpart shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with sections 3141 through 3144, 3146, and 3147 of title 40, U.S.C. Awards under this subpart are further subject to the relevant regulations contained in title 29 of the Code of Federal Regulations.

§§ 4279.266–4279.278 [Reserved]

§ 4279.279 Domestic lamb industry adjustment assistance program.

The provisions of § 4279.175 do not apply to this subpart.

§ 4279.280 Changes in borrowers.

All changes in borrowers must be in accordance with § 4279.180, but the eligibility requirements of this program apply.

§ 4279.281 Conditions precedent to issuance of loan note guarantee.

The loan note guarantee will not be issued until the lender certifies to the conditions identified in § 4279.181(a) through (o) of subpart B of this part and paragraphs (a) through (h) of this section. If the lender is unable to provide any of the certifications required under this section, the lender must provide an explanation satisfactory to the Agency as to why the lender is unable to provide the certification. The lender can request the guarantee prior to construction, but must still certify to all conditions in this section.

(a) For loans exceeding $150,000, the lender has certified its compliance with the Anti-Lobby Act (18 U.S.C. 1913). Also, if any funds have been, or will be, paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to guarantee a loan, the lender shall completely disclose such lobbying activities in accordance with 31 U.S.C. 1352.

(b) Where applicable, the lender must certify that the borrower has obtained:

(1) A legal opinion relative to the title to rights-of-way and easements. Lenders are responsible for ensuring that borrowers have obtained valid, continuous, and adequate rights-of-way and easements needed for the construction, operation and maintenance of a facility.

(2) A title opinion or title insurance showing ownership of the land and all mortgages or other lien defects, restrictions, or encumbrances, if any. It is the responsibility of the lender to ensure that the borrower has obtained and recorded such releases, consents, or subordinations to such property rights from holders of outstanding liens or other instruments as may be necessary for the construction, operation and maintenance of the facility and to provide the required security. For example, when a site is for major structures for utility-type facilities (such as a gas distribution system) and the lender and borrower are able to obtain only a right-of-way or easement on such site rather than a fee simple title, such a title opinion must be provided.

(c) The minimum financial criteria, including those financial criteria contained in the Conditional Commitment, have been maintained through the issuance of the loan note guarantee. Failure to maintain these financial criteria shall result in an ineligible application.

(d) Each borrower shall certify to the lender that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with guaranteed loan funds under this subpart shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with sections 3141 through 3144, 3146, and 3147 of title 40 U.S.C. Awards under this subpart are further subject to the relevant regulations contained in title 29 of the Code of Federal Regulations.

(e) The lender certifies that it has reviewed all contract documents and verified compliance with Sections 3141 through 3144, 3146, and 3147 of title 40 U.S.C., and title 29 of the Code of Federal Regulations. The lender will certify that the same process will be completed for all future contracts and any changes to existing contracts.

(f) The lender certifies that the proposed facility complies with all Federal, State, and local laws and regulatory rules that are in existence and that affect the project, the borrower, or lender activities.

(g) The lender will notify the Agency in writing whenever there has been a change in the classification of a loan within 15 calendar days of such change.

(h) The lender certifies that the borrower has provided the equity in the project identified in the Conditional Commitment.

§§ 4279.282–4279.289 [Reserved]

§ 4279.290 Requirements after project construction.

Once the project has been constructed, the lender must:

(a) Provide the Agency annual reports from the borrower commencing the first full calendar year following the year in which project construction was completed and continuing for the life of the guaranteed loan. The borrower's reports will include, but not be limited to, the information specified in the following paragraphs, as applicable.

(1) The actual amount of advanced biofuels, biobased products, and, if applicable, byproducts produced in order to assess whether project goals related to majority production are being met;

(2) If applicable, documentation that identified health and/or sanitation problems have been solved;

(3) A summary of the cost of operating and maintaining the facility;

(4) A description of any maintenance or operational problems associated with the facility;

(5) Certification that the project is and has been in compliance with all applicable State and Federal environmental laws and regulations;

(6) The number of jobs created;

(7) A description of the status of the project's feedstock including, but not limited to, the feedstock being used, outstanding feedstock contracts, feedstock changes and interruptions, and quality of the feedstock;

(8) The results of the annual inspections conducted under paragraph (b) of this section; and

(b) For the life of the guaranteed loan, conduct annual inspections.

§§ 4279.291–4279.300 [Reserved]

PART 4280—LOANS AND GRANTS

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

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Subpart A—Rural Economic Development Loan and Grant Programs

SOURCE: 72 FR 29843, May 30, 2007, unless otherwise noted.

§ 4280.1 Purpose.

The Rural Economic Development Loan (REDL) and Grant (REDG) Programs provide financing to eligible Rural Utilities Service (RUS) electric or telecommunications borrowers (Intermediaries) to promote rural economic development and job creation projects.

§ 4280.2 Policy.

(a) *REDL Program.* REDL Zero-Interest Loans are made to Intermediaries, to relend, at a zero-interest rate, to Ultimate Recipients. Ultimate Recipients are responsible for repayment to the Intermediary. The Intermediary must transmit Ultimate Recipient loan repayments to Rural Development.

(b) *REDG Program.* Grants are made to Intermediaries to establish Revolving Loan Funds. REDG Zero-Interest Loans are made by the Intermediary from the Revolving Loan Fund to Ultimate Recipients for the purpose of financing specific, approved Projects. Ultimate Recipients are responsible for repayment to the Intermediary. The Ultimate Recipient's loan repayments are to be retained in the Revolving Loan Fund, which is maintained by the Intermediary, to finance other rural economic development Projects. Only the initial loan made by the Intermediary from the Revolving Loan Fund has to be at zero interest.

§ 4280.3 Definitions.

The following definitions are applicable to this subpart:

Advanced Telecommunications. Using communications equipment for purposes, such as the simultaneous transmission of images and voice or the electronic transmission of data between multiple sites that do not consist primarily of providing local exchange voice or other routine communications.

Agricultural Production. The cultivation, production, growing, raising,

feeding, housing, breeding, hatching, or managing of crops, plants, animals, fish, or birds, either for fiber, food for human consumption, or livestock feed.

Business Incubator. A facility in which small businesses can share premises, support staff, computers, software or hardware, telecommunications terminal equipment, machinery, janitorial services, utilities, or other overhead expenses, and where such businesses can receive Technical Assistance, financial advice, business planning services or other support.

Community Facilities Project. An eligible community facility under the Community Facility Direct or Guaranteed programs.

Cushion of Credit. The amount contributed by the Intermediary pursuant to 7 U.S.C. 940c.

Direct Job. A job that is created or saved by an Ultimate Recipient employer as a result of funding received from these Programs.

Established Operation. An entity that has engaged in the nature of the Project for more than one year.

Full-Time Job. A job for which a worker is scheduled to work 35 hours per week, or more, on a regular basis.

Grant. For the REDG Program only; a transfer of monies other than a loan, from Rural Development to an Intermediary for specific use in funding a Revolving Loan Fund from which loans are made to Ultimate Recipients. Grant funds must be repaid by the Intermediary to Rural Development in the event the Fund is unused for more than one year, misused, no longer needed for its intended purposes, or the Grant is terminated.

Independent Provider. An entity or individual, other than the Intermediary or the Ultimate Recipient that is not owned by a subsidiary or an affiliate of the Intermediary or Ultimate Recipient or would otherwise have an interest in the Intermediary or Ultimate Recipient that would be a conflict of interest or have the appearance of a conflict of interest.

Indirect Job. A job that is created or saved as a result of a funded Project, but is not with the Ultimate Recipient.

Infrastructure. Facilities required to support private sector economic activity such as: Highways, streets, roads, and bridges; public transit; water supply; wastewater treatment; water resources; solid waste; and hazardous waste services.

Intermediary. An entity that is identified by RUS as an eligible borrower under the Rural Electrification Act and obtains a REDG Grant or a REDL Loan.

Part-Time Job. A job for which a worker is scheduled to work less than 35 hours per week, on a regular basis.

Programs. The Rural Economic Development Loan (REDL) and the Rural Economic Development Grant (REDG) Programs.

Project. The facility, equipment, or activity of the Ultimate Recipient that is funded under one of the Programs.

REDG. The Rural Economic Development Grant Program.

REDL. The Rural Economic Development Loan Program.

Revolving Loan Fund (or Fund). A revolving loan fund that is created with Grant funds and the Intermediary's supplemental contribution under the REDG Program that makes loans and uses the loan repayments and interest earnings to make subsequent loans until the Fund is terminated.

Revolving Loan Fund Plan. A plan developed by the Intermediary and approved by Rural Development that governs the use of the Revolving Loan Fund. The plan must at least include a detailed explanation of the Intermediary's Fund administration policies and procedures and planned Fund use after the funds in the Revolving Loan Fund have revolved. Fund administration policies and procedures must at least include information regarding the review and approval of loans from the Fund.

Rural Area. This information will be taken from the most recent census data. Any area other than:

(1) A city or town that has a population of greater than 50,000 inhabitants; and

(2) The urbanized area contiguous and adjacent to such a city or town.

Rural Business-Cooperative Service (RBS). The Rural Business-Cooperative Service, an agency within the Rural Development mission area of the USDA.

Rural Development. For purposes of this regulation, The Rural Business-Cooperative Service (RBS), an Agency of the United States Department of Agriculture, or a successor Agency, will be referred to as Rural Development.

Rural Utilities Service (RUS). The Rural Utilities Service, an Agency within the Rural Development mission area of the USDA.

Seasonal Job. A job whether Part-Time or Full-Time that begins and ends in accordance with a specified time period of less than a year and generally within a range less than four months.

Start-Up Venture(s). An entity that has engaged in the nature of the Project for less than one year. An entity that has operated in excess of one year, but which is about to enter into a new line of business, would be considered a Start-Up Venture.

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

Technical Assistance. Managerial, financial and operational analysis and consultation by Independent Providers to assist Project owners in identifying and evaluating problems or potential problems and to provide training that enables Project owners to successfully implement, manage, operate and maintain viable Projects.

Ultimate Recipient. An entity or individual that receives a loan from an Intermediary. The Ultimate Recipient may be a for profit or not-for-profit entity such as, but not limited to, a sole proprietorship, a corporation, a cooperative, a partnership, or a Limited Liability Company. The Ultimate Recipient may also be a public body, such as, but not limited to, a political subdivision of a State or locality, or a Federally-recognized Indian tribe.

Uniform Act. The Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (42 U.S.C. 4601–4655).

USDA. The United States Department of Agriculture.

Zero-Interest Loan. A loan made by the Intermediary to the Ultimate Recipient with no interest and which will be repaid to the Intermediary by the Ultimate Recipient.

§§ 4280.4–4280.12 [Reserved]

§ 4280.13 Applicant eligibility.

Applicants that are not delinquent on any Federal debt or otherwise disqualified from participation in these Programs are eligible to apply. An applicant must be eligible under 7 U.S.C. 940c.

§ 4280.14 [Reserved]

§ 4280.15 Ultimate Recipient Projects eligible for Rural Economic Development Loan funding.

An Intermediary may receive REDL funds only when it has a pre-approved Ultimate Recipient and Project that have an immediate need for the Zero-Interest Loan. REDL funds may only be used by the Intermediary to make a Zero-Interest Loan to the Ultimate Recipient to finance financially viable economic development or job creation Projects in a Rural Area. Funds may only be used to provide the following assistance:

(a) Start-Up Venture costs, including, but not limited to financing fixed assets such as real estate, buildings (new or existing), equipment, or working capital;

(b) Business expansion;

(c) Business Incubators;

(d) Technical Assistance;

(e) Project feasibility studies;

(f) Advanced Telecommunications services and computer networks for medical, educational, and job training services;

(g) Other Projects eligible under § 4280.21; or

(h) Community Facilities Projects.

§ 4280.16 REDL and REDG Loan terms.

REDL and REDG loans made by the Intermediary are governed by the following terms:

(a) The maximum term of a loan is 10 years, including any principal deferment period. The Intermediary may choose a shorter term if desired.

(b) Deferments on Zero-Interest Loans will automatically be granted by

Rural Development upon request of the Intermediary as follows:

(1) A deferral for up to 1 year for Projects involving an Established Operation; or

(2) A deferral for up to 2 years for Projects involving a Start-Up venture or a Community Facilities Project whether or not such Project also receives funding under USDA Community Facilities funding programs.

(c) The Intermediary must provide the Ultimate Recipient with the same loan terms as the Intermediary receives from Rural Development.

(d) The Intermediary is solely responsible for the financial approval of Fund loans and all other Fund decisions and actions.

§ 4280.17 Additional REDL terms.

(a) The Intermediary is responsible for fully repaying the Zero-Interest Loan to RBS even if the Ultimate Recipient does not repay the Intermediary.

(b) The Intermediary is responsible for remitting any partial or full payment to RBS at the time the Ultimate Recipient pays the Intermediary.

(c) Unless deferred pursuant to § 4280.16(b) of this subpart, loan payments to Rural Development under the REDL Program are due monthly.

(d) If the Intermediary does not have an outstanding loan with RUS, the Intermediary must immediately provide, as security for any REDL loan it receives, a Rural Development-approved irrevocable letter of credit that remains in effect until the loan is repaid.

§ 4280.18 [Reserved]

§ 4280.19 REDG Grants.

Intermediaries receiving Grants must partially finance a Revolving Loan Fund that the Intermediary will operate and administer, by providing supplemental funds of at least 20 percent of the Grant. Grants are subject to 7 CFR parts 3015, 3019, and 3052, as applicable.

§ 4280.20 [Reserved]

§ 4280.21 Eligible REDG Ultimate Recipients and Projects.

The Intermediary may only make loans from the Revolving Loan Fund to entities located in a Rural area of a State. Eligible entities are as follows:

(a) Non-profit entities, public bodies, or Federally-recognized Indian tribes Ultimate Recipients for:

(1) Community development or Community Facility Projects that:

(i) will create or save employment; and

(ii) are open to and serve all Rural residents, and are owned by the Ultimate Recipient;

(2) Business Incubators;

(3) Facilities and equipment to provide education and training to residents of Rural Areas that will facilitate economic development;

(4) Facilities and equipment to provide medical care to residents of Rural Areas. Equipment and facilities may be funded to enable eligible entities to provide medical training and related professional health care skills to rural health care providers;

(5) Projects that utilize Advanced Telecommunications or computer networks to facilitate medical or educational services or job training; or

(6) Project feasibility studies and Technical Assistance. A qualified Independent Provider must perform feasibility studies or Technical Assistance.

(b) For-profit Ultimate Recipients for Projects under paragraphs (a)(3), (4), (5), or (6) of this section.

§ 4280.22 [Reserved]

§ 4280.23 Requirements for lending from Revolving Loan Fund.

(a) *Supplemental contribution.* The Intermediary must establish a Revolving Loan Fund and contribute an amount equal to at least 20 percent of the Grant. The supplemental contribution must come from Intermediary's funds which may not be from other Federal Grants, unless permitted by law.

(b) *Use of supplemental contribution.* The Intermediary's contribution will only be used to make REDG loans and not other investment purposes. The

Intermediary's contribution must remain a permanent part of the Revolving Loan Fund until the Fund is terminated.

(c) *REDG Zero-Interest Loan Requirements*. The Fund is made up of Rural Development and Intermediary contributions and must be loaned in accordance with one of the following 2 options:

(1) The contribution may be used to fund the same Project that Rural Development is funding. The interest rate on that portion of the financing using Rural Development funds will be at zero percent. The interest rate on that portion of the financing using the Intermediary's contribution may be greater than zero percent but must be less than, or equal to, the prevailing prime rate. Using this option, loan security and recovery of loan losses must provide for the pro rata recovery and distribution between the Intermediary and Rural Development based on the respective amounts of each contribution to the total loan amount for the Project.

(2) The Intermediary's contribution may be used to fund Projects separate from the Project financed with Rural Development funds, provided that the Project is eligible in accordance with §4280.21.

(3) Whether the Intermediary chooses the option under paragraph (c)(1) or paragraph (c)(2) of this section, its contribution must be used to fund an eligible Project within 3 years from the date of the Grant agreement. If the Intermediary fails to use its contribution within this 3-year period, Rural Development will terminate the Grant.

(d) *Intermediary's supplemental funds*. Once revolved, monies from the Fund may be loaned at an interest rate called for in the Revolving Loan Fund Plan, not to exceed the prevailing prime rate.

(e) *Eligible purposes only*. Until the total amount in the Fund has been loaned, all loans must be made for eligible purposes as stated in §4280.21. After the Fund has been loaned, in accordance with §4280.21 of this subpart, the Intermediary shall make loans to finance rural economic development purposes in accordance with the Revolving Loan Fund Plan. All loan repayments, including interest earned, must be deposited into the Fund.

(f) *Termination for cause*. Rural Development will terminate the Fund and require repayment of the Grant funds in accordance with 7 CFR parts 3015 and 3019 if Rural Development determines that the Fund is not being operated according to the approved Revolving Loan Fund Plan, this subpart, or for other good cause determined by Rural Development, such as questionable prepayment of initial loans.

(g) All REDG Loans must be made to Rural Ultimate Recipients.

§4280.24 Revolved funds.

Rural Development and the Intermediary's supplemental funds will be considered revolved after they have been loaned to Ultimate Recipients and subsequently repaid. Loans made from revolved funds will not require prior approval of Rural Development for creditworthiness or environmental clearance purposes. All other Federal compliance requirements, including those in this subpart, remain in effect.

§4280.25 Revolving Loan Fund Plan.

Each REDG Intermediary must adopt a Rural Development-approved plan that specifies that:

(a) The initial loan made from the Fund will be at zero percent interest and have a maximum term of 10 years;

(b) Loans made from loan repayments may carry an interest rate less than, or equal to, the prevailing prime rate. The Intermediary determines repayment terms and security arrangements on these loans.

(c) Loans made from repayments of REDG loans must be for eligible Program purposes;

(d) The Intermediary is solely responsible for the financial approval of Fund loans and all other Fund decisions and actions; and

(e) No changes will be made to a Rural Development-approved Revolving Loan Fund Plan without the prior written approval of Rural Development.

§4280.26 Administration and operation of the Revolving Loan Fund.

(a) The Intermediary will operate and administer the Revolving Loan Fund.

The Intermediary may contract with a third party for administrative services regarding the Fund. However, the Intermediary must permanently retain all Project review, approval, and monitoring authority and responsibility. This authority and responsibility cannot be delegated to any other person or entity.

(b) Up to 10 percent of Rural Development Grant funds may be applied toward operating expenses over the life of the Fund. Operating expenses include the costs of administering the Fund and Technical Assistance provided to Project owners by Independent Providers.

(c) In cases where the Intermediary uses its supplemental contribution to the Revolving Loan Fund for a Project other than the Project that resulted in the Intermediary being awarded the Grant, the loan terms must not exceed 10 years and the interest rate must be less than, or equal to, the prevailing prime rate.

§ 4280.27 Ineligible purposes.

Zero-Interest Loans may not be used:

(a) For activities that would adversely affect the environment, or activities that limit the choice of reasonable alternatives prior to satisfying Rural Development environmental requirements;

(b) To pay off or refinance any existing indebtedness or costs of the Project that were incurred prior to Rural Development receipt of the Intermediary's completed application;

(c) For any electric or telecommunications purpose or for the Intermediary's electric or telecommunications operations, for affiliated operations of the Intermediary, or for the benefit of other Intermediaries or their affiliated operations, except those purposes contained in § 4280.15(f);

(d) To pay the salaries of any employee or owner of the Intermediary, its subsidiaries, or affiliates, except for salaries incurred in administering a Revolving Loan Fund established under the REDG Program;

(e) For community antenna or cable television systems or facilities;

(f) For residential purposes such as residential dwellings and land sites; facilities to provide entertainment television; to transfer property between owners without making improvements that will promote or sustain economic development in Rural Areas; or for personal, non-business related vehicles;

(g) Where there is directly or indirectly a conflict of interest or the appearance of a conflict of interest in the Project; for Intermediaries this would include a situation in which the Intermediary, its officers, managers, Board of Directors, employees, their spouses, children, or close relatives, have a financial or ownership interest in the Project being funded, including its construction or development;

(h) For any purpose when receipt of loan funds is conditioned upon the requirement that the Ultimate Recipient acquire electric or telecommunications service from the Intermediary or its affiliates;

(i) For any gambling activity;

(j) For a Project that would result in the transfer of existing employment or business activity more than 25 miles from its existing location;

(k) For proposed Projects located in areas covered by the Coastal Barrier Resources Act (16 U.S.C. 3501–3510);

(l) For any illegal activity or any activity involving prostitution;

(m) For Agricultural Production, except where the Project is a farmer-owned cooperative or similar organization where the benefits of the Project are passed on to the farmer-owners, and the Agricultural Production is part of an integrated business that processes the agricultural products, and the Agricultural Production portion of the loan will not exceed 50% of the loan amount;

(n) For any pass-through Grant funding activity (a Grant by the Intermediary to the Ultimate Recipient);

(o) Provision of only local exchange voice telephone service; or

(p) for any other purpose announced in a notice by Rural Development. This will not affect Grants that have already been awarded.

§ 4280.28 [Reserved]

§ 4280.29 Supplemental financing required for the Ultimate Recipient Project.

(a) For REDL loans, either the Ultimate Recipient or the Intermediary

must provide supplemental funds for the Project equal to at least 20 percent of the loan to the Intermediary. For REDG grants, the Intermediary must provide supplemental funds, to capitalize the Revolving Loan Fund, equal to at least 20 percent of the Grant to the Intermediary.

(b) Funds provided by the Ultimate Recipient must be:

(1) Cash or its equivalent;

(2) Provided after Rural Development receives the completed application; and

(3) Disbursed for an eligible Project within a three year period that begins on the day the Intermediary signs the Grant agreement.

(c) Satisfactory evidence of the Ultimate Recipient's funds must be provided to Rural Development before it will advance any funds to the Intermediary.

§4280.30 Restrictions on the use of REDL or REDG funds.

(a) *Conflict of interest*. The Intermediary must not own or manage any Ultimate Recipient Project, unless the Project is acquired as a result of servicing a loan made from the Revolving Loan Fund. Conflicts of interest and all appearances of a conflict of interest are not permitted.

(b) *Fees*. The Intermediary may charge reasonable loan servicing fees, which are limited to one percent per year of the principal amount outstanding on the loan; reasonable professional service fees that are customary for the service being provided and in accordance with any standard fee schedules that have been established for the service; and reasonable expenses the Intermediary has incurred from Independent Providers.

(c) *Interest earnings*. Any interest earned by the Intermediary on advances of Rural Development REDG or REDL funds prior to the disbursement for the Project, must be returned to Rural Development.

§§4280.31–4280.35 [Reserved]

§4280.36 Other laws that contain compliance requirements for these Programs.

(a) *Equal employment opportunity*. For all construction contracts and Grants in excess of $10,000, the contractor must comply with Executive Order 11246, as amended by Executive Order 11375, and as supplemented by applicable Department of Labor regulations (41 CFR part 60). The applicant is responsible for ensuring that the contractor complies with these requirements.

(b) *Equal opportunity and nondiscrimination*. Rural Development will ensure that equal opportunity and nondiscriminatory requirements are met in accordance with the Equal Credit Opportunity Act and 7 CFR part 15d, conducted by USDA. Rural Development will not discriminate against applicants on the bases of race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to contract); to the fact that all or part of the applicant's income derives from public assistance program; or to the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

(c) *Civil rights compliance*. Recipients of Grants must comply with the Americans with Disabilities Act of 1990, Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973. This includes collection and maintenance of data on the race, sex, and national origin of the recipient's membership/ownership and employees. These data must be available to conduct compliance reviews in accordance with 7 CFR part 1901 subpart E, §1901.204. Initial compliance reviews will be conducted with the Intermediary when Form RD 400–4, ''Assurance Agreement,'' is signed. For each loan or Grant an Intermediary receives, a new Form RD 400–4 must be completed. Each Ultimate Recipient must go through the same pre-award compliance review process and must also sign Form RD 400–4. For loans and Grants, a pre-award review is required before loan or Grant approval or any disbursement of funds. For Intermediaries, a post-award compliance review is required 90 days after closing the loan or Grant. This review is not required for Ultimate Recipients. Subsequent compliance reviews will be conducted 3 years from the date the post-award compliance review is completed for Intermediaries and 3 years

from the date the pre-award compliance review is completed for Ultimate Recipients. Where Grant funds are used for a Revolving Loan Fund, compliance reviews are required for the Intermediaries for as long as the Fund is in operation. For Ultimate Recipients, compliance reviews are conducted until the loan is repaid to the Fund.

(d) *Architectural barriers.* All facilities financed with Zero-Interest Loans that are open to the public or in which persons may be employed or reside must be designed, constructed, or altered to be readily accessible to and usable by disabled persons. Standards for these facilities must comply with the Architectural Barriers Act of 1968 (42 U.S.C. 4151–4157) and the ''Uniform Federal Accessibility Standards'', (41 CFR part 101–19.6, Appendix A).

(e) *Uniform relocation assistance.* Relocations in connection with these Programs are subject to 49 CFR part 24 as referenced by 7 CFR part 21 except that the provisions in title III of the Uniform Act do not apply to these Programs.

(f) *Drug-free workplace.* Grants made under these Programs are subject to the requirements contained in 7 CFR part 3021 which implements the Drug-Free Workplace Act of 1988 (41 U.S.C. 701–706). An Intermediary requesting a REDG Grant will be required to certify that it will establish and make a good faith effort to maintain a drug-free workplace program.

(g) *Debarment and suspension.* The requirements of 7 CFR part 3017 are applicable to these Programs.

(h) *Intergovernmental review of Federal programs.* These Programs are subject to the requirements of Executive Order 12372 (3 CFR 1982 Comp., p. 197) and 7 CFR part 3015, subpart V which implements Executive Order 12372. Proposed Projects are subject to the State and local government review process contained in 7 CFR part 3015.

(i) *Restrictions on lobbying.* The restrictions and requirements imposed by 31 U.S.C. 1352, and 7 CFR part 3018, are applicable to these Programs.

(j) *Earthquake hazards.* These Programs are subject to the seismic requirements of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701–7706).

(k) *Environmental requirements.* The requirements of 7 CFR part 1940, subpart G, are applicable to these Programs and to the loans made from the Revolving Loan Fund using Rural Development funds. Financial assistance from the Revolving Loan Fund, when funds are derived from repayments by third parties, is not considered Federal assistance for purposes of meeting the compliance requirements of 7 CFR part 1940, subpart G.

(l) *Affirmative fair housing.* If applicable, the Intermediary will be required to comply with the Affirmative Fair Housing Act (42 U.S.C. 3601–3631).

(m) *Flood hazard insurance.* These Programs are subject to the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended by 42 U.S.C. 4001–4129.

(n) *Audits.* These Programs are subject to 7 CFR part 3052.

§ 4280.37 Application forms and filing dates.

(a) The Intermediary may obtain forms that supplement the written narrative sections of its application from the Rural Development State Office for the State where the Intermediary is located.

(b) An original copy only of the application is to be filed with the Rural Development State Office. No other copies are required.

§ 4280.38 Maximum amount of loans or Grants.

During any given fiscal year, Rural Development will publish an announcement of available loan and Grant funds and will indicate the maximum loan and Grant amounts for which an Intermediary or prospective Intermediary may apply. This announcement will also include contact information and application deadlines. All pending applications on file at RBS, including both loan and Grant applications, from the same Intermediary or prospective Intermediary for the same Project will be considered to be one application in determining that the maximum size of the application is in accordance with this section.

§ 4280.39 Contents of an application.

An application for a loan or a Grant must contain the following:

(a) Required forms and certifications:

(1) Standard Form 424, ''Application for Federal Assistance,'' signed by an authorized representative of the Intermediary.

(2) A Resolution of the Board of Directors signed by the directors and certified by the Intermediary's board secretary. The board resolution must indicate whether the Intermediary is requesting a loan or Grant, agree to the provisions of this subpart and the loan or Grant agreement including the Intermediary's 20 percent Fund contribution, and state that the Intermediary has the legal authority to enter into a loan or Grant agreement under these Programs;

(3) Form AD 1047, ''Certification Regarding Debarment, Suspension, and other Responsibility Matters—Primary Covered Transactions,'' and Form AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Transactions.''

(4) Assurance statement for the Uniform Act signed by the Ultimate Recipient. This statement provides Rural Development with the required assurance statement that any relocations of persons or acquisitions of real property, as part of completing the Ultimate Recipient Project, will be handled in accordance with this statute.

(5) RD Instruction 1940–Q, Exhibit A–1, applies if the loan is greater than $150,000 or the Grant is greater than $100,000;

(6) SF LLL, ''Disclosure of Lobbying Activities,'' (if the Intermediary or the Ultimate Recipient engages in lobbying activities);

(7) Form AD 1049, ''Certification Regarding Drug-Free Workplace Requirements,'' for Grants only;

(8) Seismic certification if construction of a building is proposed. The Project owner certifies that any building constructed will comply with standards that reduce the damage caused by earthquakes;

(9) Form RD 1940–20, ''Request for Environmental Information''; and

(10) RUS Form 7, ''Financial and Statistical Report'' and RUS Form 7a ''Investments, Loan Guarantees, and Loans,'' or similar information.

(b) A written narrative section must be provided. This section consists of the following:

(1) A Project description, including details of the work to be performed with Rural Development funds, and a business plan, including a discussion of management and prior experience of the Ultimate Recipient.

(2) A discussion of how the Project meets each selection factor in § 4280.42(b).

(3) A Revolving Loan Fund Plan is required if the Intermediary is applying for a Grant to establish a Revolving Loan Fund.

§ 4280.40 [Reserved]

§ 4280.41 Environmental review of the application.

(a) Rural Development will conduct a review for the potential of any environmental impacts resulting from the proposed Project identified in the application and inform the Intermediary of any additional information Rural Development needs and any subsequent environmental requirements necessary for Rural Development to make a finding.

(b) Rural Development will conduct all necessary environmental reviews as prescribed in 7 CFR part 1940, subpart G. These reviews must be completed before the application can be considered for approval.

§ 4280.42 Application evaluation and selection.

(a) Rural Development will evaluate the application and score it based on the selection factors in this section. All applications will be ranked on a nationwide basis, based on the total points scored.

(b) The application will be evaluated and scored using the information provided in accordance with § 4280.39(b)(2) of this subpart.

(1) *Nature of the Project.* Rural Development will award up to 60 points based on whether the Project:

(i) Is a for-profit business, Business Incubator, industrial building or park, or an infrastructure connection project (such as streets or utilities)—20 points;

(ii) Provides Technical Assistance to rural businesses or rural residents, or educates or provides medical care to rural residents—20 points;

(iii) Will enhance rural economic development by providing Advanced Telecommunications services and computer networks for medical, educational, and job training services. This review will be based on the application's telecommunications design—20 points.

(2) *Number of direct full-time equivalent jobs created or saved within a 3-year period.* To calculate full-time equivalent Direct-Jobs, count two part-time jobs as one full-time job or three part-time or seasonal jobs as one full-time job. If the total numbers of part-time and seasonal jobs add up to a fraction, round up to the next whole number after combining same. Indirect-Jobs or non-Rural jobs cannot be used for this calculation.

If the number of Rural full-time equivalent direct-jobs jobs created or saved per $100,000 of total, Project cost is:	Then Rural Development will award:
(i) Greater than five	25 points.
(ii) From one to five	15 points.

(3) *Supplemental funds for the Project.* Points will be based on a calculation of the amount of supplemental funds to be provided to the Project. All supplemental funds used in the following calculation must be disbursed to the Project between the date of Rural Development receipt of the application and 1 year after the first advance of funds by Rural Development:

If supplemental funds as a percentage of the Rural Development loan or grant to be provided to the Project are:	Then Rural Development will award:
(i) Greater than 200%	20 points.
(ii) From 100% to 200%	10 points.
(iii) From 50% to less than 100%	5 points.

(4) *Unemployment rate for the county(ies) where the Project is physically located.* Rural Development will compare the current unemployment rate(s) in the county(ies) to the State and national unemployment rates, and, if applicable, award points under the following categories, whichever is greater:

If the unemployment rate(s) in the county(ies) where the Project will be located:	Then Rural Development will award:
(i) Exceeds the national unemployment rate by 30% or more	15 points.
(ii) Is greater than the national unemployment rate, but exceeds it by less than 30%	5 points.
(iii) Exceeds the State unemployment rate by 30% or more	10 points.
(iv) Is greater than the State unemployment rate but exceeds it by less than 30%	5 points.

(5) *Per capita personal income for the county(ies) where the Project is physically located.* Rural Development will compare the per capita personal income in the county(ies) where the Project will be located to the national and State per capita personal income levels, and, if applicable, award points under the following categories, whichever is greater:

If the per capita personal income level in the county(ies) is:	Then Rural Development will award:
(i) Less than or equal to 90% of the national level	15 points.
(ii) Between 90 and 100% of the national level	5 points.
(iii) Less than or equal to 90% of the State level	10 points.

If the per capita personal income level in the county(ies) is:	Then Rural Development will award:
(iv) Between 90 and 100% of the State level	5 points.

(6) *Rural Area location*. (i) If the Project is physically located in an incorporated city or town or equivalent having a population of 1,249 or less, or if it is physically located in an unincorporated area, Rural Development will award 20 points.

(ii) If the Project is physically located in an incorporated area having a population of 1,250 to 2500, Rural Development will award 10 points.

(7) *Decline in population for the county where the Project is physically located*. If there has been a decline in population in the county where the Project will be located over the time period covered by the two most recent decennial censuses of the United States to the present, Rural Development will award 10 points.

(8) *Cushion of Credit Payments*. Rural Development will determine the level of Cushion of Credit Payments on deposit by the Intermediary, as follows:

If the Intermediary's Cushion of Credit account level is:	Then Rural Development will award:
(i) In excess of $300,000, or a dollar amount in excess of 3 percent of the Intermediary's total assets, whichever is less.	15 points.
(ii) Within the range of $100,000 to $299,999.99, or a dollar amount that is within the range of one percent to 2.99 percent of Intermediary's total assets, whichever is less.	10 points.
(iii) Within the range of $10,000 to $99,999.99, or a dollar amount that is within the range of 0.5 percent to .99 percent of Intermediary's total assets, whichever is less.	5 points.

(9) *Initial loan and Grant*. If the loan or Grant application will result in the first award to an Intermediary under these Programs, Rural Development will award 10 points.

(10) *County participation*. If the Project will be the first REDLG Project financed in a county Rural Development will award 10 points.

(11) The business plan for the Applicant's Ultimate Recipient will be evaluated by Rural Development and must include:

(i) A description of the business or Project plans, its management, and, if applicable, its products and operating plans. (The business plan evaluated by Rural Development for Advanced Telecommunications will be its telecommunications and engineering design)—up to 15 points; and

(ii) An appropriate financial plan, including actual balance sheets and income statements covering the most recent 3-year period (for applicants who have been in business this long), and projected balance sheets, income statements, and cash flow statements for the ensuing 3-year period, supported by assumptions showing the basis for the projections—up to 20 points.

§ 4280.43 Discretionary points.

The RBS Administrator has the discretion to designate up to 25 points (no more than 5 points for each of the following elements) based on whether the Project:

(a) Is located in a Rural Empowerment Zone, Rural Economic Area Partnership Zone, Rural Enterprise Community, or Champion Community;

(b) Is located in a county that has experienced the loss, removal, or closing of a major source or sources of employment in the last 3 years which causes an increase of 2 percentage points or more in the county's most recent unemployment rate compared with the same period immediately before the dislocation;

(c) Is located in a county that has experienced chronic or long-term economic deterioration;

(d) Is located in a county that was designated a disaster area by the President of the United States that significantly affected rural economic development and job creation. The county must have been designated within 3 years prior to filing of the completed application with Rural Development; or

(e) Is consistent with the Rural Development State Office's approved strategic plan and mission area objectives and is identified as a priority area for assistance in the States' plan.

§ 4280.44 Limitation on number of loans or Grants to an Intermediary.

Depending on the amount of funds available, Rural Development may publish an announcement limiting an Intermediary to one selected Grant application and two selected loan applications in a fiscal year.

§§ 4280.45–4280.46 [Reserved]

§ 4280.47 Non-selection of applications.

Provided the application requirements have not changed, an application not selected will be reconsidered in 3 subsequent funding competitions for a total of four funding competitions. If an application is withdrawn, it can be resubmitted and will be evaluated as a new application.

§ 4280.48 Post selection period.

Rural Development will notify the Intermediary in writing if the application is selected. The documents to be executed by the Intermediary will include:

(a) For a loan:

(1) A Letter of Conditions with Project-specific terms and conditions;

(2) A loan agreement with general terms and conditions;

(3) A note covering the repayment terms of the loan; and

(4) A legal opinion concerning the authority of the Intermediary to engage in the Project.

(b) For a Grant:

(1) A Letter of Conditions with Project-specific terms and conditions;

(2) A Grant agreement with general terms and conditions; and

(3) A legal opinion concerning the authority of the Intermediary to participate in the Revolving Loan Fund and to engage in the Project.

§ 4280.49 [Reserved]

§ 4280.50 Disbursement of Zero-Interest Loan funds.

(a) For a REDL loan, Rural Development will disburse Zero-Interest Loan funds to the Intermediary in accordance with the terms of the executed loan agreement. All loan funds will be disbursed either as an advance to the Intermediary, in multiple advances, or as a reimbursement for eligible project costs, once the Intermediary has complied with Rural Development requirements.

(b) The Intermediary must provide to the Ultimate Recipient all loan funds that the Intermediary receives from Rural Development within one year of receiving them. If the Intermediary does not re-lend Rural Development funds within one year, the loan funds, and all interest earned on the loan funds, must be returned to the Agency.

(c) For a REDG loan, Rural Development will disburse Grant funds to the Intermediary in accordance with 7 CFR parts 3015 and 3019, as applicable. Specifically, Rural Development will disburse the Grant funds in advance if the following requirements are met:

(1) The Intermediary has established written procedures that will minimize the time elapsing between the transfer of funds from Rural Development and their disbursement to the Ultimate Recipient;

(2) The management system of the Intermediary meets the requirements of 7 CFR parts 3015 and 3019, as applicable;

(3) All necessary supplemental funds for the Project have been obligated or committed to the Revolving Loan Fund; and

(4) The requests for cash advances made by the Intermediary are limited to the minimum amounts needed and timed to be in accordance with the actual immediate cash needs of the Ultimate Recipient for carrying out the Project.

§§4280.51–4280.52 [Reserved]

§4280.53 Loan payments.

The Intermediary must make all REDL payments to Rural Development by electronic funds transfer or other means as specified in the loan documents.

§4280.54 Construction procurement requirements.

Construction, including bidding and awarding of contracts, must be conducted in a manner that provides maximum open and free competition.

§4280.55 Monitoring responsibilities.

(a) The Intermediary must monitor the Project to ensure that:

(1) Funds are used only for the approved purposes as specified in the legal documents;

(2) Disbursements and expenditures of funds are properly supported with certifications, invoices, contracts, bills of sale, or other forms of evidence, which are maintained on the premises of the Intermediary;

(3) Project time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved; and

(4) The Project is in compliance with all applicable regulations.

(b) Rural Development may inspect and copy records and documents that pertain to the Project. The Intermediary must retain these records for the term of the Project loan plus 2 years. In addition, Rural Development may also perform Project site visits and reviews of the use of loan or Grant proceeds.

(c) Rural Development will review and monitor Grants in accordance with 7 CFR parts 3015, 3017, 3018, 3019, 3021, and 3052.

§4280.56 Submission of reports and audits.

(a) In addition to any reports required by 7 CFR parts 3015 and 3019, the Intermediary must submit the following monitoring reports to Rural Development:

(1) *Loan*. The Intermediary must submit Form RD 4280–1 ''Survey of Recipients of Rural Economic Development Loan and Grant Program'' to Rural Development on an annual basis until it no longer owes money to USDA under the REDLG Program.

(2) *Grant (Revolving Loan Fund)*. The Intermediary must submit the Form RD 4280–1 to Rural Development on an annual basis until all projects financed with Rural Development Grant proceeds have been repaid or are otherwise retired, whichever occurs last. Thereafter, on a triennial basis until the fund is terminated, the Intermediary will submit to Rural Development the Form RD 4280–1, reporting on the activity of all loans made from the Revolving Loan Fund.

(b) If the Intermediary does not have an existing loan with RUS, the Intermediary will submit a copy of its annual audit to Rural Development within 90 days of its completion. All REDL audits must be conducted in accordance with Generally Accepted Government Auditing Standards or Generally Accepted Accounting Principles and REDG audits in accordance with 7 CFR part 3052.

(c) Rural Development may require Ultimate Recipients that receive loans financed with Grant funds provided under the REDG Program to submit annual audits to comply with Federal audit regulations. In accordance with 7 CFR part 3052, Ultimate Recipients that are nonprofit entities, or a State or local government, may be required to submit an audit subject to the threshold established in OMB Circular No. A–133.

§§4280.57–4280.61 [Reserved]

§4280.62 Appeals.

An Intermediary may appeal any appealable adverse decision made by Rural Development that affects the Intermediary in accordance with 7 CFR part 11.

§4280.63 Exception authority.

Except as specified in paragraphs (a) through (c) of this section, the RBS Administrator may, on a case-by-case basis, make exceptions to any requirement or provision of this subpart, if such exception is necessary to implement the intent of the authorizing

statute in a time of national emergency or in accordance with a Presidentially-declared disaster, or when such an exception is in the best interests of the Federal Government and is otherwise not in conflict with applicable law.

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

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

(c) *Rural area definition*. No exception to the definition of rural area, as defined, can be made.

§§ 4280.64–4280.99 [Reserved]

§ 4280.100 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0035. A person is not required to respond to this collection of information unless it displays a currently valid OMB control number.

Subpart B—Rural Energy for America Program General

SOURCE: 76 FR 21118, Apr. 14, 2011, unless otherwise noted.

GENERAL

§ 4280.101 Purpose.

This subpart contains the procedures and requirements for providing the following financial assistance under the Rural Energy for America Program:

(a) Grants or guaranteed loans, or a combination grant and guaranteed loan, for the purpose of purchasing and installing renewable energy systems and energy efficiency improvements in rural areas;

(b) Grants for conducting renewable energy system feasibility studies; and

(c) Grants to assist agricultural producers and rural small businesses by conducting energy audits and providing recommendations and information on renewable energy development assistance and improving energy efficiency.

§ 4280.102 Organization of subpart.

(a) Sections 4280.103 through 4280.111 discuss definitions, exception authority, appeals, conflict of interest, USDA Departmental regulations, other applicable laws, ineligible applicants, borrowers, and owners, general applicant and application provisions, and notifications, which are applicable to all of the funding programs under this subpart.

(b) Sections 4280.112 through 4280.121 discuss the requirements specific to renewable energy system and energy efficiency improvement grants. Sections 4280.112 and 4280.113 discuss, respectively, applicant and project eligibility. Section 4280.114 discusses the circumstances under which an applicant may qualify to submit a simplified application for a grant. Sections 4280.115 through 4280.118 address grant funding, grant application content and required documentation, the evaluation process, and insurance requirements. Sections 4280.119 through 4280.121 address project planning, development, and completion, grantee requirements, and grant servicing.

(c) Sections 4280.122 through 4280.160 discuss the requirements specific to renewable energy system and energy efficiency improvement guaranteed loans. Sections 4280.122 through 4280.127 discuss eligibility and requirements for making and processing loans guaranteed by the Agency. Section 4280.128 addresses the application and documentation requirements, separating the requirements for loans over $600,000 and for loans of $600,000 or less. Section 4280.129 addresses the evaluation of guaranteed loan applications. Sections 4280.130 through 4280.160 provide guaranteed loan origination and servicing requirements. These requirements apply to lenders, holders, and other parties involved in making, guaranteeing, holding, servicing, or liquidating such loans.

(d) Section 4280.165 presents the process by which the Agency will make combined loan guarantee and grant funding available for renewable energy system and energy efficiency improvement projects.

(e) Sections 4280.170 through 4280.182 presents the process by which the Agency will make renewable energy system feasibility study grant funding

available. These sections cover applicant, project, and application eligibility; grant funding; application content, evaluation, scoring, and selection for award; and grant award, administration, and servicing.

(f) Sections 4280.186 through 4280.196 present the process by which the Agency will make energy audit and renewable energy development assistance grant funding available. These sections cover applicant and project eligibility; grant funding; application content, evaluation, scoring, and selection for award; and grant award, administration, and servicing.

(g) Appendices A through D of this subpart cover technical report requirements. Appendix A applies to projects with total eligible project costs of $200,000 or less; Appendix B applies projects with total eligible project costs greater than $200,000; Appendix C applies to hydropower projects; and Appendix D applies to flexible fuel pumps. Appendix E identifies the contents of the feasibility study that will be required to be submitted to the Agency if funding is provided under §§4280.170 through 4280.182.

§4280.103 Definitions.

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

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

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

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

Anaerobic digester project. A renewable energy system that uses animal waste and other organic substrates, via anaerobic digestion, to produce biomethane that is used to produce thermal or electrical energy or converted to a compressed gaseous or liquid state.

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

Applicant. The agricultural producer or rural small business that is seeking a grant, guaranteed loan, or a combination of a grant and loan, under this subpart.

Assignment Guarantee Agreement (Form RD 4279–6) or successor form. A signed agreement between the Agency, the lender, and the holder containing the terms and conditions of an assignment of a guaranteed portion of a loan.

Bioenergy project. A renewable energy system that produces fuel, thermal energy, or electric power from a biomass source, other than an anaerobic digester project.

Biogas. Renewable biomass converted to gaseous fuels.

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

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

(2) Results in a blended fuel that exceeds the highest requirement for the percentage volume for a renewable fuel.

Borrower. Any party or parties liable for a guaranteed loan made under this subpart except guarantors.

Capacity. The maximum load that an apparatus or heating unit is able to meet on a sustained basis as rated by the manufacturer.

Commercially available. A system that has a proven operating history specific to the proposed application. Such a system is based on established design, and installation procedures and practices. Professional service providers, trades, large construction equipment providers, and labor are familiar with installation procedures and practices. Proprietary and balance of system equipment and spare parts are readily

available. Service is readily available to properly maintain and operate the system. An established warranty exists for parts, labor, and performance.

Conditional Commitment (Form RD 4279–3) or successor form. Agency notice to the lender that the loan guarantee is approved subject to the completion of all conditions and requirements set forth by the Agency.

Default. The condition where a borrower or grantee is not in compliance with one or more loan covenants or grant conditions as stipulated in the Letter of Conditions, Conditional Commitment, or loan or grant agreement.

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

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

Eligible project costs. The total project costs that are eligible to be paid with program funds.

Energy assessment. A report conducted by an experienced energy assessor, certified energy manager or professional engineer assessing energy cost and efficiency by analyzing energy bills and briefly surveying the target building, machinery, or system. The report identifies and provides a savings and cost analysis of low-cost/no-cost measures. The report will estimate the overall costs and expected energy savings from these improvements, and dollars saved per year. The report will estimate weighted-average payback period in years.

Energy assessor. An individual or entity that conducts an energy assessment.

Energy audit. An audit conducted by a certified energy manager or professional engineer that focuses on potential capital-intensive projects and involves detailed gathering of field data and engineering analysis. The audit will provide detailed project costs and savings information with a high level of confidence sufficient for major capital investment decisions.

Energy auditor. An individual or entity that conducts an energy audit.

Energy efficiency improvement (EEI). Improvements to a facility, building, or process that reduce energy consumption, or reduce energy consumed per square foot.

Existing business. A business that has completed at least one full business cycle.

Fair market value of equity in real property. Fair market value of real property, as established by an appraisal, less the outstanding balance of any mortgages, liens, or encumbrances.

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

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

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

Geothermal, direct use. A system that uses thermal energy directly from a geothermal source.

Geothermal, electric generation. A system that uses geothermal energy to produce high pressure steam for electric power production.

Holder. A person or entity, other than the lender, who owns all or part of the guaranteed portion of the loan with no servicing responsibilities. When the single note option is used and the lender assigns a part of the guaranteed note to an assignee, the assignee becomes a holder only when the Agency receives notice and the transaction is

completed through the use of Form RD 4279–6.

Hydroelectric energy. Energy created from various hydroelectric sources including, but not limited to, diverted run-of-river water, in-stream run-of-river water, and in-conduit water.

Hydrogen project. A renewable energy system that produces hydrogen or, a renewable energy system that uses mechanical or electric power or thermal energy from a renewable resource using hydrogen as an energy transport medium.

Hydropower. Energy created by hydroelectric or ocean energy.

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

Instrumentality. An organization recognized, established, and controlled by a State, tribal, or local government, for a public purpose or to carry out special purposes.

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

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

Large solar, electric. Large solar electric systems are those for which the rated power of the system is larger than 10 kilowatts (kW). Large solar electric systems are either stand-alone (off grid) or interconnected to the grid (on grid).

Large solar, thermal. Large solar thermal systems are those for which the rated storage volume of the system is greater than 240 gallons or that have a collector area of more than 1,000 square feet.

Large wind system. A wind energy project for which the rated power of the individual wind turbine(s) is larger than 100kW.

Lender. The organization making, servicing, and collecting the loan that is guaranteed under the provisions of this subpart.

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

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

Matching funds. The funds needed to pay for the portion of the eligible project costs not funded or guaranteed by the Agency through a grant or guaranteed loan under this program. Unless authorized by statute, other Federal grant funds cannot be used to meet a matching funds requirement.

Necessary capital improvement. A capital improvement required to keep an existing system in compliance with regulations or to maintain technical or operational feasibility.

Ocean energy. Energy created by use of various types of moving water including, but not limited to, tidal, wave, current, and thermal changes.

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

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

Post-application. The period of time after the Agency has received a complete application, which contains all parts necessary for the Agency to determine applicant and project eligibility, to score the application, and to conduct the technical evaluation.

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

Pre-commercial technology. Technology that has emerged through the research and development process and has technical and economic potential for commercial application, but is not yet commercially available.

Promissory Note. Evidence of debt. A note that a borrower signs promising to pay a specific amount of money at a stated time or on demand.

Public power entity. Is defined using the definition of state utility as 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 entity possessing the knowledge, expertise, and experience to perform a specific task.

Qualified party. An independent third party entity possessing the knowledge, expertise, and experience to perform in an efficient, effective, and authoritative manner the specific task required.

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

Renewable biomass.

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

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

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

(iii) Are harvested in accordance with applicable law and land management plans and the requirements for old-growth maintenance, restoration, and management direction of paragraphs (e)(2), (e)(3), and (e)(4) and large-tree retention of 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 and yard 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 energy sources.

Renewable Energy Development Assistance. 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 recommendations and information regarding the use of renewable energy technologies in its operation. The report shall be prepared by a qualified consultant and evaluate a specific site or geographic area for potential use of one or more renewable energy technologies. Typically, the report will evaluate a potential renewable energy project with an estimated total cost of construction of less than $200,000. The evaluation shall be based on existing data, which may include data regarding existing and/or proposed structures, commercially available technologies, feed-stocks, and other renewable energy resources. The report will consider factors such as the site and the potential uses of renewable energy technology at the site. The report will not include information about any residential dwelling(s).

Renewable energy system (RES). A system that produces or produces and delivers usable energy from a renewable energy source, or is a flexible fuel pump.

Renewable energy technical assistance. Assistance provided to agricultural producers and rural small businesses on how to use renewable energy technologies and resources in their operations.

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

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

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

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

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

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

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

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

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

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

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

business days to appeal the determination and provide further information for consideration.

Rural Energy for America Program Grant Agreement (Form RD 4280–2) or successor form. An agreement between the Agency and the grantee setting forth the provisions under which the grant will be administered.

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

(1) For energy generation projects, simple payback is calculated as follows:

(i) Simple payback = (Total Project Costs (including REAP Grant))/(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 (PTC), Renewable Energy Credit, Carbon Credits, revenue from byproducts produced by the energy system, fair market value of byproducts produced by and used in the project or related enterprises, and other incentives that can be annualized.

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

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

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

(2) For energy replacement and energy efficiency improvement projects, simple payback is calculated as follows:

(i) Simple payback = (Total Project Costs (including REAP Grant))/Dollar Value of Energy Generated or Saved (as applicable)

(ii) Dollar value of energy generated or saved incorporates the following:

(A) All energy related revenue streams, which include monetary benefits from PTC, Renewable Energy Credit, Carbon Credits, revenue from byproducts produced by the energy system, and other monetary incentives that can be annualized.

(B) Energy saved or replaced shall be calculated on the quantity of energy saved or replaced (e.g., BTU) and converted to a monetary value using a constant value or price of energy as determined under paragraph (2)(ii)(B)(*3*) of this definition.

(*1*) The actual total quantity of energy used (BTU) in the original building and equipment in the 12 months prior to the RES or EEI project application.

(*2*) Projected energy usage after the RES or EEI project shall be the projected total quantity of energy used (BTU) on an annual basis for the same size or capacity as the original building or equipment. For energy efficiency improvement to equipment, if the new piece of equipment has a different capacity than the piece of equipment being replaced, the projected total quantity of energy used for the new piece of equipment shall be adjusted based on the ratio of the capacity of the replaced piece of equipment to the capacity of the new piece of equipment.

(*3*) Value or price of energy shall be the actual average price paid over the last year and used as a constant for all calculations of the value of energy.

(C) Does not allow energy efficiency improvements to monetize benefits other than the dollar amount of the energy savings the agricultural producer or rural small business realizes as a result of the improvement.

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

(3) For flexible fuel pumps, the calculation for simple payback is as follows:

(i) Simple payback = (Total Project Costs (including REAP Grant))/(Increase in Net Income + Interest Expense + Depreciation Expense (for the project))

(ii) Increase in income:

(A) Is based on all flexible fuel pump related net income (the projected increase in annual net income resulting by the installation of the project), which includes monetary benefits from Tax Credits and other credits or incentives that can be annualized.

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

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

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

Simplified application. An application that conforms to the criteria and procedures specified in §4280.114.

Small business. An entity is considered a small business in accordance with the Small Business Administration's (SBA) small business size standards by the North American Industry Classification System (NAICS) found in 13 CFR part 121. A private entity, including a sole proprietorship, partnership, corporation, cooperative (including a cooperative qualified under section 501(c)(12) of the Internal Revenue Code), and an electric utility, including a Tribal or governmental electric utility, that provides service to rural consumers on a cost-of-service basis without support from public funds or subsidy from the Government authority establishing the district, provided such utilities meet SBA's definition of small business. These entities must operate independent of direct Government control except for Tribal business entities formed as Section 17 Corporations as determined by the Secretary of the Interior or other Tribal business entities that have similar structures and relationships with their Tribal governments as determined by the Agency. The Agency shall determine the small business status of such a Tribal entity without regard to the resources of the Tribal government. With the exception of the entities described above, all other non-profit entities are excluded.

Small hydropower. A hydropower project for which the rated power of the system is 30 megawatts or less.

Small solar, electric. Small solar electric projects are those for which the rated power of the system is 10kW or smaller. Small solar electric projects are either stand-alone (off grid) or interconnected to the grid at less than 600 volts (on grid).

Small solar, thermal. Small solar thermal projects are those for which the rated storage volume of the system is 240 gallons or smaller or that have a collector area of 1,000 square feet or less.

Small wind system. Wind energy system for which the rated power of the wind turbine is 100kW or smaller and with a generator hub height of 120 feet or less. A small wind system is either stand-alone or connected to the local electrical system at less than 600 volts.

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

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

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

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

Very small business. A business with fewer than 15 employees and less than $1 million in annual receipts.

§ 4280.104 Exception authority.

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

§ 4280.105 Appeals.

Only the grantee, borrower, lender, or holder can appeal an Agency decision made under this subpart. In cases where the Agency has denied or reduced the amount of final loss payment to the lender, the adverse decision may be appealed by the lender only. An adverse decision that only impacts the holder may be appealed by the holder only. A decision by a lender adverse to the interest of the borrower is not a decision by the Agency, whether or not concurred in by the Agency. An adverse decision regarding a grant application may be appealed by the applicant only. Appeals will be handled in accordance with 7 CFR part 11 of this title.

§ 4280.106 Conflict of interest.

(a) No conflict of interest or appearance of conflict of interest will be allowed. For purposes of this subpart, conflict of interest includes, but is not limited to, distribution or payment of grant and guaranteed loan funds or award of project contracts to an individual owner, partner, stockholder, or beneficiary of the applicant or borrower or a close relative of such an individual when such individual will retain any portion of the ownership of the applicant or borrower.

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

§ 4280.107 USDA Departmental Regulations.

All projects funded under this subpart are subject to the provisions of the Departmental regulations (7 CFR subtitle A), as applicable.

§ 4280.108 Laws that contain other compliance requirements.

(a) *Equal employment opportunity*. For all construction contracts and grants in excess of $10,000, the contractor must comply with Executive Order 11246, as amended by Executive Order 11375, and as supplemented by applicable Department of Labor regulations (41 CFR part 60). The applicant or the lender and borrower, as applicable, is responsible for ensuring that the contractor complies with these requirements.

(b) *Equal opportunity and nondiscrimination*. The Agency will ensure that equal opportunity and nondiscrimination requirements are met in accordance with the Equal Credit Opportunity Act and 7 CFR part 15d, Nondiscrimination in Programs and Activities Conducted by USDA. The Agency will not discriminate against applicants on the basis of race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to contract); the fact that all or part of the applicant's income derives from any public assistance program; or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act. Lenders will comply with the requirements of the Equal Credit Opportunity Act (see 12 CFR part 202). Such compliance will be accomplished prior to loan closing.

(c) *Civil rights compliance*. Recipients of grants must comply with the Americans with Disabilities Act of 1990, Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973. This may include collection and maintenance of data on the race, sex, and national origin of the recipient's membership/ownership and employees. These data must be available to conduct compliance reviews in accordance with 7 CFR part 1901, subpart E, § 1901.204 of this title. Grants will require one subsequent compliance review after the last disbursement of

grant funds has been made, and the facility has been in full operation for 90 days.

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

(e) *Environmental analysis.* Subpart G of part 1940 of this title outlines environmental procedures and requirements for this subpart. Prospective applicants are advised to contact the Agency to determine environmental requirements as soon as practicable after they decide to pursue any form of financial assistance directly or indirectly available through the Agency.

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

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

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

(4) The applicant taking any actions or incurring any obligations during the time of application or application review and processing that would either limit the range of alternatives to be considered or that would have an adverse effect on the environment, such as the initiation of construction, will result in project ineligibility.

(f) *Executive Order 12898.* When a project is proposed and financial assistance requested, the Agency will conduct a Civil Rights Impact Analysis (CRIA) with regards to environmental justice. The CRIA must be conducted and the analysis documented utilizing Form RD 2006–38, ''Civil Rights Impact Analysis Certification.'' This certification must be done prior to loan approval, obligation of funds, or other commitments of Agency resources, including issuance of a Letter of Conditions or Form RD 4279–3, whichever occurs first.

(g) *Discrimination complaints.* The regulations contained in 7 CFR part 1901, subpart E of this title apply to this program, with the exception of guaranteed loans. Any person or any specific class of person, believing they have been subjected to discrimination may file a complaint within 180 days of an alleged act of discrimination or from the time discrimination is known, or should have been known, with the USDA Director, Office of Adjudication, Room 3326–W, Whitten Building, 1400 Independence Avenue, SW., Washington, DC 20250–9410.

§4280.109 Ineligible applicants, borrowers, and owners.

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

(a) If an applicant, borrower, or owner has an outstanding judgment obtained by the U.S. in a Federal Court (other than in the United States Tax Court), is delinquent in the payment of Federal income taxes, or is delinquent on a Federal debt, the applicant is not eligible to receive a grant or guaranteed loan until the judgment is paid in full or otherwise satisfied or the delinquency is resolved.

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

§4280.110 General applicant and application provisions.

(a) *Complete applications.* Applicants must submit complete applications in order to be considered. If an application is incomplete, the Agency will identify those parts of the application that are incomplete and provide a written explanation to the applicant for possible future resubmission. Upon receipt of a complete application by the appropriate Agency office and by the applicable application deadline, the Agency will complete its evaluation.

(b) *Application withdrawal.* During the period between the submission of an application and the execution of loan and/or grant award documents, the applicant must notify the Agency, in

writing, if the project is no longer viable or the applicant no longer is requesting financial assistance for the project. When the applicant so notifies the Agency, the selection will be rescinded or the application withdrawn.

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

§ 4280.111 Notifications.

(a) *Eligibility.* If an applicant is determined by the Agency to be eligible for participation, the Agency will notify the applicant or lender, as applicable, in writing. If the applicant or the project is ineligible, the Agency will inform the applicant or lender, as applicable, in writing of the decision, reasons therefore, and any appeal rights. No further evaluation of the application will occur.

(b) *Ineligible applications.* If an application is determined to be ineligible at any time, the Agency will inform the applicant in writing of the decision, reasons therefore, and any appeal rights. No further evaluation of the application will occur.

(c) *Award.* Each applicant will be notified of the Agency's decision on their application.

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 be an agricultural producer or rural small business, as defined in § 4280.103.

§ 4280.113 Project eligibility.

For a renewable energy system or energy efficiency improvement project to be eligible to receive a RES or EEI grant under this subpart, the proposed project must meet each of the criteria, as applicable, in paragraphs (a) through (j), as applicable, of this section, and is subject to the limitations specified in paragraph (k) of this section.

(a) The project must be for the purchase of a renewable energy system or to make energy efficiency improvements. Energy efficiency improvements to existing renewable energy systems are eligible energy efficiency improvement projects.

(b) The project must be for a pre-commercial or commercially available, and replicable technology.

(c) The project must have technical merit, as determined using the procedures specified in § 4280.117(b).

(d) The facility for which the project is being proposed must be located in a rural area, as defined in § 4280.103, in a State if the type of applicant is a rural small business, or in a rural or non-rural area in a State if the type of applicant is an agricultural producer. If the agricultural producer's facility is in a non-rural area, then the application can only be for renewable energy systems or energy efficiency improvements on integral components of or that are directly related to the facility, such as vertically integrated operations, and are part of and co-located with the agriculture production operation.

(e) The applicant must have a place of business in a State.

(f) The applicant must be the owner of the project and control the revenues and expenses of the project, including operation and maintenance. A third-party under contract to the owner may be used to control revenues and expenses and manage the operation and/or maintenance of the project.

(g) Sites must be controlled by the agricultural producer or rural small business for the financing term of any associated Federal loans or loan guarantees.

(h) Satisfactory sources of revenue in an amount sufficient to provide for the operation, management, maintenance, and debt service of the project must be available for the life of the project.

(i) For the purposes of this subpart, only hydropower projects with a rated power of 30 megawatts or less are eligible. The Agency refers to these hydropower sources as ''small hydropower,'' which includes hydropower projects

commonly referred to as ''micro-hydropower'' and ''mini-hydropower.''

(j) The project has demonstrated technical feasibility.

(k) No renewable energy system or energy efficiency improvement, or portion thereof, can be used for any residential purpose, including any residential portion of a farm, ranch, agricultural facility, or rural small business. However, an applicant may apply for funding for the installation of a second meter or provide certification in the application that any excess power generated by the renewable energy system will be sold to the grid and will not be used by the applicant for residential purposes.

§4280.114 Qualification for simplified applications.

When applying for a RES or EEI grant, applicants may qualify for the simplified application process. In order to use the simplified application process, each of the conditions specified in paragraphs (a)(1) through (a)(8) of this section must be met.

(a) *Simplified application criteria.*

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

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

(3) Total eligible project costs must be $200,000 or less.

(4) The proposed project must use commercially available renewable energy systems or energy efficiency improvements.

(5) Construction planning and performing development must be performed in compliance with §4280.119. The applicant or the applicant's prime contractor must assume all risks and responsibilities of project development.

(6) The applicant or the applicant's prime contractor is responsible for all interim financing.

(7) The proposed project is scheduled to be completed within 2 years after entering into a grant agreement. The Agency may extend this period if the Agency determines, at its sole discretion, that the applicant is unable to complete the project for reasons beyond the applicant's control.

(8) The applicant agrees not to request reimbursement from funds obligated under this program until after project completion, including all operational testing and certifications acceptable to the Agency.

(b) *Application processing and administration.*

(1) *Application documents.* Application documents shall be submitted in accordance with §4280.116 or, if applying for a combined grant and loan, also in accordance with §4280.165(c).

(2) *Project development.* Section 4280.119 applies, except as follows:

(i) Any grantee may participate in project development without direct compensation subject to the approval in writing by the prime contractor, provided that all applicable construction practices, manufacturer instructions, and all safety codes and standards are followed during construction and testing, and the work product meets all applicable manufacture specifications, and all applicable codes and standards. The prime contractor remains responsible for the overall successful completion of the project, including any work done by the grantee, or

(ii) A grantee who can demonstrate to the Agency that the grantee has the necessary experience and other resources to successfully complete the project may serve as the prime contractor/installer. Projects where the grantee serves as the prime contractor will need to secure the services of an independent, professionally responsible, qualified consultant to certify testing specifications, procedures, and testing results.

(3) *Project completion.* The project is complete when the applicant has provided a written final project development, testing, and performance report acceptable to the Agency. Upon notification of receipt of an acceptable project completion report, the applicant may request grant reimbursement. The Agency reserves the right to observe the testing.

(4) *Insurance.* Section 4280.118 applies, except business interruption insurance is not required.

§4280.115 RES and EEI grant funding.

(a) The amount of grant funds that will be made available to an eligible RES or EEI project under this subpart

will not exceed 25 percent of total eligible project costs. Eligible project costs are specified in paragraph (c) of this section.

(b) The applicant is responsible for securing the remainder of the total eligible project costs not covered by grant funds. The amount secured by the applicant must be the remainder of total eligible project costs.

(1) Without specific statutory authority, other Federal grant funds cannot be used to meet the matching fund requirement.

(2) Passive third-party equity contributions are acceptable for renewable energy system projects, including those that are eligible for Federal production tax credits, provided the applicant meets the requirements of § 4280.112.

(c) Eligible project costs are only those costs associated with the items identified in paragraphs (c)(1) through (c)(10) of this section, as long as the items are an integral and necessary part of the renewable energy system or energy efficiency improvement.

(1) Post-application purchase and installation of equipment (new, refurbished, or remanufactured), except agricultural tillage equipment, used equipment, and vehicles.

(2) Post-application construction or improvements, except residential.

(3) Energy audits or assessments.

(4) Permit and license fees.

(5) Professional service fees, except for application preparation.

(6) Feasibility studies and Technical reports.

(7) Business plans.

(8) Retrofitting.

(9) Construction of a new energy efficient facility only when the facility is used for the same purpose, is approximately the same size, and, based on the energy assessment or audit, will provide more energy savings than improving an existing facility. Only costs identified in the energy assessment or audit for energy efficiency improvements are allowed.

(10) Energy efficiency improvements are limited to only improvements identified in the energy assessment or audit. Equipment identified by the assessment or audit to be replaced shall be replaced with equipment similar in capacity. If the energy efficiency improvement has a greater capacity than the existing equipment, the Agency will pro-rate the energy efficiency improvement's total eligible project costs based on the capacity of the existing equipment. A calculation shall be performed by dividing the capacity of the existing equipment by the capacity of the proposed equipment to determine the percentage of the energy efficiency improvement's eligible project costs that the Agency will use in determining the maximum grant assistance under this subpart (see example).

Example. A business plans to build a new production line with a capacity of 625 units per hour to replace an existing production line that produces 500 units per hour. The total project costs of the new production line is $20,000, of which $15,000 would otherwise qualify as eligible project costs. However, because the new production line has a greater production capacity than the existing line (625 units per hour versus 500 units per hour), only a portion of the $15,000 of otherwise eligible project costs would be used in determining total eligible project cost and the maximum grant assistance available. In this example, because the original capacity (500 units per hour) is 80 percent of the new capacity (625 units per hour), only 80 percent of the $15,000 of otherwise eligible project costs associated with the new production line (*i.e.*, $12,000) will be considered as total eligible project cost to be financed under this subpart. The maximum grant award in this example would be $3,000, which is equal to $12,000 × 25 percent.

(d) The maximum amount of grant assistance to one individual or entity will not exceed $750,000 per Federal fiscal year. For those applicants that have not received a grant award during the previous 2 Federal fiscal years, additional points will be added to their priority score.

(e) Applications for renewable energy system grants will be accepted for a minimum grant request of $2,500 up to a maximum of $500,000.

(f) Applications for energy efficiency improvement grants will be accepted for a minimum grant request of $1,500 up to a maximum of $250,000.

(g) In determining the amount of a RES or EEI grant awarded, the Agency will take into consideration the following six criteria:

(1) The type of renewable energy system to be purchased;

(2) The estimated quantity of energy to be generated by the renewable energy system;

(3) The expected environmental benefits of the renewable energy system;

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

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

(6) The expected energy efficiency of the renewable energy system.

(h) *Time limit.* Unless otherwise agreed to by the Agency, any renewable energy system or energy efficiency improvement grant agreement under this subpart will terminate 2 years from the date the Agency signs the agreement.

§4280.116 Application and documentation.

The requirements in this section apply to RES and EEI grant applications under this subpart.

(a) *General.* To ensure that projects are accurately scored by the Agency, applicants are requested to number each evaluation criteria and include, in that section, its corresponding supporting documentation and calculations according to §4280.117.

(1) *One funding type applications.* Only one type of funding application (grant-only, guaranteed loan-only, or guaranteed loan/grant combination) for each project can be submitted under this subpart per Federal fiscal year.

(2) *Environmental information.* Each application must include all environmental review documents with supporting documentation in accordance with 7 CFR part 1940, subpart G.

(3) *Foreign technology.* As stated in §4280.113(b), projects must be for a pre-commercial or commercially available technology. The Agency's position is that if the system is currently commercially available only outside the United States (U.S.), then applicants must provide authoritative evidence of the foreign operating history, performance, and reliability in order to address the proven operating history identified in the definition. ''Commercial'' applicants must provide evidence that professional service providers, trades, large construction equipment providers and labor are readily available domestically and familiar with installation procedures and practices, and spare parts and service are readily available in the U.S. to properly maintain and operate the system. All warranties must be valid in the U.S.

(4) *Commercial application demonstration of pre-commercial technologies.* In accordance with the definition of ''pre-commercial'' technology found in §4280.103, technical and economic potential for commercial application must be demonstrated to the Agency. In order to demonstrate the system has emerged through research and development as well as the demonstration process, applicants must provide authoritative evidence of the operating history, performance, and reliability past completion of start-up, shakedown, and commissioning. Typically, and in line with financial and operating performance evaluation protocol, the documented operating history, which may be established domestically or outside the U.S., should provide performance data for a minimum of 12 months. The time period will address the economic and technical performance potential of the pre-commercial technology, as defined in §4280.103. Lastly, in accordance with demonstrating the potential for commercial application, applicants must provide evidence that professional service providers, trades, large construction equipment providers, and labor are readily available domestically and sufficiently familiar with installation procedures and practices, and spare parts and service are available in the U.S. to properly maintain and operate the system. Any warranties have to be valid in the U.S.

(b) *Grant application content.* Applications and documentation for projects using the simplified application process, as described in §4280.114, must provide the required information organized pursuant to the Table of Contents in a chapter format presented in

the order shown in paragraphs (b)(1) through (b)(3) and (b)(5) through (b)(7) of this section; paragraph (b)(4) of this section does not apply for projects using the simplified application process. Applications and documentation for projects not using the simplified application process must provide the required information organized pursuant to the Table of Contents in a chapter format presented in the order shown in paragraphs (b)(1) through (b)(8) of this section.

(1) *Forms, certifications, and organizational documents.* Each application must contain the items identified in paragraphs (b)(1)(i) through (b)(1)(iv) in this section.

(i) *Project specific forms.*

(A) Form SF–424, ''Application for Federal Assistance.''

(B) Form SF–424C, ''Budget Information-Construction Programs.'' A more detailed budget breakdown is required in the Technical Report.

(C) Form SF–424D, ''Assurances-Construction Programs.''

(D) Form RD 1940–20, ''Request for Environmental Information.''

(ii) *Forms and certifications.*

(A) AD–1049, ''Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative I—For Grantees Other than Individuals.''

(B) Form AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions.''

(C) Exhibit A–1 of RD Instruction 1940–Q, ''Certification for Contracts, Grants and Loans,'' required by 7 CFR 3018.110 if the grant exceeds $100,000.

(D) Form SF–LLL, ''Disclosure of Lobbying Activities,'' must be completed if the applicant or borrower has made or agreed to make payment using funds other than Federal appropriated funds to influence or attempt to influence a decision in connection with the application.

(E) AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transactions.''

(F) Form RD 400–1, ''Equal Opportunity Agreement.''

(G) Form RD 400–4, ''Assurance Agreement.''

(H) Applicants and borrowers must provide a certification indicating whether or not there is a known relationship or association with an Agency employee.

(iii) *Organizational documents.* Except for sole proprietors, each applicant must submit, with the application, a copy of the legal organizational documents.

(iv) The applicant's Dun and Bradstreet Data Universal Numbering System (DUNS) number (except for individuals).

(2) *Table of Contents.* Include page numbers for each component of the application in the table of contents. Begin pagination immediately following the Table of Contents.

(3) *Project Summary.* Provide a concise summary of the project proposal and applicant information, project purpose and need, and project goals that includes the following:

(i) *Title.* Provide a descriptive title of the project (identified on SF 424).

(ii) *Applicant eligibility.* Describe how each of the applicable criteria identified in §§ 4280.109 and 4280.112 is met.

(iii) *Project eligibility.* Describe how each of the criteria in § 4280.113(a) through (j), as applicable, is met. Clearly state whether the application is for the purchase of a renewable energy system or to make energy efficiency improvements. The response to § 4280.113(a) must include a brief description of the system or improvement. This description must be sufficient to provide the reader with a frame of reference when reviewing the rest of the application. Additional project description information may be needed later in the application.

(iv) *Operation description.* Describe the applicant's total farm/ranch/business operation and the relationship of the proposed project to the applicant's total farm/ranch/business operation. Provide a description of the ownership of the applicant, including a list of individuals and/or entities with ownership interest, names of any corporate parents, affiliates, and subsidiaries, as well as a description of the relationship, including products, between these entities.

(v) *Financial information for gross income or size determination.* Provide financial information to allow the Agency to determine the agricultural producer's percent of gross income derived from agricultural operations or the rural small business' size, as applicable. All information submitted under this paragraph must be substantiated by authoritative records.

(A) *Rural small businesses.* Provide sufficient information to determine total annual receipts for and number of employees of the business and any parent, subsidiary, or affiliates at other locations. Voluntarily providing tax returns is one means of satisfying this requirement. The information provided must be sufficient for the Agency to make a determination of business size as defined by SBA.

(B) *Agricultural producers.* Provide the gross market value of your agricultural products, gross agricultural income, and gross nonfarm income of the applicant for the calendar year preceding the year in which you submit your application.

(4) *Financial information.* Financial information is required on the total operation of the agricultural producer/rural small business and its parent, subsidiary, or affiliates at other locations. All information submitted under this paragraph must be substantiated by authoritative records.

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

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

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

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

(6) *Self-evaluation score.* Self-score the project using the evaluation criteria in §4280.117(c). To justify the score, submit the total score along with appropriate calculations and attached documentation, or specific cross-references to information elsewhere in the application.

(7) *Renewable Energy System and Energy Efficiency Improvements Technical Report.* A Technical Report must be submitted as part of the application to allow the Agency to determine the overall technical merit of the renewable energy system or energy efficiency improvement project.

(i) *Simplified applications.* Simplified applications, which are submitted for renewable energy system projects or energy efficiency improvement projects with total eligible project costs of $200,000 or less, must include a Technical Report prepared in accordance with the requirements specified in paragraphs (b)(7)(i)(A) through (b)(7)(i)(C) of this section.

(A) The Technical Report must be prepared in accordance with Appendix A, C, or D, as applicable, of this subpart. If a renewable energy system project does not fit one of the technologies identified in Appendices A, C, and D, the applicant must submit a Technical Report in accordance with paragraph (b)(7)(ii) of this section. The information in all Technical Reports must be of sufficient detail to allow the

Agency to score the project and evaluate its technical feasibility.

(B) Either an energy assessment or an energy audit is required for energy efficiency improvement projects. For energy efficiency improvement projects with total eligible project costs greater than $50,000, an energy audit must be conducted; it must be conducted by or reviewed and certified by an energy auditor. For energy efficiency improvement projects with total eligible project costs of $50,000 or less, an energy assessment or an energy audit may be conducted by either an energy assessor or an energy auditor.

(C) Technical Reports prepared prior to the applicant's selection of a prime contractor may be modified after selection, pursuant to input from the prime contractor, and submitted to the Agency, provided the overall scope of the project is not materially changed as determined by the Agency. Changes in the report must be accompanied by an updated Form RD 1940–20.

(ii) *Full applications.* Full applications, which must be submitted for applications for renewable energy system projects or energy efficiency improvement projects with total eligible project costs greater than $200,000, must include a Technical Report prepared in accordance with Appendix B, C, or D, as applicable, of this subpart and with paragraphs (b)(7)(ii)(A) through (b)(7)(ii)(G) of this section, as applicable.

(A) The Technical Report must demonstrate that the renewable energy system or energy efficiency improvement project can be installed and perform as intended in a reliable, safe, cost-effective, and legally compliant manner.

(B) Either an energy assessment or an energy audit is required for energy efficiency improvement projects. For energy efficiency improvement projects with total eligible project costs greater than $50,000, an energy audit must be conducted; it must be conducted by or reviewed and certified by an energy auditor. For energy efficiency improvement projects with total eligible project costs of $50,000 or less, an energy assessment or an energy audit may be conducted by either an energy assessor or an energy auditor.

(C) For renewable energy system projects with total eligible project costs greater than $400,000 and for energy efficiency improvement projects with total eligible project costs greater than $200,000, the design review, installation monitoring, testing prior to commercial operation, and project completion certification will require the services of a licensed professional engineer (PE) or team of licensed PEs.

(D) For projects with total eligible project costs greater than $1,200,000, the Technical Report must be reviewed and include an opinion and recommendation by an independent qualified consultant.

(E) Technical Reports prepared prior to the applicant's selection of a final design, equipment vendor, or prime contractor, or other significant decision may be modified and resubmitted to the Agency, provided the overall scope of the project is not materially changed as determined by the Agency. Changes in the Technical Report must be accompanied by an updated Form RD 1940–20.

(F) All information provided in the Technical Report will be evaluated against the requirements provided in Appendix B, C, or D, as applicable, of this subpart. Any Technical Report not prepared in the following format and in accordance with Appendix B, C, or D, where applicable, will be penalized under scoring for technical merit.

(G) All Technical Reports shall follow the outline presented below and shall contain the information described in paragraphs (b)(7)(ii)(G)(*1*) through (b)(7)(ii)(G)(*10*) of this section and Appendix B, C, or D, as applicable, of this subpart if the technology is identified in Appendix B, C, or D for the particular project. If none of the Technical Reports in Appendix B apply to the proposed technology, the applicant may submit a Technical Report that conforms to the overall outline and subjects specified in paragraph (b)(7)(ii)(G) of this section. For Technical Reports prepared for technologies not identified in Appendices B, C, and D, the Agency will review the reports and notify, in writing, the applicant of the changes to the report required in

order for the Agency to accept the report.

(*1*) *Qualifications of the project team.* Describe the project team, their professional credentials, and relevant experience. The description must support that the project team service, equipment, and installation providers have the necessary professional credentials, licenses, certifications, or relevant experience to develop the proposed project.

(*2*) *Agreements and permits.* Describe the necessary agreements and permits required for the project and the anticipated schedule for securing those agreements and permits. For example, interconnection agreements and purchase power agreements are necessary for all renewable energy projects electrically interconnected to the utility grid. The applicant must demonstrate that the applicant is familiar with the regulations and utility policies and that these arrangements will be secured in a reasonable timeframe.

(*3*) *Energy or resource assessment.* Describe the quality and availability of the renewable resource, and an assessment of expected energy savings through the deployment of the proposed system or increased production created by the system.

(*4*) *Design and engineering.* Describe the intended purpose of the project and the design, engineering, testing, and monitoring needed for the proposed project. The description must support that the system will be designed, engineered, tested, and monitored so as to meet its intended purpose, ensure public safety, and comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, the applicant must identify all the major equipment that is proprietary equipment and justify how this unique equipment is needed to meet the requirements of the proposed design.

(*5*) *Project development.* Describe the overall project development method, including the key project development activities and the proposed schedule for each activity. The description must identify each significant historical and projected activity, its beginning and end, and its relationship to the time needed to initiate and carry the activity through to successful project completion. The description must address applicant project development cash flow requirements. Details for equipment procurement and installation shall be addressed in paragraphs (b)(7)(ii)(G) (*7*) and (b)(7)(ii)(G)(*8*) of this section.

(*6*) *Project economic assessment.* Describe the financial performance of the proposed project. The description must address project costs, energy savings, and revenues, including applicable investment and production incentives. Cost centers include, but are not limited to, administrative and general, fuel supply, operations and maintenance, product delivery and debt service. Revenues to be considered must accrue from the sale of energy, offset or savings in energy costs, byproducts, and green tags. Incentives to be considered must accrue from government entities.

(*7*) *Equipment procurement.* Describe the availability of the equipment required by the system. The description must support that the required equipment is available and can be procured and delivered within the proposed project development schedule.

(*8*) *Equipment installation.* Describe the plan for site development and system installation, including any special equipment requirements. In all cases, the system or improvement must be installed in conformance with manufacturer's specifications and design requirements, and comply with applicable laws, regulations, agreements, permits, codes, and standards.

(*9*) *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 the design life. All systems or improvements must have a warranty. The warranty must cover and provide protection against both breakdown and a degradation of performance. The performance of the renewable energy system or energy efficiency improvement must be monitored and recorded as appropriate to the specific technology.

(*10*) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end

of their useful lives. The budget for and any unique concerns associated with the dismantling and disposal of project components and their wastes must also be described.

(8) *Business-level feasibility study for renewable energy systems.* For each application for a renewable energy system project, with total eligible project costs greater than $200,000, a business-level feasibility study by an independent, qualified consultant will be required by the Agency for start-up businesses or existing businesses. An acceptable business-level feasibility study must conform to the requirements of an acceptable feasibility study as specified in Appendix E of this subpart.

§ 4280.117 Evaluation of RES and EEI grant applications.

(a) *General review.* The Agency will evaluate each RES and EEI application and make a determination as to whether the applicant is eligible, the proposed grant is for an eligible project, and the proposed grant complies with all applicable statutes and regulations.

(b) *Technical merit.* The Agency's determination of a project's technical merit will be based on the information provided by the applicant. The Agency may engage the services of other government agencies or other recognized industry experts in the applicable technology field, at its discretion, to evaluate and rate the application. The Agency may use this evaluation and rating to determine the level of technical merit of the proposed project. Projects that the Agency determines are without technical merit shall be deemed ineligible.

(c) *Evaluation criteria.* Agency personnel will score each application based on the evaluation criteria specified in paragraphs (c)(1) through (c)(10) of this section.

(1) *Quantity of energy replaced, produced, or saved, and flexible fuel pumps.* Points may only be awarded for energy replacement, energy savings, or energy generation, or for flexible fuel pumps. Points will not be awarded for more than one category.

(i) *Energy replacement.* If the proposed renewable energy system is intended primarily for self-use by the agricultural producer or rural small business and will provide energy replacement of greater than zero, but equal to or less than 25 percent, 5 points will be awarded; greater than 25 percent, but equal to or less than 50 percent, 10 points will be awarded; or greater than 50 percent, 15 points will be awarded. Energy replacement is to be determined by dividing the estimated quantity of renewable energy to be generated over a 12-month period by the estimated quantity of energy consumed over the same 12-month period during the previous year by the applicable energy application. The estimated quantities of energy must be converted to either British thermal units (BTUs), Watts, or similar energy equivalents to facilitate scoring. If the estimated energy produced equals more than 150 percent of the energy requirements of the applicable process(es), the project will be scored as an energy generation project.

(ii) *Energy savings.* If the estimated energy expected to be saved by the installation of the energy efficiency improvements will be from 20 percent up to, but not including 30 percent, 5 points will be awarded; 30 percent up to, but not including 35 percent, 10 points will be awarded; or, 35 percent or greater, 15 points will be awarded. Energy savings will be determined by the projections in an energy assessment or audit. Projects with total eligible project costs of $50,000 or less that opt to obtain a professional energy audit will be awarded an additional 5 points.

(iii) *Energy generation.* If the proposed renewable energy system is intended primarily for production of energy for sale, 10 points will be awarded.

(iv) *Flexible fuel pump(s).* (A) If the proposed project is for one or more flexible fuel pumps, points will be awarded based on the overall percentage of proposed flexible fuel pumps to the applicant's total retail pump inventory at the facility. The percentage of proposed flexible fuel pumps shall be calculated using the following equation.

Equation: $FFP\% = (FFPx/TP) \times 100$

where:

FFP% = Proposed flexible fuel pump(s), percentage.

FFPx = Number of proposed flexible fuel pumps to be installed at applicant's facility.

TP = Number of proposed pumps to be installed plus the number of pumps installed and operating at the facility.

(B) If the proposed flexible fuel pump percentage calculated is 5 percent or below, 5 points will be awarded; above 5 percent and up to, but not including, 10 percent, 10 points will be awarded; or 10 percent and above, 15 points will be awarded.

(2) *Environmental benefits*. If the purpose of the proposed system contributes to the environmental goals and objectives of other Federal, State, or local programs, 10 points will be awarded. Points will only be awarded for this paragraph if the applicant is able to provide documentation from an appropriate authority supporting this claim.

(3) *Commercial availability*. If the proposed system or improvement is currently commercially available and replicable, 5 points will be awarded. If the proposed system or improvement is commercially available and replicable and is also provided with a 5-year or longer warranty providing the purchaser protection against system degradation or breakdown or component breakdown, 10 points will be awarded.

(4) *Technical merit score*. The Technical Merit of each project will be determined using the procedures specified in paragraphs (c)(4)(i) and (c)(4)(ii) of this section. The procedures specified in paragraph (c)(4)(i) will be used to score paragraphs (c)(4)(i)(A) through (c)(4)(i)(J) of this section. The final score awarded will be calculated using the procedures described in paragraph (c)(4)(ii) of this section.

(i) *Technical merit*. Each subparagraph has its own maximum possible score and will be scored according to the following criteria: If the description in the subparagraph has no significant weaknesses and exceeds the requirements of the subparagraph, 100 percent of the total possible score for the subparagraph will be awarded. If the description has one or more significant strengths and meets the requirements of the subparagraph, 80 percent of the total possible score will be awarded for the subparagraph. If the description meets the basic requirements of the subparagraph, but also has several weaknesses, 60 percent of the points will be awarded. If the description is lacking in one or more critical aspects, key issues have not been addressed, but the description demonstrates some merit or strengths, 40 percent of the total possible score will be awarded. If the description has serious deficiencies, internal inconsistencies, or is missing information, 20 percent of the total possible score will be awarded. If the description has no merit in this area, 0 percent of the total possible score will be awarded. The total possible points for Technical Merit is 35 points.

(A) *Qualifications of the project team (maximum score of 10 points)*. The applicant has described the project team service providers, their professional credentials, and relevant experience. The description supports that the project team service, equipment, and installation providers have the necessary professional credentials, licenses, certifications, or relevant experience to develop the proposed project.

(B) *Agreements and permits (maximum score of 5 points)*. The applicant has described the necessary agreements and permits required for the project and the schedule for securing those agreements and permits.

(C) *Energy or resource assessment (maximum score of 10 points)*. The applicant has described the quality and availability of a suitable renewable resource or an assessment of expected energy savings for the proposed system.

(D) *Design and engineering (maximum score of 30 points)*. The applicant has described the design, engineering, and testing needed for the proposed project. The description supports that the system will be designed, engineered, and tested so as to meet its intended purpose, ensure public safety, and comply with applicable laws, regulations, agreements, permits, codes, and standards.

(E) *Project development schedule (maximum score of 5 points)*. The applicant has described the development method, including the key project development activities and the proposed schedule for each activity. The description identifies each significant task, its beginning and end, and its relationship to the

time needed to initiate and carry the project through to successful completion. The description addresses grantee or borrower project development cash flow requirements.

(F) *Project economic assessment (maximum score of 20 points).* The applicant has described the financial performance of the proposed project, including the calculation of simple payback. The description addresses project costs and revenues, such as applicable investment and production incentives, and other information to allow the assessment of the project's cost effectiveness.

(G) *Equipment procurement (maximum score of 5 points).* The applicant has described the availability of the equipment required by the system. The description supports that the required equipment is available, and can be procured and delivered within the proposed project development schedule.

(H) *Equipment installation (maximum score of 5 points).* The applicant has described the plan for site development and system installation.

(I) *Operation and maintenance (maximum score of 5 points).* The applicant has described the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life.

(J) *Dismantling and disposal of project components (maximum score of 5 points).* The applicant has described the requirements for dismantling and disposing of project components at the end of their useful life and associated wastes.

(ii) *Calculation of Technical Merit Score.* To determine the actual points awarded a project for Technical Merit, the following procedure will be used: The score awarded for paragraphs (c)(4)(i)(A) through (c)(4)(i)(J) of this section will be added together and then divided by 100, the maximum possible score, to achieve a percentage. This percentage will then be multiplied by the total possible points of 35 to achieve the points awarded for the proposed project for Technical Merit.

(5) *Readiness.* If the applicant has written commitments from the source(s) confirming commitment of 50 percent up to but not including 75 percent of the matching funds prior to the Agency receiving the complete application, 5 points will be awarded. If the applicant has written commitments from the source(s) confirming commitment of 75 percent up to but not including 100 percent of the matching funds prior to the Agency receiving the complete application, 10 points will be awarded. If the applicant has written commitments from the source(s) of matching funds confirming commitment of 100 percent of the matching funds prior to the Agency receiving the complete application, 15 points will be awarded.

(6) *Small agricultural producer/very small business.* If the applicant is an agricultural producer producing agricultural products with a gross market value of less than $600,000 in the preceding year, 5 points will be awarded. If the applicant is an agricultural producer producing agricultural products with a gross market value of less than $200,000 in the preceding year or is a very small business, as defined in § 4280.103, 10 points will be awarded.

(7) *Simplified application/low cost projects.* If the applicant is eligible for and uses the simplified application process or the project has total eligible project costs of $200,000 or less, 5 points will be awarded.

(8) *Previous grantees and borrowers.* If an applicant has not been awarded a grant or loan under this program within the 2 previous Federal fiscal years, 5 points will be awarded.

(9) *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.

(i) *Renewable energy systems, including flexible fuel pumps.* If the simple payback of the proposed project is:

(A) Less than 10 years, 15 points will be awarded;

(B) 10 years up to but not including 15 years, 10 points will be awarded;

(C) 15 years up to and including 20 years, 5 points will be awarded; or

(D) Longer than 20 years, no points will be awarded.

(ii) *Energy efficiency improvements.* If the simple payback of the proposed project is:

(A) Less than 4 years, 15 points will be awarded;

(B) 4 years up to but not including 8 years, 10 points will be awarded;

(C) 8 years up to and including 12 years, 5 points will be awarded; or

(D) Longer than 12 years, no points will be awarded.

(10) *State Director and Administrator priorities and 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.

§4280.118 Insurance requirements.

Agency approved insurance coverage must be maintained for the life of the RES or EEI grant unless this requirement is waived or modified by the Agency in writing.

(a) National flood insurance is required in accordance with 7 CFR part 1806, subpart B, of this title, if applicable.

(b) Business interruption insurance is required except for projects with total eligible project costs of $200,000 or less.

§4280.119 Construction planning and performing development.

The requirements of this section apply for planning, designing, bidding, contracting, and constructing renewable energy systems and energy efficiency improvement projects as applicable. For contracts of $200,000 or less, the simple contract method, as specified in paragraph (e) of this section, may be used. Contracts greater than $200,000 shall use the contract method specified in paragraph (g) of this section.

(a) *Technical services.* Applicants are responsible for providing the engineering, architectural, and environmental services necessary for planning, designing, bidding, contracting, inspecting, and constructing their facilities. Services may be provided by the applicant's ''in-house'' engineer or architect or through contract, subject to Agency concurrence. Engineers and architects must be licensed in the State where the facility is to be constructed.

(b) *Design policies.* Facilities funded by the Agency will meet the requirements of §1780.57(b), (c), (d), and (o) of this title. Final plans and specifications must be reviewed by the Agency and approved prior to the start of construction.

(c) *Owners accomplishing work.* In some instances, owners may wish to perform a part of the work themselves. For an owner to perform project development work, the owner must meet the experience requirements of §1780.67 of this title. For an owner to provide a portion of the work, with the remainder to be completed by a contractor, a clear understanding of the division of work must be established and delineated in the contract. In such cases, the contractor will be required to inspect the owner's work and accept it. Owners are not eligible for payment for their own work as it is not an eligible project cost. See §4280.115(c) of this subpart for further details on eligible project costs.

(d) *Equipment purchases.* Equipment purchases of less than $200,000 will not require a performance and payment bond, unless required by the applicant, as long as the contract purchase is a lump sum payment and the manufacturer provides the required warranties on the equipment as outlined in paragraph (i) in the applicable section found in Appendices A, B, C, and D of this subpart. Payment shall be certified by copies of the Manufacturer's paid invoices and warranty documents.

(e) *Simple contract method.* The simple contract method may be used for small projects with a contract not greater than $200,000. In smaller projects, Agency funds will typically be used to reimburse project costs upon completion of the work as a lump sum payment. Partial payments will be made in accordance with Form RD 4280–2 and Form RD 1924–6, ''Construction Contract,'' or other Agency approved contract. All construction work will be performed under a written contract, as

described below. A design/build method, where the same person or entity provides design and engineering work, as well as construction or installation, may be used under this method.

(1) *Contracting requirements threshold.* For contracts above $100,000, certain Federal requirements, including surety, must be met. An attachment to the contract may be used to incorporate language for these requirements.

(2) *Forms used.* Form RD 1924–6 or other Agency approved contract must be used. Other contracts must be approved by the Agency and may be used only if they are customarily used in the area and protect the interest of the applicant and the Government with respect to compliance with items such as the drawings, specifications, payments for work, inspections, completion, 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 shall be attached to and made a part of the contract.

(3) *Contract provisions.* Contracts will have a listing of attachments and the minimum provisions of the contract will include:

(i) The contract sum;

(ii) The dates for starting and completing the work;

(iii) The amount of liquidated damages to be charged;

(iv) The amount, method, and frequency of payment;

(v) Whether or not surety bonds will be provided. If not, a latent defects bond may be required, as described in paragraph (e)(4) of this section;

(vi) The requirement that changes or additions must have prior written approval of the Agency; and

(vii) The warranty period to be provided in accordance with Appendices A and B, sections 1 through 10, paragraph (i)(1) and in Appendices C and D, paragraph (i)(1).

(4) *Surety.* Surety per 7 CFR part 1780, subpart C, § 1780.75(c) of this title will be required, and made a part of the contract, if the applicant requests it, or if the contractor requests partial payments for construction work. If the contractor will receive a lump sum payment at the end of work, the Agency will not require surety. In such cases where no surety is provided and the project involves pre-commercial technology, first of its type in the U.S., or new designs without sufficient operating hours to prove their merit, a latent defects bond may be required to cover the work.

(5) *Equal opportunity.* Section 1901.205 of 7 CFR part 1901, subpart E of this title applies to all financial assistance involving construction contracts and subcontracts in excess of $10,000. Language for this requirement is included in Form RD 1924–6. If this form is not used, such language must be made a part of the Agency approved contract.

(6) *Obtaining bids and selecting a contractor.*

(i) The applicant may select a contractor and negotiate a contract or contact several contractors and request each to submit a bid. The applicant will provide a statement to the Agency describing the process for obtaining the bid(s) and what alternatives were considered.

(ii) When a price has already been negotiated by an applicant and a contractor, the Agency will review the proposed contract. If the contractor is qualified to perform the development and provide a warranty of the work and the price compares favorably with the cost of similar construction in the area, further negotiation is unnecessary. If the Agency determines the price is too high or otherwise unreasonable, the applicant will be required to negotiate further with the contractor. If a reasonable price cannot be negotiated or if the contractor is not qualified, the applicant will be required to negotiate with another contractor.

(iii) When an applicant has proposed development with no contractor in mind, competition will be required. The applicant must obtain bids from as many qualified contractors, dealers, or trades people as feasible depending on the method and type of construction.

(iv) If the award of the contract is by competitive bidding, Form RD 1924–5, ''Invitation for Bid (Construction Contract),'' or another similar Agency approved invitation bid form containing

the requirements of subpart E of part 1901 of this title may be used. All contractors from whom bids are requested should be informed of all conditions of the contract, including the time and place of opening bids. Conditions shall not be established which would give preference to a specific bidder or type of bidder. When applicable, copies of Forms RD 1924–6 and RD 400–6, ''Compliance Statement,'' also should be provided to the prospective bidders.

(7) *Awarding the contract.* The applicant, with the concurrence of the Agency, will consider the amount of the bids or proposals, and all conditions listed in the invitation. On the basis of these considerations, the applicant will select and notify the lowest responsible bidder. The contract will be awarded using Form RD 1924–6 or similar Agency approved document as described in this section.

(8) *Final payments.* Prior to making final payment on the contract when a surety bond is not used, the Agency will be provided with Form RD 1924–9, ''Certificate of Contractor's Release,'' and Form RD 1924–10, ''Release by Claimants,'' executed by all persons who furnished materials or labor in connection with the contract. The applicant should furnish the contractor with a copy of Form RD 1924–10 at the beginning of the work in order that the contractor may obtain these releases as the work progresses.

(f) *Design/build contracts.* The design/build method, where the same person or entity provides design and engineering work, as well as construction or installation, may be used with Agency written approval. If the design/build contract amount is $200,000 or less, development and contracting will follow paragraph (e) of this section. If the design/build contract amount is greater than $200,000, Agency prior concurrence must be obtained as described below, and the remaining requirements of this section apply.

(1) *Concurrence information.* The applicant will request Agency concurrence by providing the Agency at least the information specified in paragraphs (f)(1)(i) through (f)(1)(viii) of this section.

(i) The owner's written request to use the design/build method with a description of the proposed method.

(ii) A proposed scope of work describing in clear, concise terms the technical requirements for the contract. It should include a nontechnical statement summarizing the work to be performed by the contractor and the results expected, and a proposed construction schedule showing the sequence in which the work is to be performed.

(iii) A proposed firm-fixed-price contract for the entire project which provides that the contractor shall be responsible for any extra cost which may result from errors or omissions in the services provided under the contract, as well as compliance with all Federal, State, and local requirements effective on the contract execution date.

(iv) Where noncompetitive negotiation is proposed, an evaluation of the contractor's performance on previous similar projects in which the contractor acted in a similar capacity.

(v) A detailed listing and cost estimate of equipment and supplies not included in the construction contract but which are necessary to properly operate the facility.

(vi) Evidence that a qualified construction inspector who is independent of the contractor has or will be hired.

(vii) Preliminary plans and outline specifications. However, final plans and specifications must be completed and reviewed by the Agency prior to the start of construction.

(viii) The owner's attorney's opinion and comments regarding the legal adequacy of the proposed contract documents and evidence that the owner has the legal authority to enter into and fulfill the contract.

(2) *Agency concurrence of design/build method.* The Agency shall review the material submitted by the applicant. When all items are acceptable, the loan approval official will concur in the use of the design/build method for the proposal.

(3) *Forms used.* American Institute of Architects (AIA) contract forms between the owner and design-builder that are approved by the Agency should be used. Other Agency approved

contract documents may be used provided they are customarily used in the area and protect the interest of the applicant and the Agency with respect to compliance with items such as the drawings, specifications, payments for work, inspections, completion, 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 shall be attached to and made a part of the contract.

(4) *Contract provisions.* Contracts will have a listing of attachments and shall meet the following requirements:

(i) The contract sum;

(ii) The dates for starting and completing the work;

(iii) The amount of liquidated damages, if any, to be charged;

(iv) The amount, method, and frequency of payment;

(v) Surety provisions that meet the requirements of § 1780.75(c) of this title;

(vi) The requirement that changes or additions must have prior written approval of the Agency;

(vii) The warranty period to be provided in accordance with Appendices A and B, sections 1 through 10, paragraph (i) and Appendices C and D, paragraph (i);

(viii) Contract review and concurrence in accordance with § 1780.61(b) of this title;

(ix) Owner's contractual responsibility in accordance with § 1780.68 of this title; and

(x) Further contract provisions concerning remedies, termination, surety, equal employment opportunity, anti-kickback, records, State energy conservation plan, change orders, Agency concurrence, retainage, and other compliance requirements must be met in accordance with 7 CFR part 1780, subpart C, § 1780.75 of this title.

(5) *Obtaining bids and selecting a contractor.* The applicant may select a contractor based on competitive sealed bids, competitive negotiation, or noncompetitive negotiation as described in § 1780.72(b), (c), or (d) of this title.

(g) *Contract method.* If the contract amount is greater than $200,000 and is not of the design/build method, the following conditions must be met:

(1) *Procurement method.* Procurement method shall comply with the requirements of §§ 1780.72, 1780.75, and 1780.76 of this title.

(2) *Forms used.* The AIA Form A101, ''Standard Form of Agreement Between Owner and Contractor,'' or Engineering Joint Counsel Document Committee (EJCDC) Form C–521, ''Suggested Form of Agreement Between Owner and Contractor (Stipulated Price) Funding Agency Edition,'' should be used. Other Agency approved contract documents may be used provided they are customarily used in the area and protect the interest of the applicant and the Agency with respect to compliance with items such as the drawings, specifications, payments for work, inspections, completion, 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 shall be attached to and made a part of the contract.

(3) *Contract provisions.* Contracts will have a listing of attachments and shall meet the requirements of § 1780.75 of this title and the following requirements:

(i) The contract sum;

(ii) The dates for starting and completing the work;

(iii) The amount of liquidated damages, if any, to be charged;

(iv) The amount, method, and frequency of payment;

(v) Surety provisions that meet the requirements of § 1780.75(c) of this title;

(vi) The requirement that changes or additions must have prior written approval of the Agency;

(vii) The warranty period to be provided in accordance with Appendices A and B, sections 1 through 10, paragraph (i) and with Appendices C and D, paragraph (i);

(viii) Contract review and concurrence in accordance with § 1780.61(b) of this title;

(ix) Owner's contractual responsibility in accordance with § 1780.68 of this title; and

(x) Further contract provisions concerning remedies, termination, surety, equal employment opportunity, anti-kickback, records, State energy conservation plan, change orders, Agency concurrence, retainage, and other compliance requirements must be met in accordance with § 1780.75 of this title.

(4) *Obtaining bids and selecting a contractor*. The applicant may select a contractor based on competitive sealed bids, competitive negotiation, or non-competitive negotiation as described in § 1780.72(b), (c), or (d) of this title.

(5) *Contract award*. Applicants awarding contracts must comply with § 1780.70(h) of this title.

(6) *Contracts awarded prior to applications*. Applicants awarding contracts prior to filing an application must comply with § 1780.74 of this title.

(7) *Contract administration*. Contract administration must comply with § 1780.76 of this title. If another authority, such as a Federal or State agency, is providing funding and requires oversight of inspections, change orders, and pay requests, the Agency may accept copies of their reports or forms as meeting oversight requirements of the Agency.

§ 4280.120 RES and EEI grantee requirements.

(a) A Letter of Conditions will be prepared by the Agency, establishing conditions that must be understood and agreed to by the applicant before any obligation of funds can occur. The applicant must sign Form RD 1942–46, ''Letter of Intent to Meet Conditions'' and Form RD 1940–1, ''Request for Obligation of Funds,'' if they accept the conditions of the grant.

(b) The applicant must complete, sign, and return the Form RD 4280–2. The grantee must abide by all requirements contained in Form RD 4280–2, this subpart, and any other applicable Federal statutes or regulations. Failure to follow these requirements may result in termination of the grant and adoption of other available remedies.

(c) Where applicable, the grantee shall provide to the Agency a copy of the executed power purchase agreement within 12 months from the date that the grant agreement is executed, unless otherwise approved by the Agency.

§ 4280.121 Servicing grants.

(a) *General*. RES and EEI grants will be serviced in accordance with the Departmental Regulations, 7 CFR part 1951, subparts E and O of this title, and Form RD 4280–2.

(b) *Change of contractor or vendor*. After an award has been made, the recipient of the award can request to change a contractor or vendor if the technical merit score for the project remains the same or is higher. Prior to changing a contractor or vendor, the recipient must submit to the Agency a written request providing information that allows the Agency to re-score the project's technical merit. If the Agency determines that the project achieves the same or higher technical merit score, the recipient may make the change. No additional funding will be available from the Agency if costs for the project have increased. If the Agency determines that the project does not achieve the same or higher technical merit score, the change will not be approved.

RENEWABLE ENERGY SYSTEM AND ENERGY EFFICIENCY IMPROVEMENT GUARANTEED LOANS

§ 4280.122 Borrower eligibility.

To receive a RES or EEI guaranteed loan under this subpart, a borrower must meet the criteria specified in §§ 4280.109 and 4280.112.

§ 4280.123 Project eligibility.

For a RES or EEI project to be eligible to receive a guaranteed loan under this subpart, the project must meet each of the criteria, as applicable, specified in § 4280.113(a) through (j). In addition, guaranteed loan funds may be used for necessary capital improvements to an existing renewable energy system.

§ 4280.124 Guaranteed loan funding.

(a) The amount of the loan that will be made available to an eligible project under this subpart will not exceed 75 percent of total eligible project costs. Eligible project costs are specified in paragraph (e) of this section.

(b) The minimum amount of a guaranteed loan made to a borrower will be $5,000, less any program grant amounts. The maximum amount of a guaranteed loan made to a borrower is $25 million.

(c) The percentage of guarantee, up to the maximum allowed by this section, will be negotiated between the lender and the Agency. The maximum percentage of guarantee is 85 percent for loans of $600,000 or less; 80 percent for loans greater than $600,000 up to and including $5 million; 70 percent for loans greater than $5 million up to and including $10 million; and 60 percent for loans greater than $10 million.

(d) The total amount of the loans guaranteed by the Agency under this program to one borrower, including the outstanding principal and interest balance of any existing loans guaranteed by the Agency under this program, and new loan request, must not exceed $25 million.

(e) Eligible project costs are only those costs associated with the items identified in paragraphs (e)(1) through (e)(12) of this section, as long as the items are an integral and necessary part of the renewable energy system or energy efficiency improvement.

(1) Post-application purchase and installation of equipment (new, refurbished, or remanufactured), except agricultural tillage equipment, used equipment, and vehicles.

(2) Post-application construction or improvements, except residential.

(3) Energy audits or assessments.

(4) Permit and license fees.

(5) Professional service fees, except for application preparation.

(6) Feasibility studies and technical reports.

(7) Business plans.

(8) Retrofitting.

(9) Construction of a new energy efficient facility only when the facility is used for the same purpose, is approximately the same size, and, based on the energy assessment or audit, will provide more energy savings than improving an existing facility. Only costs identified in the energy assessment or audit for energy efficiency improvements are allowed.

(10) Energy efficiency improvements are limited to only improvements identified in the energy assessment or audit. Equipment identified by the audit to be replaced shall be replaced with equipment similar in capacity. If the energy efficiency improvement has a greater capacity than the existing equipment, the Agency will pro-rate the energy efficiency improvement's total eligible project costs based on the capacity of the existing equipment. A calculation shall be performed by dividing the capacity of the existing equipment by the capacity of the proposed equipment to determine the percentage of the energy efficiency improvement's eligible project costs that the Agency will use in determining the maximum guaranteed loan assistance under this subpart (see example).

Example. A business plans to build a new production line with a capacity of 625 units per hour to replace an existing production line that produces 500 units per hour. The total project costs of the new production line is $20,000, of which $15,000 would otherwise qualify as eligible project costs. However, because the new production line has a greater production capacity than the existing line (625 units per hour versus 500 units per hour), only a portion of the $15,000 otherwise eligible project costs would be used in determining total eligible project cost and the maximum guaranteed loan assistance available. In this example, because the original capacity (500 units per hour) is 80 percent of the new capacity (625 units per hour), only 80 percent of the $15,000 of otherwise eligible project costs associated with the new production line (*i.e.*, $12,000) will be considered as total eligible project cost to be financed under this subpart. The maximum guaranteed loan award in this example would be $9,000, which is equal to $12,000 x 75 percent.

(11) Working capital.

(12) Land acquisition.

(f) In determining the amount of a loan awarded, the Agency will take into consideration the following six criteria:

(1) The type of renewable energy system to be purchased;

(2) The estimated quantity of energy to be generated by the renewable energy system;

(3) The expected environmental benefits of the renewable energy system;

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

(5) The estimated period of time it would take for the energy savings generated by the activity to equal the cost of the activity; and

(6) The expected energy efficiency of the renewable energy system.

§ 4280.125 Interest rates.

(a) The interest rate for the guaranteed loan will be negotiated between the lender and the applicant and may be either fixed or variable as long as it is a legal rate. The variable rate must be based on published indices, such as money market indices. In no case, however, shall the rate be more than the rate customarily charged borrowers in similar circumstances in the ordinary course of business. The interest rate charged is subject to Agency review and approval.

(b) Comply with § 4279.125(a), (b), and (d) of this chapter.

§ 4280.126 Terms of loan.

(a) The repayment term for a loan for:

(1) Real estate must not exceed 30 years;

(2) Machinery and equipment must not exceed 20 years, or the useful life, including major rebuilds and component replacement, whichever is less;

(3) Combined loans on real estate and equipment must not exceed 30 years; and

(4) Working capital loans must not exceed 7 years.

(b) The first installment of principal and interest will, if possible, be scheduled for payment after the project is operational and has begun to generate income.

(c) Payment terms must comply with § 4279.126(c) of this chapter.

(d) The maturity of a loan will be based on the use of proceeds, the useful life of the assets being financed, and the borrower's ability to repay.

(e) All loans guaranteed through this program must be sound, with reasonably assured repayment.

(f) Guarantees must be provided only after consideration is given to the borrower's overall credit quality and to the terms and conditions of renewable energy and energy efficiency subsidies, tax credits, and other such incentives.

(g) A principal plus interest repayment schedule is permissible.

§ 4280.127 Guarantee/annual renewal fee percentages.

(a) *Fee ceilings.* The maximum guarantee fee that may be charged is 1 percent. The maximum annual renewal fee that may be charged is 0.5 percent. The Agency will establish each year the guarantee fee and annual renewal fee and a notice will be published annually in the FEDERAL REGISTER.

(b) *Guarantee fee.* The guarantee fee will be paid to the Agency by the lender and is nonrefundable. The guarantee fee may be passed on to the borrower. The guarantee fee must be paid at the time the Loan Note Guarantee is issued.

(c) *Annual renewal fee.* The annual renewal fee will be calculated on the unpaid principal balance as of close of business on December 31 of each year. It will be calculated by multiplying the outstanding principal balance times the percent of guarantee times the annual renewal fee. The fee will be billed to the lender in accordance with the FEDERAL REGISTER publication. The annual renewal fee may not be passed on to the borrower.

§ 4280.128 Application and documentation.

The requirements in this section apply to guaranteed loan applications for RES and EEI projects under this subpart.

(a) *General.* Applications must be submitted in accordance with the requirements specified in § 4280.116(a).

(b) *Application content for guaranteed loans greater than $600,000.* Applications and documentation for guaranteed loans greater than $600,000 must provide the required information organized pursuant to a Table of Contents in a chapter format presented in the order shown in paragraphs (b)(1) and (b)(2) of this section.

(1) *Guaranteed loan application content.*

(i) *Table of contents.* Include page numbers for each component of the application in the table of contents.

Begin pagination immediately following the Table of Contents.

(ii) *Project summary*. Provide a concise summary of the proposed project and applicant information, project purpose and need, and project goals, including the following:

(A) *Title*. Provide a descriptive title of the project.

(B) *Borrower eligibility*. Describe how each of the criteria identified in §§ 4280.109 and 4280.112 is met.

(C) *Project eligibility*. Describe how each of the criteria, as applicable, in § 4280.113(a) through (j) is met. Clearly state whether the application is for the purchase of a renewable energy system (including making necessary capital improvements to an existing renewable energy system) or to make energy efficiency improvements. The response to § 4280.113(a) must include a brief description of the system or improvement. This description is to provide the reader with a frame of reference for reviewing the rest of the application. Additional project description information will be needed later in the application.

(D) *Operation description*. Describe the applicant's total farm/ranch/business operation and the relationship of the proposed project to the applicant's total farm/ranch/business operation as specified in § 4280.116(b)(3)(iv).

(iii) *Financial information for gross income or size determination*. Provide financial information to allow the Agency to determine the agricultural producer's percent of gross income derived from agricultural operations or the rural small business' size, as applicable, as specified in § 4280.116(b)(3)(v).

(iv) *Matching funds*. Submit a spreadsheet identifying sources, amounts, and status of matching funds as specified in § 4280.116(b)(5).

(v) *Self-evaluation score*. Self-score the project using the evaluation criteria in § 4280.117(c) as specified in § 4280.116(b)(6).

(vi) *Renewable energy and energy efficiency technical report*. For both renewable energy system projects and energy efficiency improvement projects, submit a Technical Report in accordance with applicable provisions of Appendix B, C, or D, as applicable, of this subpart and as specified in § 4280.116(b)(7)(ii). For loan requests in excess of $600,000, the services of a licensed PE or a team of licensed PE's is required. If none of the Technical Reports in Appendices B, C, and D apply to the proposed technology, the applicant may submit a Technical Report that conforms to the overall outline and subjects specified in applicable provisions of § 4280.116(b)(7)(ii)(A) through (G).

(vii) *Business-level feasibility study for renewable energy systems*. For each application for a renewable energy system project submitted by a start-up or existing business, a business-level feasibility study by an independent qualified consultant will be required by the Agency. An acceptable business-level feasibility study must conform to the requirements of an acceptable feasibility study as specified in Appendix E of this subpart.

(2) *Lender forms, certifications, and agreements*. Each application submitted under paragraph (b)(1) of this section must contain applicable items described in paragraphs (b)(2)(i) through (b)(2)(xi) of this section.

(i) A completed Form RD 4279–1, ''Application for Loan Guarantee.''

(ii) Form RD 1940–20.

(iii) A personal credit report from an Agency approved credit reporting company for each owner, partner, officer, director, key employee, and stockholder owning 20 percent or more interest in the borrower's business, except passive investors and those corporations listed on a major stock exchange.

(iv) Appraisals completed in accordance with § 4280.141. Completed appraisals should be submitted when the application is filed. If the appraisal has not been completed when the application is filed, the applicant must submit an estimated appraisal. In all cases, a completed appraisal must be submitted prior to the loan being closed.

(v) Commercial credit reports obtained by the lender on the borrower and any parent, affiliate, and subsidiary firms.

(vi) Current personal and corporate financial statements of any guarantors.

(vii) Financial statements as specified in § 4280.116(b)(4)(i) through (iii). Financial information is required on

the total operation of the agricultural producer/rural small business and its parent, subsidiary, or affiliates at other locations. All information submitted under this paragraph must be substantiated by authoritative records.

(viii) Business-level feasibility study.

(ix) Lender's complete comprehensive written analysis in accordance with §4280.139.

(x) A certification by the lender that it has completed a comprehensive written analysis of the proposal, the borrower is eligible, the loan is for authorized purposes with technical merit, and there is reasonable assurance of repayment ability based on the borrower's history, projections, equity, and the collateral to be obtained.

(xi) A proposed loan agreement or a sample loan agreement with an attached list of the proposed loan agreement provisions. The following requirements must be addressed in the proposed or sample loan agreement:

(A) Prohibition against assuming liabilities or obligations of others;

(B) Restriction on dividend payments;

(C) Limitation on the purchase or sale of equipment and fixed assets;

(D) Limitation on compensation of officers and owners;

(E) Minimum working capital or current ratio requirement;

(F) Maximum debt-to-net worth ratio;

(G) Restrictions concerning consolidations, mergers, or other circumstances;

(H) Limitations on selling the business without the concurrence of the lender;

(I) Repayment and amortization of the loan;

(J) List of collateral and lien priority for the loan, including a list of persons and corporations guaranteeing the loan with a schedule for providing the lender with personal and corporate financial statements. Financial statements for corporate and personal guarantors must be updated at least annually once the guarantee is provided;

(K) Type and frequency of financial statements to be required from the borrower for the duration of the loan;

(L) The addition of any requirements imposed by the Agency in Form RD 4279–3;

(M) A reserved section for any Agency environmental requirements; and

(N) A provision for the lender or the Agency to have reasonable access to the project and its performance information during its useful life or the term of the loan, whichever is longer, including the periodic inspection of the project by a representative of the lender or the Agency.

(c) *Application content for guaranteed loans of $600,000 or less.* Applications and documentation for guaranteed loans $600,000 or less must comply with paragraphs (c)(1) and (c)(2) of this section.

(1) *Application Contents.* Applications and documentation for guaranteed loans $600,000 or less must provide the required information organized pursuant to a Table of Contents in a chapter format presented in the order shown in §4280.116(b)(2) through (8), except as specified in paragraphs (c)(1)(i) through (c)(1)(iii) of this section.

(i) Section 4280.116(b)(7)(i) does not apply.

(ii) Technical Reports must be submitted according to paragraph (c)(1)(ii)(A) or (B) of this section, as applicable.

(A) For renewable energy system projects and energy efficiency improvement projects utilizing commercially available systems or improvements and with total eligible project costs of $200,000 or less, submit a Technical Report as described in Appendix A, C, or D, as applicable, of this subpart. If a renewable energy project does not fit one of the technologies identified in Appendices A, C, and D, the applicant must submit a Technical Report that conforms to the overall outline and subjects specified in §4280.116(b)(7)(ii)(G).

(B) For renewable energy projects and energy efficiency projects utilizing pre-commercial technology or with total eligible project costs greater than $200,000, submit a Technical Report as described in Appendix B, C, or D, as applicable, of this subpart and as specified in §4280.116(b)(7)(ii)(G)(*1*) through (*10*), as applicable.

(iii) *Business-level feasibility study for renewable energy systems.* For each application for a renewable energy system project submitted by a start-up or existing business, a business-level feasibility study by an independent qualified consultant will be required by the Agency. An acceptable business-level feasibility study must conform to the requirements of an acceptable feasibility study as specified in Appendix E of this subpart. Renewable energy projects with total eligible project costs of $200,000 or less are exempt from the feasibility study requirement.

(2) *Lender forms, certifications, and agreements.* Applications submitted under paragraph (c) of this section must use Form RD 4279–1A, ''Application for Loan Guarantee, Short Form,'' and include the documentation contained in paragraphs (b)(2)(ii), (b)(2)(vii), (b)(2)(viii), (b)(2)(ix), and (b)(2)(xi) of this section. The lender must have the documentation contained in paragraphs (b)(2)(iii), (b)(2)(iv), (b)(2)(v), (b)(2)(vi), and (b)(2)(x) available in its files for the Agency's review.

§ 4280.129 Evaluation of RES and EEI guaranteed loan applications.

(a) *General review.* The Agency will evaluate each application and make a determination as to whether the borrower and project are eligible, the project has technical merit, there is reasonable assurance of repayment, there is sufficient collateral and equity, and the proposed loan complies with all applicable statutes and regulations. If the Agency determines it is unable to guarantee the loan, the lender will be informed in writing. Such notification will include the reasons for denial of the guarantee.

(b) *Technical merit determination.* The Agency's determination of a project's technical merit will be based on the information provided by the applicant. The Agency may engage the services of other government agencies or recognized industry experts in the applicable technology field, at its discretion, to evaluate and rate the application. The Agency may use this evaluation and rating to determine the level of technical merit of the proposed project. Projects determined by the Agency to be without technical merit shall be deemed ineligible.

(c) *Evaluation criteria.* The Agency will score each application based on the evaluation criteria specified in § 4280.117(c) (except for the criteria specified in § 4280.117(c)(5)) and in paragraphs (c)(1) and (c)(2) of this section. Points will be awarded for either paragraph (c)(1) or (c)(2) of this section, but not both.

(1) If the interest rate on the loan is to be below the prime rate (as published in The Wall Street Journal) plus 1.5 percent, 5 points will be awarded.

(2) If the interest rate on the loan is to be below the prime rate (as published in The Wall Street Journal) plus 1 percent, 10 points will be awarded.

§ 4280.130 Eligible lenders.

Eligible lenders are those identified in § 4279.29 of this chapter, excluding mortgage companies that are part of a bank-holding company.

§ 4280.131 Lender's functions and responsibilities.

(a) *General.* Lenders are responsible for implementing the guaranteed loan program under this subpart. All lenders requesting or obtaining a loan guarantee must comply with § 4279.30(a)(1)(i) through (ix) of this chapter.

(b) *Credit evaluation.* The lender's credit evaluation must comply with § 4279.30(b) of this chapter.

(c) *Environmental information.* Lenders must ensure that borrowers furnish all environmental information required under 7 CFR part 1940, subpart G, and must comply with § 4279.30(c) of this chapter.

(d) *Construction planning and performing development.* The lender must comply with § 4279.156(a) and (b) of this chapter, except under § 4279.156(a) of this chapter, the lender must also ensure that all project facilities are designed utilizing accepted architectural and engineering practices that conform to the requirements of this subpart.

(e) *Loan closing.* The loan closing must be in compliance with § 4279.30(d) of this chapter.

§ 4280.132 Access to records.

Both the lender and borrower must permit representatives of the Agency

(or other agencies of the U.S.) to inspect and make copies of any records pertaining to any Agency guaranteed loan during regular office hours of the lender or borrower or at any other time upon agreement between the lender, the borrower, and the Agency, as appropriate.

§4280.133 Conditions of guarantee.

All loan guarantees will be subject to §4279.72 of this chapter.

§4280.134 Sale or assignment of guaranteed loan.

Any sale or assignment of the guaranteed loan must be in accordance with §4279.75 of this chapter.

§4280.135 Participation.

All participation must be in accordance with §4279.76 of this chapter.

§4280.136 Minimum retention.

Minimum retention must be in accordance with §4279.77 of this chapter.

§4280.137 Repurchase from holder.

Any repurchase from a holder must be in accordance with §4279.78 of this chapter.

§4280.138 Replacement of document.

Documents must be replaced in accordance with §4279.84 of this chapter, except, in §4279.84(b)(1)(v), a full statement of the circumstances of any defacement or mutilation of the Loan Note Guarantee or Assignment Guarantee Agreement would also need to be provided.

§4280.139 Credit quality.

The lender must determine credit quality and must address all of the elements of credit quality in a written credit analysis, including adequacy of equity, cash flow, collateral, history, management, and the current status of the industry for which credit is to be extended.

(a) *Cash flow*. All efforts will be made to structure debt so that the business has adequate debt coverage and the ability to accommodate expansion.

(b) *Collateral*. Collateral must have documented value sufficient to protect the interest of the lender and the Agency. The discounted collateral value will normally be at least equal to the loan amount. Lenders will discount collateral consistent with sound loan-to-value policy. Guaranteed loans made under this subpart shall have at least parity position with guaranteed loans made under 7 CFR part 4279, subpart B of this title.

(c) *Industry*. The current status of the industry will be considered. Borrowers developing well established commercially available renewable energy systems with significant support infrastructure may be considered for better terms and conditions than those borrowers developing systems with limited infrastructure.

(d) *Equity*. In determining the adequacy of equity, the lender must meet the criteria specified in paragraph (d)(1) of this section for loans over $600,000 and the criteria in paragraph (d)(2) of this section for loans of $600,000 or less. Cash equity injection, as discussed in paragraphs (d)(1) and (d)(2) of this section, must be in the form of cash. Federal grant funds may be counted as cash equity.

(1) For loans over $600,000, borrowers shall demonstrate evidence of cash equity injection in the project of not less than 25 percent of eligible project costs. The fair market value of equity in real property that is to be pledged as collateral for the loan may be substituted in whole or in part to meet the cash equity requirement. However, the appraisal completed to establish the fair market value of the real property must not be more than 1 year old and must meet Agency appraisal standards.

(2) For loans of $600,000 or less, borrowers shall demonstrate evidence of cash equity injection in the project of not less than 15 percent of eligible project costs. The fair market value of equity in real property that is to be pledged as collateral for the loan may be substituted in whole or in part to meet the cash equity requirement. However, the appraisal completed to establish the fair market value of the real property must not be more than 1 year old and must meet Agency appraisal standards.

(e) *Lien priorities*. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan.

The unguaranteed portion of the loan will neither be paid first nor given any preference or priority over the guaranteed portion. A parity or junior position may be considered provided that discounted collateral values are adequate to secure the loan in accordance with paragraph (b) of this section after considering prior liens.

§ 4280.140 Financial statements.

(a) The financial information required in § 4280.116(b)(3)(v) and (b)(4) is required for the guaranteed loan program.

(b) If the proposed guaranteed loan exceeds $3 million, the Agency may require annual audited financial statements, at its sole discretion when the Agency is concerned about the applicant's credit risk.

§ 4280.141 Appraisals.

(a) *Conduct of appraisals.* All appraisals must be in accordance with § 4279.144 of this chapter.

(1) For loans of $600,000 or more, a complete self-contained appraisal must be conducted. Lenders must complete at least a Transaction Screen Questionnaire for any undeveloped sites and a Phase I environmental site assessment on existing business sites, which should be provided to the appraiser for completion of the self-contained appraisal.

(2) For loans for less than $600,000, a complete summary appraisal may be conducted in lieu of a complete self-contained appraisal as required under paragraph (a)(1) of this section. Summary appraisals must be conducted in accordance with Uniform Standards of Professional Appraisal Practice (USPAP).

(b) *Specialized appraisers.* Specialized appraisers will be required to complete appraisals in accordance with paragraphs (a)(1) and (a)(2) of this section. The Agency may approve a waiver of this requirement only if a specialized appraiser does not exist in a specific industry or hiring one would cause an undue financial burden to the borrower.

§ 4280.142 Personal and corporate guarantees.

(a) All personal and corporate guarantees must be in accordance with § 4279.149(a) of this chapter.

(b) Except for passive investors, unconditional personal and corporate guarantees for those owners with a beneficial interest at least 20 percent of the borrower will be required where legally permissible.

§ 4280.143 Loan approval and obligation of funds.

The lender and applicant must comply with § 4279.173 of this chapter, except that either or both parties may also propose alternate conditions to the Conditional Commitment if certain conditions cannot be met.

§ 4280.144 Transfer of lenders.

All transfers of lenders must be in accordance with § 4279.174 of this chapter, except that it will be the Agency rather than the loan approval official who may approve the substitution of a new eligible lender.

§ 4280.145 Changes in borrower.

All changes in borrowers must be in accordance with § 4279.180 of this chapter, but the eligibility requirements of this program apply.

§ 4280.146 Conditions precedent to issuance of Loan Note Guarantee.

(a) The Loan Note Guarantee will not be issued until the lender certifies to the conditions identified in paragraphs § 4279.181(a) through (o) of this chapter and paragraphs (b) and (c) of this section.

(b) All planned property acquisitions and development have been performing at a steady state operating level in accordance with the technical requirements, plans, and specifications, conforms with applicable Federal, State, and local codes, and costs have not exceeded the amount approved by the lender and the Agency.

(c) Where applicable, the lender shall provide to the Agency a copy of the executed power purchase agreement.

§ 4280.147 Issuance of the guarantee.

(a) When loan closing plans are established, the lender must notify the

Agency in writing. At the same time, or immediately after loan closing, the lender must provide the following to the Agency:

(1) Lender's certifications as required by § 4280.146;

(2) An executed Form RD 4279–4; and

(3) An executed Form RD 1980–19, ''Guaranteed Loan Closing Report,'' and appropriate guarantee fee.

(b) When the Agency is satisfied that all conditions for the guarantee have been met, the Loan Note Guarantee and the following documents, as appropriate, will be issued:

(1) Assignment Guarantee Agreement. If the lender assigns the guaranteed portion of the loan to a holder, the lender, holder, and the Agency must execute the Assignment Guarantee Agreement;

(2) Certificate of Incumbency. If requested by the lender, the Agency will provide the lender with a copy of Form RD 4279–7, ''Certificate of Incumbency and Signature,'' with the signature and title of the Agency official responsible for signing the Loan Note Guarantee, Lender's Agreement, and Assignment Guarantee Agreement;

(3) Copies of legal loan documents; and

(4) Disbursement plan, if working capital is a purpose of the project.

§ 4280.148 Refusal to execute Loan Note Guarantee.

If the Agency determines that it cannot execute the Loan Note Guarantee, § 4279.187 of this chapter will apply.

§ 4280.149 Requirements after project construction.

Once the project has been constructed, the lender must provide the Agency periodic reports from the borrower. The borrower's reports will include the information specified in paragraphs (a) and (b) of this section, as applicable.

(a) *Renewable energy projects*. For renewable energy projects, commencing the first full calendar year following the year in which project construction was completed and continuing for 3 full years, provide a report detailing the information specified in paragraphs (a)(1) through (a)(7) of this section.

(1) The actual amount of energy produced in BTUs, kilowatt-hours, or similar energy equivalents.

(2) If applicable, documentation that any identified health and/or sanitation problem has been solved.

(3) The annual income and/or energy savings of the renewable energy system.

(4) A summary of the cost of operating and maintaining the facility.

(5) A description of any maintenance or operational problems associated with the facility.

(6) Recommendations for development of future similar projects.

(7) Actual jobs created or saved.

(b) *Energy efficiency improvement projects*. For energy efficiency improvement projects, commencing the first full calendar year following the year in which project construction was completed and continuing for 2 full years, provide a report detailing the actual amount of energy saved due to the energy efficiency improvements.

§ 4280.150 Insurance requirements.

Each borrower must obtain the insurance required in § 4280.118. The coverage required by this section must be maintained for the life of the loan unless this requirement is waived or modified by the Agency in writing.

§ 4280.151 [Reserved]

§ 4280.152 Servicing guaranteed loans.

The lender must service the entire loan and must remain mortgagee and secured party of record notwithstanding the fact that another party may hold a portion of the loan. The entire loan must be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of a loan will neither be paid first nor given any preference or priority over the guaranteed portion of the loan.

(a) *Routine servicing*. Comply with § 4287.107 of this chapter, except that all notifications from the lender to the Agency shall be in writing and all actions by the lender in servicing the entire loan must be consistent with the servicing actions that a reasonable,

prudent lender would perform in servicing its own portfolio.

(b) *Interest rate adjustments.* Comply with § 4287.112 of this chapter, except that under § 4287.112(a)(3) of this chapter the interest rates, after adjustments, must comply with the requirements for interest rates on new loans as established by § 4280.125.

(c) *Release of collateral.*

(1) Collateral may only be released in accordance with § 4287.113(a) and (b) of this chapter and paragraph (c)(2) of this section.

(2) Within the parameters of paragraph (c)(1) of this section, lenders may, over the life of the loan, release collateral (other than personal and corporate guarantees) with a cumulative value of up to 20 percent of the original loan amount without Agency concurrence, if the proceeds generated are used to reduce the guaranteed loan or to buy replacement collateral or real estate equal to or greater than the collateral being replaced.

(d) *Subordination of lien position.* All subordinations of the lender's lien position must comply with § 4287.123 of this chapter.

(e) *Alterations of loan instruments.* All alterations of loan instruments must comply with § 4287.124 of this chapter.

(f) *Loan transfer and assumption.* All loan transfers and assumptions must comply with § 4287.134(c), (d), (f), (g), and (i) through (k) of this chapter in addition to the following:

(1) *Documentation of request.* All transfers and assumptions must be approved in writing by the Agency and must be to eligible applicants in accordance with § 4280.122. An individual credit report must be provided for transferee proprietors, partners, offices, directors, and stockholders with 20 percent or more interest in the business, along with such other documentation as the Agency may request to determine eligibility.

(2) *Terms.* Loan terms must not be changed unless the change is approved in writing by the Agency with the concurrence of any holder and the transferor (including guarantors), if they have not been or will not be released from liability. Any new loan terms must be within the terms authorized by § 4280.126. The lender's request for approval of new loan terms will be supported by an explanation of the reasons for the proposed change in loan terms.

(3) *Additional loans.* Loans to provide additional funds in connection with a transfer and assumption must be considered as a new loan application under § 4280.128.

(4) *Loss resulting from transfer.* If a loss should occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor (including personal guarantors) is released from liability, the lender, if it holds the guaranteed portion, may file Form RD 449–30, ''Loan Note Guarantee Report of Loss,'' to recover its pro rata share of the actual loss. If a holder owns any of the guaranteed portion, such portion must be repurchased by the lender or the Agency in accordance with § 4279.78(c) of this chapter. In completing the report of loss, the amount of the debt assumed will be entered as net collateral (recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption will be included in the calculations.

§ 4280.153 Substitution of lender.

(a) All substitutions of lenders must comply with § 4287.135(a)(2) and (b) of this chapter and paragraph (b) of this section.

(b) The Agency may approve the substitution of a new lender if the proposed substitute lender:

(1) Is an eligible lender in accordance with § 4280.130;

(2) Is able to service the loan in accordance with the original loan documents; and

(3) Acquires title to the unguaranteed portion of the loan held by the original lender and assumes all original loan requirements, including liabilities and servicing responsibilities.

§ 4280.154 Default by borrower.

If the loan goes into default, the lender must comply with § 4287.145 of this chapter.

§4280.155 Protective advances.

All protective advances made by the lender must comply with §4287.156 of this chapter.

§4280.156 Liquidation.

All liquidations must comply with §4287.157 of this chapter, except as follows:

(a) Under §4287.157(d)(13) of this chapter, whenever $200,000 is used substitute $100,000; and

(b) Under §4287.157(d)(13) of this chapter, replace the sentence ''The appraisal shall consider this aspect'' with ''Both the estimate and the appraisal shall consider this aspect.''

§4280.157 Determination of loss and payment.

Loss and payments will be determined in accordance with §4287.158 of this chapter.

§4280.158 Future recovery.

Future recoveries will be conducted in accordance with §4287.169 of this chapter.

§4280.159 Bankruptcy.

Bankruptcies will be handled in accordance with §4287.170 of this chapter, except that the notification required under §4287.170(b)(4) of this chapter shall be made in writing.

§4280.160 Termination of guarantee.

Guarantees will be terminated in accordance with §4287.180 of this chapter.

§§4280.161–4280.164 [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 defined as follows:

(a) *Eligibility*. Applicants must meet the applicant eligibility requirements specified in §§4280.109 and 4280.112 and the borrower eligibility requirements specified in §4280.122. Projects must meet the project eligibility requirements specified in §§4280.113 and 4280.123. Applicants may submit simplified applications if the project meets the requirements specified in §4280.114.

(b) *Funding*. Funding provided under this section is subject to the limits described in paragraphs (b)(1) through (b)(3) of this section.

(1) The amount of any combined grant and guaranteed loan must not exceed 75 percent of total eligible project costs. For purposes of combined funding requests, total eligible project costs are based on the total costs associated with those items specified in §§4280.115(c) and 4280.124(e). The applicant must provide the remaining total funds needed to complete the project.

(2) The minimum combined funding request allowed is $5,000, with the grant portion of the funding request being at least $1,500.

(3) Applicants whose combination applications are approved for funding must utilize both the loan guarantee and the grant. The Agency reserves the right to reduce the total loan guarantee and grant award as appropriate.

(c) *Application and documentation*. When applying for combined funding, the applicant must submit separate applications for both types of assistance (grant and guaranteed loan). Each application must meet the requirements, including the requisite forms and certifications, specified in §§4280.116 and 4280.128. The separate applications must be submitted simultaneously. The applicant must submit at least one set of documentation, but does not need to submit duplicate forms or certifications.

(d) *Evaluation*. The Agency will evaluate each application according to applicable procedures specified in §§4280.117 and 4280.129.

(e) *Interest rate and terms of loan*. The interest rate and terms of the loan for the loan portion of the combined funding request will be determined based on the procedures specified in §§4280.125 and 4280.126 for guaranteed loans.

(f) *Other provisions*. In addition to the requirements specified in paragraphs (a) through (e) of this section, the combined funding request shall be subject to the other requirements specified in this subpart, including, but not limited

to, processing and servicing requirements, as applicable, as described in paragraphs (f)(1) through (f)(3) of this section.

(1) All other provisions of §§ 4280.101 through 4280.111 apply to the combined funding request.

(2) All other provisions of §§ 4280.112 through 4280.121 apply to the grant portion of the combined funding request.

(3) All other provisions of §§ 4280.122 through 4280.160 apply to the guaranteed loan portion of the combined funding request.

§§ 4280.166–4280.169 [Reserved]

RENEWABLE ENERGY SYSTEM FEASIBILITY STUDY GRANTS

§ 4280.170 Applicant eligibility.

To be eligible for a renewable energy system feasibility study grant under this subpart, the applicant must be an agricultural producer or a rural small business, as defined in § 4280.103, and must be the prospective owner of the renewable energy system for which the feasibility study grant is sought.

§ 4280.171 Project eligibility.

Only renewable energy system projects that meet the requirements specified in this section are eligible for feasibility study grants under this subpart. The project for which the feasibility study grant is sought shall:

(a) Be for the purchase, installation, expansion, or other energy-related improvement of a renewable energy system located in a State, as defined in § 4280.103;

(b) Be for a facility located in a rural area if the applicant is a rural small business, or in a rural or non-rural area if the applicant is an agricultural producer. If the agricultural producer's facility is in a non-rural area, then the feasibility study can only be for a renewable energy system on integral components of or directly related to the facility, such as vertically integrated operations, and are part of and co-located with the agriculture production operation;

(c) Be for technology that is pre-commercial or commercially available, and that is replicable;

(d) Not have had a feasibility study already completed for it with Federal and/or State assistance; and

(e) The applicant has a place of business in a State.

§ 4280.172 Application eligibility provisions.

(a) Applications for industry-level feasibility studies, also known as feasibility study templates or guides, are not eligible because the assistance is not provided to a specific project.

(b) Applications must be from the prospective owner(s) of the renewable energy system for which the feasibility study grant is sought. Applications from other entities (e.g., entities that would be conducting the feasibility study and are not the prospective owners) will not be accepted.

(c) Applications can be submitted for a modification to an existing renewable energy system (e.g., for the expansion portion of an existing wind farm).

(d) Applications cannot be submitted in a Fiscal Year for an RES project if an RES application for the same renewable energy system is submitted in that same Fiscal Year and vice versa.

§ 4280.173 Grant funding for feasibility studies.

(a) *Maximum grant amount*. The maximum amount of grant funds that will be made available for an eligible feasibility study project under this subpart to any one recipient will not exceed $50,000 or 25 percent of the total eligible project cost of the study, whichever is less. Eligible project costs are specified in paragraph (b) of this section.

(b) *Eligible project costs*. Only post-application costs will be considered eligible. Eligible project costs for renewable energy system feasibility studies shall be specific to the completion of the feasibility study (refer to Appendix E of this subpart for information on the content of a feasibility study) including, but not limited to, the items listed in paragraphs (b)(1) through (b)(3) of this section.

(1) Resource assessment;

(2) Transmission study; and

(3) Environmental study.

(c) *Ineligible project costs.* Ineligible project costs for renewable energy system feasibility studies include, but are not limited to:

(1) Costs associated with selection of engineering, architectural, or environmental services;

(2) Designing, bidding, or contract development for the proposed facility;

(3) Permitting and other licensing costs required to construct the facility; and

(4) Any goods or services provided by a person or entity who has a conflict of interest as provided in §4280.106.

(d) *Time limit.* The grantee will have 2 years from the date of the grant agreement to provide the Agency with a complete and acceptable feasibility study and to request disbursement of the funds. If the grantee does not submit to the Agency a complete and acceptable feasibility study within this 2 year period, the grant is subject to termination by and reimbursement to the Agency according to Departmental regulations.

§§4280.174–4280.175 [Reserved]

§4280.176 Feasibility study grant applications—content.

Applications for feasibility study grants must include a Table of Contents with clear pagination and chapter identification and shall contain the information specified in paragraphs (a) and (b) of this section and shall be presented in the same order.

(a) *Forms, documents, and certifications.* The application shall contain the forms and documents specified in paragraphs (a)(1) through (a)(11) of this section.

(1) Form SF–424.

(2) Form SF–424A, ''Budget Information—Non-Construction Programs'' (as applicable).

(3) Form SF–424B, ''Assurances—Non-Construction Programs'' (as applicable).

(4) Form SF–424C (as applicable).

(5) Form SF–424D (as applicable).

(6) Form RD 1940–20 (as applicable).

(7) Except for sole proprietors, a copy of legal organizational documents.

(8) A proposed work plan, which includes:

(i) A brief description of the proposed system the feasibility study will evaluate;

(ii) A description of the feasibility study to be conducted. The contents of an acceptable feasibility study are identified in Appendix E of this subpart. Applicants shall require those conducting the feasibility study to consider and document within the feasibility study the important environmental factors within the planning area and the potential environmental impacts of the project for which the feasibility study is being conducted, as well as the alternatives considered;

(iii) The timeframe for completion of the feasibility study;

(iv) The experience of the company/individual completing the feasibility study, including the number of similar projects the company/individual has performed, the number of years the company has been performing a similar service, and corresponding resumes; and

(v) The source and amount of other project funds needs to be clearly identified. Agency approved written documentation/confirmation from any third party committing a specific amount of such funds is required. Documentation includes such items as bank statements, lender commitment letters, and so forth;

(9) A certification that the applicant has not received any other Federal or State assistance for a feasibility study for the subject renewable energy system.

(10) If the applicant is a rural small business, certification that the feasibility study grant will be for a renewable energy system project that is located in a rural area.

(11) The applicant's Dun and Bradstreet Data Universal Numbering System (DUNS) number (except for individuals).

(b) *Financial information for gross income or size determination.* The application shall contain sufficient financial information to allow the Agency to determine the agricultural producer's percentage of gross income derived from agricultural operations or the rural small business' size, as applicable. All information submitted under

this paragraph (b) must be substantiated by authoritative records:

(1) If the applicant is a rural small business, provide sufficient information to determine its total annual receipts and number of employees and the same information for any parent, subsidiary, or affiliates at other locations. Voluntarily providing tax returns is one means of satisfying this requirement. The information provided must be sufficient for the Agency to make a determination of business size as defined by the Small Business Administration; and

(2) If the applicant is an agricultural producer, provide the gross market value of the agricultural products, gross agricultural income, and gross nonfarm income of the applicant for the calendar year preceding the year in which the application is submitted.

§ 4280.177 Evaluation of feasibility study grant applications.

(a) *Agency evaluation*. Feasibility study applications submitted under this subpart will be evaluated by the Agency for eligibility, completeness, and scoring.

(b) *General review*. The Agency will evaluate each application and make a determination as to whether the applicant is eligible, the proposed grant is for an eligible feasibility study, and the proposed grant complies with all applicable statutes and regulations.

(1) *Applicant eligibility*. The Agency will first determine whether the entity is eligible to compete for a feasibility study grant. Applications for applicants determined by the Agency not to be eligible will not be processed further. The Agency will determine applicant eligibility based on the criteria specified in § 4280.170.

(2) *Proposal eligibility*. After determining applicant eligibility, the Agency will review the application to determine if the proposal is eligible. Applications determined by the Agency not to be eligible will not be processed further. The Agency will determine whether the application contains certification by the applicant that the applicant has not received any other Federal or State assistance for a feasibility study on the subject facility. If the application does not contain such certification, it is an ineligible application and the Agency will stop processing the application.

§ 4280.178 Scoring feasibility study grant applications.

Agency personnel will score each feasibility study application based on the evaluation criteria specified in paragraphs (a) through (f) of this section, with a maximum score of 100 points possible.

(a) *Energy replacement or generation*. The project can be for either replacement or generation, but not both. A maximum of 25 points can be awarded under this section.

(1) *Energy replacement*. 25 points will be awarded if proposed project will offset any portion of the applicant's energy needs.

(2) *Energy generation*. 15 points will be awarded if the proposed renewable energy system is intended primarily for production of energy for sale.

(b) *Commitment of funds for the feasibility study*. Appropriate documentation must verify commitment of funds. A maximum of 10 points can be awarded under this section.

(1) 10 points—100 percent of matching funds.

(2) 7.5 points—75 percent up to, but not including 100 percent of matching funds.

(3) 5 points—50 percent up to, but not including 75 percent of matching funds.

(4) 0 points—less than 50 percent of matching funds.

(c) *Designation as a Small agricultural producer/very small business*. An applicant will be considered either an agricultural producer or rural small business. No applicant will be considered as both. Points will only be awarded under either paragraph (c)(1) or (c)(2) of this section. A maximum of 20 points can be awarded under this section.

(1) For an Agricultural Producer:

(i) 10 points will be awarded if the applicant is an agricultural producer producing agricultural products with a gross market value of less than $600,000 in the preceding year, or

(ii) 20 points will be awarded if the applicant is an agricultural producer producing agricultural products with a gross market value of less than $200,000 in the preceding year.

(2) For a Rural Small Business, 20 points will be awarded if the applicant is a very small business, as defined in §4280.103.

(d) *Experience and qualifications of the entity identified to perform the feasibility study*. A maximum of 15 points can be awarded under this section.

(1) 15 points will be awarded if the entity has 5 or more years experience in the field of study for the technology being proposed.

(2) 7.5 points will be awarded if the entity has 2 or more years, but less than 5 years, experience in the field of study for the technology field being proposed.

(3) 0 points will be awarded if the entity has less than 2 years experience in the field of study for the technology field being proposed.

(e) *Size of feasibility study grant request*. A maximum of 20 points can be awarded under this section. If the feasibility study request is:

(1) $10,000 or less, 20 points will be awarded.

(2) Greater than $10,000 up to and including $25,000, 10 points will be awarded.

(3) Greater than $25,000, 0 points will be awarded.

(f) *Resources to implement project*. Considering the technology being proposed, the applicant may qualify for other local or State programs to assist in the construction or operation of the facility. These programs will benefit the applicant and/or proposed project during or after the facility is constructed and operational. Points can be awarded for both types of assistance, for a maximum of 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.

§4280.179 Selecting feasibility study grant applications for award.

The Agency will use the following process to determine which feasibility study grants receive funding under this subpart.

(a) *Ranking of applications*. All scored applications will be ranked by the Agency as soon after the application deadline as possible. All applications that are ranked will be considered for selection for funding.

(b) *Selection of applications for funding*. Using the ranking created under paragraph (a) of this section, the Agency will consider the score an application has received compared to the scores of other ranked applications, with higher scoring applications receiving first consideration for funding.

(c) *Funding selected applications*. As applications are funded, if insufficient funds remain to fund the next highest scoring application, the Agency may elect to fund a lower scoring application. Before this occurs, the Agency will provide the applicant of the higher scoring application the opportunity to reduce the amount of its grant request to the amount of funds available. If the applicant agrees to lower its grant request, it must certify that the purposes of the project can be met, and the Agency must determine the project is financially feasible at the lower amount.

(d) *Disposition of ranked applications not funded*. Based on the availability of funding, a ranked application may not be funded in the fiscal year in which it was submitted. Such ranked applications will not be carried forward into Fiscal Year 2012 and the Agency will notify the applicant in writing.

§4280.180 Actions prior to grant closing.

(a) *Environmental*. If construction is a component of the study, the appropriate level of environmental assessment must be completed prior to the obligation of funds. All feasibility study grants made under this subpart are subject to the requirements of 7 CFR part 1940, subpart G. When construction is not a component of the study, feasibility studies are considered planning assistance, which are categorically excluded from the environmental review process by §1940.310 of this title.

(b) *Evidence of other funds*. Applicants expecting funds from other sources for use in completing projects being partially financed with Agency funds shall present evidence of the commitment of these funds from such other sources prior to disbursement of grant funds.

§ 4280.181 Awarding and administering feasibility study grants.

Renewable energy system feasibility study grants will be awarded and administered in accordance with Departmental regulations and paragraphs (a) through (e) of this section.

(a) *Letter of conditions.* The Agency will notify the approved applicant in writing, setting out the conditions under which the grant will be made. The notice will include those matters necessary to ensure that the proposed grant is completed in accordance with the terms of the scope of work and budget, that grant funds are expended for the feasibility study, and that the applicable requirements prescribed in the relevant Departmental regulations are complied with. The Letter of Conditions will be sent to the applicant.

(b) *Applicant's intent to meet conditions.* Upon reviewing the conditions and requirements in the Letter of Conditions, the applicant must complete, sign and return a Form RD 1942–46, ''Letter of Intent to Meet Conditions,'' to the Agency; or if certain conditions cannot be met, the applicant may propose alternate conditions to the Agency. The Agency must concur with any changes proposed to the Letter of Conditions by the applicant before the application will be further processed.

(c) *Forms and certifications.* The forms specified in paragraphs (c)(1) through (c)(6) of this section will be attached to the letter of conditions referenced in paragraph (a) of this section. The forms specified in paragraphs (c)(1) through (c)(5) of this section and all of the certifications must be submitted prior to grant approval. The form specified in paragraph (c)(6), which is to be completed by the contractor (if any), does not need to be returned to the Agency, but must be kept on file.

(1) Form AD–1047.

(2) Form AD–1049.

(3) Either Form SF–LLL or Exhibit A–1 of RD Instruction 1940–Q.

(4) Form RD 400–1.

(5) Form RD 400–4.

(6) Form AD–1048.

(d) *Grant approval.* The applicant will be sent a copy of the executed Form RD 1940–1, the approved scope of work, and Form RD 4280–2. Form RD 1940–1 must be signed by the applicant.

(e) *Grant agreement.* Prior to grant disbursement, but after grant obligation, the applicant must complete, sign, and return Form RD 4280–2. The grantee must abide by all requirements contained in Form RD 4280–2, this subpart, and any other applicable Federal statutes or regulations. Failure to follow these requirements may result in termination of the grant and adoption of other available remedies.

§ 4280.182 Servicing feasibility study grants.

Feasibility study grants will be serviced in accordance with Departmental regulations; 7 CFR part 1951, subparts E and O; and paragraphs (a) through (n) of this section.

(a) *Inspections.* Grantees will permit periodic inspection of the project records and operations by a representative of the Agency.

(b) *Programmatic changes.* The grantee shall obtain prior Agency approval for any change to the scope or objectives of the approved project. Failure to obtain prior approval of changes to the scope of work or budget may result in suspension, termination, and recovery of grant funds.

(c) *Changes in project cost or scope.* If there is a significant reduction in project cost or changes in project scope, the applicant's funding needs, eligibility, and scoring, as applicable, will be reassessed. Decreases in Agency funds will be based on revised project costs and other selection factors; however, other factors, including Agency regulations and Notices used at the time of grant approval, will remain the same. Obligated grant funds not needed to complete the project will be de-obligated.

(d) *Transfer of obligations.* Subject to Agency approval, an obligation of funds established for a grantee may be transferred to a different (substituted) grantee provided:

(1) The substituted grantee

(i) Is eligible;

(ii) Has a close and genuine relationship with the original grantee; and

(iii) Has the authority to receive the assistance approved for the original grantee; and

(2) The type of renewable energy technology and the scope of the project

for which the Agency funds will be used remain unchanged.

(e) *Financial management system and records.* Grantees are required to maintain a financial management system and records in accordance with Departmental regulations.

(f) *Fund disbursement.* Grant funds will be expended on a pro rata basis with matching funds.

(1) Requests for reimbursement may be submitted monthly or more frequently if authorized to do so by the Agency. Ordinarily, payment will be made within 30 days after receipt of a proper request for reimbursement.

(2) The Grantee shall not request reimbursement for the Federal share of amounts withheld from contractors to ensure satisfactory completion of work until after it makes those payments.

(3) Payment shall be made by electronic funds transfer.

(4) Standard Form 270, ''Request for Advance or Reimbursement,'' or other format prescribed by the Agency shall be used to request grant reimbursements.

(5) For renewable energy system feasibility studies, grant funds will be disbursed in accordance with the above through 90 percent of grant disbursement. The final 10 percent of grant funds will be held by the Agency until a feasibility study acceptable to the Agency has been submitted.

(g) *Deobligation of grant funds.* Funds remaining after all costs incident to the project have been paid or provided for are subject to deobligation.

(h) *Monitoring of project.* Grantees are responsible for ensuring that all activities are performed within the approved scope of work and that funds are only used for approved purposes. Grantees shall constantly monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, financial resources are being appropriately expended by contractors (if applicable), and any other performance objectives identified in the scope of work are being achieved. The Agency will monitor grantees to ensure that activities are performed in accordance with the Agency-approved scope of work and to ensure that funds are expended for approved purposes. The Agency's monitoring of grantees neither relieves the grantee of its responsibilities to ensure that activities are performed within the scope of work approved by the Agency and that funds are expended for approved purposes only nor provides recourse or a defense to the grantee should the grantee conduct unapproved activities, engage in unethical conduct, engage in activities that are or give the appearance of a conflict of interest, or expend funds for unapproved purposes.

(i) *Federal financial reports.* A SF–425, ''Federal Financial Report,'' and a project performance report will be required of all grantees on a semiannual basis. The grantee will complete the project within the total sums available to it, including the grant, in accordance with the scope of work and any necessary modifications thereof prepared by the grantee and approved by the Agency. The final federal financial report must be submitted to the Agency within 90 days after the feasibility study has been completed.

(j) *Performance reports.* Grantees must submit to the Agency, in writing, semiannual performance reports and a final performance report. Grantees are to submit an original of each report to the Agency.

(1) *Semiannual performance reports.* Each semiannual performance report shall describe current progress and identify any problems, delays, or adverse conditions, if any, which have affected or will affect attainment of overall project objectives or prevent meeting time frame for completion of the feasibility study within 2 years. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation.

(2) *Final performance report.* A final performance report, which will serve as the last semiannual performance report, will be required within 90 days after the feasibility study has been completed. The final performance report shall summarize any problems, delays, or adverse conditions, if any, which have affected the project objectives or prevented meeting time frames for completion of the feasibility study. The final performance report should indicate if the grantee intends to proceed with the construction of the project.

(k) *Final deliverables.* Upon completion of the feasibility study, the grantee shall submit the following to the Agency:

(1) The project feasibility study; and

(2) SF–270.

(l) *Renewable energy feasibility studies.* Beginning the first full year after the feasibility study has been completed, grantees shall report annually for 2 years on the following:

(1) Is the renewable energy system project for which the feasibility study was conducted underway? If ''yes,'' describe how far along the renewable energy system project is (e.g., financing has been secured, site has been secured, construction contracts are in place, project is completed).

(2) Is the renewable energy system project complete? If so, what is the actual amount of energy being produced?

(m) *Other reports.* For clarification purposes, the Agency may request any additional project and/or performance data for the project for which grant funds have been received.

(n) *Grant close-out and related activities.* Grant close-out and related activities shall be performed in accordance with the Departmental Regulations. In addition, failure to submit satisfactory reports on time under the provisions of paragraphs (i) through (m) of this section may result in the suspension or termination of a grant. The provisions of this section apply to grants and subgrants.

§§ 4280.183–4280.185 [Reserved]

ENERGY AUDIT AND RENEWABLE ENERGY DEVELOPMENT ASSISTANCE GRANTS

§ 4280.186 Applicant eligibility.

To be eligible for an energy audit grant or a renewable energy development assistance grant under this subpart, the applicant must meet each of the criteria, as applicable, specified in paragraphs (a) through (c) of this section. The Agency will determine an applicant's eligibility.

(a) *Type of applicant.* The applicant must be one of the following:

(1) A unit of State, tribal, or local government;

(2) A land-grant college or university, or other institution of higher education;

(3) A rural electric cooperative;

(4) A public power entity; or

(5) An instrumentality of a State, tribal, or local government.

(b) *Capacity to perform.* The applicant must have sufficient capacity to perform the energy audit or renewable energy development assistance activities proposed in the application to ensure success. The Agency will make this assessment based on the information provided in the application.

(c) *Legal authority and responsibility.* Each applicant must have, or obtain, the legal authority necessary to carry out the purpose of the grant.

§ 4280.187 Project eligibility.

To be eligible for an energy audit or a renewable energy development assistance grant, the grant funds for a project must be used by the grant recipient to assist agricultural producers or rural small businesses located in a State in one or both of the purposes specified in paragraphs (a) and (b) of this section, and shall also comply with paragraphs (c) through (e), and, if applicable, paragraph (f) of this section.

(a) Grant funds may be used to conduct and promote energy audits that meet the requirements of the energy audit as defined in this subpart. Energy audits must cover the following:

(1) *Situation report.* Provide a narrative description of the facility or process being audited; its energy system(s) and usage; its activity profile; and the price per unit of energy (electricity, natural gas, propane, fuel oil, renewable energy, etc.) paid by the customer on the date of the audit. Any energy conversion data should be based on use and source.

(2) *Potential improvements.* List specific information regarding all potential energy-saving opportunities and the associated cost.

(3) *Technical analysis.* Discuss the interactions of the potential improvements with existing energy systems.

(i) Estimate the annual energy and energy costs savings expected from each improvement identified for the potential project.

(ii) Estimate all direct and attendant indirect costs of each improvement.

(iii) Rank potential improvement measures by cost-effectiveness.

(4) *Potential improvement description.* Provide a narrative summary of the potential improvement and its ability to provide needed benefits, including a discussion of non-energy benefits such as project reliability and durability.

(i) Provide preliminary specifications for critical components.

(ii) Provide preliminary drawings of project layout, including any related structural changes.

(iii) Document baseline data compared to projected consumption, together with any explanatory notes. Provide the actual total quantity of energy used (BTU) in the original building and/or equipment in the 12 months prior to the EEI project and the projected energy usage after the EEI project shall be the projected total quantity of energy used (BTU) on an annual basis for the same size or capacity as the original building or equipment. For energy efficiency improvement to equipment, if the new piece of equipment has a different capacity than the piece of equipment being replaced, the projected total quantity of energy used for the new piece of equipment shall be adjusted based on the ratio of the capacity of the replaced piece of equipment to the capacity of the new piece of equipment. When appropriate, show before-and-after data in terms of consumption per unit of production, time or area. Include at least 1 year's bills for those energy sources/fuel types affected by this project. Also submit utility rate schedules, if appropriate.

(iv) Identify significant changes in future related operations and maintenance costs.

(v) Describe explicitly how outcomes will be measured annually.

(b) Grant funds may be used to conduct and promote renewable energy development assistance by providing to agricultural producers and rural small businesses recommendations and information on how to improve the energy efficiency of their operations and to use renewable energy technologies and resources in their operations.

(c) Energy audit and renewable energy development assistance can be provided only to a facility located in a rural area unless the owner of such facility is an agricultural producer. If the facility is owned by an agricultural producer, the facility for which such services are being provided may be located in either a rural or non-rural area. If the agricultural producer's facility is in a non-rural area, then the energy audit or renewable energy development assistance can only be for a renewable energy system or energy efficiency improvement on integral components of or directly related to the facility, such as vertically integrated operations, and are part of and co-located with the agriculture production operation.

(d) The energy audit or renewable energy development assistance must be provided to a recipient in a State.

(e) The applicant must have a place of business in a State.

(f) For the purposes of this subpart, only small hydropower projects are eligible for energy audits and renewable energy development assistance. Per consultation with the U.S. Department of Energy, the Agency is defining small hydropower as having a rated power of 30 megawatts or less, which includes hydropower projects commonly referred to as ''micro-hydropower'' and ''mini-hydropower.''

§4280.188 Grant funding for energy audit and renewable energy development assistance.

(a) *Maximum grant amount.* The maximum aggregate amount of energy audit and renewable energy development assistance grants awarded to any one recipient under this subpart cannot exceed $100,000. Grant funds awarded for energy audit and renewable energy development assistance projects may be used only to pay eligible project costs, as described in paragraph (b) of this section. Grant funds awarded for energy audits and renewable energy development assistance projects are prohibited from being used to pay costs associated with the items listed in paragraph (c) of this section.

(b) *Eligible project costs.* Eligible project costs for energy audits and renewable energy development assistance are those post-application expenses directly related to conducting and promoting energy audits and renewable

energy development assistance, which include but are not limited to:

(1) Salaries directly or indirectly related to the project;

(2) Travel expenses directly related to conducting energy audits or renewable energy development assistance;

(3) Office supplies (e.g., paper, pens, file folders); and

(4) Administrative expenses, up to a maximum of 5 percent of the grant, which include but are not limited to:

(i) Utilities;

(ii) Office space;

(iii) Operation expenses of office and other project-related equipment (e.g., computers, cameras, printers, copiers, scanners); and

(iv) Expenses for outreach and marketing of the energy audit and renewable energy development assistance activities, including associated travel expenses.

(c) *Ineligible project purposes.* Grant funds may not be used to:

(1) Pay for any construction-related activities;

(2) Purchase equipment;

(3) Pay any costs of preparing the application package for funding under this subpart;

(4) Pay any costs of the project incurred prior to the application date of the grant made under this subpart;

(5) Fund political or lobbying activities; and

(6) Pay any judgment or debt owed to the United States.

(d) *Energy audits.* A recipient of a grant under this subpart that conducts an energy audit shall require that, as a condition of the energy audit, the agricultural producer or rural small business pay at least 25 percent of the cost of the energy audit. Further, the amount paid by the agricultural producer or rural small business will be retained by the recipient as a contribution towards the cost of the energy audit.

(e) *Time limit.* Unless otherwise agreed to by the Agency, any energy audit or renewable energy development assistance grant agreement under this subpart will terminate 2 years from the date the Agency signs the agreement.

§ 4280.189 [Reserved]

§ 4280.190 EA/REDA grant applications—content.

Applications must contain the elements specified in paragraphs (a) through (g) of this section.

(a) Form SF–424.

(b) Form SF–424A.

(c) Form SF–424B.

(d) If applicable, a copy of the applicant's organizational documents showing the applicant's legal existence and authority to perform the activities under the grant.

(e) A proposed scope of work, including a description of the proposed project, details of the proposed activities to be accomplished and timeframes for completion of each task, the number of months duration of the project, and the estimated time it will take from grant approval to beginning of project implementation. A written narrative to be used as the scope of work which includes, at a minimum, the following items:

(1) An Executive Summary;

(2) The plan and schedule for implementation;

(3) The anticipated number of agricultural producers and/or rural small businesses to be served;

(4) An itemized budget—compute total cost per rural small business or agricultural producer served—matching funds should be clearly identified as cash;

(5) The geographic scope of the proposed project;

(6) Applicant's experience as follows:

(i) If applying for a renewable energy development assistance grant, the applicant's experience in completing similar renewable energy development assistance activities, including the number of similar projects the applicant has performed and the number of years the applicant has been performing a similar service.

(ii) If applying for an energy audit grant, the number of energy audits and assessments the applicant has completed and the number of years the applicant has been performing those services;

(iii) For all applicants, the amount of experience in administering energy audit, renewable energy development

assistance, or similar activities using State or Federal support.

(7) Applicant's resources, including personnel, finances, and technology, to complete what is proposed. If an application is for projects located in multiple states, resources must be sufficient to complete all projects;

(8) Leveraging and commitment of other sources of funding being brought to the project. Leveraged funds should be clearly identified as cash and by source. Written documentation/confirmation from the party committing a specific amount of leveraged funds is required;

(9) Outreach activities/marketing efforts specific to conducting energy audit and renewable energy development assistance including:

(i) Project title;

(ii) Goals of the project;

(iii) Identified need;

(iv) Target audience;

(v) Timeline and type of activities/action plan; and

(vi) Marketing strategies.

(10) Method and rationale used to select the areas and businesses that will receive the service.

(11) Brief description of how the work will be performed, including whether organizational staff, consultants, or contractors will be used.

(f) The most recent financial audit (not more than 18 months old) of the applicant, or subdivision thereof, that will be performing the proposed work. If such an audit is not available, the latest financial information that shows the financial capacity of the applicant, or subdivision thereof, to perform the proposed work. Such information may include, but is not limited to, the most recent year-end balance sheet, income statement, and other appropriate data that identify the applicant's resources.

(g) The applicant's Dun and Bradstreet Data Universal Numbering System (DUNS) number.

§4280.191 Evaluation of energy audit and renewable energy development assistance grant applications.

Upon receipt of an application, the Agency will conduct a review to determine if the applicant and project are eligible. The Agency will notify the applicant in writing of the Agency's findings. If the Agency has determined that either the applicant or project is ineligible, it will include in the notification the reason(s) for its determination(s).

§4280.192 Scoring energy audit and renewable energy development assistance grant applications.

Agency personnel will score each application using the criteria specified in paragraphs (a) through (h) of this section, with a maximum score of 100 points possible.

(a) *Project proposal (maximum score of 10 points).* The applicant will be scored based on its in-house ability to conduct audits versus using third party auditing organizations as illustrated in the application.

(1) If the applicant proposes to use at least 51 percent of the awarded funding to employ internal, qualified auditors and/or renewable energy specialists for program implementation, up to 10 points will be awarded as follows:

(i) If the percentage is between 51 percent and 75 percent (inclusive), 5 points will be awarded.

(ii) If the percentage is more than 75 percent, 10 points will be awarded.

(2) If the applicant proposes to use less than 51 percent of the awarded funding to employ internal, qualified auditors and/or renewable energy specialists for program implementation, zero points will be awarded.

(b) *Use of Grant Funds for Administrative Expenses (maximum score of 10 points).* Grantees selected to participate may use up to 5 percent of their award for administrative expenses.

(1) If the applicant proposes to use none of the grant funds for Administrative Expenses, 10 points will be awarded.

(2) If the applicant proposes to use a portion (up to 5 percent) of the grant funds for Administrative Expenses, zero points will be awarded.

(c) *Applicant's organizational experience in completing proposed activity (maximum score of 15 points).* The applicant will be scored on the experience of the organization in meeting the benchmarks below. This means that an organization must have been in business and provided services as noted in the

scoring requirements. An organization's experience must be documented with references and resumes. Points will be awarded as follows:

(1) More than 3 years of experience, 15 points will be awarded.

(2) At least 2 years and up to and including 3 years of experience, 10 points will be awarded.

(3) At least 1 year but less than 2 years of experience, 5 points will be awarded.

(4) Less than 1 year of experience, zero points will be awarded.

(d) *Geographic scope of project in relation to identified need (maximum score of 10 points).*

(1) If the applicant's proposed or existing service area is State-wide or includes all or parts of multiple states, and the marketing and outreach plan has identified needs throughout that service area, 10 points will be awarded.

(2) If the applicant's proposed or existing service area consists of multiple counties in a single State and the marketing and outreach plan has identified needs throughout that service area, 7.5 points will be awarded.

(3) If the applicant's service area consists of a single county or municipality and the marketing and outreach plan has identified needs throughout that service area, 5 points will be awarded.

(e) *Number of agricultural producers/rural small businesses to be served (maximum score of 15 points).*

(1) If the applicant plans to provide audits to ultimate recipients with average audit costs of $1,000 or less, 15 points will be awarded.

(2) If the applicant plans to provide audits to ultimate recipients with average audit costs over $1,000 but less than $1,500, 10 points will be awarded.

(3) If the applicant plans to provide audits to ultimate recipients with average audit costs of at least $1,500 but less than $2,000, 5 points will be awarded.

(f) *Potential of project to produce energy savings and its attending environmental benefits (maximum score of 25 points).* Applicants can be awarded points under both paragraphs (f)(1) and (f)(2) of this section.

(1) If the applicant has an existing program that can demonstrate the achievement of energy savings with the agricultural producers and/or rural small businesses it has served, 13 points will be awarded.

(2) If the applicant provides evidence that it has received awards in recognition of its renewable energy, energy savings, or energy-based technical assistance, up to 12 points will be awarded based on number of awards and rigorousness of the competition for each award.

(g) *Marketing and outreach plan (maximum score of 10 points).* If the applicant includes in the application a marketing and outreach plan and provides a satisfactory discussion of each of the following criteria, two points for each of the following will be awarded:

(1) The goals of the project;

(2) Identified need;

(3) Target beneficiaries;

(4) Timeline and action plan; and

(5) Marketing strategies and supporting data for strategies.

(h) *Level and commitment of other funds for the project (maximum score of 5 points).*

(1) If the applicant proposes to leverage grant funding with 50 percent or more in non-State and non-Federal government matching funds for the subject grant, and has a written commitment for those funds, 5 points will be awarded.

(2) If the applicant proposes to leverage grant funding with less than 50 percent but more than 20 percent in non-State and non-Federal government matching funds for the subject grant, and has a written commitment for those funds, 2 points will be awarded.

(3) If the applicant proposes 20 percent or less in non-State and non-Federal government matching funds, zero points will be awarded.

§ 4280.193 Selecting energy audit and renewable energy development assistance grant applications for award.

Applications will be scored by the State Offices and submitted to the National Office for review. To ensure the equitable geographic distribution of funds, the two highest scoring applications from each State, based on the scoring criteria established under § 4280.192 will be submitted to the National Office to compete for funding.

(a) *Ranking of applications*. All applications submitted to the National Office will be ranked. All applications that are ranked will be considered for selection for funding.

(b) *Selection of applications for funding*. Using the ranking created under paragraph (a) of this section, the Agency will consider the score an application has received compared to the scores of other ranked applications, with higher scoring applications receiving first consideration for funding.

(c) *Funding selected applications*. As applications are funded, if insufficient funds remain to fund the next highest scoring application, the Agency may elect to fund a lower scoring application. Before this occurs, the Agency will provide the applicant of the higher scoring application the opportunity to reduce the amount of its grant request to the amount of funds available. If the applicant agrees to lower its grant request, it must certify that the purposes of the project can be met, and the Administrator must determine the project is financially feasible at the lower amount.

(d) *Disposition of ranked applications not funded*. Based on the availability of funding, a ranked application submitted under this subpart may not be funded. Such ranked applications will not be carried forward into Fiscal Year 2012 and the Agency will notify the applicant in writing.

§4280.194 Actions prior to grant closing.

Applicants expecting funds from other sources for use in completing projects being partially financed with Agency funds must have these funds from other such sources prior to grant closing. Agency funds will not be expended in advance of funds committed to the project from other sources without prior Agency approval.

§4280.195 Awarding and administering energy audit and renewable energy development assistance grants.

Energy audit and renewable energy development assistance grants under this subpart will be awarded and administered in accordance with Departmental regulations and with paragraphs (a) through (e) of this section.

(a) *Letter of conditions*. The Agency will notify the approved applicant in writing, setting out the conditions under which the grant will be made. The notice will include those matters necessary to ensure that the proposed grant is completed in accordance with the terms of the scope of work and budget, that grant funds are expended for authorized purposes, and that the applicable requirements prescribed in the relevant Departmental regulations are complied with. The Letter of Conditions will be sent to the applicant.

(b) *Applicant's intent to meet conditions*. Upon reviewing the conditions and requirements in the letter of conditions, the applicant must complete, sign, and return Form RD 1942–46 to the Agency; or if certain conditions cannot be met, the applicant may propose alternate conditions to the Agency. The Agency must concur with any changes proposed to the Letter of Conditions by the applicant before the application will be further processed.

(c) *Forms*. The forms specified in paragraphs (c)(1) through (c)(6) of this section will be attached to the letter of conditions referenced in paragraph (a) of this section. The forms specified in paragraphs (c)(1) through (c)(5) of this section must be submitted prior to grant approval. The form specified in paragraph (c)(6), which is to be completed by the contractor (if any), does not need to be returned to the Agency, but must be kept on file.

(1) Form RD 1942–46.

(2) Form AD–1047.

(3) Form AD–1049.

(4) Either Form SF–LLL or Exhibit A–1 of RD Instruction 1940–Q.

(5) Form RD 400–4.

(6) Form AD–1048.

(d) *Grant approval*. The applicant will be sent a copy of the executed Form RD 1940–1, the approved scope of work, and Form RD 4280–2. Form RD 1940–1 must be signed by the applicant.

(e) *Grant agreement*. Prior to grant approval, the applicant must complete, sign, and return Form RD 4280–2. The grantee must abide by all requirements contained in Form RD 4280–2, this subpart, and any other applicable Federal

statutes or regulations. Failure to follow these requirements may result in termination of the grant and adoption of other available remedies.

§ 4280.196 Servicing energy audit and renewable energy development assistance grants.

Energy audit and renewable energy development assistance grants will be serviced in accordance the requirements specified in Departmental regulations, 7 CFR part 1951, subparts E and O, and paragraphs (a) through (n) of this section.

(a) *Inspections.* Grantees will permit periodic inspection of the project operations by a representative of the Agency.

(b) *Programmatic changes.* The grantee shall obtain prior Agency approval for any change to the scope or objectives of the approved project. Failure to obtain prior approval of changes to the scope of work or budget may result in suspension, termination, and recovery of grant funds.

(c) *Changes in project cost or scope.* If there is a significant reduction in project cost or changes in project scope, the applicant's funding needs, eligibility, and scoring, as applicable, will be reassessed. Decreases in Agency funds will be based on revised project costs and other selection factors; however, other factors, including Agency regulations used at the time of grant approval, will remain the same. Obligated grant funds not needed to complete the project will be de-obligated.

(d) *Transfer of obligations.* The grantee may request a transfer of obligation to a different (substitute) grantee. Subject to Agency approval, an obligation of funds established for a grantee may be transferred to a substitute grantee provided:

(1) The substituted grantee

(i) Is eligible;

(ii) Has a close and genuine relationship with the original grantee; and

(iii) Has the authority to receive the assistance approved for the original grantee; and

(2) The need, purpose(s), and scope of the project for which the Agency funds will be used remain substantially unchanged.

(e) *Financial management system and records.*

(1) The grantee will provide for Financial Management Systems that will include:

(i) Accurate, current, and complete disclosure of the financial result of each grant.

(ii) Records that identify adequately the source and application of funds for grant-supporting activities, together with documentation to support the records. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

(iii) Effective control over and accountability for all funds. Grantee shall adequately safeguard all such assets and shall ensure that funds are used solely for authorized purposes.

(2) The grantee will retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least 3 years after completion of grant activities except that the records shall be retained beyond the 3-year period if audit findings have not been resolved or if directed by the United States. Microfilm copies may be substituted in lieu of original records. The Agency and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the grantee which are pertinent to the specific grant for the purpose of making audit, examination, excerpts, and transcripts.

(f) *Audit requirements.* Grantees must provide an annual audit in accordance with 7 CFR part 3052.

(g) *Fund disbursement.* The Agency will determine, based on the applicable Departmental regulations, whether disbursement of a grant will be by advance or reimbursement. A SF–270 must be completed by the grantee and submitted to the Agency no more often than monthly to request either advance or reimbursement of funds. Upon receipt of a properly completed SF–270, the funds will be requested through the field office terminal system. Ordinarily, payment will be made within 30 days after receipt of a proper request for advance or reimbursement.

(h) *Deobligation of grant funds.* Funds remaining after all costs incident to the project have been paid or provided for are subject to deobligation.

(i) *Monitoring of project.* Grantees are responsible for ensuring that all activities are performed within the approved scope of work and that funds are only used for approved purposes. Grantees shall constantly monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, financial resources are appropriately expended by contractors (if applicable), and any other performance objectives identified in the scope of work are being achieved. The Agency will monitor grantees to ensure that activities are performed in accordance with the Agency-approved scope of work and to ensure that funds are expended for approved purposes. The Agency's monitoring of grantees neither relieves the grantee of its responsibilities to ensure that activities are performed within the scope of work approved by the Agency and that funds are expended for approved purposes only nor provides recourse or a defense to the grantee should the grantee conduct unapproved activities, engage in unethical conduct, engage in activities that are or give the appearance of a conflict of interest, or expend funds for unapproved purposes.

(j) *Federal financial reports.* A SF–425 and a project performance report will be required of all grantees on a 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.

(k) *Performance reports.* Grantees must submit to the Agency, in writing, semiannual performance reports and a final performance report. Grantees are to submit an original of each report to the Agency.

(1) *Semiannual performance reports.* Project performance reports shall include, but not be limited to, the following:

(i) A comparison of actual accomplishments to the objectives established for that period (e.g., the number of audits performed, number of recipients of renewable energy development assistance);

(ii) A list of recipients, each recipient's location, and each recipient's NAICS code;

(iii) Problems, delays, or adverse conditions, if any, that have in the past or will in the future affect attainment of overall project objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation;

(iv) Percentage of financial resources expended on contractors; and

(v) Objectives and timetable established for the next reporting period.

(2) *Final performance report.* A final performance report will be required with the final Federal financial report within 90 days after project completion. In addition to the information required under paragraph (k)(1) of this section, the final performance report must contain the information specified in paragraphs (k)(2)(i) and (k)(2)(ii), as applicable, of this section.

(i) For energy audit projects, the final performance report must provide complete information regarding:

(A) The number of audits conducted,

(B) A list of recipients (agricultural producers and rural small businesses) with each recipient's North American Industry Classification System code,

(C) The location of each recipient,

(D) The cost of each audit,

(E) The expected energy saved for each audit conducted if the audit is implemented, and

(F) The percentage of financial resources expended on contractors.

(ii) For renewable energy development assistance projects, the final performance report must provide complete information regarding:

(A) A list of recipients with each recipient's North American Industry Classification System code,

(B) The location of each recipient,

(C) The expected renewable energy that would be generated if the projects were implemented, and

(D) The percentage of financial resources expended on contractors.

(l) *Final status report.* One year after submittal of the final performance report, the grantee will provide the Agency a final status report on the number of projects that are proceeding with one or all of the grantee's recommendations, including the amount of energy saved and the amount of renewable energy generated, as applicable.

(m) *Other reports.* The Agency may request any additional project and/or performance data for the project for which grant funds have been received.

(n) *Grant close-out and related activities.* In addition to the requirements specified in the Departmental regulations, failure to submit satisfactory reports on time under the provisions of paragraphs (i) through (m) of this section may result in the suspension or termination of a grant. The provisions of this section apply to grants and subgrants.

§§ 4280.197–4280.199 [Reserved]

§ 4280.200 OMB control numbers.

The information collection requirements contained in the regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control numbers 0570–0050, 0570–0059, and 0570–0061. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

APPENDIX A TO SUBPART B OF PART 4280—TECHNICAL REPORTS FOR PROJECTS WITH TOTAL ELIGIBLE PROJECT COSTS OF $200,000 OR LESS

The Technical Report for projects with total eligible project costs of $200,000 or less must demonstrate that the project design, procurement, installation, startup, operation, and maintenance of the renewable energy system or energy efficiency improvement will operate or perform as specified over its design life in a reliable and a cost-effective manner. The Technical Report must also identify all necessary project agreements, demonstrate that those agreements will be in place, and that necessary project equipment and services are available over the design life.

All technical information provided must follow the format specified in Sections 1 through 10 of this appendix. Supporting information may be submitted in other formats. Design drawings and process flowcharts are encouraged as exhibits. A discussion of each topic is not necessary if the topic is not applicable to the specific project. Questions identified in the Agency's technical review of the project must be answered to the Agency's satisfaction before the application will be approved. The applicant must submit the original technical report plus one copy to the Rural Development State Office. Depending on the level of engineering required for the specific project or if necessary to ensure public safety, the services of a licensed professional engineer or a team of licensed professional engineers may be required.

SECTION 1. BIOENERGY

The technical requirements specified in this section apply to bioenergy projects, which are, as defined in § 4280.103, renewable system[s] that produce fuel, thermal energy, or electric power from a biomass source, other than an anaerobic digester project.

(a) *Qualifications of key project service providers.* List all key project service providers. If one or more licensed professionals are involved in the project, provide the credentials for each professional.

(b) *Agreements, permits, and certifications.*

(1) Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits.

(2) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase agreements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(3) Identify all environmental issues, including any compliance issues associated with or expected as a result of the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G of this title.

(c) *Resources assessment.* Provide adequate and appropriate evidence of the availability of the renewable resource required for the system to operate as designed. Indicate the type, quantity, quality, and seasonality of the biomass resource, including harvest and storage, where applicable. Where applicable, indicate shipping or receiving method and required infrastructure for shipping. For proposed projects with an established resource, provide a summary of the resource.

(d) *Design and engineering.* Applicants must submit a statement certifying that their project will be designed and engineered so as to meet the intended purpose, will ensure

public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, applicants must:

(1) Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose;

(2) List possible suppliers and models of major pieces of equipment;

(3) Provide a description of the components, materials, or systems to be installed. Include the location of the project;

(4) Provide a one-line diagram for the electrical interconnection. Provide diagrams or schematics as required showing all major installed structural, mechanical, and electrical components of the system;

(5) Describe the expected electric power, fuel production, or thermal energy production of the proposed system as rated and as expected in actual field conditions. For systems with a capacity of more than 20 tons per day of biomass, address performance on a monthly and annual basis. For small projects such as a commercial biomass furnace or pelletizer of up to 5 tons daily capacity, proven, commercially available devices need not be addressed in detail. Describe the uses of or the market for electricity, heat, or fuel produced by the system;

(6) Discuss the impact of reduced or interrupted biomass availability on the system process; and

(7) Describe the project site and address issues such as proximity to the load or the electrical grid, unique safety concerns, and whether special circumstances exist.

(e) *Project development schedule.* Provide a project schedule in an appropriate level of detail that will demonstrate that the project can be adequately managed and be able to identify impacts of any delays on the project completion. The applicant must submit a statement certifying that the project will be completed within 2 years from the date of approval.

(f) *Project economic assessment.* Provide an analysis of the proposed project to demonstrate its financial performance, including the calculation of simple payback. The analysis should include applicable investment incentives, productivity incentives, loans and grants, and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* The project must be installed in accordance with applicable local, State, and national building and electrical codes and regulations. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules. Upon successful system installation and following established operation, the successful applicant must deliver invoices and evidence of payment.

(i) *Operations and maintenance.* Identify any unique operations and maintenance requirements of the project necessary for the system to operate as designed over the design life. State the design life of the system.

(1) Provide information on all system warranties. A minimum 3-year warranty for equipment and a 10-year warranty on design are expected.

(2) If the project has any unique operation and maintenance issues, describe them.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives.

SECTION 2. ANAEROBIC DIGESTER PROJECTS

The technical requirements specified in this section apply to anaerobic digester projects, which are, as defined in §4280.103, renewable energy systems that use animal waste and other organic substrates to produce thermal or electrical energy via anaerobic digestion.

(a) *Qualifications of key project service providers.* List all key project service providers. If one or more licensed professionals are involved in the project, provide the credentials for each professional.

(b) *Agreements, permits, and certifications.*

(1) Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits.

(2) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase agreements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(3) Identify all environmental issues, including any compliance issues associated with or expected as a result of the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G of this title.

(c) *Resources assessment.* Provide adequate and appropriate data to demonstrate the amount of digestible substrate resource available. Indicate the source of the data and assumptions. Indicate the substrates used as digester inputs, including animal wastes, food-processing wastes, or other organic wastes in terms of type, quantity,

seasonality, and frequency of collection. Describe any special handling of feedstock that may be necessary. Describe the process for determining the feedstock resource. Show the digestion conversion factors and calculations used to estimate biogas production and heat or power production.

(d) *Design and engineering.* Applicants must submit a statement certifying that their project will be designed and engineered so as to meet the intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, applicants must:

(1) Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose;

(2) List possible suppliers and models of major pieces of equipment;

(3) Provide a description of the components, materials, or systems to be installed. Include the location of the project;

(4) Provide a one-line diagram for the electrical interconnection. Provide diagrams or schematics as required showing all major installed structural, mechanical, and electrical components of the system;

(5) Describe the expected electric power, fuel production, or thermal energy production of the proposed system as rated and as expected in actual field conditions. Describe the uses of or the market for electricity, heat, or fuel produced by the system; and

(6) Describe the project site and address issues such as proximity to the load or the electrical grid, unique safety concerns, and whether special circumstances exist.

(e) *Project development schedule.* Provide a project schedule in an appropriate level of detail that will demonstrate the project can be adequately managed and be able to identify impacts of any delays on the project completion. The applicant must submit a statement certifying that the project will be completed within 2 years from the date of approval.

(f) *Project economic assessment.* Provide an analysis of the proposed project to demonstrate its financial performance, including the calculation of simple payback. The analysis should include applicable investment incentives, productivity incentives, loans and grants, and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Include a statement from the applicant certifying ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* The project must be installed in accordance with applicable local, State, and national building and electrical codes and regulations. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules. Upon successful system installation and following established operation, the successful applicant must deliver invoices and evidence of payment.

(i) *Operations and maintenance.* Identify any unique operations and maintenance requirements of the project necessary for the system to operate as designed over the design life. State the design life of the system.

(1) Provide information on all system warranties. A minimum 3-year warranty for equipment and a 10-year warranty on design are expected.

(2) If the project has any unique operation and maintenance issues, describe them.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives.

SECTION 3. GEOTHERMAL, ELECTRIC GENERATION

The technical requirements specified in this section apply to electric generation geothermal projects, which are, as defined in § 4280.103, systems that use geothermal energy to produce high pressure steam for electric power production.

(a) *Qualifications of key project service providers.* List all key project service providers. If one or more licensed professionals are involved in the project, provide the credential for each professional.

(b) *Agreements, permits, and certifications.*

(1) Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including any permits or agreements required for well construction and for disposal or re-injection of cooled geothermal waters and the schedule for securing those agreements and permits.

(2) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase agreements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(3) Identify all environmental issues, including any compliance issues associated with or expected as a result of the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G of this title.

(c) *Resources assessment.* Provide adequate and appropriate evidence of the availability of the renewable resource required for the system to operate as designed. Indicate the

quality of the geothermal resource, including temperature, flow, and sustainability and what conversion system is to be installed. Describe any special handling of cooled geothermal waters that may be necessary. Describe the process for determining the geothermal resource, including measurement setup for the collection of the geothermal resource data. For proposed projects with an established resource, provide a summary of the resource and the specifications of the measurement setup.

(d) *Design and engineering.* Applicants must submit a statement certifying that their project will be designed and engineered so as to meet the intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, applicants must:

(1) Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose;

(2) List possible suppliers and models of major pieces of equipment;

(3) Provide a description of the components, materials, or systems to be installed. Include the location of the project;

(4) Provide a one-line diagram for the electrical interconnection. Provide diagrams or schematics as required showing all major installed structural, mechanical, and electrical components of the system;

(5) Describe the expected electric power, fuel production, or thermal energy production of the proposed system as rated and as expected in actual field conditions. Describe the uses of or the market for electricity, heat, or fuel produced by the system; and

(6) Describe the project site and address issues such as proximity to the load or the electrical grid, unique safety concerns, and whether special circumstances exist.

(e) *Project development schedule.* Provide a project schedule in an appropriate level of detail that will demonstrate that the project can be adequately managed and be able to identify impacts of any delays on the project completion. The applicant must submit a statement certifying that the project will be completed within 2 years from the date of approval.

(f) *Project economic assessment.* Provide an analysis of the proposed project to demonstrate its financial performance, including the calculation of simple payback. The analysis should include applicable investment incentives, productivity incentives, loans and grants, and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* The project must be installed in accordance with applicable local, State, and national building and electrical codes and regulations. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules. Upon successful system installation and following established operation, the successful applicant must deliver invoices and evidence of payment.

(i) *Operations and maintenance.* Identify any unique operations and maintenance requirements of the project necessary for the system to operate as designed over the design life. State the design life of the system.

(1) Provide information on all system warranties. A minimum 3-year warranty for equipment and a 10-year warranty on design are expected.

(2) If the project has any unique operation and maintenance issues, describe them.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives.

SECTION 4. GEOTHERMAL, DIRECT USE

The technical requirements specified in this section apply to direct use geothermal projects, which are, as defined in §4280.103, systems that use thermal energy directly from a geothermal source.

(a) *Qualifications of key project service providers.* List all key project service providers. If one or more licensed professionals are involved in the project, provide the credentials for each professional.

(b) *Agreements, permits, and certifications.*

(1) Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including any permits or agreements required for well construction and for disposal or re-injection of cooled geothermal waters and the schedule for securing those agreements and permits.

(2) Identify all environmental issues, including any compliance issues associated with or expected as a result of the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G of this title.

(c) *Resources assessment.* Provide adequate and appropriate evidence of the availability of the renewable resource required for the system to operate as designed. Indicate the quality of the geothermal resource, including temperature, flow, and sustainability and what direct use system is to be installed. Describe any special handling of cooled geothermal waters that may be necessary. Describe the process for determining the geothermal resource, including measurement

setup for the collection of the geothermal resource data. For proposed projects with an established resource, provide a summary of the resource and the specifications of the measurement setup.

(d) *Design and engineering.* Applicants must submit a statement certifying that their project will be designed and engineered so as to meet the intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, applicants must:

(1) Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose;

(2) List possible suppliers and models of major pieces of equipment;

(3) Provide a description of the components, materials, or systems to be installed. Include the location of the project;

(4) Provide one-line diagram for the electrical interconnection. Provide diagrams or schematics as required showing all major installed structural, mechanical, and electrical components of the system;

(5) Describe the expected thermal energy production of the proposed system as rated and as expected in actual field conditions. Describe the uses of, or the market for, heat produced by the system; and

(6) Describe the project site and address issues such as proximity to the load, unique safety concerns, and whether special circumstances exist.

(e) *Project development schedule.* Provide a project schedule in an appropriate level of detail that will demonstrate the project can be adequately managed and be able to identify impacts of any delays on the project completion. The applicant must submit a statement certifying that the project will be completed within 2 years from the date of approval.

(f) *Project economic assessment.* Provide an analysis of the proposed project to demonstrate its financial performance, including the calculation of simple payback. The analysis should include applicable investment incentives, productivity incentives, loans and grants, and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* The project must be installed in accordance with applicable local, State, and national building and electrical codes and regulations. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules. Upon successful system installation and following established operation, the successful applicant must deliver invoices and evidence of payment.

(i) *Operations and maintenance.* Identify any unique operations and maintenance requirements of the project necessary for the system to operate as designed over the design life. State the design life of the system.

(1) Provide information on all system warranties. A minimum 3-year warranty for equipment and a 10-year warranty on design are expected.

(2) If the project has any unique operation and maintenance issues, describe them.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives.

SECTION 5. HYDROGEN

The technical requirements specified in this section apply to hydrogen projects, which are, as defined in §4280.103, renewable energy systems that produce hydrogen, or a renewable energy system that uses mechanical or electric power or thermal energy from a renewable resource using hydrogen as an energy transport medium.

(a) *Qualifications of key project service providers.* List all key project service providers. If one or more licensed professionals are involved in the project, provide the credentials for each professional.

(b) *Agreements, permits, and certifications.*

(1) Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits.

(2) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase agreements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(3) Identify all environmental issues, including any compliance issues associated with or expected as a result of the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G of this title.

(c) *Resources assessment.* Provide adequate and appropriate data to demonstrate the type, quantity, quality, and seasonality of the local renewable resource that will be used to produce the hydrogen.

(d) *Design and engineering.* Applicants must submit a statement certifying that their project will be designed and engineered so as to meet the intended purpose, will ensure

public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, applicants must:

(1) Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose;

(2) List possible suppliers and models of major pieces of equipment;

(3) Provide a description of the components, materials, or systems to be installed. Include the location of the project;

(4) Provide a one-line diagram for the electrical interconnection. Provide diagrams or schematics as required showing all major installed structural, mechanical, and electrical components of the system; and

(5) Describe the project site and address issues such as proximity to the load or the electrical grid, unique safety concerns, and whether special circumstances exist.

(e) *Project development schedule.* Provide a project schedule in an appropriate level of detail that will demonstrate the project can be adequately managed and be able to identify impacts of any delays on the project completion. The applicant must submit a statement certifying that the project will be completed within 2 years from the date of approval.

(f) *Project economic assessment.* Provide an analysis of the proposed project to demonstrate its financial performance, including the calculation of simple payback. The analysis should include applicable investment incentives, productivity incentives, loans and grants, and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* The project must be installed in accordance with applicable local, State, and national building and electrical codes and regulations. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules. Upon successful system installation and following established operation, the successful applicant must deliver invoices and evidence of payment.

(i) *Operations and maintenance.* Identify any unique operations and maintenance requirements of the project necessary for the system to operate as designed over the design life. State the design life of the system.

(1) Provide information on all system warranties. A minimum 3-year warranty for equipment and a 10-year warranty on design are expected.

(2) If the project has any unique operation and maintenance issues, describe them.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives.

SECTION 6. SOLAR, SMALL

The technical requirements specified in this section apply to small solar electric projects and small solar thermal projects, as defined in §4280.103.

Small solar electric projects are those for which the rated power of the system is 10kW or smaller. Small solar electric projects are either stand-alone (off grid) or interconnected to the grid at less than 600 volts (on grid).

Small solar thermal projects are those for which the rated storage volume of the system is 240 gallons or smaller, or which have a collector area of 1,000 square feet or less.

(a) *Qualifications of key project service providers.* List all key project service providers. If one or more licensed professionals are involved in the project, provide the credentials for each professional.

(b) *Agreements, permits, and certifications.*

(1) Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits.

(2) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase agreements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(3) Identify all environmental issues, including any compliance issues associated with or expected as a result of the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G of this title.

(c) *Resources assessment.* Provide adequate and appropriate data to demonstrate the amount of solar resource available. Indicate the source of the solar data and assumptions.

(d) *Design and engineering.* Applicants must submit a statement certifying that their project will be designed and engineered so as to meet the intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, applicants must:

(1) Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose;

(2) List possible suppliers and models of major pieces of equipment;

(3) Provide a description of the components, materials, or systems to be installed. Include the location of the project;

(4) Provide a one-line diagram for the electrical interconnection. Provide diagrams or schematics as required showing all major installed structural, mechanical, and electrical components of the system; and

(5) Describe the project site and address issues such as solar access, orientation, proximity to the load or the electrical grid, unique safety concerns, and whether special circumstances exist.

(e) *Project development schedule*. Provide a project schedule in an appropriate level of detail that will demonstrate that the project can be adequately managed and be able to identify impacts of any delays on the project completion. The applicant must submit a statement certifying that the project will be completed within 2 years from the date of approval.

(f) *Project economic assessment*. Provide an analysis of the proposed project to demonstrate its financial performance, including the calculation of simple payback. The analysis should include applicable investment incentives, productivity incentives, loans and grants, and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement*. Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation*. The project must be installed in accordance with applicable local, State, and national building and electrical codes and regulations. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules. Upon successful system installation and following established operation, the successful applicant must deliver invoices and evidence of payment.

(i) *Operations and maintenance*. Identify any unique operations and maintenance requirements of the project necessary for the system to operate as designed over the design life. State the design life of the system.

(1) Provide information on all system warranties. A minimum 3-year warranty for equipment and a 10-year warranty on design are expected.

(2) If the project has any unique operation and maintenance issues, describe them.

(j) *Dismantling and disposal of project components*. Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives.

SECTION 7. SOLAR, LARGE

The technical requirements specified in this section apply to large solar electric projects and large solar thermal projects, as defined in §4280.103.

Large solar electric systems are those for which the rated power of the system is larger than 10kW. Large solar electric systems are either stand-alone (off grid) or interconnected to the grid (on grid).

Large solar thermal systems are those for which the rated storage volume of the system is greater than 240 gallons or that have a collector area of more than 1,000 square feet.

(a) *Qualifications of key project service providers*. List all key project service providers. If one or more licensed professionals are involved in the project, provide the credential for each professional.

(b) *Agreements, permits, and certifications*.

(1) Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits.

(2) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase agreements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(3) Identify all environmental issues, including any compliance issues associated with or expected as a result of the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G of this title.

(c) *Resources assessment*. Provide adequate and appropriate data to demonstrate the amount of solar resource available. Indicate the source of the solar data and assumptions.

(d) *Design and engineering*. Applicants must submit a statement certifying that their project will be designed and engineered so as to meet the intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, applicants must:

(1) Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose;

(2) List possible suppliers and models of major pieces of equipment;

(3) Provide a description of the components, materials, or systems to be installed. Include the location of the project;

(4) Provide a one-line diagram for the electrical interconnection. Provide diagrams or

schematics as required showing all major installed structural, mechanical, and electrical components of the system; and

(5) Describe the project site and address issues such as solar access, orientation, proximity to the load or the electrical grid, unique safety concerns, and whether special circumstances exist.

(e) *Project development schedule.* Provide a project schedule in an appropriate level of detail that will demonstrate the project can be adequately managed and be able to identify impacts of any delays on the project completion. The applicant must submit a statement certifying that the project will be completed within 2 years from the date of approval.

(f) *Project economic assessment.* Provide an analysis of the proposed project to demonstrate its financial performance, including the calculation of simple payback. The analysis should include applicable investment incentives, productivity incentives, loans and grants, and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* The project must be installed in accordance with applicable local, State, and national building and electrical codes and regulations. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules. Upon successful system installation and following established operation, the successful applicant must deliver invoices and evidence of payment.

(i) *Operations and maintenance.* Identify any unique operations and maintenance requirements of the project necessary for the system to operate as designed over the design life. State the design life of the system.

(1) Provide information on all system warranties. A minimum 3-year warranty for equipment and a 10-year warranty on design are expected.

(2) If the project has any unique operation and maintenance issues, describe them.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives.

SECTION 8. WIND, SMALL

The technical requirements specified in this section apply to small wind systems, which are, as defined in §4280.103, wind energy systems for which the rated power of the wind turbine is 100kW or smaller and with a generator hub height of 120 feet or less. Small wind systems are either standalone or connected to the local electrical system at less than 600 volts.

(a) *Qualifications of key project service providers.* List all key project service providers. If one or more licensed professionals are involved in the project, provide the credentials for each professional.

(b) *Agreements, permits, and certifications.*

(1) Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits.

(2) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase agreements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(3) Identify all environmental issues, including any compliance issues associated with or expected as a result of the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G of this title.

(c) *Resources assessment.* Provide adequate and appropriate data to demonstrate the amount of local wind resource where the small wind turbine is to be installed. Indicate the source of the wind data and assumptions.

(d) *Design and engineering.* Applicants must certify that their project will be designed and engineered so as to meet the intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, applicants must:

(1) Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose;

(2) List possible suppliers and models of major pieces of equipment;

(3) Provide a description of the components, materials, or systems to be installed. Include the location of the project;

(4) Provide a one-line diagram for the electrical interconnection. Provide diagrams or schematics as required showing all major installed structural, mechanical, and electrical components of the system; and

(5) Describe the project site and address issues such as proximity to the load or the electrical grid, unique safety concerns, and whether special circumstances exist.

(e) *Project development schedule.* Provide a project schedule in an appropriate level of detail that will demonstrate the project can be adequately managed and be able to identify impacts of any delays on the project completion. The applicant must submit a

statement certifying that the project will be completed within 2 years from the date of approval.

(f) *Project economic assessment.* Provide an analysis of the proposed project to demonstrate its financial performance, including the calculation of simple payback. The analysis should include applicable investment incentives, productivity incentives, loans and grants, and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* The project must be installed in accordance with applicable local, State, and national building and electrical codes and regulations. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules. Upon successful system installation and following established operation, the successful applicant must deliver invoices and evidence of payment.

(i) *Operations and maintenance.* Identify any unique operations and maintenance requirements of the project necessary for the system to operate as designed over the design life. State the design life of the system.

(1) Provide information on all system warranties. A minimum 3-year warranty for equipment and a 10-year warranty on design are expected.

(2) If the project has any unique operation and maintenance issues, describe them.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives.

SECTION 9. WIND, LARGE

The technical requirements specified in this section apply to large wind systems, which are, as defined in §4280.103, wind energy projects for which the rated power of the individual wind turbine(s) is larger than 100kW.

(a) *Qualifications of key project service providers.* List all key project service providers. If one or more licensed professionals are involved in the project, provide the credentials for each professional.

(b) *Agreements, permits, and certifications.*

(1) Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits.

(2) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase agreements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(3) Identify all environmental issues, including any compliance issues associated with or expected as a result of the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G of this title.

(c) *Resources assessment.* Provide adequate and appropriate data to demonstrate the amount of local wind resource where the large wind turbine is to be installed. Indicate the source of the wind data and assumptions. Projects greater than 500kW must obtain wind data from the proposed project site. For such projects, describe the proposed measurement setup for the collection of the wind resource data. For proposed projects with an established wind resource, provide a summary of the wind resource and the specifications of the measurement setup. Large wind systems larger than 500kW in size will typically require at least 1 year of on-site monitoring. If less than 1 year of data is used, the qualified meteorological consultant must provide a detailed analysis of correlation between the site data and a nearby long-term measurement site.

(d) *Design and engineering.* Applicants must submit a statement certifying that their project will be designed and engineered so as to meet the intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, applicants must:

(1) Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose;

(2) List possible suppliers and models of major pieces of equipment;

(3) Provide a description of the components, materials, or systems to be installed. Include the location of the project;

(4) Provide one-line diagram for the electrical interconnection. Provide diagrams or schematics as required showing all major installed structural, mechanical, and electrical components of the system; and

(5) Describe the project site and address issues such as proximity to the load or the electrical grid, unique safety concerns, and whether special circumstances exist.

(e) *Project development schedule.* Provide a project schedule in an appropriate level of detail that will demonstrate the project can be adequately managed and be able to identify impacts of any delays on the project completion. The applicant must submit a statement certifying that the project will be

completed within 3 years from the date of approval.

(f) *Project economic assessment.* Provide an analysis of the proposed project to demonstrate its financial performance, including the calculation of simple payback. The analysis should include applicable investment incentives, productivity incentives, loans and grants, and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* The project must be installed in accordance with applicable local, State, and national building and electrical codes and regulations. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules. Upon successful system installation and following established operation, the successful applicant must deliver invoices and evidence of payment.

(i) *Operations and maintenance.* Identify any unique operations and maintenance requirements of the project necessary for the system to operate as designed over the design life. State the design life of the system.

(1) Provide information on all system warranties. A minimum 3-year warranty for equipment and a 10-year warranty on design are expected.

(2) If the project has any unique operation and maintenance issues, describe them.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives.

SECTION 10. ENERGY EFFICIENCY IMPROVEMENTS

The technical requirements specified in this section apply to energy efficiency improvement projects, which are, as defined in § 4280.103, improvements to a facility, building, or process that reduce energy consumption, or reduce energy consumed per square foot.

(a) *Qualifications of key project service providers.* List all key project service providers. If one or more licensed professionals are involved in the project, provide the credentials for each professional. For projects with total eligible project costs greater than $50,000, also discuss the qualifications of the energy auditor, including any relevant certifications by recognized organizations or bodies.

(b) *Agreements, permits, and certifications.*

(1) The applicant must certify that they will comply with all necessary agreements and permits required for the project. Indicate the status and schedule for securing those agreements and permits.

(2) Identify all environmental issues, including any compliance issues associated with or expected as a result of the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G of this title.

(c) *Energy assessment and audits.* For all energy efficiency improvement projects, provide adequate and appropriate evidence of energy savings expected when the system is operated as designed.

(1) For energy efficiency improvement projects with total eligible project costs greater than $50,000, an energy audit must be conducted. An energy audit is a written report by an independent, qualified party that documents current energy usage, recommended potential improvements and their costs, energy savings from these improvements, dollars saved per year, and simple payback. The methodology of the energy audit must meet professional and industry standards.

(2) The energy assessment or energy audit must cover the following:

(i) *Situation report.* Provide a narrative description of the facility or process, its energy system(s) and usage, and activity profile. Also include price per unit of energy (electricity, natural gas, propane, fuel oil, renewable energy, etc.,) paid by the customer on the date of the assessment or audit. Any energy conversion should be based on use rather than source.

(ii) *Potential improvements.* List specific information on all potential energy-saving opportunities and the associated costs.

(iii) *Technical analysis.* Discuss the interactions of the potential improvements with existing energy systems.

(A) Estimate the annual energy and energy costs savings expected from each improvement identified in the potential project.

(B) Calculate all direct and attendant indirect costs of each improvement.

(C) Rank potential improvement measures by cost-effectiveness.

(iv) *Potential improvement description.* Provide a narrative summary of the potential improvement and its ability to provide needed benefits, including a discussion of non-energy benefits such as project reliability and durability.

(A) Provide preliminary specifications for critical components.

(B) Provide preliminary drawings of project layout, including any related structural changes.

(C) Document baseline data compared to projected consumption, together with any explanatory notes. Provide the actual total quantity of energy used (BTU)in the original building and/or equipment in the 12 months prior to the EEI project and the projected

energy usage after the EEI project shall be the projected total quantity of energy used (BTU) on an annual basis for the same size or capacity as the original building or equipment. For energy efficiency improvement to equipment, if the new piece of equipment has a different capacity than the piece of equipment being replaced, the projected total quantity of energy used for the new piece of equipment shall be adjusted based on the ratio of the capacity of the replaced piece of equipment to the capacity of the new piece of equipment in accordance with the regulation. When appropriate, show before-and-after data in terms of consumption per unit of production, time or area. Include at least 1 year's bills for those energy sources/fuel types affected by this project. Also submit utility rate schedules, if appropriate.

(D) Identify significant changes in future related operations and maintenance costs.

(E) Describe explicitly how outcomes will be measured.

(d) *Design and engineering*. The applicant must submit a statement certifying that their project will be designed and engineered so as to meet the intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards.

(1) Identify possible suppliers and models of major pieces of equipment.

(2) Describe the components, materials, or systems to be installed. Include the location of the project.

(e) *Project development schedule*. Provide a project schedule in an appropriate level of detail that will demonstrate the project can be adequately managed. The applicant must submit a statement certifying that the project will be completed within 2 years from the date of approval.

(f) *Project economic assessment*. For projects with total eligible project costs greater than $50,000, provide an analysis of the proposed project to demonstrate its financial performance, including the calculation of simple payback. The analysis should include applicable investment incentives, productivity incentives, loans and grants, and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement*. Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation*. The project must be installed in accordance with applicable local, State, and national building and electrical codes and regulations. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules. Upon successful system installation and following established operation, the successful applicant must deliver invoices and evidence of payment.

(i) *Operations and maintenance*. Identify any unique operations and maintenance requirements of the project necessary for the improvement(s) to perform as designed over the design life. State the design life of the improvement(s). Provide information regarding component warranties.

(j) *Dismantling and disposal of project components*. Describe a plan for dismantling and proper disposal of the project components and associated wastes at the end of their useful lives.

APPENDIX B TO SUBPART B OF PART 4280—TECHNICAL REPORTS FOR PROJECTS WITH TOTAL ELIGIBLE PROJECT COSTS OF GREATER THAN $200,000

The Technical Report for projects with total eligible project costs greater than $200,000 (and for any other project that must submit a Technical Report under this appendix) must demonstrate that the project design, procurement, installation, startup, operation, and maintenance of the renewable energy system or energy efficiency improvement will operate or perform as specified over its design life in a reliable and a cost-effective manner. The Technical Report must also identify all necessary project agreements, demonstrate that those agreements will be in place, and that necessary project equipment and services are available over the design life.

All technical information provided must follow the format specified in Sections 1 through 10 of this appendix. Supporting information may be submitted in other formats. Design drawings and process flowcharts are encouraged as exhibits. A discussion of each topic is not necessary if the topic is not applicable to the specific project. Questions identified in the Agency's technical review of the project must be answered to the Agency's satisfaction before the application will be approved. The applicant must submit the original technical report plus one copy to the Rural Development State Office. Renewable energy projects with total eligible project costs greater than $400,000 and for energy efficiency improvement projects with total eligible project costs greater than $200,000 require the services of a licensed professional engineer (PE) or team of PEs. Depending on the level of engineering required for the specific project or if necessary to ensure public safety, the services of a licensed PE or a team of licensed PEs may be required for smaller projects.

SECTION 1. BIOENERGY

The technical requirements specified in this section apply to bioenergy projects, which are, as defined in § 4280.103, renewable energy systems that produces fuel, thermal energy, or electric power from a renewable biomass source only, other than an anaerobic digester project.

(a) *Qualifications of project team.* The bioenergy project team will vary according to the complexity and scale of the project. For engineered systems, the project team should consist of a system designer, a project manager, an equipment supplier, a project engineer, a construction contractor or system installer, and a system operator and maintainer. One individual or entity may serve more than one role. The project team must have demonstrated expertise in similar bioenergy systems development, engineering, installation, and maintenance. Authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services must be provided. Authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life must also be provided. The application must:

(1) Discuss the proposed project delivery method. Such methods include a design, bid, build where a separate engineering firm may design the project and prepare a request for bids and the successful bidder constructs the project at the applicant's risk, and a design/build method, often referred to as turnkey, where the applicant establishes the specifications for the project and secures the services of a developer who will design and build the project at the developer's risk;

(2) Discuss the bioenergy system equipment manufacturers of major components being considered in terms of the length of time in business and the number of units installed at the capacity and scale being considered;

(3) Discuss the project manager, equipment supplier, system designer, project engineer, and construction contractor qualifications for engineering, designing, and installing bioenergy systems, including any relevant certifications by recognized organizations. Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available; and

(4) Describe the system operator's qualifications and experience for servicing, operating, and maintaining bioenergy renewable energy equipment or projects. Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available.

(b) *Agreements, permits, and certifications.* Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (b)(1) through (8).

(1) Identify zoning and code issues, and required permits and the anticipated schedule for meeting those requirements and securing those permits.

(2) Identify licenses where required and the schedule for obtaining those licenses.

(3) Identify land use agreements required for the project and the anticipated schedule for securing the agreements and the term of those agreements.

(4) Identify any permits or agreements required for solid, liquid, and gaseous emissions or effluents and the schedule for securing those permits and agreements.

(5) Identify available component warranties for the specific project location and size.

(6) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase agreements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(7) Identify all environmental issues, including environmental compliance issues, associated with the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G of this title.

(8) Submit a statement certifying that the project will be installed in accordance with applicable local, State, and national codes and regulations.

(c) *Resources assessment.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the type, quantity, quality, and seasonality of the biomass resource, including harvest and storage, where applicable. Where applicable, also indicate shipping or receiving method and required infrastructure for shipping. For proposed projects with an established resource, provide a summary of the resource.

(d) *Design and engineering.* Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. Projects shall be engineered by a qualified party. Systems must be engineered as a complete, integrated system with matched components. The engineering must be comprehensive, including site selection, system and component selections, and system monitoring equipment. Systems must be constructed by a qualified party.

(1) Provide a concise but complete description of the bioenergy project, including location of the project, resource characteristics, system specifications, electric power system interconnection, and monitoring equipment. Identify possible vendors and models of major system components. Describe the expected electric power, fuel production, or thermal energy production of the proposed system as rated and as expected in actual field conditions. For systems with a capacity of more than 20 tons per day of biomass, address performance on a monthly and annual basis. For small projects such as a commercial biomass furnace or pelletizer of up to 5 tons daily capacity, proven, commercially available devices need not be addressed in detail. Describe the uses of or the market for electricity, heat, or fuel produced by the system. Discuss the impact of reduced or interrupted biomass availability on the system process.

(2) Describe the project site and address issues such as site access, foundations, backup equipment when applicable, and environmental concerns with emphasis on land use, air quality, water quality, soil degradation, habitat fragmentation, land use, visibility, odor, noise, construction, and installation issues. Identify any unique construction and installation issues.

(e) *Project development schedule.* Identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline, including resource assessment, system and site design, permits and agreements, equipment procurement, and system installation from excavation through startup and shakedown.

(f) *Project economic assessment.* Provide a study that describes the costs and revenues of the proposed project to demonstrate the financial performance of the project, including the calculation of simple payback. Provide a detailed analysis and description of project costs, including project management, resource assessment, project design, project permitting, land agreements, equipment, site preparation, system installation, startup and shakedown, warranties, insurance, financing, professional services, and operations and maintenance costs. Provide a detailed analysis and description of annual project revenues and expenses. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Bioenergy systems may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Identify all the major equipment that is proprietary and justify how this unique equipment is needed to meet the requirements of the proposed design. Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* Fully describe the management of and plan for site development and system installation, provide details regarding the scheduling of major installation equipment needed for project construction, and provide a description of the startup and shakedown specifications and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules.

(i) *Operations and maintenance.* Identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. In addition:

(1) Provide information regarding available system and component warranties and availability of spare parts;

(2) Describe the routine operations and maintenance requirements of the proposed system, including maintenance schedule for the mechanical, piping, and electrical systems and system monitoring and control requirements. Provide information that supports expected design life of the system and timing of major component replacement or rebuilds. Discuss the costs and labor associated with the operation and maintenance of the system, and plans for in-sourcing or outsourcing. Describe opportunities for technology transfer for long-term project operations and maintenance by a local entity or owner/operator; and

(3) For systems having a biomass input capacity exceeding 10 tons of biomass per day, provide and discuss the risk management plan for handling large, potential failures of major components.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives. Describe the budget for and any unique concerns associated with the dismantling and disposal of project components and their wastes.

SECTION 2. ANAEROBIC DIGESTER PROJECTS

The technical requirements specified in this section apply to anaerobic digester projects, which are, as defined in §4280.103, renewable energy systems that use animal or other waste and may include other organic substrates to produce biofuel, biogas, thermal, or electrical energy via anaerobic digestion.

(a) *Qualifications of project team.* The anaerobic digester project team should consist of a system designer, a project manager, an equipment supplier, a project engineer, a construction contractor, and a system operator or maintainer. One individual or entity may serve more than one role. The project team must have demonstrated commercial-scale expertise in anaerobic digester systems development, engineering, installation, and maintenance as related to the organic materials and operating mode of the system. Authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services must be provided. Authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life must also be provided. The application must:

(1) Discuss the proposed project delivery method. Such methods include a design, bid, build where a separate engineering firm may design the project and prepare a request for bids and the successful bidder constructs the project at the applicant's risk, and a design/build method, often referred to as turnkey, where the applicant establishes the specifications for the project and secures the services of a developer who will design and build the project at the developer's risk;

(2) Discuss the anaerobic digester system equipment manufacturers of major components being considered in terms of the length of time in business and the number of units installed at the capacity and scale being considered;

(3) Discuss the project manager, equipment supplier, system designer, project engineer, and construction contractor qualifications for engineering, designing, and installing anaerobic digester systems, including any relevant certifications by recognized organizations. Provide a list of the same or similar projects designed, installed, or supplied and currently operating consistent with the substrate material with references, if available; and

(4) For regional or centralized digester plants, describe the system operator's qualifications and experience for servicing, operating, and maintaining similar projects. Farm scale systems may not require operator experience as the developer is typically required to provide operational training during system startup and shakedown. Provide a list of the same or similar projects designed, installed, or supplied and currently operating consistent with the substrate material with references, if available.

(b) *Agreements, permits, and certifications.* Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (b)(1) through (8).

(1) Identify zoning and code issues, and required permits and the anticipated schedule for meeting those requirements and securing those permits.

(2) Identify licenses where required and the schedule for obtaining those licenses.

(3) For regional or centralized digester plants, identify feedstock access agreements required for the project and the anticipated schedule for securing those agreements and the term of those agreements.

(4) Identify any permits or agreements required for transport and ultimate waste disposal and the schedule for securing those agreements and permits.

(5) Identify available component warranties for the specific project location and size.

(6) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase agreements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(7) Identify all environmental issues, including environmental compliance issues, associated with the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G of this title.

(8) Submit a statement certifying that the project will be installed in accordance with applicable local, State, and national codes and regulations.

(c) *Resources assessment.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the substrates used as digester inputs, including animal wastes, food processing wastes, or other organic wastes in terms of type, quantity, seasonality, and frequency of collection. Describe any special handling of feedstock that may be necessary. Describe the process for determining the feedstock resource. 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.

(d) *Design and engineering*. Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. Projects shall be engineered by a qualified party. Systems must be engineered as a complete, integrated system with matched components. The engineering must be comprehensive, including site selection, digester component selection, gas handling component selection, and gas use component selection. Systems must be constructed by a qualified party.

(1) Provide a concise but complete description of the anaerobic digester project, including location of the project, farm description, feedstock characteristics, a step-by-step flowchart of unit operations, electric power system interconnection equipment, and any required monitoring equipment. Identify possible vendors and models of major system components. Provide the expected system energy production, heat balances, and material balances as part of the unit operations flowchart.

(2) Describe the project site and address issues such as site access, foundations, backup equipment when applicable, and environmental concerns with emphasis on land use, air quality, water quality, soil degradation, habitat degradation, land use, visibility, odor, noise, construction, and installation issues. Identify any unique construction and installation issues.

(e) *Project development schedule*. Identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline, including feedstock assessment, system and site designs, permits and agreements, equipment procurement, system installation from excavation through startup and shakedown, and operator training.

(f) *Project economic assessment*. Provide a study that describes the costs and revenues of the proposed project to demonstrate the financial performance of the project, including the calculation of simple payback. Provide a detailed analysis and description of project costs, including project management, feedstock assessment, project design, project permitting, land agreements, equipment, site preparation, system installation, startup and shakedown, warranties, insurance, financing, professional services, training and operations, and maintenance costs of both the digester and the gas use systems. Provide a detailed analysis and description of annual project revenues and expenses. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement*. Demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Anaerobic digester systems may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Identify all the major equipment that is proprietary and justify how this unique equipment is needed to meet the requirements of the proposed design. Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation*. Describe fully the management of and plan for site development and system installation, provide details regarding the scheduling of major installation equipment needed for project construction, and provide a description of the startup and shakedown specifications and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules.

(i) *Operations and maintenance*. Identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The application must:

(1) Ensure that systems must have at least a 3-year warranty for equipment and a 10-year warranty on design. Provide information regarding system warranties and availability of spare parts;

(2) Describe the routine operations and maintenance requirements of the proposed project, including maintenance for the digester, the gas handling equipment, and the gas use systems. Describe any maintenance requirements for system monitoring and control equipment;

(3) Provide information that supports the expected design life of the system and the timing of major component replacement or rebuilds;

(4) Provide and discuss the risk management plan for handling large, potential failures of major components. Include in the discussion, costs and labor associated with the operation and maintenance of the system, and plans for in-sourcing or out-sourcing; and

(5) Describe opportunities for technology transfer for long-term project operations and

maintenance by a local entity or owner/operator.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives. Describe the budget for and any unique concerns associated with the dismantling and disposal of project components and their wastes.

SECTION 3. GEOTHERMAL, ELECTRIC GENERATION

The technical requirements specified in this section apply to electric generation geothermal projects, which are, as defined in § 4280.103, systems that use geothermal energy to produce high pressure steam for electric power production.

(a) *Qualifications of project team.* The electric generating geothermal plant project team should consist of a system designer, a project manager, an equipment supplier, a project engineer, a construction contractor, and a system operator and maintainer. One individual or entity may serve more than one role. The project team must have demonstrated expertise in geothermal electric generation systems development, engineering, installation, and maintenance. Authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services must be provided. Authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life must also be provided. The application must:

(1) Discuss the proposed project delivery method. Such methods include a design, bid, build where a separate engineering firm may design the project and prepare a request for bids and the successful bidder constructs the project at the applicant's risk, and a design/build method, often referred to as turnkey, where the applicant establishes the specifications for the project and secures the services of a developer who will design and build the project at the developer's risk;

(2) Discuss the geothermal plant equipment manufacturers of major components being considered in terms of the length of time in business and the number of units installed at the capacity and scale being considered;

(3) Discuss the project manager, equipment supplier, system designer, project engineer, and construction contractor qualifications for engineering, designing, and installing geothermal electric generation systems, including any relevant certifications by recognized organizations. Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available; and

(4) Describe the system operator's qualifications and experience for servicing, operating, and maintaining electric generating geothermal projects. Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available.

(b) *Agreements, permits, and certifications.* Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (b)(1) through (7).

(1) Identify zoning and code issues and required permits and the anticipated schedule for meeting those requirements and securing those permits.

(2) Identify any permits or agreements required for well construction and for disposal or re-injection of cooled geothermal waters and the schedule for securing those agreements and permits.

(3) Identify land use or access to the resource agreements required for the project and the anticipated schedule for securing the agreements and the term of those agreements.

(4) Identify available component warranties for the specific project location and size.

(5) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase agreements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements.

(6) Identify all environmental issues, including environmental compliance issues, associated with the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G of this title.

(7) Submit a statement certifying that the project will be installed in accordance with applicable local, State, and national codes and regulations.

(c) *Resources assessment.* Provide adequate and appropriate data to demonstrate the 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.

(d) *Design and engineering.* Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety,

and will comply with applicable laws, regulations, agreements, permits, codes, and standards. Projects shall be engineered by a qualified party. Systems must be engineered as a complete, integrated system with matched components. The engineering must be comprehensive, including site selection, system and component selection, conversion system component and selection, design of the local collection grid, interconnection equipment selection, and system monitoring equipment. Systems must be constructed by a qualified party.

(1) Provide a concise but complete description of the geothermal project, including location of the project, resource characteristics, thermal system specifications, electric power system interconnection equipment and project monitoring equipment. Identify possible vendors and models of major system components. Provide the expected system energy production on a monthly and annual basis.

(2) Describe the project site and address issues such as site access, proximity to the electrical grid, environmental concerns with emphasis on land use, air quality, water quality, habitat fragmentation, visibility, noise, construction, and installation issues. Identify any unique construction and installation issues.

(e) *Project development schedule.* Identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline, including resource assessment, system and site design, permits and agreements, equipment procurement, and system installation from excavation through startup and shakedown.

(f) *Project economic assessment.* Provide a study that describes the costs and revenues of the proposed project to demonstrate the financial performance of the project, including the calculation of simple payback. Provide a detailed analysis and description of project costs, including project management, resource assessment, project design, project permitting, land agreements, equipment, site preparation, system installation, startup and shakedown, warranties, insurance, financing, professional services, and operations and maintenance costs. Provide a detailed analysis and description of annual project revenues, including electricity sales, production tax credits, revenues from green tags, and any other production incentive programs throughout the life of the project. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Geothermal systems may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Identify all the major equipment that is proprietary and justify how this unique equipment is needed to meet the requirements of the proposed design. Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* Describe fully the management of and plan for site development and system installation, provide details regarding the scheduling of major installation equipment needed for project construction, and provide a description of the startup and shakedown specifications and process and the conditions required for startup or shakedown for each equipment item individually and for the system as a whole. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules.

(i) *Operations and maintenance.* Identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The application must:

(1) Ensure that systems must have at least a 3-year warranty for equipment. Provide information regarding turbine warranties and availability of spare parts;

(2) Describe the routine operations and maintenance requirements of the proposed project, including maintenance for the mechanical and electrical systems and system monitoring and control requirements;

(3) Provide information that supports expected design life of the system and timing of major component replacement or rebuilds;

(4) Provide and discuss the risk management plan for handling large, potential failures of major components such as the turbine. Include in the discussion, costs and labor associated with the operation and maintenance of the system, and plans for insourcing or out-sourcing; and

(5) Describe opportunities for technology transfer for long-term project operations and maintenance by a local entity or owner/operator.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives. Describe the budget for and any unique concerns associated with the dismantling and disposal of project components and their wastes.

SECTION 4. GEOTHERMAL, DIRECT USE

The technical requirements specified in this section apply to direct use geothermal projects, which are, as defined in §4280.103, systems that use thermal energy directly from a geothermal source.

(a) *Qualifications of project team.* The geothermal project team should consist of a system designer, a project manager, an equipment supplier, a project engineer, a construction contractor, and a system operator and maintainer. One individual or entity may serve more than one role. The project team must have demonstrated expertise in geothermal heating systems development, engineering, installation, and maintenance. Authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services must be provided. Authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life must also be provided. The application must:

(1) Discuss the proposed project delivery method. Such methods include a design, bid, build where a separate engineering firm may design the project and prepare a request for bids and the successful bidder constructs the project at the applicant's risk, and a design/build method, often referred to as turnkey, where the applicant establishes the specifications for the project and secures the services of a developer who will design and build the project at the developer's risk;

(2) Discuss the geothermal system equipment manufacturers of major components being considered in terms of the length of time in business and the number of units installed at the capacity and scale being considered;

(3) Discuss the project manager, equipment supplier, system designer, project engineer, and construction contractor qualifications for engineering, designing, and installing direct use geothermal systems, including any relevant certifications by recognized organizations. Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available; and

(4) Describe system operator's qualifications and experience for servicing, operating, and maintaining direct use generating geothermal projects. Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available.

(b) *Agreements, permits, and certifications.* Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (b)(1) through (7).

(1) Identify zoning and code issues, and required permits and the anticipated schedule for meeting those requirements and securing those permits.

(2) Identify licenses where required and the schedule for obtaining those licenses.

(3) Identify land use or access to the resource agreements required for the project and the anticipated schedule for securing the agreements and the term of those agreements.

(4) Identify any permits or agreements required for well construction and for disposal or re-injection of cooled geothermal waters and the anticipated schedule for securing those permits and agreements.

(5) Identify available component warranties for the specific project location and size.

(6) Identify all environmental issues, including environmental compliance issues, associated with the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G of this title.

(7) Submit a statement certifying that the project will be installed in accordance with applicable local, State, and national codes and regulations.

(c) *Resources assessment.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the quality of the geothermal resource, including temperature, flow, and sustainability and what direct use system is to be installed. Describe any special handling of cooled geothermal waters that may be necessary. Describe the process for determining the geothermal resource, including measurement setup for the collection of the geothermal resource data. For proposed projects with an established resource, provide a summary of the resource and the specifications of the measurement setup.

(d) *Design and engineering.* Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. Projects shall be engineered by a qualified party. Systems must be engineered as a complete, integrated system with matched components. The engineering must be comprehensive, including site selection, system and component selection, thermal system component selection, and system monitoring equipment. Systems must be constructed by a qualified party.

(1) Provide a concise but complete description of the geothermal project, including location of the project, resource characteristics, thermal system specifications, and monitoring equipment. Identify possible vendors and models of major system components. Provide the expected system energy production on a monthly and annual basis.

(2) Describe the project site and address issues such as site access, thermal backup equipment, environmental concerns with emphasis on land use, air quality, water quality, habitat fragmentation, visibility, noise, construction, and installation issues. Identify any unique construction and installation issues.

(e) *Project development schedule.* Identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline, including resource assessment, system and site design, permits and agreements, equipment procurement, and system installation from excavation through startup and shakedown.

(f) *Project economic assessment.* Provide a study that describes the costs and revenues of the proposed project to demonstrate the financial performance of the project, including the calculation of simple payback. Provide a detailed analysis and description of project costs, including project management, resource assessment, project design, project permitting, land agreements, equipment, site preparation, system installation, startup and shakedown, warranties, insurance, financing, professional services, and operations and maintenance costs. Provide a detailed analysis and description of annual project revenues and expenses. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Geothermal systems may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Identify all the major equipment that is proprietary and justify how this unique equipment is needed to meet the requirements of the proposed design. Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* Describe fully the management of and plan for site development and system installation, provide details regarding the scheduling of major installation equipment needed for project construction, and provide a description of the startup and shakedown specifications and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules.

(i) *Operations and maintenance.* Identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The application must:

(1) Ensure that systems must have at least a 3-year warranty for equipment. Provide information regarding system warranties and availability of spare parts;

(2) Describe the routine operations and maintenance requirements of the proposed project, including maintenance for the mechanical and electrical systems and system monitoring and control requirements;

(3) Provide information that supports expected design life of the system and timing of major component replacement or rebuilds;

(4) Provide and discuss the risk management plan for handling large, potential failures of major components. Include in the discussion, costs and labor associated with the operation and maintenance of the system, and plans for in-sourcing or out-sourcing; and

(5) Describe opportunities for technology transfer for long-term project operations and maintenance by a local entity or owner/operator.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives. Describe the budget for and any unique concerns associated with the dismantling and disposal of project components and their wastes.

SECTION 5. HYDROGEN PROJECTS

The technical requirements specified in this section apply to hydrogen projects, which are, as defined in §4280.103, renewable energy systems that produce hydrogen or, a renewable energy system that uses mechanical or electric power or thermal energy from a renewable resource using hydrogen as an energy transport medium.

(a) *Qualifications of project team.* The hydrogen project team will vary according to the complexity and scale of the project. For engineered systems, the project team should consist of a system designer, a project manager, an equipment supplier, a project engineer, a construction contractor or system installer, and a system operator and maintainer. One individual or entity may serve more than one role. The project team must have demonstrated expertise in similar hydrogen systems development, engineering, installation, and maintenance. Authoritative evidence that project team service providers have the necessary professional credentials

or relevant experience to perform the required services must be provided. Authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life must also be provided. The application must:

(1) Discuss the proposed project delivery method. Such methods include a design, bid, build where a separate engineering firm may design the project and prepare a request for bids and the successful bidder constructs the project at the applicant's risk, and a design/build method, often referred to as turnkey, where the applicant establishes the specifications for the project and secures the services of a developer who will design and build the project at the developer's risk;

(2) Discuss the hydrogen system equipment manufacturers of major components for the hydrogen system being considered in terms of the length of time in the business and the number of units installed at the capacity and scale being considered;

(3) Discuss the project manager, equipment supplier, system designer, project engineer, and construction contractor qualifications for engineering, designing, and installing hydrogen systems, including any relevant certifications by recognized organizations. Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available; and

(4) Describe the system operator's qualifications and experience for servicing, operating, and maintaining hydrogen system equipment or projects. Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available.

(b) *Agreements, permits, and certifications.* Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (b)(1) through (8).

(1) Identify zoning and building code issues, and required permits and the anticipated schedule for meeting those requirements and securing those permits.

(2) Identify licenses where required and the schedule for obtaining those licenses.

(3) Identify land use agreements required for the project and the anticipated schedule for securing the agreements and the term of those agreements.

(4) Identify any permits or agreements required for solid, liquid, and gaseous emissions or effluents and the anticipated schedule for securing those permits and agreements.

(5) Identify available component warranties for the specific project location and size.

(6) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase agreements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(7) Identify all environmental issues, including environmental compliance issues, associated with the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G of this title.

(8) Submit a statement certifying that the project will be installed in accordance with applicable local, State, and national codes and regulations.

(c) *Resources assessment.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the type, quantity, quality, and seasonality of the biomass resource. For solar, wind, or geothermal sources of energy used to generate hydrogen, indicate the local renewable resource where the hydrogen system is to be installed. Local resource maps may be used as an acceptable preliminary source of renewable resource data. For proposed projects with an established renewable resource, provide a summary of the resource.

(d) *Design and engineering.* Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. Projects shall be engineered by a qualified party. Systems must be engineered as a complete, integrated system with matched components. The engineering must be comprehensive, including site selection, system and component selection, and system monitoring equipment. Systems must be constructed by a qualified party.

(1) Provide a concise but complete description of the hydrogen project, including location of the project, resource characteristics, system specifications, electric power system interconnection equipment, and monitoring equipment. Identify possible vendors and models of major system components. Describe the expected electric power, fuel production, or thermal energy production of the proposed system. Address performance on a monthly and annual basis. Describe the uses of or the market for electricity, heat, or fuel produced by the system. Discuss the impact of reduced or interrupted resource availability on the system process.

(2) Describe the project site and address issues such as site access, foundations, backup equipment when applicable, and any environmental and safety concerns with emphasis on land use, air quality, water quality, and safety hazards. Identify any unique construction and installation issues.

(e) *Project development schedule.* Identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline, including resource assessment, system and site design, permits and agreements, equipment procurement, and system installation from excavation through startup and shakedown.

(f) *Project economic assessment.* Provide a study that describes the costs and revenues of the proposed project to demonstrate the financial performance of the project, including the calculation of simple payback. Provide a detailed analysis and description of project costs, including project management, resource assessment, project design and engineering, project permitting, land agreements, equipment, site preparation, system installation, startup and shakedown, warranties, insurance, financing, professional services, and operations and maintenance costs. Provide a detailed analysis and description of annual project revenues and expenses. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Hydrogen systems may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues, such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, and receiving, and onsite storage or inventory. Identify all the major equipment that is proprietary and justify how this unique equipment is needed to meet the requirements of the proposed design. Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* Describe fully the management of and plan for site development and system installation, provide details regarding the scheduling of major installation equipment needed for project construction, and provide a description of the startup and shakedown specifications and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules.

(i) *Operations and maintenance.* Identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The application must:

(1) Provide information regarding system warranties and availability of spare parts;

(2) Describe the routine operations and maintenance requirements of the proposed project, including maintenance of the reformer, electrolyzer, or fuel cell as appropriate, and other mechanical, piping, and electrical systems and system monitoring and control requirements;

(3) Provide information that supports expected design life of the system and timing of major component replacement or rebuilds;

(4) Provide and discuss the risk management plan for handling large, potential failures of major components. Include in the discussion, costs and labor associated with the operation and maintenance of the system, and plans for in-sourcing or out-sourcing; and

(5) Describe opportunities for technology transfer for long-term project operations and maintenance by a local entity or owner/operator.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives. Describe the budget for and any unique concerns associated with the dismantling and disposal of project components and their wastes.

SECTION 6. SOLAR, SMALL

The technical requirements specified in this section apply to small solar electric projects and small solar thermal projects, as defined in § 4280.103.

Small solar electric projects are those for which the rated power of the system is 10kW or smaller. Small solar electric projects are either stand-alone (off grid) or interconnected to the grid at less than 600 volts (on grid).

Small solar thermal projects are those for which the rated storage volume of the system is 240 gallons or smaller, or which have a collector area of 1,000 square feet or less.

(a) *Qualifications of project team.* The small solar project team should consist of a system designer, a project manager or general contractor, an equipment supplier of major components, a system installer, a system maintainer, and, in some cases, the owner of the application or load served by the system. One individual or entity may serve more than one role. Authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services must be provided. Authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life must also be provided. The application must:

(1) Discuss the qualifications of the suppliers of major components being considered;

(2) Describe the knowledge, skills, and abilities needed to service, operate, and maintain the system for the proposed application; and

(3) Discuss the project manager, system designer, and system installer qualifications for engineering, designing, and installing small solar systems, including any relevant certifications by recognized organizations. Provide a list of the same or similar systems designed or installed by the design and installation team and currently operating with references, if available.

(b) *Agreements, permits, and certifications.* Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (b)(1) through (5).

(1) Identify zoning, building, and electrical code issues, and required permits and the anticipated schedule for meeting those requirements and securing those permits.

(2) Identify available component warranties for the specific project location and size.

(3) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase agreements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(4) Identify all environmental issues, including environmental compliance issues, associated with the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G of this title.

(5) Submit a statement certifying that the project will be installed in accordance with applicable local, State, and national codes and regulations.

(c) *Resources assessment.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the source of the solar data and assumptions.

(d) *Design and engineering.* Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. For small solar electric systems, the engineering must be comprehensive, including solar collector design and selection, support structure design and selection, power conditioning design and selection, surface or submersible water pumps and energy storage requirements as applicable, and selection of cabling, disconnects and interconnection equipment. For small solar thermal systems, the engineering must be comprehensive, including solar collector design and selection, support structure design and selection, pump and piping design and selection, and energy storage design and selection.

(1) Provide a concise but complete description of the small solar system, including location of the project and proposed equipment specifications. Identify possible vendors and models of major system components. Provide the expected system energy production based on available solar resource data on a monthly (when possible) and annual basis and how the energy produced by the system will be used.

(2) Describe the project site and address issues such as solar access, orientation, proximity to the load or the electrical grid, environmental concerns such as water quality and land use, unique safety concerns such as hazardous materials handling, construction, and installation issues, and whether special circumstances exist.

(e) *Project development schedule.* Identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline, including system and site design, permits and agreements, equipment procurement, and system installation from excavation through startup and shakedown.

(f) *Project economic assessment.* Provide a study that describes the costs and revenues of the proposed project to demonstrate the financial performance of the project, including the calculation of simple payback. Provide a detailed analysis and description of project costs, including design, permitting, equipment, site preparation, system installation, system startup and shakedown, warranties, insurance, financing, professional services, and operations and maintenance costs. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants. Provide a detailed description of historic or expected energy use and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Small solar systems may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Provide a detailed description of equipment certification. Identify

all the major equipment that is proprietary and justify how this unique equipment is needed to meet the requirements of the proposed design. Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* Describe fully the management of and plan for site development and system installation, provide details regarding the scheduling of major installation equipment needed for project construction, and provide a description of the startup and shakedown specifications and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules.

(i) *Operations and maintenance.* Identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The application must:

(1) Ensure that systems must have at least a 5-year warranty for equipment. Provide information regarding system warranty and availability of spare parts;

(2) Describe the routine operations and maintenance requirements of the proposed system, including maintenance schedules for the mechanical and electrical and software systems;

(3) For owner maintained portions of the system, describe any unique knowledge, skills, or abilities needed for service operations or maintenance; and

(4) Provide information regarding expected system design life and timing of major component replacement or rebuilds. Include in the discussion, costs and labor associated with the operation and maintenance of the system, and plans for in-sourcing or outsourcing.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives. Describe the budget for and any unique concerns associated with the dismantling and disposal of project components and their wastes. Describe any environmental compliance requirements such as proper disposal or recycling procedures to reduce potential impact from any hazardous chemicals.

SECTION 7. SOLAR, LARGE

The technical requirements specified in this section apply to large solar electric projects and large solar thermal projects, as defined in § 4280.103.

Large solar electric systems are those for which the rated power of the system is larger than 10kW. Large solar electric systems are either stand-alone (off grid) or interconnected to the grid (on grid).

Large solar thermal systems are those for which the rated storage volume of the system is greater than 240 gallons or that have a collector area of more than 1,000 square feet.

(a) *Qualifications of project team.* The large solar project team should consist of an equipment supplier of major components, a project manager, general contractor, system engineer, system installer, and system maintainer. One individual or entity may serve more than one role. Authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services must be provided. Authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life must also be provided. The application must:

(1) Discuss the proposed project delivery method. Such methods include a design, bid, build where a separate engineering firm may design the project and prepare a request for bids and the successful bidder constructs the project at the applicant's risk, and a design/build method, often referred to as turnkey, where the applicant establishes the specifications for the project and secures the services of a developer who will design and build the project at the developer's risk;

(2) Discuss the qualifications of the suppliers of major components being considered;

(3) Discuss the project manager, general contractor, system engineer, and system installer qualifications for engineering, designing, and installing large solar systems, including any relevant certifications by recognized organizations. Provide a list of the same or similar systems designed or installed by the design, engineering, and installation team and currently operating with references, if available; and

(4) Describe the system operator's qualifications and experience for servicing, operating, and maintaining the system for the proposed application. Provide a list of the same or similar systems designed or installed by the design, engineering, and installation team and currently operating with references, if available.

(b) *Agreements, permits, and certifications.* Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (b)(1) through (5).

(1) Identify zoning, building, and electrical code issues, and required permits and the anticipated schedule for meeting those requirements and securing those permits.

(2) Identify available component warranties for the specific project location and size.

(3) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase agreements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(4) Identify all environmental issues, including environmental compliance issues, associated with the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G of this title.

(5) Submit a statement certifying that the project will be installed in accordance with applicable local, State, and national codes and regulations.

(c) *Resources assessment*. Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the source of the solar data and assumptions.

(d) *Design and engineering*. Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards.

(1) For large solar electric systems, the engineering must be comprehensive, including solar collector design and selection, support structure design and selection, power conditioning design and selection, surface or submersible water pumps and energy storage requirements as applicable, and selection of cabling, disconnects, and interconnection equipment. A complete set of engineering drawings, stamped by a professional engineer, must be provided.

(2) For large solar thermal systems, the engineering must be comprehensive, including solar collector design and selection, support structure design and selection, pump and piping design and selection, and energy storage design and selection. Provide a complete set of engineering drawings stamped by a professional engineer.

(3) For either type of system, provide a concise but complete description of the large solar system, including location of the project and proposed equipment and system specifications. Identify possible vendors and models of major system components. Provide the expected system energy production based on available solar resource data on a monthly (when possible) and annual basis and how the energy produced by the system will be used.

(4) For either type of system, provide a description of the project site and address issues such as solar access, orientation, proximity to the load or the electrical grid, environmental concerns such as land use, water quality, habitat fragmentation, and aesthetics, unique safety concerns, construction, and installation issues, and whether special circumstances exist.

(e) *Project development schedule*. Identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline, including system and site design, permits and agreements, equipment procurement, and system installation from excavation through startup and shakedown.

(f) *Project economic assessment*. Provide a study that describes the costs and revenues of the proposed project to demonstrate the financial performance of the project, including the calculation of simple payback. Provide a detailed analysis and description of project costs, including *Design and engineering*, permitting, equipment, site preparation, system installation, system startup and shakedown, warranties, insurance, financing, professional services, and operations and maintenance costs. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants. Provide a detailed description of historic or expected energy use and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement*. Demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Large solar systems may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Provide a detailed description of equipment certification. Identify all the major equipment that is proprietary and justify how this unique equipment is needed to meet the requirements of the proposed design. Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation*. Describe fully the management of and plan for site development and system installation, provide details regarding the scheduling of major installation equipment, including cranes and other devices needed for project construction, and provide a description of the startup and shakedown specifications and process and the conditions required for startup and

shakedown for each equipment item individually and for the system as a whole. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules.

(i) *Operations and maintenance.* Identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The application must:

(1) Ensure that systems must have at least a 5-year warranty for equipment. Provide information regarding system warranty and availability of spare parts;

(2) Describe the routine operations and maintenance requirements of the proposed system, including maintenance schedules for the mechanical, electrical, and software systems;

(3) For owner maintained portions of the system, describe any unique knowledge, skills, or abilities needed for service operations or maintenance; and

(4) Provide information regarding expected system design life and timing of major component replacement or rebuilds. Include in the discussion, costs and labor associated with the operation and maintenance of the system, and plans for in-sourcing or outsourcing.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives. Describe the budget for and any unique concerns associated with the dismantling and disposal of project components and their wastes. Describe any environmental compliance requirements such as proper disposal or recycling procedures to reduce any potential impact from hazardous chemicals.

SECTION 8. WIND, SMALL

The technical requirements specified in this section apply to small wind systems, which are, as defined in §4280.103, wind energy systems for which the rated power of the wind turbine is 100kW or smaller and with a generator hub height of 120 ft or less. Small wind systems are either stand-alone or connected to the local electrical system at less than 600 volts.

(a) *Qualifications of project team.* The small wind project team should consist of a system designer, a project manager or general contractor, an equipment supplier of major components, a system installer, a system maintainer, and, in some cases, the owner of the application or load served by the system. One individual or entity may serve more than one role. Authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services must be provided. Authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life must also be provided. The application must:

(1) Discuss the small wind turbine manufacturers and other equipment suppliers of major components being considered in terms of their length of time in business and the number of units installed at the capacity and scale being considered;

(2) Describe the knowledge, skills, and abilities needed to service, operate, and maintain the system for the proposed application; and

(3) Discuss the project manager, system designer, and system installer qualifications for engineering, designing, and installing small wind systems, including any relevant certifications by recognized organizations. Provide a list of the same or similar systems designed, installed, or supplied and currently operating with references, if available.

(b) *Agreements, permits, and certifications.* Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (b)(1) through (5).

(1) Identify zoning, building, and electrical code issues, and required permits and the anticipated schedule for meeting those requirements and securing those permits.

(2) Identify available component warranties for the specific project location and size.

(3) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase agreements, or licenses, where required, and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(4) Identify all environmental issues, including environmental compliance issues, associated with the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G of this title.

(5) Submit a statement certifying that the project will be installed in accordance with applicable local, State, and national codes and regulations.

(c) *Resources assessment.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the source of the 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.

(d) *Design and engineering.* Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety,

and will comply with applicable laws, regulations, agreements, permits, codes, and standards. Small wind systems must be engineered by either the wind turbine manufacturer or other qualified party. Systems must be offered as a complete, integrated system with matched components. The engineering must be comprehensive, including turbine design and selection, tower design and selection, specification of guy wire anchors and tower foundation, inverter/controller design and selection, energy storage requirements as applicable, and selection of cabling, disconnects, and interconnection equipment, as well as the engineering data needed to match the wind system output to the application load, if applicable.

(1) Provide a concise but complete description of the small wind system, including location of the project, proposed turbine specifications, tower height and type of tower, type of energy storage and location of storage if applicable, proposed inverter manufacturer and model, electric power system interconnection equipment, and application load and load interconnection equipment as applicable. Identify possible vendors and models of major system components. Provide the expected system energy production based on available wind resource data on a monthly (when possible) and annual basis and how the energy produced by the system will be used.

(2) Describe the project site and address issues such as access to the wind resource, proximity to the electrical grid or application load, environmental concerns with emphasis on historic properties, visibility, noise, bird and bat populations, and wildlife habitat destruction and/or fragmentation, construction, and installation issues and whether special circumstances such as proximity to airports exist. Provide a 360-degree panoramic photograph of the proposed site, including indication of prevailing winds when possible.

(e) *Project development schedule*. Identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline, including system and site design, permits and agreements, equipment procurement, and system installation from excavation through startup and shakedown.

(f) *Project economic assessment*. Provide a study that describes the costs and revenues of the proposed project to demonstrate the financial performance of the project, including the calculation of simple payback. Provide a detailed analysis and description of project costs, including design, permitting, equipment, site preparation, system installation, system startup and shakedown, warranties, insurance, financing, professional services, and operations and maintenance costs. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants. Provide a detailed description of historic or expected energy use and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement*. Demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Small wind systems may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Provide a detailed description of equipment certification. Identify all the major equipment that is proprietary and justify how this unique equipment is needed to meet the requirements of the proposed design. Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation*. Describe fully the management of and plan for site development and system installation, provide details regarding the scheduling of major installation equipment, including cranes and other devices needed for project construction, and provide a description of the startup and shakedown specifications and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules.

(i) *Operations and maintenance*. Identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The application must:

(1) Ensure that systems must have at least a 5-year warranty for equipment and a commitment from the supplier to have spare parts available. Provide information regarding system warranty and availability of spare parts;

(2) Describe the routine operations and maintenance requirements of the proposed system, including maintenance schedules for the mechanical, electrical, and software systems;

(3) Provide historical or engineering information that supports expected design life of the system and timing of major component replacement or rebuilds. Include in the discussion, costs and labor associated with the operation and maintenance of the system,

and plans for in-sourcing or out-sourcing; and

(4) For owner maintained portions of the system, describe any unique knowledge, skills, or abilities needed for service operations or maintenance.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives. Describe the budget for and any unique concerns associated with the dismantling and disposal of project components and their wastes.

SECTION 9. WIND, LARGE

The technical requirements specified in this section apply to wind energy systems, which are, as defined in §4280.103, wind energy projects for which the rated power of the individual wind turbine(s) is larger than 100kW.

(a) *Qualifications of project team.* The large wind project team should consist of a project manager, a meteorologist, an equipment supplier, a project engineer, a primary or general contractor, construction contractor, and a system operator and maintainer and, in some cases, the owner of the application or load served by the system. One individual or entity may serve more than one role. Authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services must be provided. Authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life must also be provided. The application must:

(1) Discuss the proposed project delivery method. Such methods include a design, bid, build where a separate engineering firm may design the project and prepare a request for bids and the successful bidder constructs the project at the applicant's risk, and a design/build method, often referred to as turnkey, where the applicant establishes the specifications for the project and secures the services of a developer who will design and build the project at the developer's risk;

(2) Discuss the large wind turbine manufacturers and other equipment suppliers of major components being considered in terms of the length of time in business and the number of units installed at the capacity and scale being considered;

(3) Discuss the project manager, equipment supplier, project engineer, and construction contractor qualifications for engineering, designing, and installing large wind systems, including any relevant certifications by recognized organizations. Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available;

(4) Discuss the qualifications of the meteorologist, including references; and

(5) Describe system operator's qualifications and experience for servicing, operating, and maintaining the system for the proposed application. Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available.

(b) *Agreements, permits, and certifications.* Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (b)(1) through (6).

(1) Identify zoning, building, and electrical code issues, and required permits and the anticipated schedule for meeting those requirements and securing those permits.

(2) Identify land use agreements required for the project and the anticipated schedule for securing the agreements and the term of those agreements.

(3) Identify available component warranties for the specific project location and size.

(4) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase agreements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements.

(5) Identify all environmental issues, including environmental compliance issues, associated with the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G of this title.

(6) Submit a statement certifying that the project will be installed in accordance with applicable local, State, and national codes and regulations.

(c) *Resources assessment.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Projects greater than 500kW must obtain wind data from the proposed project site. For such projects, describe the proposed measurement setup for the collection of the wind resource data. For proposed projects with an established wind resource, provide a summary of the wind resource and the specifications of the measurement setup. Large wind systems larger than 500kW in size will typically require at least 1 year of on-site monitoring. If less than 1 year of data is used, the qualified meteorological consultant must provide a detailed analysis of the correlation between the site data and a nearby, long-term measurement site.

(d) *Design and engineering.* Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. Large wind systems must be engineered

by a qualified party. Systems must be engineered as complete, integrated systems with matched components. The engineering must be comprehensive, including site selection, turbine selection, tower selection, tower foundation, design of the local collection grid, interconnection equipment selection, and system monitoring equipment. For stand-alone, non-grid applications, engineering information must be provided that demonstrates appropriate matching of wind turbine and load.

(1) Provide a concise, but complete, description of the large wind project, including location of the project, proposed turbine specifications, tower height and type of tower, the collection grid, interconnection equipment, and monitoring equipment. Identify possible vendors and models of major system components. Provide the expected system energy production based on available wind resource data on a monthly and annual basis. For wind projects larger than 500kW in size, provide the expected system energy production over the life of the project, including a discussion on inter-annual variation using a comparison of the on-site monitoring data with long-term meteorological data from a nearby monitored site.

(2) Describe the project site and address issues such as site access, proximity to the electrical grid or application load, environmental concerns with emphasis on historic properties, visibility, noise, bird and bat populations, and wildlife habitat destruction and/or fragmentation, construction, and installation issues and whether special circumstances such as proximity to airports exist.

(e) *Project development schedule*. Identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline, including resource assessment, system and site design, permits and agreements, equipment procurement, and system installation from excavation through startup and shakedown.

(f) *Project economic assessment*. Provide a study that describes the costs and revenues of the proposed project to demonstrate the financial performance of the proposed project. Provide a detailed analysis and description of project costs, including project management, resource assessment, project design, project permitting, land agreements, equipment, site preparation, system installation, startup and shakedown, warranties, insurance, financing, professional services, and operations and maintenance costs. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants. Provide a detailed analysis and description of annual project revenues, including electricity sales, production tax credits, revenues from green tags, and any other production incentive programs throughout the life of the project. Provide a description of planned contingency fees or reserve funds to be used for unexpected large component replacement or repairs and for low productivity periods. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement*. Demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Large wind turbines may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Provide a detailed description of equipment certification. Identify all the major equipment that is proprietary and justify how this unique equipment is needed to meet the requirements of the proposed design. Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation*. Describe fully the management of and plan for site development and system installation, provide details regarding the scheduling of major installation equipment, including cranes or other devices, needed for project construction, and provide a description of the startup and shakedown specifications and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules.

(i) *Operations and maintenance*. Identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The application must:

(1) Ensure that systems must have at least a 3-year warranty for equipment. Provide information regarding turbine warranties and availability of spare parts;

(2) Describe the routine operations and maintenance requirements of the proposed project, including maintenance schedules for the mechanical and electrical systems and system monitoring and control requirements;

(3) Provide information that supports expected design life of the system and timing of major component replacement or rebuilds;

(4) Provide and discuss the risk management plan for handling large, potential failures of major components such as the turbine gearbox or rotor. Include in the discussion, costs and labor associated with the operation and maintenance of the system, and plans for in-sourcing or out-sourcing;

(5) Describe opportunities for technology transfer for long-term project operations and maintenance by a local entity or owner/operator; and

(6) For owner maintained portions of the system, describe any unique knowledge, skills, or abilities needed for service operations or maintenance.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives. Describe the budget for and any unique concerns associated with the dismantling and disposal of project components and their wastes.

SECTION 10. ENERGY EFFICIENCY IMPROVEMENTS

The technical requirements specified in this section apply to projects that involve energy efficiency improvements, which are, as defined in § 4280.103, improvements to a facility, building, or process that reduce energy consumption, or reduce energy consumed per square foot. The system engineering for such projects must be performed by a qualified party or certified Professional Engineer.

(a) *Qualifications of project team.* The energy efficiency project team is expected to consist of an energy auditor or other service provider, a project manager, an equipment supplier of major components, a project engineer, and a construction contractor or system installer. One individual or entity may serve more than one role. Authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services must be provided. Authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life must also be provided. The application must:

(1) Discuss the qualifications of the various project team members, including any relevant certifications by recognized organizations;

(2) Describe qualifications or experience of the team as related to installation, service, operation and maintenance of the project;

(3) Provide a list of the same or similarly engineered projects designed, installed, or supplied by the team or by team members and currently operating. Provide references if available; and

(4) Discuss the manufacturers of major energy efficiency equipment being considered, including length of time in business.

(b) *Agreements, permits, and certifications.* Identify all necessary agreements and permits required for the energy efficiency improvement(s) and the status and anticipated schedule for securing those agreements and permits, including the items specified in paragraphs (b)(1) through (4). The applicant must also submit a statement certifying that the applicant will comply with all necessary agreements and permits for the energy efficiency improvement(s).

(1) Identify building code, electrical code, and zoning issues and required permits, and the anticipated schedule for meeting those requirements and securing those permits.

(2) Identify available component warranties for the specific project location and size.

(3) Identify all environmental issues, including environmental compliance issues, associated with the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G of this title.

(4) Submit a statement certifying that the project will be installed in accordance with applicable local, State, and national codes and regulations.

(c) *Energy audits.* For all energy efficiency improvement projects, provide adequate and appropriate evidence of energy savings expected when the system is operated as designed.

(1) An energy audit is a written report by an independent, qualified party that documents current energy usage, recommended potential improvements and their costs, energy savings from these improvements, dollars saved per year, and simple payback. The methodology of the energy audit must meet professional and industry standards.

(2) The energy audit must cover the following:

(i) *Situation report.* Provide a narrative description of the facility or process, its energy system(s) and usage, and activity profile. Also include price per unit of energy (electricity, natural gas, propane, fuel oil, renewable energy, etc.,) paid by the customer on the date of the audit. Any energy conversion should be based on use rather than source.

(ii) *Potential improvements.* List specific information on all potential energy-saving opportunities and the associated costs.

(iii) *Technical analysis.* Discuss the interactions of the potential improvements with existing energy systems.

(A) Estimate the annual energy and energy costs savings expected from each improvement identified in the potential project.

(B) Calculate all direct and attendant indirect costs of each improvement.

(C) Rank potential improvement measures by cost-effectiveness.

(iv) *Potential improvement description*. Provide a narrative summary of the potential improvement and its ability to provide needed benefits, including a discussion of non-energy benefits such as project reliability and durability.

(A) Provide preliminary specifications for critical components.

(B) Provide preliminary drawings of project layout, including any related structural changes.

(C) Document baseline data compared to projected consumption, together with any explanatory notes. Provide the actual total quantity of energy used (BTU) in the original building and/or equipment in the 12 months prior to the EEI project and the projected energy usage after the EEI project shall be the projected total quantity of energy used (BTU) on an annual basis for the same size or capacity as the original building or equipment. For energy efficiency improvement to equipment, if the new piece of equipment has a different capacity than the piece of equipment being replaced, the projected total quantity of energy used for the new piece of equipment shall be adjusted based on the ratio of the capacity of the replaced piece of equipment to the capacity of the new piece of equipment in accordance with the regulation. When appropriate, show before-and-after data in terms of consumption per unit of production, time or area. Include at least 1 year's bills for those energy sources/fuel types affected by this project. Also submit utility rate schedules, if appropriate.

(D) Identify significant changes in future related operations and maintenance costs.

(E) Describe explicitly how outcomes will be measured.

(d) *Design and engineering*. Provide authoritative evidence that the energy efficiency improvement(s) will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards.

(1) Energy efficiency improvement projects in excess of $50,000 must be engineered by a qualified party. Systems must be engineered as a complete, integrated system with matched components.

(2) For all energy efficiency improvement projects, identify and itemize major energy efficiency improvements, including associated project costs. Specifically delineate which costs of the project are directly associated with energy efficiency improvements. Describe the components, materials or systems to be installed and how they improve the energy efficiency of the process or facility being modified. Discuss passive improvements that reduce energy loads, such as improving the thermal efficiency of a storage facility, and active improvements that directly reduce energy consumption, such as replacing existing energy consuming equipment with high efficiency equipment, as separate topics. Discuss any anticipated synergy between active and passive improvements or other energy systems. Include in the discussion any change in on-site effluents, pollutants, or other by-products.

(3) Identify possible suppliers and models of major pieces of equipment.

(e) *Project development schedule*. Identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline, including energy audit (if applicable), system and site design, permits and agreements, equipment procurement, and system installation from site preparation through startup and shakedown.

(f) *Project economic assessment*. For projects whose total eligible costs are greater than $50,000, provide an analysis of the proposed project to demonstrate its financial performance, including the calculation of simple payback. The analysis should include applicable investment incentives, productivity incentives, loans and grants, and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement*. Demonstrate that equipment required for the energy efficiency improvement(s) is available and can be procured and delivered within the proposed project development schedule. Energy efficiency improvements may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Provide a detailed description of equipment certification. Identify all the major equipment that is proprietary and justify how this unique equipment is needed to meet the requirements of the proposed design. Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation*. Describe fully the management of and plan for installation of the energy efficiency improvement(s), identify specific issues associated with installation, provide details regarding the scheduling of major installation equipment needed for project discussion, and provide a description of the startup and shakedown specifications and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole. Include in this discussion any unique concerns, such as the effects of

energy efficiency improvements on system power quality. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules.

(i) *Operations and maintenance.* Identify the operations and maintenance requirements of the energy efficiency improvement(s) necessary for the energy efficiency improvement(s) to perform as designed over the design life. The application must:

(1) Provide information regarding component warranties and the availability of spare parts;

(2) Describe the routine operation and maintenance requirements of the proposed project, including maintenance schedules for the mechanical and electrical systems and system monitoring and control requirements;

(3) Provide information that supports expected design life of the improvement(s) and timing of major component replacement or rebuilds;

(4) Provide and discuss the risk management plan for handling large, potential failures of major components. Include in the discussion, costs and labor associated with the operation and maintenance of the improvement(s), and plans for in-sourcing or outsourcing; and

(5) For owner maintained portions of the improvement(s), describe any unique knowledge, skills, or abilities needed for service operations or maintenance.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives. Describe the budget for and any unique concerns associated with the dismantling and disposal of project components and their wastes.

APPENDIX C TO SUBPART B OF PART 4280—TECHNICAL REPORT FOR HYDROPOWER PROJECTS

The technical requirements specified in this appendix apply to all hydropower projects. Hydropower projects are those projects that create hydroelectric or ocean energy.

The Technical Report for hydropower projects must demonstrate that the project design, procurement, installation, startup, operation, and maintenance of the renewable energy system will operate or perform as specified over its design life in a reliable and a cost-effective manner. The Technical Report must also identify all necessary project agreements, demonstrate that those agreements will be in place, and that necessary project equipment and services are available over the design life.

All technical information provided must follow the format specified in this appendix. Supporting information may be submitted in other formats. Design drawings and process flowcharts are encouraged as exhibits. A discussion of each topic is not necessary if the topic is not applicable to the specific project. Questions identified in the Agency's technical review of the project must be answered to the Agency's satisfaction before the application will be approved. The applicant must submit the original Technical Report plus one copy to the Rural Development State Office. Hydropower projects with total eligible project costs greater than $400,000 require the services of a licensed professional engineer (PE) or team of PEs. Depending on the level of engineering required for the specific project or if necessary to ensure public safety, the services of a licensed PE or a team of licensed PEs may be required for smaller projects.

(a) *Qualifications of project team.* The hydropower project team should consist of a system designer, a project manager, an equipment supplier, a project engineer, a construction contractor, and a system operator and maintainer. One individual or entity may serve more than one role. The project team must have demonstrated expertise in hydropower development, engineering, installation, and maintenance. Authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services must be provided. Authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life must also be provided. The application must:

(1) Discuss the proposed project delivery method. Such methods include a design, bid, build where a separate engineering firm may design the project and prepare a request for bids and the successful bidder constructs the project at the applicant's risk, and a design/build method, often referred to as turnkey, where the applicant establishes the specifications for the project and secures the services of a developer who will design and build the project at the developer's risk;

(2) Discuss the hydropower equipment manufacturers of major components being considered in terms of the length of time in business and the number of units installed at the capacity and scale being considered;

(3) Discuss the project manager, equipment supplier, system designer, project engineer, and construction contractor qualifications for engineering, designing, and installing hydropower systems, including any relevant certifications by recognized organizations. Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available; and

(4) Describe the system operator's qualifications and experience for servicing, operating, and maintaining hydropower projects.

Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available.

(b) *Agreements, permits, and certifications.* Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (b)(1) through (b)(6).

(1) Identify zoning and code issues and required permits and the anticipated schedule for meeting those requirements and securing those permits. This list should include all local, state, and federal permits required, estimated timeline for each permit and current status of acquiring each permit.

(2) Identify land use agreements required for the project and the anticipated schedule for securing the agreements and the term of those agreements.

(3) Identify available component warranties for the specific project location and size.

(4) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase agreements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements.

(5) Identify all environmental issues, including environmental compliance issues, associated with the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G. (Note: The environmental review process, including all required publications, must be completed prior to approval of any Rural Development funding.) The applicant may want to work with all Federal organizations involved with the project to promulgate a single environmental review document.

(6) Submit a statement certifying that the project will be installed in accordance with applicable local, State, and national codes, regulations, and permits.

(c) *Resource assessment.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the quality of the resource, including temperature (if applicable), flow, and sustainability of the resource, including a summary of the resource evaluation process and the specifications of the measurement setup and the date and duration of the evaluation process and proximity to the proposed site. If less than 1 year of data is used, a qualified consultant must provide a detailed analysis of the correlation between the site data and a nearby, long-term measurement site.

(d) *Design and engineering.* Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. Projects shall be engineered by a qualified party. Systems must be engineered as a complete, integrated system with matched components. The engineering must be comprehensive, including site selection, system and component selection, conversion system component selection, design of the local collection grid, interconnection equipment selection, and system monitoring equipment. Systems must be constructed by a qualified party.

(1) Provide a concise but complete description of the hydropower project, including location of the project, resource characteristics, system specifications, electric power system interconnection equipment and project monitoring equipment. Identify possible vendors and models of major system components. Provide the expected system energy production on a monthly and annual basis.

(2) Describe the project site and address issues such as site access, proximity to the electrical grid, environmental concerns with emphasis on land use, air quality, water quality, habitat fragmentation, visibility, noise, construction, and installation issues. Identify any unique construction and installation issues.

(e) *Project development schedule.* Identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline, including resource assessment, system and site design, permits and agreements, equipment procurement, and system installation from excavation through startup and shakedown.

(f) *Project economic assessment.* Provide a study that describes the costs and revenues of the proposed project to demonstrate the financial performance of the proposed project. Provide a detailed analysis and description of project costs, including project management, resource assessment, project design, project permitting, land agreements, equipment, site preparation, system installation, startup and shakedown, warranties, insurance, financing, professional services, and operations and maintenance costs. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants. Provide a detailed analysis and description of annual project revenues, including electricity sales, production tax credits, revenues from green tags, and any other production incentive programs throughout the life of the project. Provide a description of planned contingency fees or reserve funds to be used for unexpected large component replacement or repairs and for low productivity periods. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Demonstrate that equipment required by the system is available and can be procured and delivered

within the proposed project development schedule. Hydropower systems may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Provide a detailed description of equipment certification. Identify all the major equipment that is proprietary and justify how this unique equipment is needed to meet the requirements of the proposed design. Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation*. Describe fully the management of and plan for site development and system installation, provide details regarding the scheduling of major installation equipment, including cranes, barges or other devices, needed for project construction, and provide a description of the startup and shakedown specifications and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules.

(i) *Operations and maintenance*. Identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The application must:

(1) Ensure that systems must have at least a 3-year warranty for equipment. Provide information regarding turbine warranties and availability of spare parts;

(2) Describe the routine operations and maintenance requirements of the proposed project, including maintenance schedules for the mechanical and electrical systems and system monitoring and control requirements;

(3) Provide information that supports expected design life of the system and timing of major component replacement or rebuilds;

(4) Provide and discuss the risk management plan for handling large, potential failures of major components such as the turbine gearbox or rotor. Include in the discussion, costs and labor associated with the operation and maintenance of the system, and plans for in-sourcing or out-sourcing;

(5) Describe opportunities for technology transfer for long-term project operations and maintenance by a local entity or owner/operator; and

(6) For owner maintained portions of the system, describe any unique knowledge, skills, or abilities needed for service operations or maintenance.

(j) *Dismantling and disposal of project components*. Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives. Describe the budget for and any unique concerns associated with the dismantling and disposal of project components and their wastes.

APPENDIX D TO SUBPART B OF PART 4280—TECHNICAL REPORT FOR FLEXIBLE FUEL PUMPS

The technical requirements specified in this appendix apply to flexible fuel pump projects, as defined in §4280.103.

(a) *Qualifications of project team*. The flexible fuel pump project team is expected to consist of a project manager, an equipment supplier of major components, a project engineer, and a construction contractor or system installer. One individual or entity may serve more than one role. Authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services must be provided. Authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life must also be provided. The application must:

(1) Discuss the proposed project delivery method. Such methods include a design, bid, build where a separate engineering firm may design the project and prepare a request for bids and the successful bidder constructs the project at the applicant's risk, and a design/build method, often referred to as turnkey, where the applicant establishes the specifications for the project and secures the services of a developer who will design and build the project at the developer's risk;

(2) Discuss the flexible fuel system equipment, manufacturers of major components being considered in terms of the length of time in business and the number of units installed at the capacity and scale being considered;

(3) Discuss the project manager, equipment supplier, system designer, project engineer, and construction contractor qualifications for engineering, designing, and installing fuel dispensing systems, including any relevant certifications by recognized organizations. Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available; and

(4) Describe the system operator's qualifications and experience for servicing, operating, and maintaining fuel dispensing equipment or projects. Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available.

(b) *Agreements, permits, and certifications.* Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (b)(1) through (b)(8).

(1) Include Underwriters Laboratory certifications for installed flexible fuel pumps.

(2) Identify zoning and code issues and required permits and the anticipated schedule for meeting those requirements and securing those permits.

(3) Identify licenses where required and the schedule for obtaining those licenses.

(4) Identify land use agreements required for the project and the anticipated schedule for securing the agreements and the term of those agreements.

(5) Identify any permits or agreements required for solid, liquid, and gaseous emissions or effluents and the schedule for securing those permits and agreements.

(6) Identify available component warranties for the specific project location and size.

(7) Identify all environmental issues, including environmental compliance issues, associated with the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G of this title.

(8) Submit a statement certifying that the project will be installed in accordance with applicable local, State, and national codes and regulations.

(c) *Resource assessment.* Provide adequate and appropriate data to demonstrate the amount of renewable fuels available. Indicate the type, quantity, and quality and the demand for that fuel in its service area.

(d) *Design and engineering.* Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. Projects shall be engineered by a qualified party. Systems must be engineered as a complete, integrated system with matched components. The engineering must be comprehensive, including site selection, system and component selections, and system monitoring equipment. Systems must be constructed by a qualified party.

(1) Provide a concise but complete description of the flexible fuel pump project, including location of the project, resource characteristics, system specifications, electric power system, fire suppression systems, and monitoring equipment. Identify possible vendors and models of major system components. Describe the system capacity, storage tank(s), and dispensing apparatus of the proposed system as rated and as expected in actual field conditions.

(2) Describe the project site and address issues such as site access, foundations, backup equipment when applicable, and environmental concerns with emphasis on land use, air quality, water quality, soil degradation, habitat fragmentation, land use, visibility, odor, noise, construction, and installation issues. Identify any unique construction and installation issues.

(e) *Project development schedule.* Identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline, including resource assessment, system and site design, permits and agreements, equipment procurement, and system installation from excavation through startup and shakedown.

(f) *Project economic assessment.* Provide a report that describes the costs and revenues of the proposed project to demonstrate the financial performance of the project (the projected increase in annual net income resulting by the installation of the project) and include the calculation of simple payback. Provide a detailed analysis and description of project costs, including project management, resource assessment, project design, project permitting, equipment, site preparation, system installation, startup and shakedown, warranties, insurance, financing, professional services, and operations and maintenance costs. Provide a detailed analysis and description of annual project revenues and expenses. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Flexible fuel systems may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Identify all the major equipment that is proprietary and justify how this unique equipment is needed to meet the requirements of the proposed design. Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015.

(h) *Equipment installation.* Fully describe the management of and plan for site development and system installation, provide details regarding the scheduling of major installation equipment needed for project construction, and provide a description of the startup and shakedown specifications and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole.

Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules.

(i) *Operations and maintenance*. Identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. In addition:

(1) Provide information regarding available system and component warranties and availability of spare parts;

(2) Describe the routine operations and maintenance requirements of the proposed system, including maintenance schedule for the mechanical, piping, and electrical systems and system monitoring and control requirements. Provide information that supports expected design life of the system and timing of major component replacement or rebuilds. Discuss the costs and labor associated with the operation and maintenance of the system, and plans for in-sourcing or outsourcing. Water infiltration should be checked daily. Replace filters if pump/dispenser is running slowly. Check/calibrate pump two weeks after initial load conversion.

(j) *Dismantling and disposal of project components*. Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives. Describe the budget for and any unique concerns associated with the dismantling and disposal of project components and their wastes.

APPENDIX E TO SUBPART B OF 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. Both a technical report for the project and an economic analysis of the project are required as part of the feasibility study. The technical report to be provided must conform to that required under Appendix A, B, C, or D of this subpart, as applicable.

Section A. Executive Summary. Provide an introduction and overview of the project. In the overview, describe the nature and scope of the proposed project, including purpose, project location, design features, capacity, and estimated total capital cost. Include a summary of each of the elements of the feasibility study, including:

(1) Economic feasibility determinations;

(2) Market feasibility determinations;

(3) Technical feasibility determinations;

(4) Financial feasibility determinations;

(5) Management feasibility determinations; and

(6) Recommendations for implementation of the proposed project.

Section B. Economic Feasibility. Provide information regarding project site; the availability of trained or trainable labor; and the availability of infrastructure, including utilities, and rail, air and road service to the site. Discuss feedstock source management, including feedstock collection, pre-treatment, transportation, and storage, and provide estimates of feedstock volumes and costs. Discuss the proposed project's potential impacts on existing manufacturing plants or other facilities that use similar feedstock if the proposed technology is adopted. Provide projected impacts of the proposed project on resource conservation, public health, and the environment. Provide an overall economic impact of the project including any additional markets created (e.g., for agricultural and forestry products and agricultural waste material) and potential for rural economic development. Provide feasibility/plans of project to work with producer associations or cooperatives including estimated amount of annual feedstock and biofuel and byproduct dollars from producer associations and cooperatives.

Section C. Market Feasibility. Provide information on the sales organization and management. Discuss the nature and extent of market and market area and provide marketing plans for sale of projected output, including both the principal products and the by-products. Discuss the extent of competition including other similar facilities in the market area. Provide projected total supply of and projected competitive demand for raw materials. Describe the procurement plan, including projected procurement costs and the form of commitment of raw materials (e.g., marketing agreements, etc.). Identify commitments from customers or brokers for both the principal products and the by-products. Discuss all risks related to the industry, including industry status.

Section D. Technical Feasibility. The technical feasibility report shall be based upon verifiable data and contain sufficient information and analysis so that a determination may be made on the technical feasibility of achieving the levels of income or production that are projected in the financial statements. The project engineer or architect is considered an independent party provided neither the principals of the firm nor any individual of the firm who participates in the technical feasibility report has a financial interest in the project. If no other individual or firm with the expertise necessary to make such a determination is reasonably available to perform the function, an individual or firm that is not independent may be used.

(1) Identify any constraints or limitations in the financial projections and any other facility or design-related factors that might affect the success of the enterprise. Identify and estimate project operation and development costs and specify the level of accuracy

of these estimates and the assumptions on which these estimates have been based.

(2) Discuss all risks related to construction of the project and regulation and governmental action as they affect the technical feasibility of the project.

Section E. Financial Feasibility. Discuss the reliability of the financial projections and assumptions on which the financial statements are based including all sources of project capital both private and public, such as Federal funds. Provide 3 years (minimum) projected Balance Sheets and Income Statements and cash flow projections for the life of the project. Discuss the ability of the business to achieve the projected income and cash flow. Provide an assessment of the cost accounting system. Discuss the availability of short-term credit or other means to meet seasonable business costs and the adequacy of raw materials and supplies. Provide a sensitivity analysis, including feedstock and energy costs. Discuss all risks related to the project, financing plan, the operational units, and tax issues.

Section F. Management Feasibility. Discuss the continuity and adequacy of management. Identify applicant and/or management's previous experience concerning the receipt of federal financial assistance, including amount of funding, date received, purpose, and outcome. Discuss all risks related to the applicant as a company (e.g., applicant is at the Development-Stage) and conflicts of interest, including appearances of conflicts of interest.

Section G. Qualifications. Provide a resume or statement of qualifications of the author of the feasibility study, including prior experience.

Subpart C [Reserved]

Subpart D—Rural Microentrepreneur Assistance Program

AUTHORITY: 7 U.S.C. 1989(a), 7 U.S.C. 2009s.

SOURCE: 75 FR 30145, May 28, 2010, unless otherwise noted.

§ 4280.301 Purpose and scope.

(a) This subpart contains the provisions and procedures by which the Agency will administer the Rural Microenterprise Assistance Program (RMAP). The purpose of the program is to support the development and ongoing success of rural microentrepreneurs and microenterprises. To accomplish this purpose, the program will make direct loans, and provide grants to selected Microenterprise Development Organizations (MDOs). Selected MDOs will use the funds to:

(1) Provide microloans to rural microentrepreneurs and microenterprises;

(2) Provide business based training and technical assistance to rural microborrowers and potential microborrowers; and

(3) Perform other such activities as deemed appropriate by the Secretary to ensure the development and ongoing success of rural microenterprises.

(b) The Agency will make direct loans to microlenders, as defined in § 4280.302, for the purpose of providing fixed interest rate microloans to rural microentrepreneurs for startup and growing microenterprises. Eligible microlenders will also be automatically eligible to receive microlender technical assistance grants to provide technical assistance and training to microentrepreneurs that have received or are seeking a microloan under this program.

(c) To allow for extended opportunities for technical assistance and training, the Agency will make technical assistance-only grants to MDOs that have sources of funding other than program funds for making or facilitating microloans.

§ 4280.302 Definitions and abbreviations.

(a) *General definitions*. The following definitions apply to the terms used in this subpart.

Administrative expenses. Those expenses incurred by an MDO for the operation of services under this program. Not more than 10 percent of TA grant funding may be used for such expenses.

Agency. USDA Rural Development, Rural Business-Cooperative Service or its successor organization.

Agency personnel. Individuals employed by the Agency.

Applicant. The legal entity, also referred to as a microenterprise development organization or MDO, submitting an application to participate in the program.

Application. The forms and documentation submitted by an MDO for acceptance into the program.

Award. The written documentation, executed by the Agency after the application is approved, containing the terms and conditions for provision of financial assistance to the applicant. Financial assistance may constitute a loan or a grant or both.

Business incubator. An organization that provides temporary premises at below market rates, technical assistance, advice, use of equipment, and may provide access to capital, or other facilities or services to rural microentrepreneurs and microenterprises starting or growing a business.

Close relative. Individuals who are closely related by blood, marriage, or adoption, or live within the same household: a spouse, domestic partner, parent, child, brother, sister, aunt, uncle, grandparent, grandchild, niece, or nephew.

Default. The condition that exists when a borrower is not in compliance with the promissory note, the loan and/or grant agreement, or other related documents evidencing the loan.

Delinquency. Failure by an MDO to make a scheduled loan payment by the due date or within any grace period as stipulated in the promissory note and loan agreement.

Eligible project cost. The total cost of a microborrower's project for which a microloan is being sought from a microlender less any costs identified as ineligible in § 4280.323.

Facilitation of access to capital. For purposes of this program, facilitation of access to capital means assisting a technical assistance client of the TA-only grantee in obtaining a microloan whether or not the microloan is wholly or partially capitalized by funds provided under this program.

Federal Fiscal year (FY). The 12-month period beginning October 1 of any given year and ending on September 30 of the following year.

Full-time equivalent employee (FTE). The Agency uses the Bureau of Labor Statistics definition of full-time jobs as its standard definition. For purposes of this program, a full-time job is a job that has at least 35 hours in a work week. As such, one full-time job with at least 35 hours in a work week equals one FTE; two part-time jobs with combined hours of at least 35 hours in a work week equals one FTE, and three seasonal jobs equals one FTE. If an FTE calculation results in a fraction, it should be rounded up to the next whole number.

Indian tribe. As defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b), ''any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 *et seq*.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.''

Loan loss reserve fund (LLRF). An interest-bearing deposit account that each microlender must establish and maintain in an amount equal to not less than 5 percent of the total amount owed by the microlender under this program to the Agency to pay any shortage in the RMRF caused by delinquencies or losses on microloans.

Microborrower. A microentrepreneur or microenterprise that has received financial assistance from a microlender under this program in an amount of $50,000 or less.

Microenterprise. Microenterprise means:

(i) A sole proprietorship located in a rural area; or

(ii) A business entity, located in a rural area, with not more than 10 full-time-equivalent employees. Rural microenterprises are businesses employing 10 people or fewer that are in need of $50,000 or less in business capital and/or in need of business based technical assistance and training. Such businesses may include any type of legal business that meets local standards of decency. Business types may also include agricultural producers provided they meet the stipulations in this definition.

(iii) All microenterprises assisted under this regulation must be located in rural areas.

Microenterprise development organization (MDO). An organization that is a non-profit entity; an Indian tribe (the government of which tribe certifies that no MDO serves the tribe and no

RMAP exists under the jurisdiction of the Indian tribe); or a public institution of higher education; and that, for the benefit of rural microentrepreneurs and microenterprises:

(i) Provides training and technical assistance and/or;

(ii) Makes microloans or facilitates access to capital or another related service; and/or

(iii) Has a demonstrated record of delivering, or an effective plan to develop a program to deliver, such services.

Microentrepreneur. An owner and operator, or prospective owner and operator, of a microenterprise who is unable to obtain sufficient training, technical assistance, or credit other than under this section, as determined by the Secretary. All microentrepreneurs assisted under this regulation must be located in rural areas.

Microlender. An MDO that has been approved by the Agency for participation under this subpart to make microloans and provide an integrated program of training and technical assistance to its microborrowers and prospective microborrowers.

Microloan. A business loan of not more than $50,000 with a fixed interest rate and a term not to exceed 10 years.

Military personnel. Individuals, regardless of rank or grade, currently in active United States military service with less than 6 months remaining in their active duty service requirement.

Nonprofit entity. An entity chartered as a nonprofit entity under State Law.

Program. The Rural Microentrepreneur Assistance Program (RMAP).

Rural microloan revolving fund (RMRF). An exclusive interest-bearing account on which the Agency will hold a first lien and from which microloans will be made; into which payments from microborrowers and reimbursements from the LLRF will be deposited; and from which payments will be made by the microlender to the Agency.

Rural or rural area. Any area of a State not in a city or town that has a population of more than 50,000 inhabitants, according to the latest decennial census of the United States, and the contiguous and adjacent urbanized area, and any area that has been determined to be ''rural in character'' by the Under Secretary for Rural Development, or as otherwise identified in this definition. In determining which census blocks in an urbanized area are not in a rural area, the Agency will exclude any cluster of census blocks that would otherwise be considered not in a Rural Area only because the cluster is adjacent to not more than two census blocks that are otherwise considered not in a rural area under this definition.

(i) For the purposes of this definition, cities and towns are incorporated population centers with definite boundaries, local self government, and legal powers set forth in a charter granted by the State.

(ii) For the Commonwealth of Puerto Rico, the island is considered rural and eligible for Business Programs assistance, except for the San Juan Census Designated Place (CDP) and any other CDP with greater than 50,000 inhabitants. CDPs with greater than 50,000 inhabitants, other than the San Juan CDP, may be determined to be eligible if they are ''not urban in character.'' Any such requests must be forwarded to the National Office, Business and Industry Division, with supporting documentation as to why the area is ''not urban in character'' for review, analysis, and decision by the Rural Development Under Secretary.

(iii) For the State of Hawaii, all areas within the State are considered rural and eligible for Business Programs assistance, except for the Honolulu CDP within the County of Honolulu.

(iv) For the purpose of defining a rural area in the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands, the Agency shall determine what constitutes rural and rural area based on available population data.

(v) On the petition of a unit of local government in an area described in paragraph (v)(A) or (B) of this definition, or on the initiative of the Under Secretary for Rural Development, the Under Secretary may determine that part of an area described in paragraph (v)(A) or (B) of this definition, is a rural area for the purposes of this paragraph, if the Under Secretary finds

that the part is ''rural in character'', as determined by the Under Secretary.

(A) An urbanized area that has two points on its boundary that are at least 40 miles apart, which is not contiguous or adjacent to a city or town that has a population of greater than 150,000 inhabitants or the urbanized area of such a city or town; or

(B) An urbanized area contiguous and adjacent to a city or town of greater than 50,000 population that is within one-quarter mile of a rural area.

State. Any of the 50 States of the United States, the Commonwealth of Puerto Rico, the District of Columbia, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Technical assistance and training. The provision of education, guidance, or instruction to one or more rural microentrepreneurs to prepare them for self-employment; to improve the state of their existing rural microenterprises; to increase their capacity in a specific technical aspect of the subject business; and, to assist the rural microentrepreneurs in achieving a degree of business preparedness and/or functioning that will allow them to obtain, or have the ability to obtain, one or more business loans of $50,000 or less, whether or not from program funds.

Technical assistance grant. A grant, the funds of which are used to provide technical assistance and training, as defined in this section.

(b) *Abbreviations*. The following abbreviations apply to the terms used in this subpart:

FTE—Full-time employee
LLRF—Loan loss reserve fund.
MDO—Microenterprise development organization.
RMAP—Rural microentrepreneur assistance program.
RMRF—Rural microloan revolving fund.
TA—Technical assistance.

[75 FR 30145, May 28, 2010, as amended at 75 FR 41696, July 19, 2010]

§ 4280.303 Exception authority.

The Administrator may make limited exceptions to the requirements or provisions of this subpart. Such exceptions must be in the best financial interest of the Federal government and may not conflict with applicable law. No exceptions may be made regarding applicant eligibility, project eligibility, or the rural area definition. In addition, exceptions may not be made:

(a) To accept an applicant into the program that would not normally be accepted under the eligibility or scoring criteria; or

(b) To fund an interested party that has not successfully competed for funding in accordance with the regulations.

§ 4280.304 Review or appeal rights and administrative concerns.

(a) *Review or appeal rights*. An applicant MDO, a microlender, or grantee MDO may seek a review of an adverse Agency decision under this subpart from the appropriate Agency official that oversees the program in question, and/or appeal the Agency decision to the National Appeals Division in accordance with 7 CFR part 11.

(b) *Administrative concerns*. Any questions or concerns regarding the administration of the program, including any action of the microlender, may be addressed to: USDA Rural Development, Rural Business-Cooperative Service, Specialty Programs Division or its successor agency, or the local USDA Rural Development office.

§ 4280.305 Nondiscrimination and compliance with other Federal laws.

(a) Any entity receiving funds under this subpart must comply with other applicable Federal laws, including the Equal Employment Opportunities Act of 1972, the Americans with Disabilities Act, the Equal Credit Opportunity Act, the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and 7 CFR part 1901, subpart E.

(b) The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or

part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). Any applicant that believes it has been discriminated against as a result of applying for funds under this program should contact: USDA, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, DC 20250–9410, or call (866) 632–9992 (toll free) or (202) 401–0216 (TDD) for information and instructions regarding the filing of a Civil Rights complaint. USDA is an equal opportunity provider, employer, and lender.

(c) A pre-award compliance review will take place at the time of application when the applicant completes Form RD 400–8, ''Compliance Review''. Post- award compliance reviews will take place once every three years after the beginning of participation in the program and until such time as a microlender leaves the program.

§4280.306 Forms, regulations, and instructions.

Copies of all forms, regulations, and instructions referenced in this subpart are available in any Agency office, the Agency's Web site at *http://www.rurdev.usda.gov/regs/*, and for grants on the Internet at *http://www.grants.gov*.

§§4280.307–4280.309 [Reserved]

§4280.310 Program requirements for MDOs.

(a) *Eligibility requirements for applicant MDOs*. To be eligible for a direct loan or grant award under this subpart, an applicant must meet each of the criteria set forth in paragraphs (a)(1) through (4) of this section, as applicable.

(1) *Type of applicant*. The applicant must meet the definition of an MDO under this program.

(2) *Citizenship*. For non-profit entities only, to be eligible to apply for status as an MDO, the applicant must be at least 51 percent controlled by persons who are either:

(i) Citizens of the United States, the Republic of Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, American Samoa, or the Commonwealth of Puerto Rico; or

(ii) Legally admitted permanent residents residing in the U.S.

(3) *Legal authority and responsibility*. The applicant must have the legal authority necessary to carry out the purpose of the award.

(4) *Other eligibility requirements*. For potential microlenders only,

(i) The applicant must also provide evidence that it:

(A) Has demonstrated experience in the management of a revolving loan fund; or

(B) Certifies that it, or its employees, have received education and training from a qualified microenterprise development training entity so that the applicant has the capacity to manage such a revolving loan fund; or

(C) Is actively and successfully participating as an intermediary lender in good standing under the U.S. Small Business Administration (SBA) Microloan Program or other similar loan programs as determined by the Administrator.

(ii) An attorney's opinion regarding the potential microlender's legal status and its ability to enter into program transactions is required at the time of initial entry into the program. Subsequent to acceptance into the program, an attorney's opinion will not be required unless the Agency determines significant changes to the microlender have occurred.

(b) *Minimum score*. Once deemed eligible, an entity will be evaluated based on the scoring criteria in §4280.316 for adequate qualification to participate in the program. Eligible MDOs must score a minimum of seventy points (70 points) in order to be considered to receive an award under this subpart.

(c) *Ineligible applicants*. An applicant will be considered ineligible if it:

(1) Does not meet the definition of an MDO as provided in §4280.302;

(2) Is debarred, suspended or otherwise excluded from, or ineligible for,

participation in Federal assistance programs; and

(3) Has an outstanding judgment against it, obtained by the United States in a Federal Court (other than U.S. Tax Court).

(d) *Delinquencies.* No applicant will be eligible to receive a loan if it is delinquent on a Federal debt.

(e) *Application eligibility and qualification.* An application will be considered eligible for funding if it is submitted by an eligible MDO. The applicant will qualify for funding based on the results of review, scoring, and other procedures as indicated in this subpart, and will further:

(1) Establish an RMRF, or add capital to an RMRF originally capitalized under this program and establish or continue a training and TA program for its microborrowers and prospective microborrowers; or

(2) Fund a TA-only grant program to provide services to rural microentrepreneurs and microenterprises.

(f) *Business incubators.* Because the purpose of a business incubator is to provide business-based technical assistance and an environment in which micro-level, very small, and small businesses may thrive, a microlender that meets all other eligibility requirements and owns and operates a small business incubator will be considered eligible to apply. In addition, a business incubator selected to participate as a microlender may use RMAP funding to lend to an eligible microenterprise tenant, without creating a conflict of interest under § 4280.323(c).

§ 4280.311 Loan provisions for Agency loans to microlenders.

(a) *Purpose of the loan.* Loans will be made to eligible and qualified microlenders to capitalize RMRFs that it will administer by making and servicing microloans in one or more rural areas.

(b) *Eligible activities.* Microlenders may make microloans for qualified business activities and use Agency loan funds only as provided in § 4280.322.

(c) *Ineligible activities.* Microlenders may not use RMRF funds for administrative costs or expenses and may not make microloans under this program for ineligible purposes as specified in § 4280.323.

(d) *Cost share.* The Federal share of the eligible project cost of a microborrower's project funded under this section shall not exceed 75 percent. The cost share requirement shall be met by the microlender using either of the options identified in paragraphs (d)(1) and (2) of this section in establishing an RMRF. A microlender may establish multiple RMRFs utilizing either option. Whichever option is selected for an RMRF, it must apply to the entire RMRF and all microloans made with funds from that RMRF.

(1) *Microborrower project level option.* The loan covenants between the Agency and the microlender and the microlender's lending policies and procedures shall limit the microlender's loan to the microborrower to no more than 75 percent of the eligible project cost of the microborrower's project and require that the microborrower obtain the remaining 25 percent of the eligible project cost from non-Federal sources. The non-Federal share of the eligible project cost of the microborrower's project may be provided in cash (including through fees, grants (including community development block grants), and gifts) or in the form of in-kind contributions.

(2) *RMRF level option.* The microlender shall capitalize the RMRF at no more than 75 percent Agency loan funds and not less than 25 percent non-Federal funds, thereby allowing the microlender to finance 100 percent of the microborrower's eligible project costs. All contributed funds shall be maintained in the RMRF.

(e) *Loan terms and conditions for microlenders.* Loans will be made to microlenders under the following terms and conditions:

(1) Funds received from the Agency and any non-Federal share will be deposited into an interest-bearing account that will be the RMRF account.

(2) The RMRF account, including any interest earned on the account and the microloans made from the account, will be used to make fixed-rate microloans, to accept repayments from microborrowers and reimbursements from the LLRF, to repay the Agency and, with the advance written approval

of the Agency, to supplement the LLRF with interest earnings (from payments received or from account earnings) from the RMRF.

(3) The term of a loan made to a microlender will not exceed 20 years. If requested by the applicant MDO, a shorter term may be agreed upon by the microlender and the Agency.

(4) Each loan made to a microlender will automatically receive a 2-year deferral during which time no repayment to the Agency will be required. Voluntary payments will be accepted.

(i) Interest will accrue during the deferral period only on funds disbursed by the Agency.

(ii) The deferral period will begin on the day the Agency loan to the microlender is closed.

(iii) Loan repayments will be made in equal monthly installments to the Agency beginning on the last day of the 24th month of the life of the loan.

(5) Partial or full repayment of debt to the Agency under this program may be made at any time, including during the deferral period, without any prepayment penalties being assessed.

(6) The microlender is responsible for full repayment of its loan to the Agency regardless of the performance of its microloan portfolio.

(7) The Agency may call the entire loan due and payable prior to the end of the full term, due to any non-performance, delinquency, or default on the loan.

(8) Loan closing between the microlender and the Agency must take place within 90 days of loan approval or funds will be forfeited and the loan will be deobligated.

(9) Microlenders will be eligible to receive a disbursement of up to 25 percent of the total loan amount at the time of loan closing. Interest will accrue on all funds disbursed to the microlender beginning on the date of disbursement.

(10) A microlender must make one or more microloans within 60 days of any disbursement it receives from the Agency. Failure to make a microloan within this time period may result in the microlender not receiving any additional funds from the Agency and may result in the Agency demanding return of any funds already disbursed to the microlender.

(11) Microlenders may request in writing, and receive additional disbursements not more than quarterly, until the full amount of the loan to the microlender is disbursed, or until the end of the 36th month of the loan, whichever occurs first. Letters of request for disbursement must be accompanied by a description of the microlender's anticipated need. Such description will indicate the amount and number of microloans anticipated to be made with the funding.

(12) Each loan made to a microlender during its first five years of participation in this program will bear an interest rate of 2 percent. After the fifth year of an MDO's continuous and satisfactory participation in this program, each new loan made to the microlender will bear an interest rate of 1 percent. Satisfactory participation requires a default rate of 5 percent or less and a pattern of delinquencies of 10 percent or less. Except in the case of liquidation or early repayment, loans to microlenders must fully amortize over the life of the loan.

(13) During the initial deferral period, each loan to a microlender will accrue interest at a rate of 1 or 2 percent based on the ultimate interest rate on the loan. Interest accrued during the 2-year deferral period will be capitalized so that, during the 24th month of the initial deferral period, the microlender's debt to the Agency will be calculated and amortized over the remaining life of the loan. The first payment will be due to the Agency on the last day of the 24th month of the life of the loan.

(14) Funds not disbursed to the microlender by the end of the 36th month of the loan from the Agency will be de-obligated.

(15) The Agency will hold first lien position on the RMRF account, the LLRF, and all notes receivable from microloans.

(16) If a microlender makes a withdrawal from the RMRF for any purpose other than to make a microloan, repay the Agency, or, with advance written approval, transfer an appropriate amount of non-Federal funds to the LLRF, the Agency may restrict further

access to withdrawals from the account by the microlender.

(17) In the event a microlender fails to meet its obligations to the Agency, the Agency may pursue any combination of the following:

(i) Take possession of the RMRF and/or any microloans outstanding, and/or the LLRF;

(ii) Call the loan due and payable in full; and/or

(iii) Enter into a workout agreement acceptable to the Agency, which may or may not include transfer or sale of the portfolio to another microlender (whether or not funded under this program) deemed acceptable to the Agency.

(f) *Loan funding limitations.*

(1) *Minimum and maximum loan amounts.* The minimum loan amount a microlender may borrow under this program will be $50,000. The maximum any microlender may borrow on a single loan under this program, or in any given Federal fiscal year, will be $500,000. In no case will the aggregate outstanding balance owed to the program by any single microlender exceed $2,500,000.

(2) *Use of funds.* Loans must be used only to establish or recapitalize an existing Agency funded RMRF out of which microloans will be made, into which microloan payments will be deposited, and from which repayments to the Agency will be made. In some instances, as described in § 4280.311(e)(2), interest earned by these funds may be used to fund and recapitalize both RMRF and the LLRF.

(g) *Loan loss reserve fund (LLRF).* Each microlender that receives one or more loans under this program will be required to establish an interest-bearing LLRF.

(1) *Purpose.* The purpose of the LLRF is to protect the microlender and the Agency against losses that may occur as the result of the failure of one or more microborrowers to repay their loans on a timely basis.

(2) *Capitalization and maintenance.* The LLRF is subject to each of the following conditions:

(i) The microlender must maintain the LLRF at a minimum of 5 percent of the total amount owed by the microlender under this program to the Agency. If the LLRF falls below the required amount, the microlender will have 30 days to replenish the LLRF. The Agency will hold a security interest in the account and all funds therein until the MDO has repaid its debt to the Agency under this program.

(ii) No Agency loan funds may be used to capitalize the LLRF.

(iii) The LLRF must be held in an interest-bearing, Federally-insured deposit account separate and distinct from any other fund owned by the microlender.

(iv) The LLRF must remain open, appropriately capitalized, and active until such time as:

(A) All obligations owed to the Agency by the microlender under this program are paid in full; or

(B) The LLRF is used to assist with full repayment or prepayment of the microlender's program debt.

(v) Earnings on the LLRF account must remain a part of the account except as stipulated in § 4280.311(e)(2).

(3) *Use of LLRF.* The LLRF must be used only to:

(i) Recapitalize the RMRF in the event of the loss and write-off of a microloan; that is, when a loss has been paid to the RMRF, from the LLRF, the microlender must, within 30 days, replenish the LLRF, with non-federal funds, to the required level;

(ii) Accept non-Federal deposits as required for maintenance of the fund at a level equal to 5 percent or more of the amount owed to the Agency by the microlender under this program;

(iii) Accrue interest (interest earnings accrued by the LLRF will become part of the LLRF and may be used only for eligible purposes); and

(iv) Prepay or repay the Agency program loan.

(4) *LLRF funded at time of closing.* The LLRF account must be established by the microlender prior to the closing of the loan from the Agency. At the time of initial loan closing, sources of funding for the LLRF must be identified by the microlender so that as microloans are made, the amount in the LLRF can be built over time to an amount greater than or equal to 5 percent of the amount owed to the Agency by the microlender under this program. After the first disbursement is made to a

microlender, further disbursements will only be made if the LLRF is funded at the appropriate amount. After the initial loan is made to a microlender, subsequent loan closings will require the LLRF to be funded in an amount equal to 5 percent of the anticipated initial drawdown of funds for the RMRF. Federal funds, except where specifically permitted by other laws, may not be used to fund LLRF.

(5) *Additional LLRF funding*. In the event of exhibited weaknesses, such as losses that are greater than 5 percent of the microloan portfolio, on the part of a microlender, the Agency may require additional funding be put into the LLRF; however, the Agency may never require an LLRF of more than 10 percent of the total amount owed by the microlender.

(h) *Recordkeeping, reporting, and oversight*. Microlenders must maintain all records applicable to the program and make them available to the Agency upon request. Microlenders must submit quarterly reports as specified in paragraphs (h)(1) through (4) of this section. Portfolio reporting requirements must be met via the electronic reporting system. Other reports, such as narrative information, may be submitted as hard copy in the event the microlender, grantee, or Agency do not have the capability to submit or accept same electronically.

(1) *Periodic reports*. On a quarterly basis, within 30 days of the end of the calendar quarter, each microlender that has an outstanding loan under this section must provide to the Agency:

(i) Quarterly reports, using an Agency-approved form, containing such information as the Agency may require, and in accordance with OMB circulars and guidance, to ensure that funds provided are being used for the purposes for which the loan to the microlender was made. At a minimum, these reports must identify each microborrower under this program and should include a discussion reconciling the microlender's actual results for the period against its goals, milestones, and objectives as provided in the application package;

(ii) SF–PPR, ''Performance Progress Report'' cover sheet, performance measures (SF–PPR–A), and activity based expenditures (SF–PPR–E); and

(iii) SF–270, ''Request for Advance or Reimbursement''.

(2) *Minimum retention*. Microlenders must provide evidence in their quarterly reports that the sum of the unexpended amount in the RMRF, plus the amount in the LLRF, plus debt owed by the microborrowers is equal to a minimum of 105 percent of the amount owed by the microlender to the Agency unless the Agency has established a higher LLRF reserve requirement for a specific microlender.

(3) *Combining accounts and reports*. If a microlender has more than one loan from the Agency, a separate report must be made for each except when RMRF accounts have been combined. A microlender may combine RMRF accounts only when:

(i) The underlying loans have the same rates, terms and conditions;

(ii) The combined report allows the Agency to effectively administer the program, including providing the same level of transparency and information for each loan as if separate RMRF reports had been prepared; and

(iii) The accompanying LLRF fund reports also provide the same level of transparency and information for each loan as if separate LLRF reports had been prepared.

(iv) The Agency must approve the combining of accounts and reports in writing before such accounts are combined and reports are submitted.

(4) *Delinquency*. In the event that a microlender has delinquent loans in its RMAP portfolio, quarterly reports will include narrative explanation of the steps being taken to cure the delinquencies.

(5) *Other reports*. Other reports may be required by the Agency from time to time in the event of poor performance, one or more work out agreements or other such occurrences that require more than the usual set of reporting information.

(6) *Site visits*. The Agency may, at any time, choose to visit the microlender and inspect its files to ensure that program requirements are being met.

(7) *Access to microlender's records*. Upon request by the Agency, the

microlender will permit representatives of the Agency (or other agencies of the U.S. Department of Agriculture authorized by that Department or the U.S. Government) to inspect and make copies of any records pertaining to operation and administration of this program. Such inspection and copying may be made during regular office hours of the microlender or at any other time agreed upon between the microlender and the Agency.

(8) *Changes in key personnel.* Before any additions are made to key personnel, the microlender must notify and the Agency must approve such changes.

§ 4280.312 Loan approval and closing.

(a) *Loan approval and obligating funds.* The loan will be considered approved on the date the signed copy of Form RD 1940–1, ''Request for Obligation of Funds,'' is signed by the Agency. Form RD 1940–1 authorizes funds to be obligated and may be executed by the Agency provided the microlender has the legal authority to contract for a loan, and to enter into required agreements, including an Agency-approved loan agreement, and meets all program loan requirements and has signed Form RD 1940–1.

(b) *Letter of conditions.* Upon reviewing the conditions and requirements in the letter of conditions, the applicant must complete, sign, and return Form RD 1942–46, ''Letter of Intent to Meet Conditions,'' to the Agency; or if certain conditions cannot be met, the applicant may propose alternate conditions. The Agency will review any requests for changes to the letter of conditions. The Agency may approve only minor changes that do not materially affect the microlender. Changes in legal entities prior to loan closing will not be approved.

(c) *Loan closing.*

(1) Prior to loan closing, microlenders must provide evidence that the RMRF and LLRF bank accounts have been set up and the LLRF has been, or will be, funded as described in § 4280.311(g)(4). Such evidence shall consist of:

(i) A pre-authorized debit form allowing the Agency to withdraw payments from the RMRF account, and in the event of a repayment workout, from the LLRF account;

(ii) An Agency-approved automatic deposit authorization form from the depository institution providing the Agency with the RMRF account number into which funds may be deposited at time of disbursement to the microlender;

(iii) A statement from the depository institution as to the amount of cash in the LLRF account;

(iv) An Agency-approved promissory note must be executed at loan closing; and

(v) An appropriate security agreement on the LLRF and RMRF accounts.

(2) At loan closing, the microlender must certify that:

(i) All requirements of the letter of conditions have been met and

(ii) There has been no material adverse change in the microlender or its financial condition since the issuance of the letter of conditions. If one or more adverse changes have occurred, the microlender must explain the changes and the Agency must determine that the microlender remains eligible and qualified to participate as an MDO.

(3) The microlender will provide sufficient evidence, which may include but is not limited to, mechanics' lien waivers or in their absence receipts of payment, that no lawsuits are pending or threatened that would adversely affect the security of the microlender when Agency security instruments are filed.

§ 4280.313 Grant provisions.

(a) *General.* The following provisions apply to each type of grant offered under this program unless otherwise specified annually in a FEDERAL REGISTER notice. Competition for these funds will occur as a part of the application and qualification process of becoming a microlender. Failure to meet scoring benchmarks will preclude an applicant from receiving loan and/or grant dollars. Once an MDO is participating as a microlender, grant funds will be made available automatically based on lending and the availability of funds.

(1) *Grant amounts.*

(i) The maximum TA grant amount for a microlender is 25 percent of the first $400,000 of outstanding microloans owed to the microlender under this program, plus an additional 5 percent of the outstanding loan amount owed by the microborrowers to the lender under this program over $400,000 up to and including $2.5 million. This calculation leads to a maximum grant of $205,000 annually for any microlender to provide technical assistance to its clients. These grants will be awarded annually.

(ii) The maximum amount of a TA-only grant under this program will not exceed 10 percent of the amount of funding available for TA-only grants. The amount of funding available for TA funding will be announced annually and will be based on the availability of funds. In no case will funding for the TA-only grants exceed 10 percent of the amount appropriated for the program each Federal fiscal year.

(2) *Matching requirement*. The MDO is required to provide a match of not less than 15 percent of the total amount of the grant in the form of matching funds, indirect costs, or in-kind goods or services. Unless specifically permitted by laws other than the statute authorizing RMAP, matching contributions must be made up of non-Federal funding.

(3) *Administrative expenses*. Not more than 10 percent of a grant received by a MDO for a Federal fiscal year (FY) may be used to pay administrative expenses. MDOs must submit an annual budget of proposed administrative expenses for Agency approval. The Agency has the right to deny the 10 percent and to fund administration expenses at a lower level.

(4) *Ineligible grant purposes*. Grant funds, matching funds, indirect costs, and in-kind goods and services may not be used for:

(i) Grant application preparation costs;

(ii) Costs incurred prior to the obligation date of the grant;

(iii) Capital improvements;

(iv) Political or lobbying activities;

(v) Assistance to any ineligible entity;

(vi) Payment of any judgment or debt owed; and

(vii) Payment of any costs other than those allowed in paragraphs (b)(1) and (c) of this section.

(5) *Changes in key personnel*. Before any additions are made to key personnel, the microlender must notify and the Agency must approve such changes.

(b) *Grants to assist microentrepreneurs (Microlender Technical Assistance (TA) Grants)*. The capacity of a microlender to provide an integrated program of microlending and technical assistance will be evaluated during the scoring process. An eligible MDO selected to be a microlender will be eligible to receive a microlending TA grant if it receives funding to provide microloans under this program.

(1) *Purpose*. The Agency shall make microlender TA grants to microlenders to assist them in providing marketing, management, and other technical assistance to rural microentrepreneurs and microenterprises that have received or are seeking one or more microloans from the microlender.

(2) *Grant amounts*. Microlender TA grants will be limited to an amount equal to not more than 25 percent of the total outstanding balance of microloans made under this program and active by the microlender as of the date the grant is awarded for the first $400,000 plus an additional 5 percent of the loan amount owed by the microborrowers to the lender under this program over $400,000 up to and including $2.5 million. Funds cannot be used to pay off the loans. During the first year of operation, the percentage will be determined based on the amount of the loan to the microlender, but will be disbursed on a quarterly basis based on the amount of microloans made. Any grant dollars obligated, but not spent, from the initial grant, will be subtracted from the subsequent year grant to ensure that obligations cover only microloans made and active.

(3) *TA grant fund uses and limitations*. The microlender will agree to use TA grant funding exclusively for providing technical assistance and training to eligible microentrepreneurs and microenterprises, with the exception that up to 10 percent of the grant funds may be

used to cover the microlender's administrative expenses, except as may be reduced as provided under § 4280.313(a)(4). The following limitations will apply to TA grant funding:

(i) Administrative expenses should be kept to a minimum. As such, the applicant MDO is required, in the application materials, to provide an administrative budget plan indicating the amount of funding it will need for administrative purposes. Applicants will be scored accordingly, with those using less than 10 percent of the funding for administrative purposes being scored higher than those using 10 percent of the funding for administrative purposes.

(ii) While operating the program, the selected microlender will be expected to adhere to the estimates it provides in the application. If for any reason, the microlender cannot meet the expectations of the application, it must contact the Agency in writing to request a budget adjustment.

(iii) At no time will it be appropriate for the microlender to expend more than 10 percent of its grant funding on administrative expenses. Microlenders that go over 10 percent will be considered in performance default and may be subject to forfeiting funding.

(iv) Budget adjustments will be considered within the 10 percent limitation and approved or denied on a case-by-case basis.

(c) *TA-only grants.* Grants will be competitively made to MDOs for the purpose of providing technical assistance and training to prospective microborrowers. Technical assistance-only grants will be provided to eligible MDOs that seek to provide business-based technical assistance and training to eligible microentrepreneurs and microenterprises, but do not seek funding for an RMRF. Entities receiving microlending TA grants will not be eligible to apply for TA-only grants.

(1) *Grant term.* TA-only grants will have a grant term not to exceed 12 months from the date the grant agreement is signed.

(2) *Funding level.* The maximum amount of a TA-only grant under this program will not exceed 10 percent of the amount of funding available for TA-only grants. In no case will funding for the TA-only grants exceed 10 percent of the amount appropriated for the program each Federal fiscal year.

(3) *Loan referencing.* TA-only grantees will be required to:

(i) Refer clients to internal or external non-program funded lenders for loans of $50,000 or less and

(ii) Collect data regarding such clients. TA-only grantees will be considered successful if a minimum of 1- in-5 TA clients are referred for a microloan and are operating a business within 18 months of receiving technical assistance.

(4) *Facilitation of access to capital.* Technical assistance-only grantees will be expected to provide training and technical assistance services to the extent that access to capital for eligible microentrepreneurs and microenterprises is facilitated by referral to either an internal or external non-program loan fund so that these clients may take advantage of available financing programs.

(5) *Microlender funding.* No entity will receive grant funding as both a microlender and a TA-only provider; that is, RMAP microlenders are not eligible for TA-only funding and an MDO receiving TA-only funding are not eligible for microlender funding.

(d) *Grant agreement.* For any grant to an MDO or microlender, the Agency will notify the approved applicant in writing, using an Agency-approved grant agreement setting out the conditions under which the grant will be made. The form will include those matters necessary to ensure that the proposed grant is completed in accordance with the proposed project, that grant funds are expended for authorized purposes, and that the applicable requirements prescribed in the relevant Department regulations are complied with.

§§ 4280.314 [Reserved]

§ 4280.315 MDO application and submission information.

(a) *Initial and subsequent applications.* Applications shall be submitted in accordance with the provisions of this subpart unless adjusted by the Agency in an annual FEDERAL REGISTER Notice for Solicitation of Applications (NOSA)

or a Notice of Funding Availability (NOFA), depending on the availability of funds at the time of publication.

(1) The information required in this section is necessary for an application to be considered complete.

(2) When preparing applications, applicants are strongly encouraged to review the scoring criteria in §4280.316 and provide documentation that will support a competitive score.

(3) Only those applicants that meet the basic eligibility requirements in §4280.310 will have their applications fully scored and considered for participation in the program under this section.

(b) *Content and form of submission.* The content and form requirements will differ based on the nature of the application. All applicants must provide the information specified in paragraph (c) of this section. Additional application information is required in paragraph (d) of this section depending on the type of application being submitted.

(c) *Application information for all applicants.* All applicants must provide the following information and forms fully completed and with all attachments:

(1) Standard Form-424, ''Application for Federal Assistance.''

(2) Standard Form-424A, ''Budget Information—Non-construction Programs.''

(3) Standard Form-424B, ''Assurances—Non-construction Programs.''

(4) For entities that are applying for more than $150,000 in loan funds and/or more than $100,000 in grant funds, only, SF LLL, ''Disclosure of Lobbying Activities.''

(5) AD 1047, ''Certification Regarding Debarment, Suspension, and other Responsibility Matters—Primary Covered Transaction.''

(6) For entities applying for program loan funds to become an RMAP microlender only, Form RD 1910–11, ''Certification of No Federal Debt.''

(7) Form RD 400–8, ''Compliance Review.''

(8) Demonstration that the applicant is eligible to apply to participate in this program. To demonstrate eligibility, applicants must submit documentation that the applicant is an MDO as defined in §4280.302, as follows:

(i) If a nonprofit entity, evidence that the applicant organization meets the citizenship requirements;

(ii) If a nonprofit entity, a copy of the applicant's bylaws and articles of incorporation, which include evidence that the applicant is legally considered a non-profit organization;

(iii) If an Indian tribe, evidence that the applicant is a Federally-recognized Indian tribe, and that the tribe neither operates nor is served by an existing MDO;

(iv) If a public institution of higher education, evidence that the applicant is a public institution of higher education; and

(v) For nonprofit applicants only, a Certificate of Good Standing, not more than 6 months old, from the Office of the Secretary of State in the State in which the applicant is located. If the applicant has offices in more than one state, then the state in which the applicant is organized and licensed will be considered the home location.

(9) Certification by the applicant that it cannot obtain sufficient credit elsewhere to fund the activities called for under this program with similar rates and terms.

(10) Form RD 400–4, ''Assurance Agreement.''

(d) *Type of application specific information.* In addition to the information required under paragraph (c) of this section, the following information is also required, as applicable:

(1) The information specified in §4280.316(a).

(2) An applicant for status as a microlender with more than 3 years of experience as an MDO seeking to participate as a microlender must provide the additional information specified in §4280.316(b). Such an applicant will be applying for a loan to capitalize an RMRF, which, unless otherwise requested by the applicant, will be accompanied by a microlending TA grant.

(3) An applicant for status as a microlender with 3 years or less experience as an MDO seeking to participate as a microlender must provide the additional information specified in §4280.316(c). Such an applicant will be

applying for a loan to capitalize an RMRF, which, unless otherwise requested by the applicant, will be accompanied by a microlending TA grant.

(4) All applicants seeking status as a microlender must identify in their application which cost share option(s) the applicant will utilize, as described in § 4280.311(d), to meet the Federal cost share requirement. If the applicant will utilize the RMRF-level option, the applicant shall identify the amount(s) and source(s) of the non-Federal share.

(5) An applicant seeking TA-only grant funding must provide the additional information specified in § 4280.316(d).

(e) *Application limits*. Paragraph (d) of this section sets out three types of funding under which applications may be submitted. MDOs may only submit and have pending for consideration, at any given time, one application, regardless of funding category.

(f) *Completed applications*. Applications that fulfill the requirements specified in paragraphs (a) through (e) of this section will be fully reviewed, scored, and ranked by the Agency in accordance with the provisions of § 4280.316.

[75 FR 30145, May 28, 2010, as amended at 75 FR 41696, July 19, 2010]

§ 4280.316 Application scoring.

Applications will be scored based on the criteria specified in this section using only the information submitted in the application. The total available points per application are 100. Points will be awarded as shown in paragraphs (a) through (e) of this section. Awards will be based on the ranking, with the highest ranking applications being funded first, subject to available funding.

(a) *Application requirements for all applicants*. All applicants must submit the eligibility information described in § 4280.315. Only those applicants deemed eligible will be scored for qualification. Qualification information provides the complete forms and information necessary to determine a baseline of capacity. Additional information is specified depending on the level of experience or type of funding being applied for. The maximum points available in this part of the application are 45. In addition to the eligibility information, all applicants will submit:

(1) An organizational chart clearly showing the positions and naming the individuals in those positions. Of particular interest to the Agency are management positions and those positions essential to the operation of microlending and TA programming. Up to 5 points will be awarded.

(2) Resumes for each of the individuals shown on the organizational chart and indicated as key to the operation of the activities to be funded under this program. There should be a corresponding resume for each of the key individuals noted and named on the organizational chart. Points will be awarded based on the quality of the resumes and on the ability (based on the resumes) of the key personnel to administer the program. Up to 5 points will be awarded.

(3) A succession plan to be followed in the event of the departure of personnel key to the operation of the applicant's RMAP activities. Up to 5 points will be awarded.

(4) Information indicating an understanding of microenterprise development concepts. Provide those parts of your policy and procedures manual that deal with the provision of loans, management of loan funds, and provision of technical assistance. Up to 5 points will be awarded.

(5) Copies of the applicant's most recent, and two years previous, financial statements. Points will be awarded based on the demonstrated ability of the applicant to maintain or grow its bottom line fund balance, its ability to manage one or more federal programs, and its capacity to manage multiple funding sources, restricted and non-restricted funding sources, income, earnings, and expenditures. Up to 10 points will be awarded.

(6) A copy of the applicant's organizational mission statement. The mission statement will be rated based on its relative connectivity to microenterprise development and general economic development. The mission statement may or may not be a part of a larger statement. For example, if the mission statement is included in the

by-laws or other organizational documents, please so note, direct the reviewer to the proper document, and do not submit these documents twice. Up to 5 points will be awarded.

(7) Information regarding the geographic service area to be served. Describe the service area, which must be rural as defined. State the number of counties or other jurisdictions to be served. Describe the demographics of the service area and whether or not the population is a diverse population. Note that the applicant will not be scored on the size of the service area, but on its ability to fully cover the service area as described. Up to 10 points will be awarded.

(b) *Program loan application requirements for MDOs seeking to participate as RMAP microlenders with more than 3 years of experience.* In addition to the information required under paragraph (a) of this section, applicants with more than 3 years of experience as a microlender also must provide the information specified in paragraphs (b)(1) through (5) of this section. The total number of points available under this paragraph, in addition to the up to 45 points available in paragraph (a) of this section, is 55, for a total of 100.

(1) *History of provision of microloans.* The applicant must provide data regarding its history of making microloans for the three years previous to this application by answering the questions in paragraphs (b)(1)(i) through (vi) of this section. This information should be provided clearly and concisely in numerical format as the data will be used to calculate points as noted. Figure 1 presents an example of the format and data required. The maximum number of points under this criterion is 20.

FIGURE 1. EXAMPLE OF FORMAT AND DATA REQUIREMENTS

Data item	Federal FY			
	Last fiscal year	Year before last fiscal year	2nd year before last fiscal year	Total
Total # of Microloans Made				
Total $ Amount of Microloans Made				
# of Microloans Made in Rural Areas				
Total $ Amount of Microloans Made in Rural Areas				
# of Microloans Made to Racial and Ethnic Minorities				
# of Microloans Made to women				
# of Microloans Made to the Disabled				

(i) Number and amount of microloans made during each of the three previous Federal FYs. Do not include current year information. A narrative may be included as a separate attachment, not in the body of the suggested table.

(ii) Number and amount of microloans made in rural areas in each of the three years prior to the year in which the application is submitted. If the history of providing microloans in rural areas shows:

(A) More than the three consecutive years immediately prior to this application, 5 points will be awarded;

(B) At least two of the years but not more than the three consecutive years immediately prior to this application, 3 points will be awarded;

(C) At least 6 months, but not more than one year immediately prior to this application, 1 point will be awarded.

(iii) Percentage of number of loans made in rural areas. Calculate and enter the total number of microloans made in rural areas as a percentage of the total number of all microloans made for each of the past three Federal FYs. If the percentage of the total number of microloans made in rural areas is:

(A) 75 percent or more, 5 points will be awarded;

(B) At least 50 percent but less than 75 percent, 3 points will be awarded;

(C) At least 25 but less than 50 percent, 1 point will be awarded.

(iv) The percentage of dollar amount of loans made in rural areas. Enter the dollar amount of microloans made in

rural areas as a percentage of the dollar amount of the total portfolio (rural and non-rural) of microloans made for each of the previous three Federal FYs. If percentage of the dollar amount of the microloans made in rural areas is:

(A) 75 percent or more of the total amount, 5 points will be awarded;

(B) At least 50 percent but less than 75 percent, 3 points will be awarded;

(C) At least 25 percent but less than 50 percent, 1 point will be awarded.

(v) Each applicant shall compare the diversity of its entire microloan portfolio to the demographic makeup of its service area (as determined by the latest applicable decennial census for the State) based on the number of microloans made during the three years preceding the subject application. Demographic groups shall include gender, racial and ethnic minority status, and disability (as defined in The Americans with Disabilities Act). Points will be awarded on the basis of how close the MDO's microloan portfolio matches the demographic makeup of its service area. A maximum of 5 points will be awarded.

(A) If at least one loan has been made to each demographic group and if the percentage of loans made to each demographic group is each within 5 or less percent of the demographic makeup, 5 points will be awarded.

(B) If at least one loan has been made to each demographic group and if the percentage of loans made to each demographic group is each within 10 or less percent of the demographic makeup, 3 points will be awarded.

(C) If at least one loan has been made to each demographic group and if the percentage of loans made to one or more of the demographic groups is greater than 10 percent of the demographic makeup or if no loans have been made to one of the demographic groups and if the percentage of loans made to each of the other demographic groups is each within 10 or less percent of the demographic makeup, 1 point will be awarded.

(D) If no loans have been made to two or more demographic groups, no points will be awarded.

(2) *Portfolio management*. Each applicant's ability to manage its portfolio will be determined based on the data provided in response to paragraphs (b)(2)(i) and (ii) of this section and scored accordingly. The maximum number of points under this criterion is 10.

(i) Enter the total number of your microloans paying on time for the three previous Federal FYs. If the total number of microloans paying on time at the end of each year over the prior three Federal FYs is:

(A) 95 percent or more, 5 points will be awarded;

(B) At least 85 percent but less than 95 percent, 3 points will be awarded;

(C) Less than 85 percent, 0 points will be awarded.

(ii) Enter the total number of microloans 30 to 90 days in arrears or that have been written off at year end for the three previous Federal FYs. If the total number of these microloans is:

(A) 5 percent or less of the total portfolio, 5 points will be awarded;

(B) More than 5 percent, 0 points will be awarded.

(3) *History of provision of technical assistance*. Each applicant's history of provision of technical assistance to microentrepreneurs and microenterprises, and their ability to reach diverse communities, will be scored based on the data specified in paragraphs (b)(3)(i) through (iv) of this section. Applicants may use a chart such as that suggested in Figure 1 as they deem appropriate. The maximum number of points under this criterion is 15.

(i) Provide the total number of rural and non-rural microentrepreneurs and microenterprises that received both microloans and TA services for each of the previous three Federal FYs.

(ii) Provide the percentage of the total number of only rural microentrepreneurs and rural microenterprises that received both microloans and TA services for each of the previous three Federal FYs (calculate this as the total number of rural microloans made each year divided by the total number of loans made during the past three Federal FYs). If provision of both microloans and technical assistance to rural microentrepreneurs and rural microenterprises is demonstrated at a rate of:

(A) 75 percent or more, 5 points will be awarded;

(B) At least 50 percent but less than 75 percent, 3 points will be awarded;

(C) At least 25 percent but less than 50 percent, 1 point will be awarded.

(iii) Provide the percentage of the total number of rural microentrepreneurs and rural microenterprises by racial and ethnic minority, disabled, and/or gender that received both microloans and TA services for each of the previous three Federal FYs. If the demonstrated provision of microloans and technical assistance to these rural microentrepreneurs and rural microenterprises is at a rate of:

(A) 75 percent or more, 5 points will be awarded;

(B) At least 50 percent but less than 75 percent, 3 points will be awarded;

(C) At least 25 percent but less than 50 percent, 1 point will be awarded.

(iv) Provide the ratio of TA clients that also received microloans during each of the previous three Federal FYs. If the ratio of clients receiving technical assistance to clients receiving microloans is:

(A) Between 1:1 and 1:5, 5 points will be awarded.

(B) Between 1:6 and 1:8, 3 points will be awarded.

(C) Either 1:9 or 1:10, 1 point will be awarded.

(4) *Ability to provide technical assistance.* In addition to providing a statistical history of their provision of technical assistance to microentrepreneurs, microenterprises, and microborrowers, applicants must provide a narrative of not more than five pages describing the teaching and training methods used by the applicant organization to provide such technical assistance and discussing the outcomes of their endeavors. Technical assistance is defined in §4280.302. The narrative will be scored as specified in paragraphs (b)(4)(i) through (iv) of this section. The maximum number of points under this criterion is 5.

(i) Applicants that have used more than one method of training and technical assistance (e.g., classroom training, peer-to-peer discussion groups, individual assistance, distance learning) will be awarded 2 points.

(ii) Applicants that provide success stories to demonstrate the effects of technical assistance on their clients will be awarded 1 point.

(iii) Applicants that provide evidence that they require evaluations by the clients of their training programs and indicate that the average level of evaluation scores is ''good'' or higher will be awarded 1 point.

(iv) Applicants that present their narrative information clearly and concisely (five pages or less) and at a level expected by trainers and teachers will be awarded 1 point.

(5) *Proposed administrative expenses to be spent from TA grant funds.* The maximum number of points under this criterion is 5. If the percentage of grant funds to be used for administrative purposes is:

(i) Less than 5 percent of the TA grant funding, 5 points will be awarded;

(ii) Between 5 percent and 8 percent, but not including 8 percent, 3 points will be awarded; and

(iii) Between 8 percent up to and including 10 percent, 0 point will be awarded.

(c) *Application requirements for MDOs seeking to participate as RMAP microlenders with 3 years or less experience.* In addition to the information required under paragraph (a) of this section, an applicant MDO with 3 years or less experience that is applying to be a microlender must submit the information specified in paragraphs (c)(1) through (8) of this section. The total number of points available under this paragraph, in addition to the up to 45 points available in paragraph (a) of this section, is 55, for a total of 100.

(1) The applicant must provide a narrative work plan that clearly indicates its intention for the use of loan and grant funding. Provide goals and milestones for planned microlending and technical assistance activities. In relation to the information requested in paragraph (a) of this section, the applicant must describe how it will incorporate its mission statement, utilize its employees, and maximize its human and capital assets to meet the goals of this program. The applicant must provide its strategic plan and organizational development goals and clearly indicate its lending goals for the five

years after the date of application. The narrative work plan should be not more than five pages in length. Up to 10 points will be awarded.

(2) The applicant will provide the date that it began business as an MDO or other provider of business education and/or facilitator of capital. This date will reflect when the applicant became licensed to do business, in good standing with the Secretary of State in which it is registered to do business, and regularly paid staff to conduct business on a daily basis. If the applicant has been in business for:

(i) More than 2 years but less than 3 years, 5 points will be awarded;

(ii) At least 1 year, but not more than 2 years, 3 points will be awarded;

(iii) At least 6 months, but not more than 1 year, 1 point will be awarded;

(iv) Less than 6 months, or more than 3 full years, 0 points will be awarded. (If more than 3 full years, the applicant must apply under the provisions for MDOs with more than 3 years experience as specified in § 4280.315.)

(3) The applicant must describe in detail any microenterprise development training received by it as a whole, or its employees as individuals, to date. The narrative may refer reviewers to already submitted resumes to save space. The training received will be rated on its topical variety, the quality of the description, and its relevance to the organization's strategic plan. The applicant should not submit training brochures or conference announcements. Up to 10 points will be awarded.

(4) The applicant must indicate its current number of employees, those that concentrate on rural microentrepreneurial development, and the current average caseload for each. Indicate how the caseload ratio does or does not optimize the applicant's ability to perform the services described in the work plan. Discuss how Agency grant funding will be used to assist with TA program delivery and how loan funding will affect the portfolio. Up to 5 points will be awarded.

(5) The applicant must indicate any training organizations with which it has a working relationship. Provide contact information for references regarding the applicant's capacity to perform the work plan provided. If the recommendations received from references are:

(i) Generally excellent, 5 points will be awarded;

(ii) Generally above average, 3 points will be awarded;

(iii) Generally average, 1 point will be awarded;

(iv) Generally less than average, 0 points will be awarded.

(6) Describe any plans for continuing training relationship(s), including ongoing or future training plans and goals, and the timeline for same. Up to 5 points will be awarded.

(7) The applicant will describe its internal benchmarking system for determining client success, reporting on client success, and following client success for up to 5 years after completion of a training relationship. Up to 10 points will be awarded.

(8) The applicant will identify its proposed administrative expenses to be spent from TA grant funds. The maximum total number of points under this criterion is 5. If the percentage of grant funds to be used for administrative purposes is:

(i) Less than 5 percent of the TA grant funding, 5 points will be awarded;

(ii) Between 5 percent and 8 percent, but not including 8 percent, 3 points will be awarded; and

(iii) Between 8 percent up to and including 10 percent, 0 points will be awarded.

(d) *Application requirements for MDOs seeking technical assistance-only grants.* TA-only grants may be provided to MDOs that are not RMAP microlenders seeking to provide training and technical assistance to rural microentrepreneurs and rural microenterprises. An applicant seeking a TA-only grant must submit the information specified in paragraphs (d)(1) through (4) of this section. The total number of points available under this section, in addition to the 45 points available in paragraph (a) of this section, is 55, for a total of 100 points.

(1) *History of provision of technical assistance.* Each applicant's history of provision of technical assistance to microentrepreneurs and microenterprises, and their ability to reach diverse communities, will be scored

based on the data specified in paragraphs (d)(1)(i) through (iv) of this section. Applicants may use a chart such as that suggested in Figure 1 as they deem appropriate. The maximum number of points under this criterion is 20.

(i) Provide the total number of rural and non-rural microentrepreneurs and microenterprises that received both microloans and TA services for each of the previous three Federal FYs.

(ii) Provide the percentage of the total number of rural microentrepreneurs and rural microenterprises that received both microloans and TA services for each of the previous three Federal FYs (calculate this as the total number of rural microloans made each year divided by the total number of rural and non-rural microloans made during the past three Federal FYs). If provision of both technical assistance and resultant microloans to rural microentrepreneurs and rural microenterprises is demonstrated at a rate of:

(A) 75 percent or more, 5 points will be awarded;

(B) At least 50 percent but less than 75 percent, 3 points will be awarded;

(C) At least 25 percent but less than 50 percent, 1 point will be awarded.

(iii) Provide the percentage of the total number of rural microentrepreneurs by racial and ethnic minority, disabled, and/or gender that received both microloans and TA services for each of the previous three Federal FYs. If the demonstrated provision of technical assistance and resultant microloans to these rural microentrepreneurs when compared to the total number of microentrepreneurs assisted, is at a rate of:

(A) 75 percent or more, 10 points will be awarded;

(B) At least 50 percent but less than 75 percent, 7 points will be awarded;

(C) At least 25 percent but less than 50 percent, 5 point will be awarded.

(iv) Provide the ratio of TA clients that also received microloans during each of the last three years. If the ratio of clients receiving technical assistance to clients receiving microloans is:

(A) Between 1:1 and 1:5, 5 points will be awarded.

(B) Between 1:6 and 1:8, 3 points will be awarded.

(C) Either 1:9 or 1:10, 1 point will be awarded.

(2) *Ability to provide technical assistance.* In addition to providing a statistical history of their provision of technical assistance to microentrepreneurs, microenterprises, and microborrowers, applicants must provide a narrative of not more than five pages describing the teaching and training method(s) used by the applicant organization to provide technical assistance and discussing the outcomes of their endeavors. The narrative will be scored as specified in paragraphs (d)(2)(i) through (iv) of this section. The maximum number of points under this criterion is 20.

(i) Applicants that have used more than one method of training and technical assistance (e.g., classroom training, peer-to-peer discussion groups, individual assistance, distance learning) will be awarded 5 points.

(ii) Applicants that provide success stories to demonstrate the effects of technical assistance on their clients will be awarded points under either of the following paragraphs, but not both.

(A) News stories that highlight businesses made successful as a result of technical assistance, 5 points will be awarded.

(B) Internal stories that highlight businesses made successful as a result of technical assistance, 3 points.

(iii) Applicants that provide evidence that they require evaluations by the clients of their training programs and indicate that the evaluation scores are generally:

(A) Excellent, 5 points will be awarded.

(B) Good, 3 points will be awarded.

(C) Less than good, 0 points will be awarded.

(iv) Applicants that present well-written narrative information that is clearly and concisely written and is five pages or less will be awarded 5 points.

(3) *Technical assistance plan.* Submit a plan for the provision of technical assistance explaining how the funding will benefit the current program and how it will allow the applicant to expand its non-program microlending activities. Up to 10 points will be awarded

(4) *Proposed administrative expenses to be spent from TA grant funds.* The maximum number of points under this criterion is 5. If the percentage of grant funds to be used for administrative purposes is:

(i) Less than 5 percent of the TA grant funding, 5 points will be awarded;

(ii) Between 5 percent and 8 percent, but not including 8 percent, 3 points will be awarded; and

(iii) Between 8 percent up to and including 10 percent, 1 point will be awarded.

(e) *Re-application requirements for participating microlenders with more than 5 years experience as a microlender under this program.*

(1) Microlender applicants with more than 5 years of experience as an MDO under this program may choose to submit a shortened loan/grant application that includes the following:

(i) A letter of request for funding stating the amount of loan and/or grant funds being requested;

(ii) An indication of the loan and/or grant amounts being requested accompanied by a completed SF 424 and any pertinent attachments;

(iii) An indication of the number and percent of program microentrepreneurs and microenterprises remaining in business for two years or more after microloan disbursement; and

(iv) A recent resolution of the applicant's Board of Directors approving the application for debt.

(2) The Agency, using this request, and data available in the reports submitted under previous fundings, will review the overall program performance of the applicant over the life of its participation in the program to determine its continued qualification for subsequent funding. Requirements include:

(i) A default rate of 5 percent or less;

(ii) A pattern of delinquencies during the period of participation in this program of 10 percent or less;

(iii) A pattern of use of TA dollars that indicates at least one in ten TA clients receive a microloan;

(iv) A statement discussing the need for more funding, accompanied by account documentation showing the amounts in each of the RMRF and LLRF accounts established to date; and

(v) A pattern of compliance with program reporting requirements.

(3) Shortened applications under this section will be rated on a pass or fail basis. Passing applications will be assigned a score of 90 points and will be ranked accordingly in the quarterly competitions. Failing applications will be scored 0.

§ 4280.317 Selection of applications for funding.

All applications received will be scored using the scoring criteria specified in § 4280.316. Because each set of applicants is scored on a 100 point scale, applications will be ranked together. Shortened applications can only receive 90 points. Within funding limitations, applications will be funded in descending order, from the highest ranking application down. If two or more applications score the same, the Administrator may prioritize such applications to help the program achieve overall geographic diversity.

(a) *Timing and submission of applications.*

(1) All applications must be submitted as a complete application, in one package. Packages must be bound in a three ring binder and evidence must be organized in the order of appearance in § 4280.315 of this document. Applications that are unbound, disorganized, or otherwise not ready for evaluation will be returned.

(2) Applications will be accepted on a quarterly basis using Federal fiscal quarters. Deadlines and specific application instructions will be published annually in the FEDERAL REGISTER.

(3) Applications received will be reviewed, scored, and ranked quarterly. Unless withdrawn by the applicant, the Agency will retain unsuccessful applications that score 70 points or more, for consideration in subsequent reviews, through a total of four quarterly reviews. Applications unsuccessful after 4 quarters will be returned.

(b) *Availability of funds.* If an application is received, scored, and ranked, but insufficient funds remain to fully fund it, the Agency may elect to fund an application requesting a smaller amount that has a lower score. Before

this occurs, the Agency, as applicable, will provide the higher scoring applicant the opportunity to reduce the amount of its request to the amount of funds available. If the applicant agrees to lower its request, it must certify that the purposes of the project can be met, and the Agency must determine that the project is financially feasible at the lower amount.

(c) *Applicant notification*. The Agency will notify applicants regarding their selection or non-selection, provide appeal rights of unsuccessful applicants, and closing procedures for the loans and/or grants to awardees.

(d) *Closing*. Awardees unable to complete closing for obligation within 90 days will forfeit their funding. Such funding will revert back to the Agency for later use.

§§ 4280.318–4280.319 [Reserved]

§ 4280.320 Grant administration.

(a) *Oversight*. Any MDO receiving a grant under this program is subject to Agency oversight, with site visits and inspection of records occurring at the discretion of the Agency. In addition, MDOs receiving a grant under this subpart must submit reports, as specified in paragraphs (a)(1) through (3) of this section.

(1) On a quarterly basis, within 30 days after the end of each Federal fiscal quarter, the microlender will provide to the Agency an Agency-approved quarterly report containing such information as the Agency may require to ensure that funds provided are being used for the purposes for which the grant was made, including:

(i) SF–PPR, ''Performance Progress Report,'' including narrative reporting information as required by Office of Management and Budget (OMB) circulars and successor regulations. This report will include information on the microlender's technical assistance, training, and/or enhancement activity, and grant expenses, milestones met, or unmet, explanation of difficulties, observations and other such information;

(ii) As appropriate, SF–270; and

(iii) If requesting grant funding at the time of reporting, SF–PPR–E, ''Activity Based Expenditures.''

(2) If a microlender has more than one grant from the Agency, a separate report must be made for each.

(3) Other reports may be required by the Agency from time to time in the event of poor performance or other such occurrences that require more than the usual set of reporting information.

(b) *Payments*. The Agency will make grant payments not more often than on a quarterly basis. The first payment may be made in advance and will equal no more than one fourth of the grant award. Payment requests must be submitted on Standard Form 270 and will only be paid if reports are up to date and approved.

§ 4280.321 Grant and loan servicing.

In addition to the ongoing oversight of the participating MDOs:

(a) *Grants*. Grants will be serviced in accordance with all applicable regulations:

(1) Department of Agriculture regulations including, but not limited to 7 CFR part 1951, subparts E and O, parts 3015, 3016, 3017, 3018, 3019, and 3052; and

(2) Office of Management and Budget (OMB) regulations including, but not limited to, 2 CFR parts 215, 220, 230, and OMB Circulars A–110 and A–133.

(b) *Loans*. Loans to microlenders will be serviced in accordance with the following:

(1) Department of Agriculture regulations 7 CFR part 1951, subparts E, O, and R;

(2) Other Department of Agriculture regulations as may be applicable; and

(3) OMB Circular A–129.

§ 4280.322 Loans from the microlenders to microentrepreneurs.

The primary purpose of making a loan to a microlender is to enable that microlender to make microloans. It is the responsibility of each microborrower to repay the microlender in accordance with the terms and conditions agreed to with the microlender. It is the responsibility of each microlender to make microloans in such a fashion that the terms and conditions of the microloan will support microborrower success while enabling the microlender to repay the Federal Government.

(a) *Maximum microloan amount.* The maximum amount of a microloan made under this program will be $50,000.

(b) *Microloan terms and conditions.* The terms and conditions for microloans made by microlenders will be negotiated between the prospective microborrower and the microlender, with the following limitations:

(1) No microloan may have a term of more than 10 years;

(2) The interest rate charged to the microborrower will be established at, or before the closing of the microloan; and

(3) The microlender may establish its margin of earnings but may not adjust the margin so as to violate Fair Credit Lending laws. Margins must be reasonable so as to ensure that microloans are affordable to the microborrowers.

(c) *Microloan insurance requirements.* The requirement of reasonable hazard, key person, and other insurance will be at the discretion of the microlender.

(d) *Credit elsewhere test.* Microborrowers will be subject to a ''credit elsewhere'' test so that the microlender will make loans only to those borrowers that cannot obtain business funding of $50,000 or less at affordable rates and on acceptable terms. Each microborrower file must contain evidence that the microborrower has sought credit elsewhere or that the rates and terms available within the community at the time were outside the range of the microborrower's affordability. Evidence may include a comparison of rates, loan limitations, terms, etc. for other funding sources to those forth offered by the microlender). Denial letters from other lenders are not required.

(e) *Fair credit requirements.* To ensure fairness, microlenders must publicize their rates and terms on a regular basis. Microlenders are also subject to Fair Credit lending laws as discussed in § 4280.305.

(f) *Eligible microloan purposes.* Agency loan funds may be used to make microloans as defined in § 4280.302 for any legal business purpose not identified in § 4280.323 as an ineligible purpose. Microlenders may make microloans for qualified business activities and expenses including, but not limited to:

(1) Working capital;

(2) The purchase of furniture, fixtures, supplies, inventory or equipment;

(3) Debt refinancing;

(4) Business acquisitions; and

(5) The purchase or lease of real estate that is already improved and will be used for the location of the subject business only, provided no demolition or construction will be accomplished with program funding. Neither interior decorating, nor the affixing of chattel to walls, floors, or ceilings are considered to be demolition or construction.

(g) *Military personnel.* Military personnel who are or seek to be a microentrepreneur and are on active duty with six months or less remaining in their active duty status may receive a microloan and/or technical assistance and training if they are otherwise qualified to participate in the program.

§ 4280.323 Ineligible microloan purposes and uses.

Agency loan funds will not be used for the payment of microlender administrative costs or expenses and microlenders may not make microloans under this program for any of purposes and uses identified as ineligible in paragraphs (a) through (p) of this section.

(a) Construction costs.

(b) Any amount in excess of that needed by a microborrower to accomplish the immediate business goal.

(c) Assistance that will cause a conflict of interest or the appearance of a conflict of interest including but not limited to:

(1) Financial assistance to principals, directors, officers, or employees of the microlender, or their close relatives as defined; and

(2) Financial assistance to any entity the result of which would appear to benefit the microlender or its principals, directors, or employees, or their close relatives, as defined, in any way other than the normal repayment of debt.

(d) Distribution or payment to a microborrower when such will use any portion of the microloan for other than the purpose for which it was intended.

(e) Distribution or payment to a charitable institution not gaining revenue from sales or fees to support the operation and repay the microloan.

(f) Microloans to a fraternal organization.

(g) Any microloan to an applicant that has an RMAP funded microloan application pending with another microlender or that has an RMAP-funded microloan outstanding with another microlender that would cause the applicant to owe a combined amount of more than $50,000 to one or more microlenders under this program.

(h) Assistance to USDA Rural Development (Agency) employees, or their close relatives, as defined.

(i) Any illegal activity.

(j) Any project that is in violation of either a Federal, State, or local environmental protection law, regulation, or enforceable land use restriction unless the microloan will result in curing or removing the violation.

(k) Microloans to lending and investment institutions and insurance companies.

(l) Golf courses, race tracks, or gambling facilities.

(m) Any lobbying activities as described in 7 CFR part 3018.

(n) Lines of credit.

(o) Subordinated liens.

(p) Use of an Agency funded loan to pay debt service on a previous Agency loan.

§§ 4280.324–4280.399 [Reserved]

§ 4280.400 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0570–0062. A person is not required to respond to this collection of information unless it displays a currently valid OMB control number.

[75 FR 30145, May 28, 2010, as amended at 75 FR 33501, June 14, 2010]

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AUTHORITY: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart F also issued under 7 U.S.C 1932(e).

Subpart G also issued under 7 U.S.C 1926(a)(11).

Subpart J also issued under 7 U.S.C 1621 note.

Subpart K also issued under 7 U.S.C. 1621 note.

SOURCE: 62 FR 42387, Aug. 7, 1997, unless otherwise noted.

Subpart A—General Requirements for Cooperative Services Grant Programs

SOURCE: 69 FR 23425, Apr. 29, 2004, unless otherwise noted.

§ 4284.1 Purpose.

The purpose of this subpart is to set forth definitions and requirements which are common to all grant programs set forth in this part administered by Cooperative Services within the Rural Business-Cooperative Service (RBS). Programs administered by the Business Programs within RBS are not affected by this subpart.

§ 4284.2 Policy.

It is the policy of Cooperative Services to administer grant programs as uniformly as possible to minimize unnecessary inconsistencies in the administration of the grant programs provided for in this part. The specific provisions or definitions provided in the subparts that are specific to Cooperative Services are supplemental to these general provisions. Where a specific program provision is expressly different from what is provided in this subpart, the program specific subpart shall prevail.

§ 4284.3 Definitions.

Agency—Rural Business-Cooperative Service (RBS), an agency of the United States Department of Agriculture (USDA), or a successor agency.

Agricultural Producer—Persons or entities, including farmers, ranchers, loggers, agricultural harvesters and fishermen, that engage in the production or harvesting of an agricultural product. Producers may or may not own the land or other production resources, but must have majority ownership interest in the agricultural product to which Value-Added is to accrue as a result of the project. Examples of agricultural producers include: a logger who has a majority interest in the logs harvested that are then converted to boards, a fisherman that has a majority interest in the fish caught that are then smoked, a wild herb gatherer that has a majority interest in the gathered herbs that are then converted into essential oils, a cattle feeder that has a majority interest in the cattle that are fed, slaughtered and sold as boxed beef, and a corn grower that has a majority interest in the corn produced that is then converted into corn meal.

Agriculture Producer Group—An organization that represents Independent Producers, whose mission includes working on behalf of Independent Producers and the majority of whose membership and board of directors is comprised of Independent Producers.

Agricultural Product—Plant and animal products and their by-products to include forestry products, fish and seafood products.

Cooperative Services—The office within RBS, and its successor organization, that administers programs authorized by the Cooperative Marketing Act of 1926 (7 U.S.C. 451 *et seq.*) and such other programs so identified in USDA regulations.

Economic development—The economic growth of an area as evidenced by increase in total income, employment opportunities, decreased out-migration of population, value of production, increased diversification of industry, higher labor force participation rates, increased duration of employment, higher wage levels, or gains in other measurements of economic activity, such as land values.

Emerging Market—A new or developing market for the applicant, which the applicant has not traditionally supplied.

Farmer or Rancher Cooperative—A farmer or rancher-owned and controlled business from which benefits are derived and distributed equitably on the basis of use by each of the farmer or rancher owners.

Fixed equipment—Tangible personal property used in trade or business that would ordinarily be subject to depreciation under the Internal Revenue Code, including processing equipment, but not including property for equipping and furnishing offices such as computers, office equipment, desks or file cabinets.

Independent Producers—Agricultural producers, individuals or entities (including for profit and not for profit corporations, LLCs, partnerships or LLPs), where the entities are solely owned or controlled by Agricultural Producers who own a majority ownership interest in the agricultural product that is produced. An independent producer can also be a steering committee composed of independent producers in the process of organizing an association to operate a Value-Added venture that will be owned and controlled by the independent producers supplying the agricultural product to the market. Independent Producers must produce and own the agricultural product to which value is being added.

Producers who produce the agricultural product under contract for another entity but do not own the product produced are not independent producers.

Majority-Controlled Producer-Based Business Venture—A venture where more than 50% of the ownership and control is held by Independent Producers, or, partnerships, LLCs, LLPs, corporations or cooperatives that are themselves 100 percent owned and controlled by Independent Producers.

Matching Funds—Cash or confirmed funding commitments from non-Federal sources unless otherwise provided by law. Unless otherwise provided, matching funds must be at least equal to the grant amount. Unless otherwise provided, in-kind contributions that conform to the provisions of 7 CFR 3015.50 and 7 CFR 3019.23, as applicable, can be used as matching funds. Examples of in-kind contributions include volunteer services furnished by professional and technical personnel, donated supplies and equipment, and donated office space. Matching funds must be provided in advance of grant funding, such that for every dollar of grant that is advanced, not less than an equal amount of match funds shall have been funded prior to submitting the request for reimbursement. Matching funds are subject to the same use restrictions as grant funds. Funds used for an ineligible purpose will not be considered matching funds.

National Office—USDA RBS headquarters in Washington, DC.

Nonprofit institution—Any organization or institution, including an accredited institution of higher education, no part of the net earnings of which may inure, to the benefit of any private shareholder or individual.

Product segregation—Physical separation of a product or commodity from similar products. Physical separation requires a barrier to prevent mixing with the similar product.

Public body—Any state, county, city, township, incorporated town or village, borough, authority, district, economic development authority, or Indian tribe on federal or state reservations or other federally recognized Indian tribe in rural areas.

RFP—Request for Proposals.

Rural and rural area—includes all the territory of a state that is not within the outer boundary of any city or town having a population of 50,000 or more and the urbanized area contiguous and adjacent to such city or town, as defined by the U.S. Bureau of the Census using the latest decennial census of the United States.

Rural Development—A mission area within the USDA consisting of the Office of Under Secretary for Rural Development, Office of Community Development, Rural Business-Cooperative Service, Rural Housing Service and Rural Utilities Service and their successors.

State—includes each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and, as may be determined by the Secretary to be feasible, appropriate and lawful, the Freely Associated States and the Federated States of Micronesia.

State Office—USDA Rural Development offices located in each state.

Value-Added—The incremental value that is realized by the producer from an agricultural commodity or product as the result of a change in its physical state, differentiated production or marketing, as demonstrated in a business plan, or Product segregation. Also, the economic benefit realized from the production of farm or ranch-based renewable energy. Incremental value may be realized by the producer as a result of either an increase in value to buyers or the expansion of the overall market for the product. Examples include milling wheat into flour, slaughtering livestock or poultry, making strawberries into jam, the marketing of organic products, an identity-preserved marketing system, wind or hydro power produced on land that is farmed and collecting and converting methane from animal waste to generate energy. Identity-preserved marketing systems include labeling that identifies how the product was produced and by whom.

§ 4284.4 Appeals.

Any appealable adverse decision made by the Agency may be appealed

in accordance with USDA appeal regulations found at 7 CFR part 11 and subpart B of part 1900. If the Agency makes a determination that a decision is not appealable, a participant may request that it be reviewed by the Director of the National Appeals Division.

§ 4284.5 [Reserved]

§ 4284.6 Applicant eligibility.

An outstanding judgment obtained against an applicant by the United States in a Federal Court (other than in the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible to receive any assistance until the judgment is paid in full or otherwise satisfied. RBS grant funds may not be used to satisfy the judgment.

§ 4284.7 Electronic submission.

Applicants and grant awardees are encouraged, but not required, to submit applications and reports in electronic form as prescribed in requests for proposals issued by USDA and in the applicable grant agreements.

§ 4284.8 Grant approval and obligation of funds.

The following statement will be entered in the comment section of the Request for Obligation of Funds, which must be signed by the grantee:

The grantee certifies that it is in compliance with and will continue to comply with all applicable laws, regulations, Executive Orders and other generally applicable requirements, including those contained in 7 CFR part 4284 and 7 CFR parts 3015, 3016, 3017, 3018, 3019 and 3052 in effect on the date of grant approval, and the approved Letter of Conditions.

§ 4284.9 Grant disbursement.

The Agency will determine, based on 7 CFR parts 3015, 3016 and 3019, as applicable, whether disbursement of a grant will be by advance or reimbursement. The Agency may limit the frequency in which a Request for Advance or Reimbursement may be submitted.

§ 4284.10 Ineligible grant purposes.

Grant funds may not be used to:

(a) Duplicate current services or replace or substitute support previously provided. If the current service is inadequate, however, grant funds may be used to expand the level of effort or services beyond what is currently being provided;

(b) Pay costs of preparing the application package for funding under this program;

(c) Pay costs of the project incurred prior to the date of grant approval;

(d) Fund political activities;

(e) Pay for assistance to any private business enterprise which does not have a least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence;

(f) Pay any judgment or debt owed to the United States;

(g) Plan, repair, rehabilitate, acquire, or construct a building or facility (including a processing facility);

(h) Purchase, rent or install Fixed Equipment;

(i) Pay for the repair of privately owned vehicles; or

(j) Fund research and development.

§ 4284.11 Award requirements.

In addition to specific grant requirements, all approved applicants will be required to do the following:

(a) Enter into a grant agreement with USDA in form and substance similar to the form of agreement as may be published within or as an appendix to the applicable RFP;

(b) Submit a feasibility study and business plan showing the viability of the venture, if any Federal grant and matching funds are to be used as working capital;

(c) Use ''Request for Advance or Reimbursement'' to request advances or reimbursements, as applicable, but not more frequently than once a month;

(d) Maintain a financial management system that is acceptable to the Agency; and

(e) Collect and maintain data on race, sex and national origin of the beneficiaries of the project.

§ 4284.12 Reporting requirements.

Grantees must submit the following to USDA:

(a) A ''Financial Status Report'' listing expenditures according to agreed

upon budget categories, on a semi-annual basis. Reporting periods end each March 31 and September 30. Reports are due 30 days after the reporting period ends.

(b) Semi-annual performance reports that compare accomplishments to the objectives stated in the proposal. Identify all tasks completed to date and provide documentation supporting the reported results. If the original schedule provided in the work plan is not being met, the report should discuss the problems or delays that may affect completion of the project. Objectives for the next reporting period should be listed. Compliance with any special condition on the use of award funds should be discussed. Reports are due as provided in paragraph (a) of this section. The supporting documentation for completed tasks include, but are not limited to, feasibility studies, marketing plans, business plans, articles of incorporation and bylaws and an accounting of how working capital funds were spent.

(c) Final project performance reports, inclusive of supporting documentation. The final performance report is due within 30 days of the completion of the project.

§ 4284.13 Confidentiality of reports.

All reports submitted to the Agency will be held in confidence to the extent permitted by law.

§ 4284.14 Grant servicing.

Grants will be serviced in accordance with 7 CFR part 1951, subparts E and O. Grantees will permit periodic inspection of the program operations by a representative of the Agency. All nonconfidential information resulting from the Grantee's activities shall be made available to the general public on an equal basis.

§ 4284.15 Performance reviews.

(a) USDA will incorporate performance criteria in grant award documentation and will regularly evaluate the progress and performance of grant awardees.

(b) USDA may elect to suspend or terminate a grant in all or part, or funding of a particular workplan activity, but nevertheless fund the remainder of a request for an advance or reimbursement, as applicable, where USDA has determined:

(1) That the grantee or subrecipient of grant funds has demonstrated insufficient progress in complying with the terms of the grant agreement;

(2) There is reason to believe that other sources of joint funding have not been or will not be forthcoming on a timely basis; or

(3) Such other cause as USDA identifies in writing to the grantee (including but not limited to the use of Federal grant funds for ineligible purposes).

§ 4284.16 Other considerations.

(a) *Environmental review*. All grants made under this subpart are subject to the requirements of 7 CFR part 1940, subpart G. Applications for technical assistance or planning projects are generally excluded from the environmental review process by § 1940.333, provided the assistance is not related to the development of a specific site. Applicants for grant funds must consider and document within their plans the important environmental factors within the planning area and the potential environmental impacts of the plan on the planning area, as well as the alternative planning strategies that were reviewed.

(b) *Civil rights*. All grants made under this subpart are subject to the requirements of title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color and national origin as outlined in 7 CFR part 1901, subpart E. In addition, the grants made under this subpart are subject to the requirements of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of disability; the requirements of the Age Discrimination Act of 1975, which prohibits discrimination on the basis of age; and title III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability by private entities in places of public accommodations. This program will also be administered in accordance with all other applicable civil rights law.

(c) *Other USDA regulations*. The grant programs under this part are subject to

the provisions of the following regulations, as applicable:

(1) 7 CFR part 3015, Uniform Federal Assistance Regulations;

(2) 7 CFR part 3016, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;

(3) 7 CFR part 3017, Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants);

(4) 7 CFR part 3018, New Restrictions on Lobbying;

(5) 7 CFR part 3019, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations; and

(6) 7 CFR part 3052, Audits of States, Local Governments and Non-profit Organizations.

§4284.17 Member delegate clause.

No Member of Congress shall be admitted to any share or part of a grant program or any benefit that may arise there from, but this provision shall not be construed to bar as a contractor under a grant a publicly held corporation whose ownership might include a Member of Congress.

§4284.18 Audit requirements.

Grantees must comply with the audit requirements of 7 CFR part 3052. The audit requirements apply to the years in which grant funds are received and years in which work is accomplished using grant funds.

§4284.19 Programmatic changes.

The Grantee shall obtain prior approval for any change to the scope or objectives of the approved project. Failure to obtain prior approval of changes to the scope of work or budget may result in suspension, termination and recovery of grant funds.

§§4284.20–4284.99 [Reserved]

§4284.100 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0570–0045.

Subparts B–E [Reserved]

Subpart F—Rural Cooperative Development Grants

SOURCE: 69 FR 23428, Apr. 29, 2004, unless otherwise noted.

§4284.501 Purpose.

This subpart outlines the Agency's polices and procedures for making grants for cooperative development in rural areas.

§4284.502 Policy.

Rural cooperative development grants will be used to facilitate the creation or retention of jobs in rural areas through the development of new rural cooperatives, Value-Added processing and rural businesses.

§4284.503 Program administration.

The rural cooperative development grant program is administered by Cooperative Services within the Agency.

§4284.504 Definitions.

Center—The entity established or operated by the grantee for rural cooperative development. It may or may not be an independent legal entity separate from the grantee.

Cooperative development—The startup, expansion or operational improvement of a cooperative to promote development in rural areas of services and products, processes that can be used in the marketing of products, or enterprises that create Value-Added to farm products through processing or marketing activities. Development activities may include, but are not limited to, technical assistance, research services, educational services and advisory services. Operational improvement includes making the cooperative more efficient or better managed.

1994 Institution—means a college identified as such for purposes of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note). Contact the Agency for a list of currently eligible colleges.

Project—A planned undertaking by a Center that utilizes the funds provided to it to promote economic development in rural areas through the creation and enhancement of cooperatives.

§§ 4284.505–4284.506 [Reserved]

§ 4284.507 Eligibility for grant assistance.

Grants may be made to Nonprofit corporations and institutions of higher education. Grants may not be made to Public bodies.

§ 4284.508 Use of grant funds.

Grant funds may be used to pay up to 75 percent (95 percent where the grantee is a 1994 Institution) of the cost of establishing and operating centers for rural cooperative development. Matching funds contributed by the applicant may include a loan from another federal source. Grant funds may be used for, but are not limited to, providing the following to individuals, cooperatives, small businesses and other similar entities in rural areas served by the Center:

(a) Applied research, feasibility, environmental and other studies that may be useful for the purpose of cooperative development.

(b) Collection, interpretation and dissemination of principles, facts, technical knowledge, or other information for the purpose of cooperative development.

(c) Providing training and instruction for the purpose of cooperative development.

(d) Providing loans and grants for the purpose of cooperative development in accordance with the subpart.

(e) Providing technical assistance, research services and advisory services for the purpose of cooperative development.

§ 4284.509 Limitations on grants.

Grants made pursuant to this subpart shall be for one year or less.

§ 4284.510 Application processing.

(a) *Applications*. USDA will solicit applications on a competitive basis by publication of one or more Requests for Proposals (RFPs). Unless otherwise specified in the applicable RFP, applicants must file an original and one hard copy of the required forms and a proposal.

(b) *Required forms*. The following forms must be completed, signed and submitted as part of the application package. Other forms may be required. This will be published in the applicable RFP.

(1) ''Application for Federal Assistance''

(2) ''Budget Information—Non-Construction Programs''

(3) ''Assurances—Non-Construction Programs''

(c) *Proposal*. Each proposal must contain the following elements. Additional elements may be published in the applicable RFP.

(1) Title Page.

(2) Table of Contents.

(3) *Executive Summary*. A summary of the proposal should briefly describe the Center, including goals and tasks to be accomplished, the amount requested, how the work will be performed and whether organizational staff, consultants or contractors will be used.

(4) *Eligibility*. A detailed discussion describing how the applicant meets the eligibility requirements.

(5) *Proposal Narrative*. The narrative portion of the proposal must include, but is not limited to, the following:

(i) *Project Title*. The title of the proposed project must be brief, not to exceed 75 characters, yet describe the essentials of the project.

(ii) *Information Sheet*. A separate one-page information sheet listing each of the evaluation criteria referenced in the RFP, followed by the page numbers of all relevant material and documentation contained in the proposal that address or support the criteria.

(iii) *Goals of the Project*. This section must include the following:

(A) A provision that substantiates that the Center will effectively serve rural areas in the United States;

(B) A provision that the primary objective of the Center will be to improve the economic condition of rural areas through cooperative development;

(C) A description of the contributions that the proposed activities are likely to make to the improvement of the economic conditions of the rural areas

for which the Center will provide services.

(D) Provisions that the Center, in carrying out the activities, will seek, where appropriate, the advice, participation, expertise, and assistance of representatives of business, industry, educational institutions, the Federal Government, and State and local governments.

(iv) *Work Plan*. Applicants must discuss the specific tasks to be completed using grant and matching funds. The work plan should show how customers will be identified, key personnel to be involved, and the evaluation methods to be used to determine the success of specific tasks and overall objectives of Center operations. The budget must present a breakdown of the estimated costs associated with cooperative development activities as well as the operation of the Center and allocate these costs to each of the tasks to be undertaken. Matching funds as well as grant funds must be accounted for in the budget.

(v) *Performance Evaluation Criteria*. Performance criteria suggested by the applicant for incorporation in the grant award in the event the proposal receives grant funding under this subpart. These suggested criteria are not binding on USDA.

(vi) *Undertakings*. The applicant must expressly undertake to do the following:

(A) Take all practicable steps to develop continuing sources of financial support for the Center, particularly from sources in the private sector;

(B) Make arrangements for the activities by the nonprofit institution operating the Center to be monitored and evaluated; and

(C) Provide an accounting for the money received by the grantee under this subpart.

(vii) *Delivery of Cooperative development assistance*. The applicant must describe its previous accomplishments and outcomes in Cooperative development activities and/or its potential for effective delivery of Cooperative development services to rural areas. The applicant should also describe the type(s) of assistance to be provided, the expected impacts of that assistance, the sustainability of cooperative organizations receiving the assistance, and the transferability of its Cooperative development strategy and focus to other areas of the U.S.

(viii) *Qualifications of Personnel*. Applicants must describe the qualifications of personnel expected to perform key center tasks, and whether these personnel are to be full/part-time Center employees or contract personnel. Those personnel having a track record of positive solutions for complex cooperative development or marketing problems, or those with a record of conducting feasibility studies that later proved to be accurate, business planning, marketing analysis, or other activities relevant to the Center's success should be highlighted.

(ix) *Support and commitments*. Applicants must describe the level of support and commitment in the community for the proposed Center and the services it would provide. Plans for coordinating with other developmental organizations in the proposed service area, or with state and local government institutions should be included. Letters supporting cooperation and coordination from potential local customers should be provided.

(x) *Future support*. Applicants should describe their vision for Center operations beyond the first year, including issues such as sources and uses of alternative funding; reliance on Federal, state, and local grants; and the use of in-house personnel for providing services versus contracting out for that expertise. To the extent possible, applicants should document future funding sources that will help achieve long-term sustainability of the Center.

(xi) *Evaluation criteria*. Each of the evaluation criteria referenced in the RFP must be specifically and individually addressed in narrative form.

(6) *Verification of Matching Funds*. Applicants must provide a budget to support the work plan showing all sources and uses of funds during the project period. Applicants will be required to verify matching funds, both cash and in-kind. Sufficient information should be included such that USDA can verify all representations.

(7) *Certification*. Applicants must certify that matching funds will be available at the same time grant funds are

anticipated to be spent and that matching funds will be spent in advance of grant funding, such that for every dollar of grant that is advanced, not less than an equal amount of match funds will have been funded prior to submitting the request for advance.

§ 4284.511 Evaluation screening.

The Agency will conduct an initial screening of all proposals to determine whether the applicant is eligible and whether the application is complete and sufficiently responsive to the requirements set forth in the applicable RFP so as to allow for an informed review. Incomplete or non-responsive applications will not be evaluated further. Applicants may revise their applications and re-submit them prior to the published deadline if there is sufficient time to do so.

§ 4284.512 Evaluation process.

(a) Applications will be evaluated by qualified reviewers appointed by the Agency.

(b) After all proposals have been evaluated using the evaluation criteria and scored in accordance with the point allocation specified in the applicable RFP, the Agency will present to the Administrator of RBS a list of all applications in rank order, together with funding level recommendations.

§ 4284.513 Evaluation criteria and weights.

Unless supplemented in a RFP, the criteria listed in this section will be used to evaluate grants under this subpart. Preference will be given to items in paragraphs (a) through (f) of this section. The distribution of points to be awarded per criterion will be identified in the applicable RFP.

(a) *Administrative capabilities*. The application will be evaluated to determine whether the subject Center has a track record of administering a nationally coordinated, regional or state-wide operated project. Centers that have capable financial systems and audit controls, personnel and program administration performance measures and clear rules of governance will receive more points than those not evidencing this capacity.

(b) *Technical assistance and other services*. The Agency will evaluate the applicant's demonstrated expertise in providing technical assistance in Rural areas.

(c) *Economic development*. The Agency will evaluate the applicant's demonstrated ability to assist in the retention of businesses, facilitate the establishment of cooperatives and new cooperative approaches and generate employment opportunities that will improve the economic conditions of rural areas.

(d) *Linkages*. The Agency will evaluate the applicant's demonstrated ability to create horizontal linkages among businesses within and among various sectors in rural areas of the United States and vertical linkages to domestic and international markets.

(e) *Commitment*. The Agency will evaluate the applicant's commitment to providing technical assistance and other services to underserved and economically distressed areas in rural areas of the United States.

(f) *Matching Funds*. All applicants must demonstrate Matching Funds equal to at least 25 percent (5 percent for 1994 Institutions) of the grant amount requested. Applications exceeding these minimum commitment levels will receive more points.

(g) *Delivery*. The Agency will evaluate whether the Center has a track record in providing technical assistance in rural areas and accomplishing effective outcomes in cooperative development. The Center's potential for delivering effective cooperative development assistance, the expected effects of that assistance, the sustainability of cooperative organizations receiving the assistance, and the transferability of the Center's cooperative development strategy and focus to other States will also be assessed.

(h) *Work Plan/Budget*. The work plan will be reviewed for detailed actions and an accompanying timetable for implementing the proposal. Clear, logical, realistic and efficient plans will result in a higher score. Budgets will be reviewed for completeness and the quality of non Federal funding commitments.

(i) *Qualifications of those Performing the Tasks*. The application will be evaluated to determine if the personnel expected to perform key center tasks have a track record of positive solutions for complex Cooperative development or marketing problems, or a successful record of conducting accurate feasibility studies, business plans, marketing analysis, or other activities relevant to Cooperative development center success.

(j) *Local support*. Applications will be reviewed for previous and expected local support for the Center, plans for coordinating with other developmental organizations in the proposed service area and coordination with state and local institutions. Support documentation should include recognition of rural values that balance employment opportunities with environmental stewardship and other positive rural amenities. Centers that demonstrate strong support from potential beneficiaries and formal evidence of the Center's intent to coordinate with other developmental organizations will receive more points than those not evidencing such support and formal intent.

(k) *Future support*. Applications that demonstrate their vision for funding center operations for future years, including diversification of funding sources and building in-house technical assistance capacity, will receive more points for this criterion.

§4284.514 Grant closing.

(a) *Letter of Conditions*. The Agency will notify an approved applicant in writing, setting out the conditions under which the grant will be made.

(b) *Applicant's intent to meet conditions*. Upon reviewing the conditions and requirements in the letter of conditions, the applicant must complete, sign and return the Agency's ''Letter of Intent to Meet Conditions,'' or, if certain conditions cannot be met, the applicant may propose alternate conditions to the Agency. The Agency must concur with any changes proposed to the letter of conditions by the applicant before the application will be further processed.

(c) *Grant agreement*. The Agency and the grantee must enter into the Agency's ''Agriculture Innovation Center Grant Agreement'' prior to the advance of funds.

§§4284.515–4284.599 [Reserved]

§4284.600 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0570–0006 in accordance with the Paperwork Reduction Act of 1995.

Subpart G—Rural Business Opportunity Grants

SOURCE: 64 FR 71986, Dec. 23, 1999, unless otherwise noted.

§4284.601 Purpose.

This subpart outlines Agency policies and authorizations and sets forth procedures for making grants to provide technical assistance for business development and conduct economic development planning in rural areas. The purpose of this program is to promote sustainable economic development in rural communities with exceptional needs by:

(a) Promoting economic development that is sustainable over the long term through local effort without subsidies or external support and that leads to improvements in quality as well as the quantity of economic activity in the community;

(b) Catalyzing economic development projects by providing critical investments that enable effective development projects to be undertaken by rural communities that, with the Rural Business Opportunity Grants (RBOG) assistance, will be able to identify their needs and take full advantage of available resources and opportunities;

(c) Focusing assistance on priority communities (defined in §4284.603); and

(d) Sponsoring economic development activities with significant potential to serve as examples of ''best practices'' that merit implementation in rural communities in similar circumstances.

§ 4284.602 Policy.

(a) The grant program will be used to assist in the economic development of rural areas.

(b) Funds allocated for use in accordance with this subpart are also to be considered for use by Indian tribes within the State regardless of whether State development strategies include Indian reservations within the State's boundaries. Indians residing on such reservations must have equal opportunity, along with other rural residents, to participate in the benefits of these programs.

§ 4284.603 Definitions.

Agency. The Federal agency within the United States Department of Agriculture (USDA) with responsibility assigned by the Secretary of Agriculture to administer the RBOG Program. At the time of publication, that agency is the Rural Business-Cooperative Service.

Best practice project. An action that has potential applicability in other rural communities and which potentially has instructional value when shared with those communities.

Business support centers. Centers established to provide assistance to businesses in such areas as counseling, business planning, training, management assistance, marketing information, and locating financing for business operations. The centers need not be located in a rural area, but must provide assistance to businesses located in rural areas.

Economic development. The industrial, business and financial augmentation of an area as evidenced by increases in total income, employment opportunities, value of production, duration of employment, or diversification of industry, reduced outmigration, higher labor force participation rates or wage levels, or gains in other measurements of economic activity, such as land values.

Long-term. The period of time covered by the three most recent decennial censuses of the United States to the present.

Planning. A process to coordinate economic development activities, develop guides for action, or otherwise assist local community leaders in the economic development of rural areas.

Priority communities. Communities targeted for Agency assistance as determined by the USDA Under Secretary for Rural Development. Priority communities are those that are experiencing trauma due to natural disasters or are undertaking or completing fundamental structural changes, have remained persistently poor, or have experienced long-term population decline or job deterioration.

Project. The result of the use of grant funds provided under this subpart through technical assistance or planning relating to the economic development of a rural area.

Rural and rural area. Any area other than a city or town that has a population of greater than 50,000 inhabitants including the urbanized area contiguous and adjacent to such a city or town. The population figure used must be in accordance with the latest decennial census of the United States.

State. Any of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Sustainable development. Development planned and designed to consider and balance environmental quality, economic needs, and social concerns.

Technical assistance. A nonconstruction, problem solving activity performed for the benefit of a business or community to assist in the economic development of a rural area. The Agency will determine whether a specific activity qualifies as technical assistance.

United States. The 50 States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

[64 FR 71986, Dec. 23, 1999, as amended at 67 FR 63538, Oct. 15, 2002]

§§4284.604–4287.619 [Reserved]

§4284.620 Applicant eligibility.

(a) Grants may be made to public bodies, nonprofit corporations, Indian tribes on Federal or State reservations and other Federally recognized tribal groups, and cooperatives with members that are primarily rural residents and that conduct activities for the mutual benefit of the members.

(b) Applicants must have sufficient financial strength and expertise in activities proposed in the application to ensure accomplishment of the described activities and objectives.

(1) Financial strength will be analyzed by the Agency based on financial data provided in the application. The analysis will consider the applicant's tangible net worth, which must be positive, and whether the applicant has dependable sources of revenue or a successful history of raising revenue sufficient to meet cash requirements.

(2) Expertise will be analyzed by the Agency based on the applicant staff's training and experience in activities similar to those proposed in the application and, if consultants will be used, on the staff's experience in choosing and supervising consultants.

(c) Any delinquent debt to the Federal Government shall cause the applicant to be ineligible to receive any RBOG funds until the debt has been paid.

§4284.621 Eligible grant purposes.

(a) Grant funds may be used to assist in the economic development of rural areas by providing technical assistance for business development and economic development planning. Grant funds may be used for, but are not limited to, the following purposes:

(1) Identify and analyze business opportunities that will use local rural materials or human resources. This includes opportunities in export markets, as well as feasibility and business plan studies.

(2) Identify, train, and provide technical assistance to existing or prospective rural entrepreneurs and managers;

(3) Establish business support centers and otherwise assist in the creation of new rural businesses;

(4) Conduct local community or multi-county economic development planning;

(5) Establish centers for training, technology, and trade that will provide training to rural businesses in the utilization of interactive communications technologies to develop international trade opportunities and markets;

(6) Conduct leadership development training of existing or prospective rural entrepreneurs and managers; or

(7) Pay reasonable fees and charges for professional services necessary to conduct the technical assistance, training, or planning functions.

(b) Grants may be made only when there is a reasonable prospect that the project will result in the economic development of a rural area.

(c) Grants may be made only when the proposal includes a basis for determining the success or failure of the project and individual major elements of the project and outlines procedures that will be taken to assess the project's impact at its conclusion.

(d) Grants may be made only when the proposed project is consistent with local and area-wide strategic plans for community and economic development, coordinated with other economic development activities in the project area and consistent with any USDA Rural Development State Strategic Plan.

(e) A grant may be considered for the amount needed to assist with the completion of a proposed project, provided that the project can reasonably be expected to be completed within 2 full years after it is begun. If grant funds are requested to establish or assist with an activity of more than 2 years duration, the amount of a grant approved in any fiscal year will be limited to the amount needed to assist with no more than 1 full year of operation. Subsequent grant requests may be considered in subsequent years, if needed to continue the operation, but funding for 1 year provides no assurance of additional funding in subsequent years.

§§4284.622–4287.628 [Reserved]

§4284.629 Ineligible grant purposes.

Grant funds may not be used to:

(a) Duplicate current services or replace or substitute support previously provided. If the current service is inadequate, however, grant funds may be used to expand the level of effort or services beyond what is currently being provided;

(b) Pay costs of preparing the application package for funding under this program;

(c) Pay costs of the project incurred prior to the effective date of the grant made under this subpart;

(d) Fund political activities;

(e) Pay for assistance to any private business enterprise which does not have at least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence;

(f) Pay any judgment or debt owed to the United States; or

(g) Pay costs of real estate acquisition or development or building construction.

§ 4284.630 Other considerations.

(a) *Civil rights compliance requirements.* All grants made under this subpart are subject to title VI of the Civil Rights Act of 1964 and part 1901, subpart E of this title.

(b) *Environmental review.* All grants made under this subpart are subject to the requirements of subpart G of part 1940 of this title. Applications for technical assistance or planning projects are generally excluded from the environmental review process by § 1940.333 of this title provided the assistance is not related to the development of a specific site. Applicants for grant funds must consider and document within their plans the important environmental factors within the planning area and the potential environmental impacts of the plan on the planning area, as well as the alternative planning strategies that were reviewed.

(c) *Other USDA regulations.* This program is subject to the provisions of the following regulations, as applicable;

(1) 7 CFR part 3015, Uniform Federal Assistance Regulations;

(2) 7 CFR part 3016, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;

(3) 7 CFR part 3017, Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants);

(4) 7 CFR part 3018, New Restrictions on Lobbying;

(5) 7 CFR part 3019, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations; and

(6) 7 CFR part 3052, Audits of States, Local Governments, and Non-profit Organizations.

§§ 4284.631–4284.637 [Reserved]

§ 4284.638 Application processing.

(a) *Applications.* (1) Applicants will file an original and one copy of ''Application For Federal Assistance (For Nonconstruction),'' with the Agency State Office (available in any Agency office).

(2) All applications shall be accompanied by:

(i) Copies of applicant's organizational documents showing the applicant's legal existence and authority to perform the activities under the grant;

(ii) A proposed scope of work, including a description of the proposed project, details of the proposed activities to be accomplished and timeframes for completion of each task, the number of months duration of the project, and the estimated time it will take from grant approval to beginning of project implementation;

(iii) A written narrative which includes, at a minimum, the following items:

(A) An explanation of why the project is needed, the benefits of the proposed project, and how the project meets the grant selection criteria;

(B) Area to be served, identifying each governmental unit, *i.e.*, town, county, etc., to be affected by the project;

(C) Description of how the project will coordinate economic development activities with other economic development activities within the project area;

(D) Business to be assisted, if appropriate; economic development to be accomplished;

(E) An explanation of how the proposed project will result in increased or saved jobs in the area and the number of projected new and saved jobs;

(F) Description of the applicant's demonstrated capability and experience in providing the proposed project assistance or similar economic development activities, including experience of key staff members and persons who will be providing the proposed project activities and managing the project;

(G) Method and rationale used to select the areas and businesses that will receive the service;

(H) Brief description of how the work will be performed including whether organizational staff or consultants or contractors will be used; and

(I) Other information the Agency may request to assist it in making a grant award determination.

(iv) The latest financial information to show the organization's financial capacity to carry out the proposed work. At a minimum, the information should include the most recent balance sheet and an income statement. A current audited report is required if available;

(v) An evaluation method to be used by the applicant to determine if objectives of the proposed activity are being accomplished; and

(vi) Intergovernmental review comments from the State Single Point of Contact, or evidence that the State has elected not to review the program under Executive Order 12372.

(b) *Letter of conditions.* The Agency will notify the approved applicant in writing, setting out the conditions under which the grant will be made.

(c) *Applicant's intent to meet conditions.* Upon reviewing the conditions and requirements in the letter of conditions, the applicant must complete, sign and return a ''Letter of Intent to Meet Conditions,'' to the Agency; or if certain conditions cannot be met, the applicant may propose alternate conditions to the Agency. The Agency must concur with any changes proposed to the letter of conditions by the applicant before the application will be further processed.

§4284.639 Grant selection criteria.

Agency officials will select projects to receive assistance under this program according to the following criteria:

(a) A score of 0 to 10 points will be awarded based on the Agency assessment of the extent to which economic development resulting from the proposed project will be sustainable over the long term by local efforts, without the need for continued subsidies by governments or other organizations outside the community.

(b) A score of 0 to 10 points will be awarded based on the Agency assessment of the extent to which the project should lead to improvements in the quality of economic activity within the community, such as higher wages, improved benefits, greater career potential, and the use of higher levels of skills than currently are typical within the economy.

(c) If the grant will fund a critical element of a larger program of economic development, without which the overall program either could not proceed or would be far less effective, or if the program to be assisted by the grant will also be partially funded from other sources, points will be awarded as follows based on the percentage of the cost of the overall program that will be funded by the grant.

(1) Less than 20 percent—30 points;

(2) 20 but less than 50 percent—20 points;

(3) 50 but less than 75 percent—10 points; or

(4) More than 75 percent—0 points.

(d) Points will be awarded for each of the following criteria met by the community or communities that will receive the primary benefit of the grant. However, regardless of the mathematical total of points indicated by paragraphs (d)(1) through (d)(5) of this section, total points awarded under paragraph (d) must not exceed 40.

(1) Experiencing trauma due to a major natural disaster that occurred not more than 3 years prior to the filing of the application for RBOG assistance—15 points;

(2) Undergoing fundamental structural change in the local economy, such as that caused by the closing or major downsizing of a military facility or other major employer not more than 3 years prior to the filing of the application for RBOG assistance—15 points;

(3) Has experienced long-term poverty—10 points;

(4) Has experienced long-term population decline—10 points; and

(5) Has experienced long-term job deterioration—10 points.

(e) A score of 0 to 10 points will be awarded based on the Agency determination of the extent of the project's usefulness as a new best practice as defined in § 4284.603.

(f) The State Director may assign up to 15 discretionary points to an application. If allocation of funds under National Office control is being considered, the Agency Administrator may assign up to 20 additional discretionary points. Assignment of discretionary points by either the State Director or the Agency Administrator must include a written justification. Permissible justifications are geographic distribution of funds, special importance for implementation of a strategic plan in partnership with other organizations, or extraordinary potential for success due to superior project plans or qualifications of the grantee.

§ 4284.640 Appeals.

Any appealable adverse decision made by the Agency may be appealed in accordance with USDA appeal regulations found at 7 CFR part 11. If the Agency makes a determination that a decision is not appealable, a request for a determination of appealability may be made to the National Appeals Staff.

§§ 4284.641–4287.646 [Reserved]

§ 4284.647 Grant approval and obligation of funds.

(a) The following statement will be entered in the comment section of the Request For Obligation of Funds, which must be signed by the grantee:

> The grantee certifies that it is in compliance with and will continue to comply with all applicable laws; regulations; Executive Orders; and other generally applicable requirements, including those contained in 7 CFR part 4284, subpart G, and 7 CFR parts 3015, 3016, 3017, 3018, 3019, and 3052 in effect on the date of grant approval; and the approved Letter of Conditions.

(b) [Reserved]

§ 4284.648 Fund disbursement.

The Agency will determine, based on 7 CFR parts 3015, 3016, and 3019, as applicable, whether disbursement of a grant will be by advance or reimbursement. A Request for Advance or Reimbursement, (available in any Agency office) must be completed by the grantee and submitted to the Agency no more often than monthly to request either advance or reimbursement of funds.

§§ 4284.649–4284.655 [Reserved]

§ 4284.656 Reporting.

(a) A Financial Status Report (available in any Agency office) and a project performance activity report will be required of all grantees on a quarterly basis. The grantee will cause said program to be completed within the total sums available to it, including the grant, in accordance with the scope of work and any necessary modifications thereof prepared by grantee and approved by the Agency. A final project performance report will be required with the final Financial Status Report. The final report may serve as the last quarterly report. The final report must provide complete information regarding the jobs created and saved as a result of the grant. Grantees shall constantly monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. Grantees are to submit an original of each report to the Agency. The project performance reports shall include, but not be limited to, the following:

(1) A comparison of actual accomplishments to the objectives established for that period;

(2) Problems, delays, or adverse conditions, if any, which have affected or will affect attainment of overall project objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation; and

(3) Objectives and timetable established for the next reporting period.

(b) Within 1 year after the conclusion of the project, the grantee will provide a project evaluation report based on criteria developed in accordance with §§ 4284.621(c) and 4284.638(a)(2)(v).

(c) The Agency may also require grantees to prepare a report suitable for public distribution describing the accomplishments made through the use of the grant and, in the case where the grant funded the development or application of a ''best practice,'' to describe that ''best practice.''

(d) The grantee will provide for Financial Management Systems which will include:

(1) Accurate, current, and complete disclosure of the financial result of each grant.

(2) Records which identify adequately the source and application of funds for grant-supporting activities, together with documentation to support the records. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

(3) Effective control over and accountability for all funds. Grantee shall adequately safeguard all such assets and shall assure that funds are used solely for authorized purposes.

(e) The grantee will retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least 3 years after grant closing except that the records shall be retained beyond the 3-year period if audit findings have not been resolved or if directed by the United States. Microfilm copies may be substituted in lieu of original records. The Agency and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the grantee which are pertinent to the specific grant program for the purpose of making audit, examination, excerpts, and transcripts.

§ 4284.657 Audit requirements.

Grantees must provide an annual audit in accordance with 7 CFR part 3052. The audit requirements apply to the years in which grant funds are received and years in which work is accomplished that will be paid for with grant funds.

§§ 4284.658–4284.666 [Reserved]

§ 4284.667 Grant servicing.

Grants will be serviced in accordance with part 1951, subparts E and O, of this title. Grantees will permit periodic inspection of the program operations by a representative of the Agency. All non-confidential information resulting from the Grantee's activities shall be made available to the general public on an equal basis.

§ 4284.668 Programmatic changes.

The Grantee shall obtain prior approval for any change to the scope or objectives of the approved project. Failure to obtain prior approval of changes to the scope of work or budget may result in suspension, termination, and recovery of grant funds.

§§ 4284.669–4284.683 [Reserved]

§ 4284.684 Exception authority.

The Administrator may, in individual cases, grant an exception to any requirement or provision of this subpart provided the Administrator determines that application of the requirement or provision would adversely affect USDA's interest.

§§ 4284.685–4284.698 [Reserved]

§ 4284.699 Member delegate clause.

No member of Congress shall be admitted to any share or part of this grant or any benefit that may arise therefrom; but this provision shall not be construed to bar as a contractor under the grant a publicly held corporation whose ownership might include a member of Congress.

§ 4284.700 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0570–0024 in accordance with the Paperwork Reduction Act of 1995. You

are not required to respond to this collection of information unless it displays a valid OMB control number.

Subparts H–I [Reserved]

Subpart J—Value-Added Producer Grant Program

SOURCE: 76 FR 10122, Feb. 23, 2011, unless otherwise noted.

GENERAL

§ 4284.901 Purpose.

This subpart implements the value-added agricultural product market development grant program (Value-Added Producer Grants (VAPG)) administered by the Rural Business-Cooperative Service whereby grants are made to enable viable agricultural producers (those who are prepared to progress to the next business level of planning for, or engaging in, value-added production) to develop businesses that produce and market value-added agricultural products. The provisions of this subpart constitute the entire provisions applicable to this Program; the provisions of subpart A of this part do not apply to this subpart.

§ 4284.902 Definitions.

The following definitions apply to this subpart:

Administrator. The Administrator of the Rural Business-Cooperative Service or designees or successors.

Agency. The Rural Business-Cooperative Service or successor for the programs it administers.

Agricultural commodity. An unprocessed product of farms, ranches, nurseries, and forests and natural and man-made bodies of water, that the independent producer has cultivated, raised, or harvested with legal access rights. Agricultural commodities include plant and animal products and their by-products, such as crops, forestry products, hydroponics, nursery stock, aquaculture, meat, on-farm generated manure, and fish and seafood products. Agricultural commodities do not include horses or other animals raised or sold as pets, such as cats, dogs, and ferrets.

Agricultural food product. Agricultural food products can be a raw, cooked, or processed edible substance, beverage, or ingredient intended for human consumption. These products cannot be animal feed, live animals, non-harvested plants, fiber, medicinal products, cosmetics, tobacco products, or narcotics.

Agricultural producer. An individual or entity directly engaged in the production of an agricultural commodity, or that has the legal right to harvest an agricultural commodity, that is the subject of the value-added project. Agricultural producers may ''directly engage'' either through substantially participating in the labor, management, and field operations themselves or by maintaining ownership and financial control of the agricultural operation.

Agricultural producer group. A membership organization that represents independent producers and whose mission includes working on behalf of independent producers and the majority of whose membership and board of directors is comprised of independent producers. The independent producers, on whose behalf the value-added work will be done, must be confirmed as eligible and identified by name or class.

Applicant. The legal entity submitting an application to participate in the competition for program funding. The applicant must be legally structured to meet one of the four eligible applicant types: Independent Producer, Agricultural Producer Group, Farmer or Rancher Cooperative, or Majority-Controlled Producer Based Business.

Beginning farmer or rancher. This term has the meaning given it in section 343(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1991(a)) and is an entity in which none of the individual owners have operated a farm or a ranch for more than 10 years. For the purposes of this subpart, a beginning farmer or rancher must be an Independent Producer that, at the time of application submission, currently owns and produces more than 50 percent of the agricultural commodity to which value will be added and has an applicant ownership or membership of 51 percent or more beginning farmers or ranchers. Except as provided, for the

purposes of §4284.922(c)(1)(i), to compete for reserved funds, for applicant entities with multiple owners, all owners must be eligible beginning farmers or ranchers.

Branding. The activities involved in the practice of creating a name, symbol or design that identifies and differentiates a product from other products that attracts and retains customers or encourages confidence in the quality and performance of that individual or firm's products or services.

Business plan. A formal statement of a set of business goals, the reasons why they are believed attainable, and the plan for reaching those goals, including pro forma financial statements appropriate to the term and scope of the project and sufficient to evidence the viability of the venture. It may also contain background information about the organization or team attempting to reach those goals.

Change in physical state. An irreversible processing activity that alters the raw agricultural commodity into a marketable value-added product. This processing activity must be something other than a post-harvest process that primarily acts to preserve the commodity for later sale. Examples of eligible value-added products in this category include, but are not limited to, fish fillets, diced tomatoes, bio-diesel fuel, cheese, jam, and wool rugs. Examples of ineligible products include, but are not limited to, pressure-ripened produce, raw bottled milk, container grown trees, plugs, and cut flowers.

Conflict of interest. A situation in which a person or entity has competing personal, professional, or financial interests that make it difficult for the person or business to act impartially. Regarding use of both grant and matching funds, Federal procurement standards prohibit transactions that involve a real or apparent conflict of interest for owners, employees, officers, agents, or their immediate family members having a financial or other interest in the outcome of the project; or that restrict open and free competition for unrestrained trade. Specifically, grant and matching funds may not be used to support costs for services or goods going to, or coming from, a person or entity with a real or apparent conflict of interest, including, but not limited to, owner(s) and their immediate family members. See §4284.923(a) and (b) for limited exceptions to this definition and practice for VAPG.

Departmental regulations. The regulations of the Department of Agriculture's Office of Chief Financial Officer (or successor office) as codified in 7 CFR parts 3000 through 3099, including, but not necessarily limited to, 7 CFR parts 3015 through 3019, 7 CFR part 3021, and 7 CFR part 3052, and successor regulations to these parts.

Emerging market. A new or developing, geographic or demographic market that is new to the applicant or the applicant's product. To qualify as new, the applicant cannot have supplied this product, geographic, or demographic market for more than two years at time of application submission.

Family farm. The term has the meaning given it in §761.2 of title 7, Code of Federal Regulations as in effect on November 8, 2007 (*see* 7 CFR parts 700–799, revised as of January 1, 2007), in effect that, a Family Farm produces agricultural commodities for sale in sufficient quantity to be recognized as a farm and not a rural residence, owners are primarily responsible for daily physical labor and management, hired help only supplements family labor, and owners are related by blood or marriage or are immediate family.

Farm or ranch. Any place from which $1,000 or more of agricultural products were raised and sold or would have been raised and sold during the previous year, but for an event beyond the control of the farmer or rancher.

Farm- or Ranch-based renewable energy. An agricultural commodity that is used to generate renewable energy on a farm or ranch owned or leased by the independent producer applicant that produces the agricultural commodity. On-farm generation of energy from wind, solar, geothermal or hydro sources are not eligible.

Farmer or rancher cooperative. A business owned and controlled by independent producers that is incorporated, or otherwise identified by the state in which it operates, as a cooperatively operated business. The independent producers, on whose behalf the value-

added work will be done, must be confirmed as eligible and identified by name or class.

Feasibility study. An analysis by a qualified consultant of the economic, market, technical, financial, and management capabilities of a proposed project or business in terms of the project's expectation for success.

Financial feasibility. The ability of a project or business to achieve the income, credit, and cash flows to financially sustain a venture over the long term.

Fiscal year. The Federal government's fiscal year.

Immediate family. Individuals who are closely related by blood, marriage, or adoption, or live within the same household, such as a spouse, domestic partner, parent, child, brother, sister, aunt, uncle, grandparent, grandchild, niece, or nephew.

Independent producers.

(1) Individual agricultural producers or entities that are solely owned and controlled by agricultural producers. Independent producers must produce and own the majority of the agricultural commodity to which value will be added as the subject of the project proposal. Independent producers must maintain ownership of the agricultural commodity or product from its raw state through the production and marketing of the value-added product. Producers who produce the agricultural commodity under contract for another entity, but do not own the agricultural commodity or value-added product produced are not considered independent producers. Entities that contract out the production of an agricultural commodity are not considered independent producers. Independent producer entities must confirm their owner members as eligible and must identify them by name or class.

(2) A steering committee comprised of specifically identified agricultural producers in the process of organizing one of the four program eligible entity types that will operate a value-added venture and will supply the majority of the agricultural commodity for the value-added project during the grant period. Such entity must be legally authorized before the grant agreement will be approved by the Agency.

(3) A harvester of an agricultural commodity that can document their legal right to access and harvest the majority of the agricultural commodity that will be used for the value-added product.

Local or regional supply network. An interconnected group of entities through which agricultural based products move from production through consumption in a local or regional area of the United States. Examples of participants in a supply network may include agricultural producers, aggregators, processors, distributors, wholesalers, retailers, consumers, and entities that organize or provide facilitation services and technical assistance for development of such networks.

Locally-produced agricultural food product. Any agricultural food product, as defined in this subpart, that is raised, produced, and distributed in:

(1) The locality or region in which the final product is marketed, so that the total distance that the product is transported is less than 400 miles from the origin of the product; or

(2) The State in which the product is produced.

Majority-controlled producer-based business venture. An entity (except farmer or rancher cooperatives) in which more than 50 percent of the financial ownership and voting control is held by independent producers. Independent Producer members must be confirmed as eligible and must be identified by name or class, along with their percentage of ownership.

Marketing plan. A plan for the project conducted by a qualified consultant that identifies a market window, potential buyers, a description of the distribution system and possible promotional campaigns.

Matching funds. A cost-sharing contribution to the project via confirmed cash or funding commitments from eligible sources without a real or apparent conflict of interest, that are used for eligible project purposes during the grant funding period. Matching funds must be at least equal to the grant amount, and combined grant and matching funds must equal 100 percent of the total project costs. All matching funds must be verified by authentic documentation from the source as part

of the application. Matching funds must be provided in the form of confirmed applicant cash, loan, or line of credit, or provided in the form of a confirmed applicant or family member in-kind contribution that meets the requirements and limitations in §4284.923(a) and (b); or confirmed third-party cash or eligible third-party in-kind contribution; or confirmed non-federal grant sources (unless otherwise provided by law). See examples of ineligible matching funds and matching funds verification requirements in §§4284.924 and 4284.931.

Medium-sized farm. A farm or ranch that is structured as a family farm that has averaged $250,001 to $1,000,000 in annual gross sales of agricultural commodities in the previous three years.

Mid-tier value chain. Local and regional supply networks that link independent producers with businesses and cooperatives that market value-added agricultural products in a manner that:

(1) Targets and strengthens the profitability and competitiveness of small and medium-sized farms and ranches that are structured as a family farm; and

(2) Obtains agreement from an eligible agricultural producer group, farmer or rancher cooperative, or majority-controlled producer-based business venture that is engaged in the value chain on a marketing strategy.

(3) For mid-tier value chain projects, the Agency recognizes that, in a supply chain network, a variety of raw agricultural commodity and value-added product ownership and transfer arrangements may be necessary. Consequently, applicant ownership of the raw agricultural commodity and value-added product from raw through value-added is not necessarily required, as long as the mid-tier value chain proposal can demonstrate an increase in customer base and an increase in revenue returns to the applicant producers supplying the majority of the raw agricultural commodity for the project.

Planning grant. A grant to facilitate the development of a defined program of economic planning activities to determine the viability of a potential value-added venture, and specifically for the purpose of paying for a qualified consultant to conduct and develop a feasibility study, business plan, and/or marketing plan associated with the processing and/or marketing of a value-added agricultural product.

Produced in a manner that enhances the value of the agricultural commodity. The use of a recognizably coherent set of agricultural production practices in the growing or raising of the raw commodity, such that a differentiated market identity is created for the resulting product. Examples of eligible products in this category include, but are not limited to, sustainably grown apples, eggs produced from free-range chickens, or organically grown carrots.

Product segregation. Separating an agricultural commodity or product on the same farm from other varieties of the same commodity or product on the same farm during production and harvesting, with assurance of continued separation from similar commodities during processing and marketing in a manner that results in the enhancement of the value of the separated commodity or product.

Pro forma financial statement. A financial statement that projects the future financial position of a company. The statement is part of the business plan and includes an explanation of all assumptions, such as input prices, finished product prices, and other economic factors used to generate the financial statements. The statement must include projections for a minimum of three years in the form of cash flow statements, income statements, and balance sheets.

Project. All of the eligible activities to be funded by grant and matching funds.

Qualified consultant. An independent, third-party, without a conflict of interest, possessing the knowledge, expertise, and experience to perform the specific task required in an efficient, effective, and authoritative manner.

Rural Development. A mission area of the Under Secretary for Rural Development within the U.S. Department of Agriculture (USDA), which includes Rural Housing Service, Rural Utilities Service, and Rural Business-Cooperative Service and their successors.

Small farm. A farm or ranch that is structured as a Family Farm that has

averaged $250,000 or less in annual gross sales of agricultural products in the previous three years.

Socially disadvantaged farmer or rancher. This term has the meaning given it in section 355(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2003(e)): A farmer or rancher who is a member of a ''socially disadvantaged group.'' In this definition, the term farmer or rancher means a person that is engaged in farming or ranching or an entity solely owned by individuals who are engaged in farming or ranching. A socially disadvantaged group means a group whose members have been subjected to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities. In the event that there are multiple farmer or rancher owners of the applicant organization, the Agency requires that at least 51 percent of the ownership be held by members of a socially disadvantaged group. Except as provided, for the purposes of § 4284.922(c)(1)(ii), to compete for reserved funds, all farmer and rancher owners must be members of a socially disadvantaged group.

State. Any of the 50 States of the United States, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

State director. The term ''State Director'' means, with respect to a State, the Director of the Rural Development State Office.

State office. USDA Rural Development offices located in each state.

Total project cost. The sum of all grant and matching funds in the project budget that reflects the eligible project tasks associated with the work plan.

Value-added agricultural product. Any agricultural commodity that meets the requirements specified in paragraphs (1) and (2) of this definition.

(1) The agricultural commodity must meet one of the following five value-added methodologies:

(i) Has undergone a change in physical state;

(ii) Was produced in a manner that enhances the value of the agricultural commodity;

(iii) Is physically segregated in a manner that results in the enhancement of the value of the agricultural commodity;

(iv) Is a source of farm- or ranch-based renewable energy, including E–85 fuel; or

(v) Is aggregated and marketed as a locally-produced agricultural food product.

(2) As a result of the change in physical state or the manner in which the agricultural commodity was produced, marketed, or segregated:

(i) The customer base for the agricultural commodity is expanded and

(ii) A greater portion of the revenue derived from the marketing, processing, or physical segregation of the agricultural commodity is available to the producer of the commodity.

Venture. The business and its value-added undertakings, including the project and other related activities.

Working capital grant. A grant to provide funds to operate a value-added project, specifically to pay the eligible project expenses related to the processing and/or marketing of the value-added product that are eligible uses of grant funds.

§ 4284.903 Review or appeal rights.

A person may seek a review of an Agency decision under this subpart from the appropriate Agency official that oversees the program in question or appeal to the National Appeals Division in accordance with 7 CFR Part 11.

§ 4284.904 Exception authority.

Except as specified in paragraphs (a) and (b) of this section, the Administrator may make exceptions to any requirement or provision of this subpart, if such exception is necessary to implement the intent of the authorizing statute in a time of national emergency or in accordance with a Presidentially-declared disaster, or, on a case-by-case basis, when such an exception is in the best financial interests of the Federal Government and is otherwise not in conflict with applicable laws.

(a) *Applicant eligibility*. No exception to applicant eligibility can be made.

(b) *Project eligibility*. No exception to project eligibility can be made.

§4284.905 Nondiscrimination and compliance with other Federal laws.

(a) *Other Federal laws*. Applicants must comply with other applicable Federal laws, including the Equal Employment Opportunities Act of 1972, the Americans with Disabilities Act, the Equal Credit Opportunity Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and 7 CFR part 1901, subpart E.

(b) *Nondiscrimination*. The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). Any applicant that believes it has been discriminated against as a result of applying for funds under this program should contact: USDA, Director, Office of Adjudication and Compliance, 1400 Independence Avenue, SW., Washington, DC 20250–9410, or call (800) 795–3272 (voice) or (202) 720–6382 (TDD) for information and instructions regarding the filing of a Civil Rights complaint. USDA is an equal opportunity provider, employer, and lender.

(c) *Civil rights compliance*. Recipients of grants must comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973. This includes collection and maintenance of data on the basis of race, sex and national origin of the recipient's membership/ownership and employees. These data must be available to conduct compliance reviews in accordance with 7 CFR Part 1901, subpart E. For grants, initial compliance review will be conducted after Form RD 400–4, ''Assurance Agreement,'' is signed and one subsequent compliance review after the last disbursement of grant funds have been made, and the facility or programs has been in full operations for 90 days.

(d) *Executive Order 12898*. When a project is proposed and financial assistance is requested, the Agency will conduct a Civil Rights Impact Analysis (CRIA) with regards to environmental justice. The CRIA must be conducted and the analysis documented utilizing Form RD 2006–38, ''Environmental Justice (EJ) and Civil Rights Impact Analysis (CRIA) Certification.'' This certification must be done prior to grant approval, obligation of funds, or other commitments of Agency resources, including issuance of a Letter of Conditions, whichever occurs first.

§4284.906 State laws, local laws, regulatory commission regulations.

If there are conflicts between this subpart and State or local laws or regulatory commission regulations, the provisions of this subpart will control.

§4284.907 Environmental requirements.

All grants awarded under this subpart are subject to the environmental requirements in subpart G of 7 CFR part 1940 or successor regulations. Applications for planning grants are generally excluded from the environmental review process by §1940.333 of this title. Applicants for working capital grants must submit Form RD 1940–20, ''Request for Environmental Information.''

§4284.908 Compliance with other regulations.

(a) *Departmental regulations*. Applicants must comply with the regulations of the Department of Agriculture's Office of Chief Financial Officer (or successor office) as codified in 7 CFR parts 3000 through 3099, including, but not necessarily limited to, 7 CFR parts 3015 through 3019, 7 CFR part 3021, and 7 CFR part 3052, and successor regulations to these parts.

(b) *Cost principles*. Applicants must comply with the cost principles found

in 2 CFR part 230 and in 48 CFR part 31.2.

(c) *Definitions*. If a term is defined differently in the Departmental Regulations, 2 CFR part 230, or 48 CFR 31.2 and in this subpart, such term shall have the meaning as found in this subpart.

§ 4284.909 Forms, regulations, and instructions.

Copies of all forms, regulations, instructions, and other materials related to the program referenced in this subpart may be obtained through the Agency.

§§ 4284.910–4284.914 [Reserved]

FUNDING AND PROGRAMMATIC CHANGE NOTIFICATIONS

§ 4284.915 Notifications.

In implementing this subpart, the Agency will issue notifications addressing funding and programmatic changes, as specified in paragraphs (a) and (b) of this section, respectively. The methods that the Agency will use in making these notifications is specified in paragraph (c) of this section, and the timing of these notifications is specified in paragraph (d) of this section.

(a) *Funding and simplified applications*. The Agency will issue notifications concerning:

(1) The funding level and the minimum and maximum grant amount and any additional funding information as determined by the Agency; and

(2) The contents of simplified applications, as provided for in § 4284.932.

(b) *Programmatic changes*. The Agency will issue notifications of the programmatic changes specified in paragraphs (b)(1) through (4) of this section.

(1) The following is the set of Administrator priority categories that may be considered if the provisions specified in § 4284.942(b)(6) are not to be used for awarding Administrator points:

(i) Unserved or underserved areas.

(ii) Geographic diversity.

(iii) Emergency conditions.

(iv) Priority mission area plans, goals, and objectives.

(2) Additional reports that are generally applicable across projects within a program associated with the monitoring of and reporting on project performance.

(3) Any requirement specified in § 4284.933.

(4) Preliminary review information.

(c) *Notification methods*. The Agency will issue the information specified in paragraphs (a) and (b) of this section in one or more FEDERAL REGISTER notices. In addition, all information will be available at any Rural Development office.

(d) *Timing*. The Agency will make the information specified in paragraphs (a) and (b) of this section available as specified in paragraphs (d)(1) through (3) of this section.

(1) The Agency will make the information specified in paragraph (a) of this section available each fiscal year.

(2) The Agency will make the information specified in paragraph (b)(1) of this section available at least 60 days prior to the application deadline, as applicable.

(3) The Agency will make the information specified in paragraphs (b)(2) through (4) of this section available on an as needed basis.

§§ 4284.916–4284.919 [Reserved]

ELIGIBILITY

§ 4284.920 Applicant eligibility.

To be eligible for a grant under this subpart, an applicant must demonstrate that they meet the requirements specified in paragraphs (a) through (d) of this section, as applicable, and are subject to the limitations specified in paragraphs (e) and (f) of this section.

(a) *Type of applicant*. The applicant must demonstrate that they meet all definition requirements for one of the following applicant types:

(1) An independent producer;

(2) An agricultural producer group;

(3) A farmer or rancher cooperative; or

(4) A majority-controlled producer-based business venture.

(b) *Emerging market*. An applicant that is an agricultural producer group, a farmer or rancher cooperative, or a majority-controlled producer-based business venture must demonstrate

that they are entering into an emerging market as a result of the proposed project.

(c) *Citizenship*.

(1) Individual applicants must certify that they:

(i) Are citizens or nationals of the United States (U.S.), the Republic of Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, or American Samoa, or

(ii) Reside in the U.S. after legal admittance for permanent residence.

(2) Entities other than individuals must certify that they are at least 51 percent owned by individuals who are either citizens as identified under paragraph (c)(1)(i) of this section or legally admitted permanent residents residing in the U.S. This paragraph is not applicable if the entity is owned solely by members of one immediate family. In such instance, if at least one of the entity owners is a citizen or national, as defined in paragraph (c)(1) of this section, then the entity is eligible.

(d) *Legal authority and responsibility*. Each applicant must demonstrate that they have, or can obtain, the legal authority necessary to carry out the purpose of the grant, and they must evidence good standing from the appropriate state agency or equivalent.

(e) *Multiple grant eligibility*. An applicant may submit only one application in response to a solicitation, and must explicitly direct that it compete in either the general funds competition or in one of the named reserved funds competitions. Separate entities with identical or greater than 75 percent common ownership may only submit one application for one entity per year. Applicants who have already received a planning grant for the proposed project cannot receive another planning grant for the same project. Applicants who have already received a working capital grant for the proposed project cannot receive any additional grants for that project.

(f) *Active VAPG grant*. If an applicant has an active value-added grant at the time of a subsequent application, the currently active grant must be closed out within 90 days of the application submission deadline for the subsequent competition, as published in the annual NOFA.

§4284.921 Ineligible applicants.

(a) Consistent with the Departmental regulations, an applicant is ineligible if the applicant is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, ''Debarment and Suspension.''

(b) An applicant will be considered ineligible for a grant due to an outstanding judgment obtained by the U.S. in a Federal Court (other than U.S. Tax Court), is delinquent on the payment of Federal income taxes, or is delinquent on Federal debt.

§4284.922 Project eligibility.

To be eligible for a VAPG grant, the application must demonstrate that the project meets the requirements specified in paragraphs (a) through (c) of this section, as applicable.

(a) *Product eligibility*. Each product that is the subject of the proposed project must meet the definition of a value-added agricultural product, including a demonstration that:

(1) The value-added product results from one of the value-added methodologies identified in paragraphs (1)(i) through (v) of the definition of value-added agricultural product;

(2) As a result of the project, the customer base for the agricultural commodity or value-added product is expanded; and

(3) As a result of the project, a greater portion of the revenue derived from the marketing or processing of the value-added product is available to the applicant producer of the agricultural commodity.

(b) *Purpose eligibility*.

(1) The grant funds requested must not exceed the amount specified in the annual solicitation for planning and working capital grant requests, per §4284.915.

(2) The matching funds required for the project budget must be eligible and without a real or apparent conflict of interest, available during the project period, and source verified in the application.

(3) The proposed project must be limited to eligible planning or working capital activities as defined at §4284.923, as applicable, with eligible

tasks directly related to the processing and/or marketing of the subject value-added product, to be demonstrated in the required work plan and budget as described at § 4284.922(b)(5).

(4) Applications that propose ineligible expenses in excess of 10 percent of total project costs will be deemed ineligible to compete for funds. Eligible applications selected for award must eliminate any ineligible expenses from the project budget.

(5) The project work plan and budget must demonstrate eligible sources and uses of funds and must:

(i) Present a detailed narrative description of the eligible activities and tasks related to the processing and/or marketing of the value-added product along with a detailed breakdown of all estimated costs allocated to those activities and tasks;

(ii) Identify the key personnel that will be responsible for overseeing and/or conducting the activities or tasks and provide reasonable and specific timeframes for completion of the activities and tasks;

(iii) Identify the sources and uses of grant and matching funds for all activities and tasks specified in the budget; and indicate that matching funds will be spent at a rate equal to or in advance of grant funds; and

(iv) Present a project budget period that commences within the start date range specified in the annual solicitation, concludes not later than 36 months after the proposed start date, and is scaled to the complexity of the project.

(6) Except as noted in paragraphs (b)(6)(i) and (ii) of this section, working capital applications must include a feasibility study and business plan completed specifically for the proposed value-added project by a qualified consultant. The Agency must concur in the acceptability or adequacy of the feasibility study and business plan for eligibility purposes.

(i) An Independent Producer applicant seeking a working capital grant of $50,000 or more, who can demonstrate that they are proposing market expansion for an existing value-added product(s) that they currently own and produce from at least 50 percent of their own agricultural commodity and that they have produced and marketed for at least 2 years at time of application submission, may submit a business or marketing plan for the value-added project in lieu of a feasibility study. These applications must still document for increased customer base and increased revenues returning to the applicant producers as a result of the project, and meet all other eligibility requirements. Further, the waiver of the independent feasibility study does not change the proposal evaluation or scoring elements that pertain to issues that might be supported by an independent feasibility study, so applicants are encouraged to well-document their project plans and expectations for success in their proposals.

(ii) All four applicant types that submit a Simplified Application for working capital grant funds of less than $50,000 are not required to provide an independent feasibility study or business plan for the project/venture but must provide adequate documentation to demonstrate the expected increases in customer base and revenues resulting from the project that will benefit the producer applicants supplying the majority of the agricultural commodity for the project. All other eligibility requirements remain the same. The waiver of the requirement to submit a feasibility study and business plan does not change the proposal evaluation or scoring elements that pertain to issues that might be supported by a feasibility study or business plan, so applicants are encouraged to well-document their project plans and expectations for success in their proposals.

(7) If the applicant is an agricultural producer group, a farmer or rancher cooperative, or a majority-controlled producer-based business venture, the applicant must demonstrate that it is entering an emerging market unserved by the applicant in the previous two years.

(8) All applicants requesting working capital funds must either be currently marketing each value-added agricultural product that is the subject of the grant application, or be ready to implement the working capital activities in accord with the budget and work plan timeline proposed.

(c) *Reserved funds eligibility*. In addition to the requirements specified in paragraphs (a) and (b) of this section, the requirements specified in paragraphs (c)(1) and (2) of this section must be met, as applicable, if applicants choose to compete for reserved funds. All eligible, but unfunded reserved funds applications will be eligible to compete for general funds in that same fiscal year, as funding levels permit.

(1) If the applicant is applying for beginning farmer or rancher, or socially-disadvantaged farmer or rancher reserved funds, the applicant must provide the following documentation to demonstrate that the applicant meets all the requirements for one of these definitions.

(i) For beginning farmers and ranchers, documentation must include a description from each of the individual owner(s) of the applicant farm or ranch organization, addressing the qualifying elements in the beginning farmer or rancher definition, including the length and nature of their individual owner/operator experience at any farm in the previous 10 years, along with one IRS income tax form from the previous 10 years showing that each of the individual owner(s) did not file farm income; or a detailed letter from a certified public accountant or attorney certifying that each owner meets the reserved funds beginning farmer or rancher eligibility requirements. For applicant entities with multiple owners, all owners must be eligible beginning farmers or ranchers.

(ii) For socially disadvantaged farmers and ranchers, documentation must include a description of the applicant's farm or ranch ownership structure and demographic profile that indicates the owner(s)' membership in a socially disadvantaged group that has been subjected to racial, ethnic or gender prejudice; including identifying the total number of owners of the applicant organization; along with a self-certification statement from the individual owner(s) evidencing their membership in a socially disadvantaged group. All farmer and rancher owners must be members of a socially disadvantaged group.

(2) If the applicant is applying for Mid-Tier Value Chain reserved funds, the applicant must be one of the four VAPG applicant types and the application must provide documentation demonstrating that the project meets the Mid-Tier Value Chain definition, and must:

(i) Demonstrate that the project proposes development of a local or regional supply network of an interconnected group of entities (including nonprofit organizations, as appropriate) through which agricultural commodities and value-added products move from production through consumption in a local or regional area of the United States, including a description of the network, its component members, either by name or by class, and its purpose;

(ii) Describe at least two alliances, linkages, or partnerships within the value chain that link independent producers with businesses and cooperatives that market value-added agricultural commodities or value-added products in a manner that benefits small or medium-sized farms and ranches that are structured as a family farm, including the names of the parties and the nature of their collaboration;

(iii) Demonstrate how the project, due to the manner in which the value-added product is marketed, will increase the profitability and competitiveness of at least two, eligible, small or medium-sized farms or ranches that are structured as a family farm, including documentation to confirm that the participating small or medium-sized farms are structured as a family farm and meet these program definitions. A description of the two farms or ranches confirming they meet the Family Farm requirements, and IRS income tax forms evidencing eligible farm income is sufficient;

(iv) Document that the eligible agricultural producer group/cooperative/majority-controlled producer-based business venture applicant organization has obtained at least one agreement with another member of the supply network that is engaged in the value chain on a marketing strategy; or that the eligible independent producer applicant has obtained at least

one agreement from an eligible agricultural producer group/cooperative/majority-controlled producer-based business venture engaged in the value-chain on a marketing strategy;

(A) For Planning grants, agreements may include letters of commitment or intent to partner on marketing, distribution or processing; and should include the names of the parties with a description of the nature of their collaboration. For Working Capital grants, demonstration of the actual existence of the executed agreements is required.

(B) Independent Producer applicants must provide documentation to confirm that the non-applicant agricultural producer group/cooperative/majority-controlled partnering entity meets program eligibility definitions, except that, in this context, the partnering entity does not need to supply any of the raw agricultural commodity for the project;

(v) Demonstrate that the applicant organization currently owns and produces more than 50 percent of the raw agricultural commodity that will be used for the value-added product that is the subject of the proposal; and

(vi) Demonstrate that the project will result in an increase in customer base and an increase in revenue returns to the applicant producers supplying the majority of the raw agricultural commodity for the project.

(d) *Priority*. In addition, applicants that demonstrate eligibility may apply for priority points if they propose projects that contribute to increasing opportunities for beginning farmers or ranchers, socially disadvantaged farmers or ranchers, or if they are Operators of small- or medium-sized farms or ranches that are structured as a family farm, propose Mid-Tier Value Chain projects, or are a farmer or rancher Cooperative.

(1) Applicants seeking priority points as beginning farmers or ranchers or as socially disadvantaged farmers or ranchers must provide the documentation specified in paragraphs (c)(1)(i) or (ii), as applicable, of this section. For entities with multiple owners or members, 51 percent of owners or members must be eligible beginning farmers or ranchers or socially disadvantaged farmers or ranchers, as applicable.

(2) Applicants seeking priority points as Operators of small- or medium-sized farms and ranches that are structured as a family farm must:

(i) Be structured as family farm;

(ii) Meet all requirements in the associated definitions; and

(iii) Provide the following documentation:

(A) A description from the individual owner(s) of the applicant organization addressing each qualifying element in the definitions, including identification of the average annual gross sales of agricultural commodities from the farm in the previous three years, not to exceed $250,000 for small operators or $1,000,000 for medium operators;

(B) The names and identification of the blood or marriage relationships of all applicant/owners of the farm; and

(C) A statement that the applicant/owners are primarily responsible for the daily physical labor and management of the farm with hired help merely supplementing the family labor.

(3) Applicants seeking priority points for Mid-Tier Value Chain proposals must be one of the four eligible applicant types and provide the documentation specified in paragraphs (c)(2)(i) through (c)(2)(vi) of this section, demonstrating that the project meets the Mid-Tier Value Chain definition.

(4) Applicants seeking priority points for a Farmer or Rancher Cooperative must:

(i) Demonstrate that it is a business owned and controlled by Independent Producers that is legally incorporated as a Cooperative; or that it is a business owned and controlled by Independent Producers that is not legally incorporated as a Cooperative, but is identified by the state in which it operates as a cooperatively operated business;

(ii) Identify, by name or class, and confirm that the Independent Producers on whose behalf the value-added work will be done meet the definition requirements for an Independent Producer, including that each member is an individual agricultural producer, or an entity that is solely owned and controlled by agricultural producers, that is directly engaged in the production of

the majority of the agricultural commodity to which value will be added; and

(iii) Provide evidence of ''good standing'' as a cooperatively operated business in the state of incorporation or operations, as applicable.

§4284.923 Eligible uses of grant and matching funds.

In general, grant and cost-share matching funds have the same use restrictions and must be used to fund only the costs for eligible purposes as defined in paragraphs (a) and (b) of this section.

(a) Planning funds may be used to pay for a qualified consultant to conduct and develop a feasibility study, business plan, and/or marketing plan associated with the processing and/or marketing of a value-added agricultural product. Planning funds may not be used to compensate applicants or family members for participation in feasibility studies. However, in-kind contribution of matching funds to cover applicant or family member participation in planning activities is allowed so long as the value of such contribution does not exceed a maximum of 25 percent of the total project costs and an adequate explanation of the basis for the valuation, referencing comparable market values, salary and wage data, expertise or experience of the contributor, per unit costs, industry norms, etc., is provided. Final valuation for applicant or family member in-kind contributions is at the discretion of the Agency. Planning funds may not be used to evaluate the agricultural production of the commodity itself, other than to determine the project's input costs related to the feasibility of processing and marketing the value-added product.

(b) Working capital funds may be used to pay the project's operational costs directly related to the processing and/or marketing of the value-added product. Examples of eligible working capital expenses include designing or purchasing a financial accounting system for the project, paying salaries of employees without ownership or immediate family interest to process and/or market and deliver the value-added product to consumers, paying for inventory supply costs from a third party necessary to produce the value-added product from the agricultural commodity, and paying for a marketing campaign for the value-added product. In-kind contributions may include appropriately valued inventory of raw commodity to be used in the project. In-kind contributions of matching funds may also include contributions of time spent on eligible tasks by applicants or applicant family members so long as the value of such contribution does not exceed a maximum of 25 percent of the total project costs and an adequate explanation of the basis for the valuation, referencing comparable market values, salary and wage data, expertise or experience of the contributor, per unit costs, industry norms, etc. is provided. Final valuation for applicant or family member in-kind contributions is at the discretion of the Agency.

§4284.924 Ineligible uses of grant and matching funds.

Federal procurement standards prohibit transactions that involve a real or apparent conflict of interest for owners, employees, officers, agents, or their immediate family members having a personal, professional, financial or other interest in the outcome of the project; including organizational conflicts, and conflicts that restrict open and free competition for unrestrained trade. In addition, the use of funds is limited to only the eligible activities identified in §4284.923 and prohibits other uses of funds. Ineligible uses of grant and matching funds awarded under this subpart include, but are not limited to:

(a) Support costs for services or goods going to or coming from a person or entity with a real or apparent conflict of interest, except as specifically noted for limited in-kind matching funds in §4284.923(a) and (b);

(b) Pay costs for scenarios with noncompetitive trade practices;

(c) Plan, repair, rehabilitate, acquire, or construct a building or facility (including a processing facility);

(d) Purchase, lease purchase, or install fixed equipment, including processing equipment;

(e) Purchase or repair vehicles, including boats;

(f) Pay for the preparation of the grant application;

(g) Pay expenses not directly related to the funded project for the processing and marketing of the value-added product;

(h) Fund research and development;

(i) Fund political or lobbying activities;

(j) Fund any activities prohibited by 7 CFR parts 3015 and 3019, 2 CFR part 230, and 48 CFR subpart 31.2.

(k) Fund architectural or engineering design work;

(l) Fund expenses related to the production of any agricultural commodity or product, including seed, rootstock, labor for harvesting the crop, and delivery of the commodity to a processing facility;

(m) Conduct activities on behalf of anyone other than a specifically identified independent producer or group of independent producers, as identified by name or class. The Agency considers conducting industry-level feasibility studies or business plans, that are also known as feasibility study templates or guides or business plan templates or guides, to be ineligible because the assistance is not provided to a specific group of Independent Producers;

(n) Pay owner or immediate family member salaries or wages;

(o) Pay for goods or services from a person or entity that employs the owner or an immediate family member;

(p) Duplicate current services or replace or substitute support previously provided;

(q) Pay any costs of the project incurred prior to the date of grant approval, including legal or other expenses needed to incorporate or organize a business;

(r) Pay any judgment or debt owed to the United States;

(s) Purchase land; or

(t) Pay for costs associated with illegal activities.

§ 4284.925 Funding limitations.

(a) Grant funds may be used to pay up to 50 percent of the total eligible project costs, subject to the limitations established for maximum total grant amount.

(b) The maximum total grant amount provided to a grantee in any one year shall not exceed the amount announced in an annual notice issued pursuant to § 4284.915, but in no event may the total amount of grant funds provided to a grant recipient exceed $500,000.

(c) A grant under this subsection shall have a term that does not exceed 3 years, and a project start date within 90 days of the date of award, unless otherwise specified in a notice pursuant to § 4284.915. Grant project periods should be scaled to the complexity of the objectives for the project. The Agency may extend the term of the grant period, not to exceed the 3-year maximum.

(d) The aggregate amount of awards to majority controlled producer-based businesses may not exceed 10 percent of the total funds obligated under this subpart during any fiscal year.

(e) Not more than 5 percent of funds appropriated each year may be used to fund the Agricultural Marketing Resource Center, to support electronic capabilities to provide information regarding research, business, legal, financial, or logistical assistance to independent producers and processors.

(f) Each fiscal year, the following amounts of reserved funds will be made available:

(1) 10 percent to fund projects that benefit beginning farmers or ranchers, or socially-disadvantaged farmers or ranchers; and

(2) 10 percent to fund projects that propose development of mid-tier value chains.

(3) Funds not obligated by June 30 of each fiscal year shall be available to the Secretary to make grants under this subsection to eligible entities as determined by the Secretary.

§§ 4284.926–4284.929 [Reserved]

APPLYING FOR A GRANT

§ 4284.930 Preliminary review.

The Agency encourages applicants to contact their State Office well in advance of the application submission deadline, to ask questions and to discuss applicant and project eligibility potential. At its option, the Agency may establish a preliminary review deadline so that it may informally assess the eligibility of the application and its completeness. The result of the

preliminary review is not binding on the Agency. To implement this section, the Agency will issue a notification addressing this issue in accordance with § 4284.915.

§ 4284.931 Application package.

All applicants are required to submit an application package that is comprised of the elements in this section.

(a) *Application forms.* The following application forms (or their successor forms) must be completed when applying for a grant under this subpart.

(1) Form SF–424, ''Application for Federal Assistance.''

(2) Form SF–424A, ''Budget Information-Non-Construction Programs.''

(3) Form SF–424B, ''Assurances—Non-Construction Programs.''

(4) Form RD 400–4, ''Assurance Agreement.''

(5) Form RD 1940–20, ''Request for Environmental Information.'' Applications for planning grants are generally excluded from the environmental review process by § 1940.333 of this title.

(6) All applicants are required to have a DUNS number (including individuals and sole proprietorships).

(b) *Application content.* The following content items must be completed when applying for a grant under this subpart:

(1) *Eligibility discussion.* The applicant must demonstrate in detail how the:

(i) Applicant eligibility requirements in §§ 4284.920 and 4284.921 are met;

(ii) Project eligibility requirements in § 4284.922 are met;

(iii) Eligible use of grant and matching funds requirements in §§ 4284.923 and 4284.924 are met; and

(iv) Funding limitation requirements in § 4284.925 are met.

(2) *Evaluation criteria.* Using the format prescribed by the application package, the applicant must address each evaluation criterion identified below.

(i) *Performance Evaluation Criteria.* As part of the application, applicants for both planning and working capital grants must suggest one or more relevant criterion that will be used to evaluate the performance of the grant project during its operational phase post-award, as benchmarks to ascertain whether or not the primary goals and objectives proposed in the work plan are accomplished during the project period. These benchmarks should relate to the overall project goal of creating and serving new markets, with a resulting increase in customer base and increase in revenues returning to the producer applicants; as well as to the practical and/or logistical activities and tasks to be accomplished during the project period. The Agency application package will provide additional instruction to assist applicants when responding to this criterion. Applicant suggested performance criteria will be incorporated into the applicant's semi-annual and final reporting requirements if selected for award, and will be specified in the grant agreement associated with the award. In addition, applicants for both planning and working capital grants must identify the number of jobs anticipated to be created or saved as a direct result of the project. Planning grant applicants should identify the number of jobs expected to be created or saved as a result of continuing the project into its operational phase. Working capital grant applicants should identify the actual number of jobs created or saved as a result of the project.

(ii) *Proposal evaluation criteria.* Applicants for both planning and working capital grants must address each proposal evaluation criterion identified in § 4284.942 in narrative form, in the application package.

(3) *Certification of matching funds.* Using the format prescribed by the application package, applicants must certify that:

(i) Cost-share matching funds will be spent in advance of grant funding, such that for every dollar of grant funds disbursed, not less than an equal amount of matching funds will have been expended prior to submitting the request for reimbursement; and

(ii) If matching funds are proposed in an amount exceeding the grant amount, those matching funds must be spent at a proportional rate equal to the match-to-grant ratio identified in the proposed budget.

(4) *Verification of cost-share matching funds.* Using the format prescribed by the application package, the applicant

must demonstrate and provide authentic documentation from the source to confirm the eligibility and availability of both cash and in-kind contributions that meet the definition requirements for Matching Funds and Conflict of Interest in § 4284.902, as well as the following criteria:

(i) Matching funds are subject to the same use restrictions as grant funds, and must be spent on eligible project expenses during the grant funding period.

(ii) Matching funds must be from eligible sources without a real or apparent conflict of interest.

(iii) Matching funds must be at least equal to the amount of grant funds requested, and combined grant and matching funds must equal 100 percent of the total eligible project costs.

(iv) Unless provided by other authorizing legislation, other Federal grant funds cannot be used as matching funds.

(v) Matching funds must be provided in the form of confirmed applicant cash, loan, or line of credit; or provided in the form of a confirmed applicant or family member in-kind contribution that meets the requirements and limitations specified in § 4284.923(a) and (b); or provided in the form of confirmed third-party cash or eligible third-party in-kind contribution; or non-federal grant sources (unless otherwise provided by law).

(vi) Examples of ineligible matching funds include funds used for an ineligible purpose, contributions donated outside the proposed grant funding period, third-party in-kind contributions that are over-valued, or are without substantive documentation for an independent reviewer to confirm a valuation, conducting activities on behalf of anyone other than a specific Independent Producer or group of Independent Producers, expected program income at time of application, or instances where a real or apparent conflict of interest exists, except as detailed in § 4284.923(a) and (b).

(5) *Business plan*. For working capital grant applications, applicants must provide a copy of the business plan that was completed for the proposed value-added venture, except as provided for in §§ 4284.922(b)(6) and 4284.932. The Agency must concur in the acceptability or adequacy of the business plan. For all planning grant applications including those proposing product eligibility under ''produced in a manner that enhances the value of the agricultural commodity,'' a business plan is not required as part of the grant application.

(6) *Feasibility study*. As part of the application package, applicants for working capital grants must provide a copy of the third-party feasibility study that was completed for the proposed value-added project, except as provided for at §§ 4284.922(b)(6) and 4284.932. The Agency must concur in the acceptability or adequacy of the feasibility study.

§ 4284.932 Simplified application.

Applicants requesting less than $50,000 will be allowed to submit a simplified application, the contents of which will be announced in an annual notice issued pursuant to § 4284.915. Applicants requesting working capital grants of less than $50,000 are not required to provide feasibility studies or business plans, but must provide information demonstrating increases in customer base and revenue returns to the producers supplying the majority of the agricultural commodity as a result of the project. *See* § 4284.922(b)(6)(ii).

§ 4284.933 Filing instructions.

Unless otherwise specified in a notification issued under § 4284.915, the requirements specified in paragraphs (a) through (e) of this section apply to all applications.

(a) *When to submit*. Complete applications must be received by the Agency on or before the application deadline established for a fiscal year to be considered for funding for that fiscal year. Applications received by the Agency after the application deadline established for a fiscal year will not be considered.

(b) *Incomplete applications*. Incomplete applications will be rejected. Applicants will be informed of the elements that made the application incomplete. If a resubmitted application is received by the applicable application deadline, the Agency will reconsider the application.

(c) *Where to submit.* All applications must be submitted to the State Office of Rural Development in the State where the project primarily takes place, or on-line through grants.gov.

(d) *Format.* Applications may be submitted as paper copy, or electronically via grants.gov. If submitted as paper copy, only one original copy should be submitted. An application submission must contain all required components in their entirety. Emailed or faxed submissions will not be acknowledged, accepted or processed by the Agency.

(e) *Other forms and instructions.* Upon request, the Agency will make available to the public the necessary forms and instructions for filing applications. These forms and instructions may be obtained from any State Office of Rural Development, or the Agency's Value-Added Producer Grant program Web site in *http://www.rurdev.usda.gov/rbs/coops/vadg.htm.*

§§ 4284.934–4284.939 [Reserved]

PROCESSING AND SCORING APPLICATIONS

§ 4284.940 Processing applications.

(a) *Initial review.* Upon receipt of an application on or before the application submission deadline for each fiscal year, the Agency will conduct a review to determine if the applicant and project are eligible, and if the application is complete and sufficiently responsive to program requirements.

(b) *Notifications.* After the review in paragraph (a) of this section has been conducted, if the Agency has determined that either the applicant or project is ineligible or that the application is not complete to allow evaluation of the application or sufficiently responsive to program requirements, the Agency will notify the applicant in writing and will include in the notification the reason(s) for its determination(s).

(c) *Resubmittal by applicants.* Applicants may submit revised applications to the Agency in response to the notification received under paragraph (b) of this section. If a revised grant application is received on or before the application deadline, it will be processed by the Agency. If a revised application is not received by the specified application deadline, the Agency will not process the application and will inform the applicant that their application was not reviewed due to tardiness.

(d) *Subsequent ineligibility determinations.* If at any time an application is determined to be ineligible, the Agency will notify the applicant in writing of its determination.

§ 4284.941 Application withdrawal.

During the period between the submission of an application and the execution of award documents, the applicant must notify the Agency in writing if the project is no longer viable or the applicant no longer is requesting financial assistance for the project. When the applicant notifies the Agency, the selection will be rescinded or the application withdrawn.

§ 4284.942 Proposal evaluation criteria and scoring applications.

(a) *General.* The Agency will only score applications for which it has determined that the applicant and project are eligible, the application is complete and sufficiently responsive to program requirements, and the project is likely feasible. Any applicant whose application will not be reviewed because the Agency has determined it fails to meet the preceding criteria will be notified of appeal rights pursuant to § 4284.903. Each such viable application the Agency receives on or before the application deadline in a fiscal year will be scored in the fiscal year in which it was received. Each application will be scored based on the information provided and/or adequately referenced in the scoring section of the application at the time the applicant submits the application to the Agency. Scoring information must be readily identifiable in the application or it will not be considered.

(b) *Scoring Applications.* The criteria specified in paragraphs (b)(1) through (b)(6) of this section will be used to score all applications. For each criterion, applicants must demonstrate how the project has merit, and provide rationale for the likelihood of project success. Responses that do not address all aspects of the criterion, or that do not comprehensively convey pertinent project information will receive lower scores. The maximum number of points

that will be awarded to an application is 100. Points may be awarded lump sum or on a graduated basis. The Agency application package will provide additional instruction to assist applicants when responding to the criteria below.

(1) *Nature of the Proposed Venture (graduated score 0–30 points).* Describe the technological feasiblity of the project, of the project, as well as the operational efficiency, profitability, and overall economic sustainability resulting from the project. In addition, demonstrate the potential for expanding the customer base for the value-added product, and the expected increase in revenue returns to the producer-owners providing the majority of the raw agricultural commodity to the project. Applications that demonstrate high likelihood of success in these areas will receive more points than those that demonstrate less potential in these areas.

(2) *Qualifications of Project Personnel (graduated score 0–20 points).* Identify the individuals who will be responsible for completing the proposed tasks in the work plan, including the roles and activities that owners, staff, contractors, consultants or new hires may perform; and demonstrate that these individuals have the necessary qualifications and expertise, including those hired to do market or feasibility analyses, or to develop a business operations plan for the value-added venture. Include the qualifications of those individuals responsible to lead or manage the total project (applicant owners or project managers), as well as those individuals responsible for actually conducting the various individual tasks in the work plan (such as consultants, contractors, staff or new hires). Demonstrate the commitment and the availability of any consultants or other professionals to be hired for the project. If staff or consultants have not been selected at the time of application, provide specific descriptions of the qualifications required for the positions to be filled. Applications that demonstrate the strong credentials, education, capabilities, experience and availability of project personnel that will contribute to a high likelihood of project success will receive more points than those that demonstrate less potential for success in these areas.

(3) *Commitments and Support (graduated score 0–10 points).* Producer commitments to the project will be evaluated based on the number of independent producers currently involved in the project; and the nature, level and quality of their contributions. End-user commitments will be evaluated on the basis of potential or identified markets and the potential amount of output to be purchased, as evidenced by letters of intent or contracts from potential buyers referenced within the application. Other Third-Party commitments to the project will be evaluated based on the critical and tangible nature of the contribution to the project, such as technical assistance, storage, processing, marketing, or distribution arrangements that are necessary for the project to proceed; and the level and quality of these contributions. Applications that demonstrate the project has strong direct financial, technical and logistical support to successfully complete the project will receive more points than those that demonstrate less potential for success in these areas.

(4) *Work Plan and Budget (graduated score 0–20 points).* In accord with § 4284.922(b)(5), applicants must submit a comprehensive work plan and budget. The work plan must provide specific and detailed narrative descriptions of the tasks and the key project personnel that will accomplish the project's goals. The budget must present a detailed breakdown of all estimated costs associated with the activities and allocate those costs among the listed tasks. The source and use of both grant and matching funds must be specified for all tasks. An eligible start and end date for the project itself and for individual project tasks must be clearly indicated and may not exceed Agency specified timeframes for the grant period. Points may not be awarded unless sufficient detail is provided to determine that both grant and matching funds are being used for qualified purposes and are from eligible sources without a conflict of interest. It is recommended that applicants utilize the

budget format templates provided in the Agency's application package.

(5) *Priority Points (lump sum score 0 or 10 points).* Priority points may be awarded in both the General Funds competition, as well as the Reserved Funds competitions. Qualifying applicants may request priority points if they meet the requirements for one of the following categories and provide the documentation specified in § 4284.922(d), as applicable. Priority categories include: Beginning Farmer or Rancher, Socially Disadvantaged Farmer or Rancher, Operator of a Small or Medium-sized farm or ranch that is structured as a Family Farm, Mid Tier Value Chain proposals, and Farmer or Rancher Cooperative. It is recommended that applicants utilize the Agency application package when documenting for priority points and refer to the documentation requirements specified in § 4284.922(d). All qualifying applicants in this category will receive 10 points.

(6) *Administrator Priority Categories (graduated score 0–10 points).* Unless otherwise specified in a notification issued under § 4284.915(b)(1), the Administrator of USDA Rural Development Business and Cooperative Programs has discretion to award up to 10 points to an application to improve the geographic diversity of awardees in a fiscal year.

§§ 4284.943–4284.949 [Reserved]

GRANT AWARDS AND AGREEMENT

§ 4284.950 Award process.

(a) *Selection of applications for funding and for potential funding.* The Agency will select and rank applications for funding based on the score an application has received in response to the proposal evaluation criteria, compared to the scores of other value-added applications received in the same fiscal year. Higher scoring applications will receive first consideration for funding. The Agency will notify applicants, in writing, whether or not they have been selected for funding. For those applicants not selected for funding, the Agency will provide a brief explanation for why they were not selected.

(b) *Ranked applications not funded.* A ranked application that is not funded in the fiscal year in which it was submitted will not be carried forward into the next fiscal year. The Agency will notify the applicant in writing.

(c) *Intergovernmental review.* If State or local governments raise objections to a proposed project under the intergovernmental review process that are not resolved within 90 days of the Agency's award announcement date, the Agency will rescind the award and will provide the applicant with a written notice to that effect. The Agency, in its sole discretion, may extend the 90-day period if it appears resolution is imminent.

§ 4284.951 Obligate and award funds.

(a) *Letter of conditions.* When an application is selected subject to conditions established by the Agency, the Agency will notify the applicant using a Letter of Conditions, which defines the conditions under which the grant will be made. Each grantee will be required to meet all terms and conditions of the award within 90 days of receiving a Letter of Conditions unless otherwise specified by the Agency at the time of the award. If the applicant agrees with the conditions, the applicant must complete, sign, and return the Agency's Form RD 1942–46, ''Letter of Intent to Meet Conditions.'' If the applicant believes that certain conditions cannot be met, the applicant may propose alternate conditions to the Agency. The Agency must concur with any proposed changes to the Letter of Conditions by the applicant before the application will be further processed. If the Agency agrees to any proposed changes, the Agency will issue a revised or amended Letter of Conditions that defines the final conditions under which the grant will be made.

(b) *Grant agreement and conditions.* Each grantee will be required to sign a grant agreement that outlines the approved use of funds and actions under the award, as well as the restrictions and applicable laws and regulations that pertain to the award.

(c) *Other documentation.* The grantee will execute additional documentation in order to obligate the award of funds including, but not limited to,

(1) Form RD 1940–1, ''Request for Obligation of Funds;''

(2) Form AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transaction;''

(3) Form AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions;''

(4) Form AD–1049, ''Certification Regarding Drug-Free Workplace Requirements;''

(5) Form RD 400–4, ''Assurance Agreement (under Title VI, Civil Rights Act of 1964);''

(6) Form SF–3881, ''ACH Vendor/Miscellaneous Payment Enrollment Form;''

(7) RD Instruction 1940–Q, Exhibit A–1, ''Certification for Contracts, Grants and Loans;'' and

(8) Form SF–LLL, ''Disclosure of Lobbying Activities.''

(d) *Grant disbursements.* Grant disbursements will be made in accordance with the Letter of Conditions, and/or the grant agreement, as applicable. A disbursement request may be submitted by the grantee not more frequently than once every 30 days by using Form SF 270, ''Request for Advance or Reimbursement.'' The disbursement request is typically in the form of a reimbursement request for eligible expenses incurred by the grantee during the grant funding period. Adequate supporting documentation must accompany each request, and may include, but is not limited to, receipts, hourly wage rates, personnel payroll records, contract progression certification, or other similar documentation.

§§ 4284.952–4284.959 [Reserved]

POST AWARD ACTIVITIES AND REQUIREMENTS

§ 4284.960 Monitoring and reporting program performance.

The requirements specified in this section shall apply to grants made under this subpart.

(a) Grantees must complete the project per the terms and conditions specified in the approved work plan and budget, and in the grant agreement and letter of conditions. Grantees are responsible to expend funds only for eligible purposes and will be monitored by Agency staff for compliance. Grantees must maintain a financial management system, and property and procurement standards in accordance with Departmental Regulations.

(b) Grantees must submit prescribed narrative and financial performance reports that include a comparison of accomplishments with the objectives stated in the application. The Agency will prescribe both the narrative and financial report formats in the grant agreement.

(1) Semi-annual performance reports shall be submitted within 45 days following March 31 and September 30 each fiscal year. A final performance report shall be submitted to the Agency within 90 days of project completion. Failure to submit a performance report within the specified timeframes may result in the Agency withholding grant funds.

(2) Additional reports shall be submitted as specified in the grant agreement or Letter of Conditions, or as otherwise provided in a notification issued under § 4284.915.

(3) Copies of supporting documentation and/or project deliverables for completed tasks must be provided to the Agency in a timely manner in accord with the development or completion of materials and in conjunction with the budget and project timeline. Examples include, but are not limited to, a feasibility study, marketing plan, business plan, success story, distribution network study, or best practice.

(4) The Agency may request any additional project and/or performance data for the project for which grant funds have been received, including but not limited to,

(i) Information about jobs created and/or saved as a result of the project;

(ii) Increases in producer customer base and revenues as a result of the project;

(iii) Data regarding renewable energy capacity or emissions reductions resulting from the project;

(iv) The nature of and advantages or disadvantages of supply chain arrangements or equitable distribution of rewards and responsibilities for mid-tier value chain projects; and

(v) Recommendations from Beginning Farmers or Socially Disadvantaged Farmers.

(5) The Agency may terminate or suspend the grant for lack of adequate or timely progress, reporting, or documentation, or for failure to comply with Agency requirements.

§ 4284.961 Grant servicing.

All grants awarded under this subpart shall be serviced in accordance with 7 CFR part 1951, subparts E and O, and the Departmental Regulations with the exception that delegation of the post-award servicing of the program does not require the prior approval of the Administrator.

§ 4284.962 Transfer of obligations.

At the discretion of the Agency and on a case-by-case basis, an obligation of funds established for an applicant may be transferred to a different (substituted) applicant provided:

(a) The substituted applicant:

(1) Is eligible;

(2) Has a close and genuine relationship with the original applicant; and

(3) Has the authority to receive the assistance approved for the original applicant; and

(b) The project continues to meet all product, purpose, and reserved funds eligibility requirements so that the need, purpose(s), and scope of the project for which the Agency funds will be used remain substantially unchanged.

§ 4284.963 Grant close out and related activities.

Grant closeout is the administrative wrap-up of a grant that has concluded or has been terminated. Typical closeout activities include a letter to the grantee with final instructions and reminders for amounts to be de-obligated for any unexpended grant funds, final project performance reports due, submission of outstanding deliverables, audit requirements, or other outstanding items of closure.

§§ 4284.964–4284.999 [Reserved]

Subpart K—Agriculture Innovation Demonstration Centers

SOURCE: 69 FR 23433, Apr. 29, 2004, unless otherwise noted.

§ 4284.1001 Purpose.

This subpart implements a demonstration program administered by the Rural Business-Cooperative Service whereby grants are made to innovation centers responsible for providing technical and business development assistance to agricultural producers seeking to engage in the marketing or the production of Value-Added products.

§ 4284.1002 Policy.

It is the policy of the Secretary of Agriculture to fund Centers which evidence broad support from the agricultural community in the state or region, significant coordination with end users (processing and distribution companies and regional grocers), strategic alliances with entities having technical research capabilities and a focused delivery plan for reaching out to the producer community. It is also the policy of the Secretary, using the research and technical services of the U.S. Department of Agriculture, to assist the grantees in establishing Centers. This program is not intended to fund scientific research.

§ 4284.1003 Program administration.

The Agriculture Innovation Demonstration Center program is administered by Cooperative Services within the Agency.

§ 4284.1004 Definitions.

Board of Directors—The group of individuals that govern the Center.

Center—The Agriculture Innovation Center to be established and operated by the grantees. It may or may not be an independent legal entity, but it must be independently governed in accordance with the requirements of this subpart.

Producer Services—Services to be provided by the Centers to agricultural producers. Producer Services consist of the following types of services:

(1) Technical assistance, consisting of engineering services, applied research, Scale Production Assessments, and similar services, to enable the agricultural producers to establish businesses to produce Value-Added agricultural commodities or products;

(2) Assistance in marketing, market development and business planning, including advisory services with respect to leveraging capital assets; and

(3) Organizational, outreach and development assistance to increase the viability, growth and sustainability of businesses that produce Value-Added agricultural commodities or products.

Qualified Board of Directors—A Board of Directors that includes representatives from each of the following groups:

(1) The two general agricultural organizations with the greatest number of members in the State in which the Center is located;

(2) The State department of agriculture, or equivalent, of the State in which the Center is located; and

(3) Entities representing the four highest grossing commodities produced in the State in which the Center is located, as determined on the basis of annual gross cash sales.

Scale Production Assessments—Studies that analyze facilities, including processing facilities, for potential Value-added activities in order to determine the size that optimizes construction and other cost efficiencies.

§§ 4284.1005–4284.1006 [Reserved]

§ 4284.1007 Eligibility for grant assistance.

Non-profit and for-profit corporations, institutions of higher learning and other entities, including a consortium where a lead entity has been designated and agrees to act as funding agent, that meet the following requirements are eligible for grant assistance:

(a) The entity—

(1) Has provided services similar to those listed for Producer Services; or

(2) Demonstrates the capability of providing Producer Services;

(b) The application includes a plan that meets the requirements of § 4284.1010(c)(5)(iv) that also outlines—

(1) The support for the entity in the agricultural community;

(2) The technical and other expertise of the entity; and

(3) The goals of the entity for increasing and improving the ability of local agricultural producers to develop markets and processes for Value-Added agricultural commodities or products;

(c) The entity demonstrates that adequate resources (in cash or in kind) are available, or have been committed to be made available to the entity, to increase and improve the ability of local agricultural producers to develop markets and processes for Value-Added agricultural commodities or products; and

(d) The proposed Center has a Qualified Board of Directors.

§ 4284.1008 Use of grant funds.

Grant funds may be used to assist eligible recipients in establishing Centers that provide Producer Services and may only be used to support operations of the Center that directly relate to providing Producer Services. Grant funds may be used for the following purposes, subject to the limitations set forth in § 4284.10:

(a) Consulting services for legal, accounting and technical services to be used by the grantee in establishing and operating a Center;

(b) Hiring of employees, at the discretion of the Qualified Board of Directors;

(c) The making of matching grants to agricultural producers, individually not to exceed $5,000, where the aggregate amount of all such matching grants made by the grantee does not exceed $50,000;

(d) Applied research;

(e) Legal services; and

(f) Such other related purposes as the Agency may announce in the RFP.

§ 4284.1009 Limitations on awards.

The maximum grant award for an agriculture innovation center shall be in an amount that does not exceed the lesser of $1,000,000 or twice the dollar amount of the resources (in cash or in kind) that the eligible entity demonstrates are available, or have been committed to be made available, to the eligible entity.

§ 4284.1010 Application processing.

(a) *Applications*. USDA will solicit applications on a competitive basis by publication of one or more Requests for Proposals (RFPs). Unless otherwise specified in the applicable RFP, applicants must file an original and one copy of the required forms and a proposal.

(b) *Required forms*. The following forms must be completed, signed and submitted as part of the application package. Other OMB approved forms may be required. This will be published in the applicable RFP.

(1) ''Application for Federal Assistance.''

(2) ''Budget Information—Non-Construction Programs.''

(3) ''Assurances—Non-Construction Programs.''

(c) *Proposal*. Each proposal must contain the following elements. Additional elements may be published in the applicable RFP.

(1) Title Page.

(2) Table of Contents.

(3) *Executive Summary*. A summary of the proposal should briefly describe the project including goals, tasks to be completed and other relevant information that provides a general overview of the project and the amount requested.

(4) *Eligibility*. A detailed discussion describing how the applicant meets the eligibility requirements.

(5) *Proposal Narrative*. The narrative portion of the proposal must include, but is not limited to, the following:

(i) *Project Title*. The title of the proposed project must be brief, not to exceed 75 characters, yet describe the essentials of the project.

(ii) *Information Sheet*. A separate one page information sheet listing each of the evaluation criteria referenced in the RFP followed by the page numbers of all relevant material and documentation contained in the proposal that address or support the criteria.

(iii) *Goals of the Project*. The first part of this section should list each Producer Service to be offered by the Center. The second part of this section should list one or more specific goals relating to increasing and improving the ability of identified local agricultural producers to develop a market or process for Value-Added agricultural commodities or products.

(iv) *Work Plan*. Actions that must be taken in order for the Producer Services to be available from the Center. Each action listed should include a target date by which it will be completed. General start up tasks should be listed, followed by specific tasks listed for each Producer Service to be offered, as well as tasks associated with the start of operations. The tasks associated with the start of operations should include a focused marketing and delivery plan directed to the local agricultural producers that were identified in paragraph (c)(5)(iii) of this section. The actions to be taken should include steps for identifying customers, acquiring personnel and contracting for services to the Center, including arrangements for strategic alliances.

(v) *Performance Evaluation Criteria*. Performance criteria suggested by the applicant for incorporation in the grant award in the event the proposal receives grant funding under this subpart. These suggested criteria are not binding on USDA.

(vi) Agricultural Community Support. Evidence of support from the local agricultural community should be included in this section. Letters in support should reflect that the writer is familiar with the provisions of the Plan for the Center, including the stated goals.

Evidence of support can take the form of making employees available to the Center, service as a board member and other in-kind contributions.

(vii) *Strategic Coordination and Alliances*. Describe arrangements in place or planned with end users (processing and distribution companies and regional grocers) as well as arrangements with entities having technical research capabilities, broad support from the agricultural community in the state or region, significant coordination with end users (processing and distribution companies and regional grocers), strategic alliances with entities having technical research capabilities and a focused delivery plan for reaching out to the producer community.

(viii) *Capacity*. Evidence of the ability of the grantee(s) to successfully establish and operate a Center. A description of the grantee's track record in providing services similar to those listed for Producer Services or evidence that the entity has the capability to provide Producer Services. Resumes of key personnel should be included in this section. Past successes should be described in detail, with a focus on lessons learned, best practices, familiarity with producer problems in Value-Added ventures, and how these barriers are best overcome should be elaborated on in this section. For every challenge identified, the applicant should demonstrate how they are addressed in the Work Plan (*see* paragraph (c)(5)(iv) of this section). All successes should include a monetary estimate of the Value-Added achieved.

(ix) *Legal structure*. Provide a description of the legal relationship between the grantee(s) and the proposed Center. If the Center is to be an independent corporate entity, provide copies of the corporate charter, bylaws and other relevant organizational documents. Describe how funds for the Center will be handled and include copies of the agreements documenting the legal relationships between the Center and related parties. If the Center is not to be an independent legal entity, provide copies of the corporate governance documents that describe how members of the Board of Directors for the Center are to be determined.

(x) *Evaluation Criteria*. Each of the evaluation criteria referenced in the RFP must be specifically and individually addressed in narrative form. Supporting documentation, as applicable, should be included in this section, or a cross reference to other sections in the application should be provided, as applicable.

(xi) Verification of Adequate Resources. Present a budget to support the work plan showing sources and uses of funds during the start up period prior to the start of operations and for the first year of full operations. Present a copy of a bank statement evidencing sources of funds equal to amounts required in excess of the grant requested, or, in the alternative, a copy of confirmed funding commitments from credible sources such that USDA is satisfied that the Center has adequate resources to complete a full year of operation. Include information sufficient to facilitate verification by USDA of all representations.

(xii) Certification of Adequate Resources Applicants must certify that non-Federal funds identified in the budget pursuant to paragraph (c)(5)(xi) of this section will be available and funded commensurately with grant funds.

§ 4284.1011 Evaluation screening.

The Agency will conduct an initial screening of all proposals to determine whether the applicant is eligible and whether the application is complete and sufficiently responsive to the requirements set forth in the applicable RFP so as to allow for an informed review. Incomplete or non-responsive applications will not be evaluated further, and may be returned to the applicant. Applicants may revise their applications and re-submit them prior to the published deadline if there is sufficient time to do so.

§ 4284.1012 Evaluation process.

(a) Applications will be evaluated by qualified reviewers appointed by the Agency.

(b) After all proposals have been evaluated using the evaluation criteria and scored in accordance with the point allocation specified in the applicable RFP, Agency officials will present to the Administrator of RBS a list of all applications in rank order, together with funding level recommendations.

(c) The Administrator reserves the right to award additional points, as specified in the applicable RFP, to accomplish agency objectives (e.g., to ensure geographic distribution, put emphasis on a specific commodity, or to accomplish presidential initiatives.) The maximum number of points that can be added to an application under this paragraph cannot exceed ten percent of the total points the application originally scored.

(d) After giving effect to the Administrator's point awards, applications will be funded in rank order until all available funds have been obligated.

§ 4284.1013 Evaluation criteria and weights.

Unless supplemented in a RFP, the criteria listed in this section will be used to evaluate grants under this subpart. The distribution of points to be awarded per criterion will be identified in the applicable RFP.

(a) *Ability to Deliver*. The application will be evaluated as to whether it evidences unique abilities to deliver Producer Services so as to create sustainable Value-Added ventures. Abilities that are transferable to a wide range of agricultural Value-Added commodities are preferred over highly specialized skills. Strong skills must be accompanied by a credible and thoughtful plan.

(b) *Successful Track Record*. The applicant's track record in achieving Value-Added successes.

(c) *Work Plan/Budget*. The work plan will be reviewed for detailed actions and an accompanying timetable for implementing the proposal. Clear, logical, realistic and efficient plans will result in a higher score. Budgets will be reviewed for completeness and the strength of non-Federal funding commitments.

(d) *Qualifications of personnel*. Proposals will be reviewed for whether the key personnel who are to be responsible for performing the proposed tasks have the necessary qualifications and whether they have a track record of performing activities similar to those being proposed. If a consultant or others are to be hired, points may be awarded for consultants only if the proposal includes evidence of their availability and commitment as well. Proposals using in-house employees with strong track records in innovative activities will receive higher points relative to proposals that out-source expertise.

(e) *Local support*. Proposed Centers must show local support and coordination with other developmental organizations in the proposed service area and with state and local institutions. Support documentation should include recognition of rural values that balance employment opportunities with environmental stewardship and other rural amenities. Proposed Centers that show strong support from potential beneficiaries and coordination with other developmental organizations will receive more points than those not evidencing such support.

(f) *Future support*. Applicants that can demonstrate their vision for funding center operations for future years, including diversification of funding sources and building in-house technical assistance capacity, will receive more points for this criterion.

§ 4284.1014 Grant closing.

(a) *Letter of Conditions*. The Agency will notify an approved applicant in writing, setting out the conditions under which the grant will be made.

(b) *Applicant's intent to meet conditions*. Upon reviewing the conditions and requirements in the letter of conditions, the applicant must complete, sign and return the Agency's ''Letter of Intent to Meet Conditions,'' or, if certain conditions cannot be met, the applicant may propose alternate conditions to the Agency. The Agency must concur with any changes proposed to the letter of conditions by the applicant before the application will be further processed.

(c) *Grant agreement*. The Agency and the grantee must enter into an ''Agriculture Innovation Center Grant Agreement'' prior to the advance of funds.

§§ 4284.1015–4284.1099 [Reserved]

§ 4284.1100 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0570–0045.

PART 4285—COOPERATIVE AGREEMENTS

Subpart A—Federal-State Research on Cooperatives Program

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AUTHORITY: 7 U.S.C. 1623; Public Law 103–111, 107 Stat. 1046; 7 U.S.C. 2201; USDA Secretary's Memorandum 1020–39, dated September 30, 1993; and Public Law 103–211, 108 Stat. 3.

SOURCE: 59 FR 38342, July 28, 1994, unless otherwise noted.

Subpart A—Federal-State Research on Cooperatives Program

§ 4285.1 Objective.

This subpart sets forth the policies and procedures and delegates authority for providing Federal-State Research on Cooperatives cooperative agreement funds to finance programs of research on cooperatives as authorized under Section 204 (b) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1623 (b)). The primary purpose of this matching fund program, via cooperative agreements, is to encourage State Departments of Agriculture and State Agricultural Experiment Stations in conducting research related to agricultural cooperatives.

§ 4285.2 Cooperative agreement purposes.

Rural Development Administration (RDA) or its successor agency may enter into a cooperative agreement with a State agency to provide funds to the State agency to:

(a) Conduct marketing research related to agricultural cooperatives.

(b) Assist other organizations in conducting marketing research related to agricultural cooperatives.

§ 4285.3 Definitions.

As used in this part:

Agreement period. The total period of time approved by the Assistant Administrator for Cooperative Services for conducting the proposed project as outlined in an approved application. The time period is normally no more than 3 years, renewable for cause not to exceed a total of 4 fiscal years.

Agricultural products. Agricultural products include agricultural, horticultural, viticultural, and dairy products, livestock and poultry, bees, forest products, fish and shellfish, and any products thereof, including processed or manufactured products, and any and all products raised or produced on farms and any processed or manufactured product thereof.

Assistant Administrator for Cooperative Services. The Assistant Administrator for Cooperative Services, Rural Development Administration or its successor agency, USDA or any authorized delegate.

Awarding official. The Assistant Administrator for Cooperative Services or authorized delegate.

Cooperative agreement. A legal instrument reflecting a relationship between the United States Government and a State where:

(1) The principal purpose of the relationship is the transfer of money, property, services, or anything of value to the State agency to carry out research related to cooperatives; and

(2) Substantial involvement is anticipated between RDA or its successor agency, acting for the Federal Government, and the State or other recipient during performance of the research in the agreement.

Cooperator. The State agency designated in the cooperative agreement award document as the responsible legal entity to whom a cooperative agreement is awarded under this part.

Department. The U.S. Department of Agriculture.

Methodology. The research approach to be followed to carry out the project.

Principal investigator. A single individual who is responsible for the scientific and technical direction of the project, as designated by the cooperator in the cooperative agreement

application and approved by the Assistant Administrator for Cooperative Services.

Project. The particular activity within the scope of one or more of the research program areas identified in the annual program solicitation that is supported by a cooperative agreement under this part.

State agencies. State agencies include, among others, State Agricultural Experiment Stations and State Departments of Agriculture in the 50 States, the Virgin Islands, and Guam, and other appropriate State agencies. Final determination of whether certain 1890 or 1862 Land Grant institutions qualify as state agencies will be determined on a case-by-case basis by the Office of the General Counsel (OGC), USDA.

§§ 4285.4–4285.23 [Reserved]

§ 4285.24 Eligibility.

To enter into a cooperative agreement for these funds, the applicant must:

(a) Be a State Agency as defined in § 4285.3 of this subpart;

(b) Have the financial, legal, administrative, and actual capacity to assume and carry out the responsibilities imposed by the Agreement. To meet the requirement of actual capacity it must either:

(1) Have necessary background and experience with proven ability to perform responsibly in the field of economic, business management, or other needed research area; or

(2) Have the necessary administrative and supervisory controls in place to assure an agreed upon contracting organization has the proven ability to perform responsibly in the field of economic, business management, or other needed research area;

(c) Legally obligate itself to administer cooperative agreement funds, provide adequate accounting of the expenditure of such funds, and comply with the cooperative agreement;

(d) Provide at least 50 percent of the funds necessary to conduct the research from non-federal funds; and

(e) Agree to conduct proposed research related to cooperatives and agricultural marketing.

§ 4285.25 Authorized use of cooperative agreement funds.

Funds received for research under cooperative agreements in this program shall only be used for:

(a) Payment of salaries and necessary employee benefits of personnel as agreed upon in the Cooperative Agreement. Included are salaries and benefits of State employees assigned full-time to one or more projects, or the percent of the salaries and benefits related to project work for State employees assigned part-time to research on one or more projects. Salaries and benefits include basic salary, other compensation such as holiday pay, sick or annual leave, and personnel benefits (quarters allowance, payments to other funds such as employees' life insurance, health benefits, retirement, Federal Insurance Contributions Act (FICA), accident compensation, and similar payments). For any of the benefit items when the State usually pays the employer share, Federal funds may be used to pay the proportionate share of such employer contributions.

(b) Payment of necessary and reasonable office expenses such as office rental, office utilities, and office equipment rental. The purchase of office equipment is permissible when the cooperator determines it to be more economical than renting. However, as a general rule, these types of expenses would be classified as indirect costs in multiple funded organizations and would not be an allowable expense. Planned purchases of equipment costing more than $200 per unit must be approved by RDA or its successor agency. Equipment purchased becomes State property pursuant to the cooperative agreement.

(c) Payment of necessary and reasonable costs of printing publications of research project results. However, all such publications should show the RDA or its successor agency as cooperator in the project and bear the following statement: ''State funds for this project (publication) were matched with Federal funds under the Federal-

State Research on Cooperatives Program of the U.S. Department of Agriculture, Rural Development Administration or its successor agency, Cooperative Services, as provided by the Agricultural Marketing Act of 1946 and (appropriate) fiscal year appropriations.''

(d) Purchase of office supplies (such as paper, pens, pencils, and trade magazines) and postage needed for project activities.

(e) Payment of necessary and reasonable travel expenses.

§§ 4285.26–4285.45 [Reserved]

§ 4285.46 Prohibited use of cooperative agreement funds.

(a) The Agricultural Marketing Act prohibits the use of Federal funds to pay for newspaper or periodical space and radio and television time, either directly to the media or indirectly though an advertising agency or other firm. County and State fair exhibits, as well as commodity months and weeks, are also excluded as the research on cooperatives program activities.

(b) Federal funds cannot be used to purchase products or samples of products to give away to the public.

(c) Federal program funds cannot be used to purchase:

(1) Promotional pieces such as point-of-sale materials, promotional kits, billboard space and signs, streamers, automobile stickers, table tents, and placemats; or

(2) Promotion items of a personal gift nature.

(d) Cooperative agreement funds cannot be used to conduct general publicity or information programs designed to build the image of the State's agriculture or of a particular State Department of Agriculture or Agricultural Experiment Station.

(e) Project funds cannot be used to pay for the salary and travel of employees of cooperatives, trade associations, commodity groups, and other industry organizations, or of State personnel while engaged in managing market orders, cooperatives, or other group endeavors.

(f) Commissioners, Directors, and Secretaries of State Departments of Agriculture, Agricultural Experiment Stations, and other State agencies cannot charge their salaries and travel to project funds, with the exception of travel to workshops or conferences devoted to the Federal-State Research On Cooperatives Program.

(g) Funds made available for this program shall not be subject to reduction for indirect costs or for tuition remission.

§ 4285.47 Limitations.

The amount of funds available for the cooperative agreements under this program is limited to the amount appropriated for the fiscal year.

§§ 4285.48–4285.57 [Reserved]

§ 4285.58 How to apply for cooperative agreement funds.

(a) A program solicitation will be prepared and announced through publications such as the FEDERAL REGISTER, professional trade journals, agency or program handbooks, and/or any other appropriate means, as early as practicable each fiscal year in which funds are appropriated for the program.

(b) The annual program solicitation will contain information sufficient to enable all eligible applicants to prepare proposals including:

(1) Desired research topics. The FY–94 solicitation will encourage studies:

(i) To improve the efficiency and effectiveness of marketing of agricultural cooperatives;

(ii) To measure the impact of rural cooperatives on the local economies;

(iii) That help identify opportunities to develop cooperatives for new or alternative market uses of agricultural products;

(iv) That help identify ways to develop agricultural marketing cooperatives; and

(v) Addressing other cooperative marketing objectives;

(2) Explanation of eligibility requirements as outlined in § 4285.24 of this subpart;

(3) The notice of availability of application forms and instructions for submission of applications;

(4) The notice of deadline dates for postmarking proposal packages.

(c) *Format for proposals*. Unless otherwise indicated by the Department in the annual program solicitation, the

following information must be submitted for the preparation of proposals under this program:

(1) Form SF–424, ''Application for Federal Assistance.''

(2) Form SF–424A, ''Budget Information—Non-Construction Programs.''

(3) Form SF–424B, ''Assurances—Non-Construction Programs.''

(4) *Statement of Work*. The application must include a narrative statement describing the nature of the proposed research. The Statement of Work must include at least the following:

(i) Title of the Project. The title of the proposal must be brief, yet represent the major thrust of the project.

(ii) Project Leaders. List the name(s) of the principal investigator(s). Minor collaborators or consultants should be so designated and not listed as principal investigators.

(iii) Need for the Project. A concisely worded rationale behind the proposed research must be presented. The need for the proposed research must be clearly related to marketing and to the needs of agricultural cooperatives.

(iv) Objectives of the project. The specific description of the overall project goal(s) and supporting objectives must be presented.

(v) Procedures for conducting the research. The hypotheses or questions being asked and the methodology being applied to the proposed project must be described. A description of any subcontracting arrangements that will be used for conducting the research must be included. A tentative schedule for conducting major steps involved in the investigation must also be included.

(vi) The expected output of the project. A description of how the results of the research will be disseminated should be presented. Responsibility for publishing any research reports or other types of output should also be identified.

(5) *Collaborative arrangements*. If the nature of the proposed project requires collaboration or subcontractual arrangements with other research scientists, corporations, organizations, agencies, or entities, the applicant must identify the collaborator(s) and provide a full explanation of the nature of the collaboration. Evidence (*i.e.*, letters of intent) should be provided to assure reviewers that the collaborators involved have agreed to render this service. In addition, the proposal must indicate whether or not such a collaborative arrangement(s) has the potential for conflict(s) of interest.

(6) *Personnel support*. To assist reviewers in assessing the competence and experience of the proposed project staff, key personnel who will be involved in the proposed project must be identified clearly. For each principal investigator involved, and for all senior associates and other professional personnel who expect to work on the project, whether or not funds are sought for their support, the following must be included:

(i) An estimate of the time commitments necessary;

(ii) Curriculum Vitae. The curriculum vitae should be limited to a presentation of academic and research credentials, e.g., educational, employment and professional history, and honors and awards. Unless pertinent to the project, it should not include meetings attended, seminars given, or personal data such as birth date, martial status, or community activities; and

(iii) Publication List(s). A chronological list of all publications in refereed journals during the past five years, including those in press, must be provided for each professional project member for whom a curriculum vitae is provided. Also list other non-refereed technical publications that have relevance to the proposed project. Authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these usually appear in journals.

§§ 4285.59–4285.68 [Reserved]

§ 4285.69 Evaluation and disposition of applications.

(a) *Evaluation*. (1) All proposals received from eligible applicants and postmarked in accordance with deadlines established in the annual program solicitation shall be evaluated by the Assistant Administrator for Cooperative Services through an RDA or its successor agency staff panel. The Assistant Administrator for Cooperative Services will select the evaluation

panel from staff determined to be highly qualified in the subject matter areas that were emphasized in the current year's solicitation and from those with no potential conflict of interest with the applicants.

(2) Prior to technical examination, a preliminary review will be made for responsiveness to the program solicitation (e.g., relationship of proposal to research topic(s) listed in solicitation). Proposals that do not fall within the guidelines as stated in the program solicitation will be eliminated from competition and will be returned to the applicant.

(3) Proposals will be ranked based on evaluation criteria established in § 4285.70 of this subpart, and financial support levels will be recommended to the Assistant Administrator for Cooperative Services by the panel within the limitation of the total funding available in the fiscal year. The purpose of these evaluations is to provide information upon which the Assistant Administrator for Cooperative Services may make informed judgments in selecting proposals. Such recommendations are advisory only and are not binding on the awarding official of RDA or its successor agency. To ensure a comprehensive evaluation, all applications should be written with the care and thoroughness accorded papers for publication.

(b) *Disposition*. (1) On the basis of the Assistant Administrator for Cooperative Services's evaluation of an application in accordance with paragraph (a) of this section, the Assistant Administrator for Cooperative Services will either:

(i) Approve support using currently available funds;

(ii) Defer support due to lack of funds or need for further evaluation; or

(iii) Disapprove support for the proposed project in whole or in part.

(2) With respect to any approved project, the Assistant Administrator for Cooperative Services will determine the project period during which the project may be funded.

(3) Any deferral or disapproval of an application will not preclude its reconsideration or reapplication during subsequent fiscal years. However, applicants must reapply if reconsideration is desired.

(4) The Assistant Administrator for Cooperative Services will not make a cooperative agreement funding award, based upon an application covered by this part, unless the application has been properly reviewed in accordance with the provisions of this part and unless said reviewers have made recommendations concerning the scientific merit and relevance to the program of such application.

§ 4285.70 Evaluation criteria.

(a) In evaluating the proposal, the RDA or its successor agency staff review panel and the awarding official will take into account the degree to which the proposal demonstrates the following:

(1) Focus on a practical solution to a significant problem involving one or more of the following on a cooperative business basis: the preparation for market, processing, packaging, handling, storing, transporting, distributing, or marketing of agricultural products. (35%)

(2) Adequacy, soundness, and appropriateness of the proposed approach to solve the identified problem. (30%)

(3) Feasibility and probability of success of project solving the problem. (10%)

(4) Qualifications, experience in related work, competence, and availability of project personnel to direct and carry out the project. (25%)

(b) In addition, the cost relative to the expected research results will be considered in determining the awarding of the agreements.

§§ 4285.71–4285.80 [Reserved]

§ 4285.81 Cooperative agreement awards.

(a) *General*. Within the limit of funds available for such purpose, the awarding official shall make awards for cooperative agreements to those applicants whose proposals are judged most meritorious in the announced program areas under the evaluation criteria and procedures set forth in this part. The date specified by the Assistant Administrator for Cooperative Services as the beginning of the project period shall be

no later than September 30 of the Federal fiscal year in which the project is approved and funds are appropriated for such purpose, unless otherwise permitted by law. All funds awarded under this part shall be expended solely in accordance with the methods identified in approved application and budget, the regulations of this part, the terms and conditions of the award, the applicable Federal cost principles, and the Department's ''Uniform Federal Assistance Regulations'' (part 3015 of this title) and the Department's ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments'' (part 3016 of this title).

(b) *Cooperative agreement award document and notice of award.* (1) Cooperative agreement award document. The award document shall include at a minimum the following:

(i) Legal name and address of performing organization or institution to whom the Assistant Administrator for Cooperative Services has competitively awarded funds under the terms of this part;

(ii) Title of project;

(iii) Name(s) and address(es) of principal investigator(s) chosen to direct and control approved activities;

(iv) Identifying cooperative agreement number assigned by RDA or its successor agency;

(v) Project period, specifying the amount of time the Agency intends to support the project without requiring recompetition for funds;

(vi) Total amount of Agency financial assistance approved by the Assistant Administrator for Cooperative Services during the project period;

(vii) Legal authority(ies) under which the cooperative agreement is awarded;

(viii) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the cooperative agreement award; and

(ix) Other information or provisions deemed necessary by RDA or its successor agency to carry out its agreement activities or to accomplish the purpose of a particular cooperative agreement.

(2) Notice of award. The notice of award of funds for the cooperative agreement will be in the form of a letter providing pertinent instructions or information to the cooperator.

(c) *Types of cooperative agreement instruments.* The types of cooperative agreements shall be as follows:

(1) New agreement. This is an agreement instrument by which RDA or its successor agency agrees to support a specified level of effort for a project not supported previously under this program. This type of agreement is approved on the basis of an RDA or its successor agency Staff evaluation review and recommendation.

(2) Renewal agreement. This is an agreement instrument by which RDA or its successor agency agrees to provide additional funding for a project beyond the period approved in an original or amended agreement, provided that the cumulative period does not exceed the statutory limitation. When a renewal application is submitted, it must include a summary of progress to date from the previous agreement period. A renewal agreement shall be based upon new application, de novo review and staff evaluation, new recommendation and approval, and a new award instrument.

(3) Supplemental agreement. This is an instrument by which RDA or its successor agency agrees to provide small amounts of additional funding under a new or renewal cooperative agreement as specified in paragraphs (c)(1) and (c)(2) of this section and may involve a short-term (usually one year or less) extension of the project period beyond that approved in an original or amended award, but in no case may the cumulative period for the project exceed the statutory limitation. A supplement is awarded only if required to assure adequate completion of the original scope of work and if there is sufficient justification to warrant such action. A request of this nature will not require additional review.

(d) *Obligation of the Federal Government.* The approval of any application or the award of any funds for a cooperative agreement shall not commit nor obligate the United States in any way to make any renewal, supplemental, continuation, or other award with respect to any approved application or portion of an approved application.

(e) *Obligation of the cooperator*. The cooperator shall be responsible for:

(1) Making a brief quarterly progress reports at the end of each December, March, June and September to the FSROC program staff for the duration of the research project;

(2) Presenting a final administrative report on the project at the end of the research project; and

(3) Preparing and publishing a report(s) of research findings for dissemination to interested producers, cooperatives, and agencies. Include recognition to financial and other assistance received from the FSROC program.

§ 4285.82 Use of funds; changes.

(a) *Delegation of fiscal responsibility*. The cooperator may not, in whole or in part, delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of cooperative agreement funds.

(b) *Change in project plans*. (1) The permissible changes by the cooperator, principal investigator(s), or other key project personnel in the approved cooperative agreement shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the cooperator and/or the principal investigator(s) is uncertain whether a particular change complies with this provision, the question must be referred to the Assistant Administrator for Cooperative Services for a final determination.

(2) Changes in approved goals, or objectives, shall be requested by cooperator and approved in writing by the Assistant Administrator for Cooperative Services, or authorized delegate, prior to effecting such changes. Normally, no requests for such changes outside the scope of the original approved project will be approved.

(3) Changes in approved project leadership or the replacement or realignment of other key project personnel shall be requested by the cooperator and approved in writing by the Assistant Administrator for Cooperative Services, or authorized delegate, prior to effecting such changes.

(4) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the cooperator and approved in writing by the Assistant Administrator for Cooperative Services, or authorized delegate, prior to effecting such changes, except as may be allowed in the terms and conditions of a cooperative agreement award.

(c) *Changes in project period*. The project period determined pursuant to § 4285.81(b) of this subpart may be extended by the Assistant Administrator for Cooperative Services without additional financial support, for such additional period(s) as the Assistant Administrator for Cooperative Services determines may be necessary to complete, or fulfill the purposes of, an approved project. Any extension, when combined with the originally approved or amended project period, shall not exceed four (4) years and shall be further conditioned upon prior request by the cooperator and approval in writing by the Assistant Administrator for Cooperative Services, or authorized delegate, except as may be allowed in the terms and conditions of a cooperative agreement award.

(d) *Changes in approved budget*. The terms and conditions of a cooperative agreement will prescribe circumstances under which written Agency approval must be requested and obtained prior to instituting changes in an approved budget.

§§ 4285.83–4285.92 [Reserved]

§ 4285.93 Other Federal statutes and regulations that apply.

Several other Federal statutes and regulations apply to cooperative agreement proposals considered for review or to agreements awarded under this part. These include but are not limited to:

(a) 7 CFR Part 1, Subpart A—USDA implementation of the Freedom of Information Act;

(b) 7 CFR Part 3—USDA implementation of OMB Circular A–129 regarding debt collection;

(c) 7 CFR Part 15, Subpart A—USDA implementation of title VI of the Civil Rights Act of 1964 in order to assure nondiscrimination;

(d) 7 CFR Part 1473—National Agricultural, Research, Extension, and Teaching Policy Act Amendments of 1981 if the project involves a college or university;

(e) 7 CFR Part 3015—USDA Uniform Federal Assistance Regulations implementing OMB directives (*i.e.*, Circular Nos. A–110, A–21, and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly, the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224, 92 Stat. 3), as well as general policy requirements applicable to recipients of Departmental financial assistance;

(f) 7 CFR Part 3016—USDA Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;

(g) 7 CFR Part 3017—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants);

(h) 7 CFR Part 3018—USDA implementation of New Restrictions on Lobbying. Imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans;

(i) 7 CFR Part 3051—Audits of Institutions of Higher Education and Other Nonprofit Institutions;

(j) 29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and 7 CFR Part 15B prohibiting discrimination based upon physical or mental handicap in Federally assisted programs;

(k) 35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

§ 4285.94 Other conditions.

Post-award requirements. Upon awarding the cooperative agreement, the post-award requirements of subparts C and D of part 3016 of this title apply.

§§ 4285.95–4285.99 [Reserved]

§ 4285.100 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0570–0005. Public reporting burden for this collection of information is estimated to vary from 10 minutes to 36 hours per response with an average of 3.48 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Ag Box 7630, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0570–0005), Washington, DC 20503.

PART 4287—SERVICING

Subpart A [Reserved]

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AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1989

SOURCE: 61 FR 67648, Dec. 23, 1996, unless otherwise noted.

Subpart A [Reserved]

Subpart B—Servicing Business and Industry Guaranteed Loans

§ 4287.101 Introduction.

(a) This subpart supplements part 4279, subparts A and B, by providing additional requirements and instructions for servicing and liquidating all Business and Industry (B&I) Guaranteed Loans. This includes Drought and Disaster (D&D), Disaster Assistance for Rural Business Enterprises (DARBE), and Business and Industry Disaster (BID) loans.

(b) The lender will be responsible for servicing the entire loan and will remain mortgagee and secured party of record notwithstanding the fact that another party may hold a portion of the loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of a loan will neither be paid first nor given any preference or priority over the guaranteed portion of the loan.

(c) Copies of all forms, regulations, and Instructions referenced in this subpart are available in any Agency office. Whenever a form is designated in this subpart, that designation includes predecessor and successor forms, if applicable, as specified by the field or National Office.

§ 4287.102 Definitions.

The definitions and abbreviations contained in § 4279.2 of subpart A of part 4279 of this chapter apply to this subpart.

§ 4287.103 Exception authority.

Section 4279.15 of subpart A of part 4279 of this chapter applies to this subpart.

§§ 4287.104–4287.105 [Reserved]

§ 4287.106 Appeals.

Section 4279.16 of subpart A of part 4279 of this chapter applies to this subpart.

§ 4287.107 Routine servicing.

The lender is responsible for servicing the entire loan and for taking all servicing actions that a prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The Loan Note Guarantee is unenforceable by the lender to the extent any loss is occasioned by violation of usury laws, use of loan funds for unauthorized purposes, negligent servicing, or failure to obtain the required security interest regardless of the time at which the Agency acquires knowledge of the foregoing. This responsibility includes but is not limited to the collection of payments, obtaining compliance with the covenants and provisions in the Loan Agreement, obtaining and analyzing financial statements, checking on payment of taxes and insurance premiums, and maintaining liens on collateral.

(a) *Lender reports and annual renewal fee.* The lender must report the outstanding principal and interest balance on each guaranteed loan semiannually using a USDA-approved status report or other approved format. The lender will transmit the annual renewal fee to the Agency simultaneously with the December 31 semiannual status report in accordance with 7 CFR part 4279, subpart B, § 4279.107.

(b) *Loan classification.* Within 90 days of receipt of the Loan Note Guarantee, the lender must notify the Agency of the loan's classification or rating under its regulatory standards. Should the classification be changed at a future time, the Agency must be notified immediately.

(c) *Agency and lender conference.* At the Agency's request, the lender will

meet with the Agency to ascertain how the guaranteed loan is being serviced and that the conditions and covenants of the Loan Agreement are being enforced.

(d) *Financial reports*. The lender must obtain and forward to the Agency the financial statements required by the Loan Agreement. The lender must submit annual financial statements to the Agency within 120 days of the end of the borrower's fiscal year. The lender must analyze the financial statements and provide the Agency with a written summary of the lender's analysis and conclusions, including trends, strengths, weaknesses, extraordinary transactions, and other indications of the financial condition of the borrower. Spreadsheets of the new financial statements must be included.

(e) *Additional expenditures*. The lender will not make additional loans to the borrower without first obtaining the prior written approval of the Agency, even though such loans will not be guaranteed.

[61 FR 67648, Dec. 23, 1996, as amended at 70 FR 57486, Oct. 3, 2005]

§§ 4287.108–4287.111 [Reserved]

§ 4287.112 Interest rate adjustments.

(a) *Reductions*. The borrower, lender, and holder (if any) may collectively initiate a permanent or temporary reduction in the interest rate of the guaranteed loan at any time during the life of the loan upon written agreement among these parties. The Agency must be notified by the lender, in writing, within 10 calendar days of the change. If any of the guaranteed portion has been purchased by the Agency, then the Agency will affirm or reject interest rate change proposals in writing. The Agency will concur in such interest-rate changes only when it is demonstrated to the Agency that the change is a more viable alternative than initiating or proceeding with liquidation of the loan or continuing with the loan in its present state.

(1) Fixed rates can be changed to variable rates to reduce the borrower's interest rate only when the variable rate has a ceiling which is less than or equal to the original fixed rate.

(2) Variable rates can be changed to a fixed rate which is at or below the current variable rate.

(3) The interest rates, after adjustments, must comply with the requirements for interest rates on new loans as established by § 4279.125 of subpart B of part 4279 of this chapter.

(4) The lender is responsible for the legal documentation of interest-rate changes by an endorsement or any other legally effective amendment to the promissory note; however, no new notes may be issued. Copies of all legal documents must be provided to the Agency.

(b) *Increases*. No increases in interest rates will be permitted except the normal fluctuations in approved variable interest rates unless a temporary interest-rate reduction had occurred.

§ 4287.113 Release of collateral.

(a) All releases of collateral with a value exceeding $100,000 must be supported by a current appraisal on the collateral released. The appraisal will be at the expense of the borrower and must meet the requirements of § 4279.144 of subpart B of part 4279 of this chapter. The remaining collateral must be sufficient to provide for repayment of the Agency's guaranteed loan. The Agency may, at its discretion, require an appraisal of the remaining collateral in cases where it is determined that the Agency may be adversely affected by the release of collateral. Sale or release of collateral must be based on an arm's-length transaction.

(b) Within the parameters of paragraph (a) of this section, lenders may, over the life of the loan, release collateral (other than personal and corporate guarantees) with a cumulative value of up to 20 percent of the original loan amount without Agency concurrence if the proceeds generated are used to reduce the guaranteed loan or to buy replacement collateral.

(c) Within the parameters of paragraph (a) of this section, release of collateral with a cumulative value in excess of 20 percent of the original loan or when the proceeds will not be used to reduce the guaranteed loan or to buy replacement collateral must be requested in writing by the lender and concurred in by the Agency in writing

in advance of the release. A written evaluation will be completed by the lender to justify the release.

§§ 4287.114–4287.122 [Reserved]

§ 4287.123 Subordination of lien position.

A subordination of the lender's lien position must be requested in writing by the lender and concurred in by the Agency in writing in advance of the subordination. The subordination must enhance the borrower's business and the Agency's interest. After the subordination, collateral must be adequate to secure the loan. The lien to which the guaranteed loan is subordinated must be for a fixed dollar limit and fixed or limited term, after which the guaranteed loan lien priority will be restored. Subordination to a revolving line of credit will not exceed 1 year. There must be adequate consideration for the subordination.

§ 4287.124 Alterations of loan instruments.

The lender shall neither alter nor approve any alterations of any loan instrument without the prior written approval of the Agency.

§§ 4287.125–4287.133 [Reserved]

§ 4287.134 Transfer and assumption.

(a) *Documentation of request.* All transfers and assumptions must be approved in writing by the Agency and must be to eligible applicants in accordance with subpart B of part 4279 of this chapter. An individual credit report must be provided for transferee proprietors, partners, officers, directors, and stockholders with 20 percent or more interest in the business, along with such other documentation as the Agency may request to determine eligibility.

(b) *Terms.* Loan terms must not be changed unless the change is approved in writing by the Agency with the concurrence of any holder and the transferor (including guarantors) if they have not been or will not be released from liability. Any new loan terms must be within the terms authorized by 4279.126 of subpart B of part 4279 of this chapter. The lender's request for approval of new loan terms will be supported by an explanation of the reasons for the proposed change in loan terms.

(c) *Release of liability.* The transferor, including any guarantor, may be released from liability only with prior Agency written concurrence and only when the value of the collateral being transferred is at least equal to the amount of the loan being assumed and is supported by a current appraisal and a current financial statement. The Agency will not pay for the appraisal. If the transfer is for less than the debt, the lender must demonstrate to the Agency that the transferor and guarantors have no reasonable debt-paying ability considering their assets and income in the foreseeable future.

(d) *Proceeds.* Any proceeds received from the sale of collateral before a transfer and assumption will be credited to the transferor's guaranteed loan debt in inverse order of maturity before the transfer and assumption are closed.

(e) *Additional loans.* Loans to provide additional funds in connection with a transfer and assumption must be considered as a new loan application under subpart B of part 4279 of this chapter.

(f) *Credit quality.* The lender must make a complete credit analysis which is subject to Agency review and approval.

(g) *Documents.* Prior to Agency approval, the lender must advise the Agency, in writing, that the transaction can be properly and legally transferred, and the conveyance instruments will be filed, registered, or recorded as appropriate.

(1) The assumption will be done on the lender's form of assumption agreement and will contain the Agency case number of the transferor and transferee. The lender will provide the Agency with a copy of the transfer and assumption agreement. The lender must ensure that all transfers and assumptions are noted on all original Loan Note Guarantees.

(2) A new Loan Agreement, consistent in principle with the original Loan Agreement, should be executed to establish the terms and conditions of the loan being assumed. An assumption agreement can be used to establish the loan covenants.

(3) The lender will provide to the Agency a written certification that the transfer and assumption is valid, enforceable, and complies with all Agency regulations.

(h) *Loss resulting from transfer*. If a loss should occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor (including personal guarantors) is released from liability, the lender, if it holds the guaranteed portion, may file an estimated report of loss to recover its *pro rata* share of the actual loss. If a holder owns any of the guaranteed portion, such portion must be repurchased by the lender or the Agency in accordance with 4279.78(c) of subpart A of part 4279 of this chapter. In completing the report of loss, the amount of the debt assumed will be entered as net collateral (recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption will be included in the calculations.

(i) *Related party*. If the transferor and transferee are affiliated or related parties, any transfer and assumption must be for the full amount of the debt.

(j) *Payment requests*. Requests for a loan guarantee to provide equity for a transfer and assumption must be considered as a new loan under subpart B of part 4279 of this chapter.

(k) *Cash downpayment*. When the transferee will be making a cash downpayment as part of the transfer and assumption:

(1) The lender must have an appropriate appraiser, acceptable to both the transferee and transferor and currently authorized to perform appraisals, determine the value of the collateral securing the loan. The appraisal fee and any other costs will not be paid by the Agency.

(2) The market value of the collateral, plus any additional property the transferee proposes to offer as collateral, must be adequate to secure the balance of the guaranteed loans.

(3) Cash downpayments may be paid directly to the transferor provided:

(i) The lender recommends that the cash be released, and the Agency concurs prior to the transaction being completed. The lender may wish to require that an amount be retained for a defined period of time as a reserve against future defaults. Interest on such account may be paid periodically to the transferor or transferee as agreed;

(ii) The lender determines that the transferee has the repayment ability to meet the obligations of the assumed guaranteed loan as well as any other indebtedness;

(iii) Any payments by the transferee to the transferor will not suspend the transferee's obligations to continue to meet the guaranteed loan payments as they come due under the terms of the assumption; and

(iv) The transferor agrees not to take any action against the transferee in connection with the assumption without prior written approval of the lender and the Agency.

§4287.135 Substitution of lender.

After the issuance of a Loan Note Guarantee, the lender shall not sell or transfer the entire loan without the prior written approval of the Agency. The Agency will not pay any loss or share in any costs (*i.e.*, appraisal fees, environmental studies, or other costs associated with servicing or liquidating the loan) with a new lender unless a relationship is established through a substitution of lender in accordance with paragraph (a) of this section. This includes cases where the lender has failed and been taken over by a regulatory agency such as the Federal Deposit Insurance Corporation (FDIC) and the loan is subsequently sold to another lender.

(a) The Agency may approve the substitution of a new lender if:

(1) The proposed substitute lender:

(i) Is an eligible lender in accordance with 4279.29 of subpart A of part 4279 of this chapter;

(ii) Is able to service the loan in accordance with the original loan documents; and

(iii) Agrees in writing to acquire title to the unguaranteed portion of the loan held by the original lender and assumes all original loan requirements, including liabilities and servicing responsibilities.

(2) The substitution of the lender is requested in writing by the borrower,

the proposed substitute lender, and the original lender if still in existence.

(b) Where the lender has failed and been taken over by FDIC and the guaranteed loan is liquidated by FDIC rather than being sold to another lender, the Agency will pay losses and share in costs as if FDIC were an approved substitute lender.

§§ 4287.136–4287.144 [Reserved]

§ 4287.145 Default by borrower.

(a) The lender must notify the Agency when a borrower is 30 days past due on a payment or is otherwise in default of the Loan Agreement. Form FmHA 1980–44, ''Guaranteed Loan Borrower Default Status,'' will be used and the lender will continue to submit this form bimonthly until such time as the loan is no longer in default. If a monetary default exceeds 60 days, the lender will arrange a meeting with the Agency and the borrower to resolve the problem.

(b) In considering options, the prospects for providing a permanent cure without adversely affecting the risk to the Agency and the lender is the paramount objective.

(1) Curative actions include but are not limited to:

(i) Deferment of principal (subject to rights of any holder);

(ii) An additional unguaranteed loan by the lender to bring the account current;

(iii) Reamortization of or rescheduling the payments on the loan (subject to rights of any holder);

(iv) Transfer and assumption of the loan in accordance with § 4287.134 of this subpart;

(v) Reorganization;

(vi) Liquidation;

(vii) Subsequent loan guarantees; and

(viii) Changes in interest rates with the Agency's, the lender's, and holder's approval, provided that the interest rate is adjusted proportionately between the guaranteed and unguaranteed portion of the loan and the type of rate remains the same.

(2) In the event a deferment, rescheduling, reamortization, or moratorium is accomplished, it will be limited to the remaining life of the collateral or remaining limits as contained in § 4279.126 of subpart B of part 4279 of this chapter, whichever is less.

§§ 4287.146–4287.155 [Reserved]

§ 4287.156 Protective advances.

Protective advances are advances made by the lender for the purpose of preserving and protecting the collateral where the debtor has failed to, will not, or cannot meet its obligations. Sound judgment must be exercised in determining that the protective advance preserves collateral and recovery is actually enhanced by making the advance. Protective advances will not be made in lieu of additional loans.

(a) The maximum loss to be paid by the Agency will never exceed the original principal plus accrued interest regardless of any protective advances made.

(b) Protective advances and interest thereon at the note rate will be guaranteed at the same percentage of loss as provided in the Loan Note Guarantee.

(c) Protective advances must constitute an indebtedness of the borrower to the lender and be secured by the security instruments. Agency written authorization is required when cumulative protective advances exceed $5,000.

§ 4287.157 Liquidation.

In the event of one or more incidents of default or third party actions that the borrower cannot or will not cure or eliminate within a reasonable period of time, liquidation may be considered. If the lender concludes that liquidation is necessary, it must request the Agency's concurrence. The lender will liquidate the loan unless the Agency, at its option, carries out liquidation. When the decision to liquidate is made, if the loan has not already been repurchased, provisions will be made for repurchase in accordance with § 4279.78 of subpart A of part 4279 of this chapter.

(a) *Decision to liquidate.* A decision to liquidate shall be made when it is determined that the default cannot be cured through actions contained in § 4287.145 of this subpart or it has been determined that it is in the best interest of the Agency and the lender to liquidate. The decision to liquidate or

continue with the borrower must be made as soon as possible when any of the following exist:

(1) A loan has been delinquent 90 days and the lender and borrower have not been able to cure the delinquency through one of the actions contained in §4287.145 of this subpart.

(2) It has been determined that delaying liquidation will jeopardize full recovery on the loan.

(3) The borrower or lender has been uncooperative in resolving the problem and the Agency or the lender has reason to believe the borrower is not acting in good faith, and it would enhance the position of the guarantee to liquidate immediately.

(b) *Liquidation by the Agency*. The Agency may require the lender to assign the security instruments to the Agency if the Agency, at its option, decides to liquidate the loan. When the Agency liquidates, reasonable liquidation expenses will be assessed against the proceeds derived from the sale of the collateral. Form FmHA 1980–45, ''Notice of Liquidation Responsibility,'' will be forwarded to the Finance Office when the Agency liquidates the loan.

(c) *Submission of liquidation plan*. The lender will, within 30 days after a decision to liquidate, submit to the Agency in writing its proposed detailed method of liquidation. Upon approval by the Agency of the liquidation plan, the lender will commence liquidation.

(d) *Lender's liquidation plan*. The liquidation plan must include, but is not limited to, the following:

(1) Such proof as the Agency requires to establish the lender's ownership of the guaranteed loan promissory note and related security instruments and a copy of the payment ledger if available which reflects the current loan balance and accrued interest to date and the method of computing the interest.

(2) A full and complete list of all collateral including any personal and corporate guarantees.

(3) The recommended liquidation methods for making the maximum collection possible on the indebtedness and the justification for such methods, including recommended action:

(i) For acquiring and disposing of all collateral; and

(ii) To collect from guarantors.

(4) Necessary steps for preservation of the collateral.

(5) Copies of the borrower's latest available financial statements.

(6) Copies of the guarantor's latest available financial statements.

(7) An itemized list of estimated liquidation expenses expected to be incurred along with justification for each expense.

(8) A schedule to periodically report to the Agency on the progress of liquidation.

(9) Estimated protective advance amounts with justification.

(10) Proposed protective bid amounts on collateral to be sold at auction and a breakdown to show how the amounts were determined.

(11) If a voluntary conveyance is considered, the proposed amount to be credited to the guaranteed debt.

(12) Legal opinions, if needed.

(13) If the outstanding balance of principal and accrued interest is less than $200,000, the lender will obtain an estimate of fair market and potential liquidation value of the collateral. If the outstanding balance of principal and accrued interest is $200,000 or more, the lender will obtain an independent appraisal report meeting the requirements of §4279.144 of subpartB of part 4279 of this chapter on all collateral securing the loan which will reflect the fair market value and potential liquidation value. In order to formulate a liquidation plan which maximizes recovery, collateral must be evaluated for the release of hazardous substances, petroleum products, or other environmental hazards which may adversely impact the market value of the collateral. The appraisal shall consider this aspect. The independent appraiser's fee, including the cost of the environmental site assessment, will be shared equally by the Agency and the lender.

(e) *Approval of liquidation plan*. The Agency will inform the lender in writing whether it concurs in the lender's liquidation plan. Should the Agency and the lender not agree on the liquidation plan, negotiations will take place between the Agency and the lender to resolve the disagreement. When the liquidation plan is approved by the

Agency, the lender will proceed expeditiously with liquidation.

(1) A transfer and assumption of the borrower's operation can be accomplished before or after the loan goes into liquidation. However, if the collateral has been purchased through foreclosure or the borrower has conveyed title to the lender, no transfer and assumption is permitted.

(2) A protective bid may be made by the lender, with prior Agency written approval, at a foreclosure sale to protect the lender's and the Agency's interest. The protective bid will not exceed the amount of the loan, including expenses of foreclosure, and should be based on the liquidation value considering estimated expenses for holding and reselling the property. These expenses include, but are not limited to, expenses for resale, interest accrual, length of time necessary for resale, maintenance, guard service, weatherization, and prior liens.

(f) *Acceleration*. The lender, or the Agency if it liquidates, will proceed to accelerate the indebtedness as expeditiously as possible when acceleration is necessary including giving any notices and taking any other legal actions required. A copy of the acceleration notice or other acceleration document will be sent to the Agency (or lender if the Agency liquidates). The guaranteed loan will be considered in liquidation once the loan has been accelerated and a demand for payment has been made upon the borrower.

(g) *Filing an estimated loss claim*. When the lender is conducting the liquidation and owns any or all of the guaranteed portion of the loan, the lender will file an estimated loss claim once a decision has been made to liquidate if the liquidation will exceed 90 days. The estimated loss payment will be based on the liquidation value of the collateral. For the purpose of reporting and loss claim computation, the lender will discontinue interest accrual on the defaulted loan in accordance with Agency procedures, and the loss claim will be promptly processed in accordance with applicable Agency regulations.

(h) *Accounting and reports*. When the lender conducts liquidation, it will account for funds during the period of liquidation and will provide the Agency with reports at least quarterly on the progress of liquidation including disposition of collateral, resulting costs, and additional procedures necessary for successful completion of the liquidation.

(i) *Transmitting payments and proceeds to the Agency*. When the Agency is the holder of a portion of the guaranteed loan, the lender will transmit to the Agency its *pro rata* share of any payments received from the borrower; liquidation; or other proceeds using Form FmHA 1980–43, ''Lender's Guaranteed Loan Payment to FmHA.''

(j) *Abandonment of collateral*. There may be instances when the cost of liquidation would exceed the potential recovery value of the collection. The lender, with proper documentation and concurrence of the Agency, may abandon the collateral in lieu of liquidation. A proposed abandonment will be considered a servicing action requiring the appropriate environmental review by the Agency in accordance with subpart G of part 1940 of this title. Examples where abandonment may be considered include, but are not limited to:

(1) The cost of liquidation is increased or the value of the collateral is decreased by environmental issues;

(2) The collateral is functionally or economically obsolete;

(3) There are superior liens held by other parties in excess of the value of the collateral;

(4) The collateral has deteriorated; or

(5) The collateral is specialized and there is little or no demand for it.

(k) *Disposition of personal or corporate guarantees*. The lender should take action to maximize recovery from all collateral, including personal and corporate guarantees. The lender will seek a deficiency judgment when there is a reasonable chance of future collection of the judgment. The lender must make a decision whether or not to seek a deficiency judgment when:

(1) A borrower voluntarily liquidates the collateral, but the sale fails to pay the guaranteed indebtedness;

(2) The collateral is voluntarily conveyed to the lender, but the borrower and personal and corporate guarantors are not released from liability; or

(3) A liquidation plan is being developed for forced liquidation.

(l) *Compromise settlement.* A compromise settlement may be considered at any time.

(1) The lender and the Agency must receive complete financial information on all parties obligated for the loan and must be satisfied that the statements reflect the true and correct financial position of the debtor including all assets. Adequate consideration must be received before a release from liability is issued. Adequate consideration includes money, additional security, or other benefit to the goals and objectives of the Agency.

(2) Before a personal guarantor can be released from liability, the following factors must be considered.

(i) Cash, either lump sum or over a period of time, or other consideration offered by the guarantor;

(ii) Age and health of the guarantor;

(iii) Potential income of the guarantor;

(iv) Inheritance prospects of the guarantor;

(v) Availability of the guarantor's assets.

(vi) Possibility that the guarantor's assets have been concealed or improperly transferred; and

(vii) Effect of other guarantors on the loan.

(3) Once the Agency and the lender agree on a reasonable amount that is fair and adequate, the lender can proceed to effect the settlement compromise.

(4) A compromise will only be accepted if it is in the best interest of the Agency.

§4287.158 Determination of loss and payment.

In all liquidation cases, final settlement will be made with the lender after the collateral is liquidated, unless otherwise designated as a future recovery or after settlement and compromise of all parties has been completed. The Agency will have the right to recover losses paid under the guarantee from any party which may be liable.

(a) *Report of loss form.* Form FmHA 449–30, ''Loan Note Guarantee Report of Loss,'' will be used for calculations of all estimated and final loss determinations. Estimated loss payments may only be approved by the Agency after the Agency has approved a liquidation plan.

(b) *Estimated loss.* In accordance with the requirements of §4287.157(g) of this subpart, an estimated loss claim based on liquidation appraisal value will be prepared and submitted by the lender.

(1) The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by the Agency will be applied by the lender on the guaranteed portion of the loan debt. Such application does not release the borrower from liability.

(2) An estimated loss will be applied first to reduce the principal balance on the guaranteed loan and the balance, if any, to accrued interest. Interest accrual on the defaulted loan will be discontinued.

(3) A protective advance claim will be paid only at the time of the final report of loss payment, except in certain transfer and assumption situations as specified in §4287.134 of this subpart.

(c) *Final loss.* Within 30 days after liquidation of all collateral, except for certain unsecured personal or corporate guarantees as provided for in this section, is completed, a final report of loss must be prepared and submitted by the lender to the Agency. The Agency will not guarantee interest beyond this 30-day period other than for the period of time it takes the Agency to process the loss claim. Before approval by the Agency of any final loss report, the lender must account for all funds during the period of liquidation, disposition of the collateral, all costs incurred, and any other information necessary for the successful completion of liquidation. Upon receipt of the final accounting and report of loss, the Agency may audit all applicable documentation to determine the final loss. The lender will make its records available and otherwise assist the Agency in making any investigation. The documentation accompanying the report of loss must support the amounts shown on Form FmHA 449–30.

(1) A determination must be made regarding the collectibility of unsecured personal and corporate guarantees. If reasonably possible, such guarantees

should be promptly collected or otherwise disposed of in accordance with § 4287.157(k) of this subpart prior to completion of the final loss report. However, in the event that collection from the guarantors appears unlikely or will require a prolonged period of time, the report of loss will be filed when all other collateral has been liquidated, and unsecured personal or corporate guarantees will be treated as a future recovery with the net proceeds to be shared on a pro rata basis by the lender and the Agency.

(2) The lender must document that all of the collateral has been accounted for and properly liquidated and that liquidation proceeds have been properly accounted for and applied correctly to the loan.

(3) The lender will show a breakdown of any protective advance amount as to the payee, purpose of the expenditure, date paid, and evidence that the amount expended was proper and that payment was actually made.

(4) The lender will show a breakdown of liquidation expenses as to the payee, purpose of the expenditure, date paid, and evidence that the amount expended was proper and that payment was actually made. Liquidation expenses are recoverable only from collateral proceeds. Attorney fees may be approved as liquidation expenses provided the fees are reasonable and cover legal issues pertaining to the liquidation that could not be properly handled by the lender and its in-house counsel.

(5) Accrued interest will be supported by documentation as to how the amount was accrued. If the interest rate was a variable rate, the lender will include documentation of changes in both the selected base rate and the loan rate.

(6) Loss payments will be paid by the Agency within 60 days after the review of the final loss report and accounting of the collateral.

(d) *Loss limit.* The amount payable by the Agency to the lender cannot exceed the limits set forth in the Loan Note Guarantee.

(e) *Rent.* Any net rental or other income that has been received by the lender from the collateral will be applied on the guaranteed loan debt.

(f) *Liquidation costs.* Liquidation costs will be deducted from the proceeds of the disposition of primary collateral. If changed circumstances after submission of the liquidation plan require a substantial revision of liquidation costs, the lender will procure the Agency's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the lender will be allowed. In-house expenses include, but are not limited to, employee's salaries, staff lawyers, travel, and overhead.

(g) *Payment.* When the Agency finds the final report of loss to be proper in all respects, it will approve Form FmHA 449–30 and proceed as follows:

(1) If the loss is greater than any estimated loss payment, the Agency will pay the additional amount owed by the Agency to the lender.

(2) If the loss is less than the estimated loss payment, the lender will reimburse the Agency for the overpayment plus interest at the note rate from the date of payment.

(3) If the Agency has conducted the liquidation, it will pay the lender in accordance with the Loan Note Guarantee.

§§ 4287.159–4287.168 [Reserved]

§ 4287.169 Future recovery.

After a loan has been liquidated and a final loss has been paid by the Agency, any future funds which may be recovered by the lender will be pro rated between the Agency and the lender based on the original percentage of guarantee.

§ 4287.170 Bankruptcy.

The lender is responsible for protecting the guaranteed loan and all collateral securing the loan in bankruptcy proceedings.

(a) *Lender's responsibilities.* It is the lender's responsibility to protect the guaranteed loan debt and all of the collateral securing it in bankruptcy proceedings. These responsibilities include but are not limited to the following:

(1) The lender will file a proof of claim where necessary and all the necessary papers and pleadings concerning the case.

(2) The lender will attend and, where necessary, participate in meetings of the creditors and all court proceedings.

(3) When permitted by the Bankruptcy Code, the lender will request modification of any plan of reorganization whenever it appears that additional recoveries are likely.

(4) The Agency will be kept adequately and regularly informed in writing of all aspects of the proceedings.

(5) In a Chapter 11 reorganization, if an independent appraisal of collateral is necessary in the Agency's opinion, the Agency and the lender will share such appraisal fee equally.

(b) *Reports of loss during bankruptcy.* When the loan is involved in reorganization proceedings, payment of loss claims may be made as provided in this section. For a liquidation proceeding, only paragraphs (b)(3) and (5) of this section are applicable.

(1) *Estimated loss payments.* (i) If a borrower has filed for protection under Chapter 11 of the United States Code for a reorganization (but not Chapter 13) and all or a portion of the debt has been discharged, the lender will request an estimated loss payment of the guaranteed portion of the accrued interest and principal discharged by the court. Only one estimated loss payment is allowed during the reorganization. All subsequent claims of the lender during reorganization will be considered revisions to the initial estimated loss. A revised estimated loss payment may be processed by the Agency, at its option, in accordance with any court-approved changes in the reorganization plan. Once the reorganization plan has been completed, the lender is responsible for submitting the documentation necessary for the Agency to review and adjust the estimated loss claim to reflect any actual discharge of principal and interest and to reimburse the lender for any court-ordered interest-rate reduction under the terms of the reorganization plan.

(ii) The lender will use Form FmHA 449–30 to request an estimated loss payment and to revise any estimated loss payments during the course of the reorganization plan. The estimated loss claim, as well as any revisions to this claim, will be accompanied by documentation to support the claim.

(iii) Upon completion of a reorganization plan, the lender will complete a Form FmHA 1980–44 and forward this form to the Finance Office.

(2) *Interest loss payments.* (i) Interest losses sustained during the period of the reorganization plan will be processed in accordance with paragraph (b)(1) of this section.

(ii) Interest losses sustained after the reorganization plan is completed will be processed annually when the lender sustains a loss as a result of a permanent interest rate reduction which extends beyond the period of the reorganization plan.

(iii) If an estimated loss claim is paid during the operation of the Chapter 11 reorganization plan and the borrower repays in full the remaining balance without an additional loss sustained by the lender, a final report of loss is not necessary.

(3) *Final loss payments.* Final loss payments will be processed when the loan is liquidated.

(4) *Payment application.* The lender must apply estimated loss payments first to the unsecured principal of the guaranteed portion of the debt and then to the unsecured interest of the guaranteed portion of the debt. In the event a bankruptcy court attempts to direct the payments to be applied in a different manner, the lender will immediately notify the Agency servicing office.

(5) *Overpayments.* Upon completion of the reorganization plan, the lender will provide the Agency with the documentation necessary to determine whether the estimated loss paid equals the actual loss sustained. If the actual loss sustained as a result of the reorganization is less than the estimated loss, the lender will reimburse the Agency for the overpayment plus interest at the note rate from the date of payment of the estimated loss. If the actual loss is greater than the estimated loss payment, the lender will submit a revised estimated loss in order to obtain payment of the additional amount owed by the Agency to the lender.

(6) *Protective advances.* If approved protective advances were made prior to the borrower having filed bankruptcy, these protective advances and accrued

interest will be considered in the loss calculations.

(c) *Legal expenses during bankruptcy proceedings.* (1) When a bankruptcy proceeding results in a liquidation of the borrower by a trustee, legal expenses will be handled as directed by the court.

(2) Chapter 11 pertains to a reorganization of a business contemplating an ongoing business rather than a termination and dissolution of the business where legal protection is afforded to the business as defined under Chapter 11 of the Bankruptcy Code. Consequently, expenses incurred by the lender in a Chapter 11 reorganization can never be liquidation expenses unless the proceeding becomes a Chapter 11 liquidation. If the proceeding should become a Liquidating 11, reasonable and customary liquidation expenses may be deducted from proceeds of collateral as provided in the Lender's Agreement. Chapter 7 pertains to a liquidation of the borrower's assets. If, and when, liquidation of the borrower's assets under Chapter 7 is conducted by the bankruptcy trustee, then the lender cannot claim expenses.

§§ 4287.171–4287.179 [Reserved]

§ 4287.180 Termination of guarantee.

A guarantee under this part will terminate automatically:

(a) Upon full payment of the guaranteed loan;

(b) Upon full payment of any loss obligation; or

(c) Upon written notice from the lender to the Agency that the guarantee will terminate 30 days after the date of notice, provided that the lender holds all of the guaranteed portion and the Loan Note Guarantee is returned to the Agency to be canceled.

§§ 4287.181–4287.199 [Reserved]

§ 4287.200 OMB control number.

The information collection requirements contained in this regulation have been approved by OMB and have been assigned OMB control number 0575–0168. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 8 hours per response, with an average of 4 hours per response, including time for reviewing the collection of information. Send comments regarding this burden, estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Department of Agriculture, Clearance Officer, OIRM, Stop 7630, Washington, DC 20250. You are not required to respond to this collection of information unless it displays a currently valid OMB control number.

Subpart D—Servicing Biorefinery Assistance Guaranteed Loans

SOURCE: 76 FR 8475, Feb. 14, 2011, unless otherwise noted.

§ 4287.301 Introduction.

(a) This subpart supplements 7 CFR part 4279, subparts A and C, by providing additional requirements and instructions for servicing and liquidating all Biorefinery Assistance Guaranteed Loans.

(b) The lender will be responsible for servicing the entire loan and will remain mortgagee and secured party of record notwithstanding the fact that another party may hold a portion of the loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of a loan will neither be paid first nor given any preference or priority over the guaranteed portion of the loan.

(c) Copies of all forms, regulations, and Instructions referenced in this subpart are available in any Agency office. Whenever a form is designated in this subpart, that designation includes predecessor and successor forms, if applicable, as specified by the field or National Office.

§ 4287.302 Definitions.

The definitions and abbreviations contained in § 4279.2 of subpart A and in § 4279.202 of subpart C of part 4279 of this chapter apply to this subpart.

§ 4287.303 Exception authority.

The exception authority provisions of this paragraph apply to this subpart instead of those in § 4279.15 of subpart A

of part 4279 of this chapter. The Administrator may, with the concurrence of the Secretary of Agriculture, make an exception, on a case-by-case basis, to any requirement or provision of this subpart that is not inconsistent with any authorizing statute or applicable law, if the Administrator determines that application of the requirement or provision would adversely affect the Federal government's interest.

§§ 4287.304–4287.305 [Reserved]

§ 4287.306 Appeals.

Section 4279.16 of subpart A of part 4279 of this chapter applies to this subpart.

§ 4287.307 Servicing.

Except as specified in paragraphs (a) through (m) of this section, all loans guaranteed under this subpart shall comply with the provisions found in §§ 4287.101 through 4287.180 of this chapter. If the Agency determines that the lender is not in compliance with its servicing responsibilities, the Agency reserves the right to take any action the Agency determines necessary to protect the Agency's interests with respect to the loan. If the Agency exercises this right, the lender must cooperate with the Agency. Any cost to the Agency associated with such action will be assessed against the lender.

(a) *Periodic reports.* Each lender shall submit quarterly reports, unless more frequent ones are needed as determined by the Agency to meet the financial interests of the United States, regarding the condition of its Agency guaranteed loan portfolio (including borrower status and loan classification) and any material adverse change in the general financial condition of the borrower since the last report was submitted.

(b) *Default reports.* Lenders shall submit monthly default reports, including borrower payment history, for each loan in monetary default using a form approved by the Agency.

(c) *Financial reports.* The financial report requirements specified in § 4287.107(d) apply except as follows:

(1) The financial reports required under § 4287.107(d) may be specified in either the loan agreement or the Conditional Commitment;

(2) The lender must submit to the Agency quarterly financial statements within 45 days of the end of each quarter; and

(3) The annual financial statements required under § 4287.107(d) must be audited financial statements and must be submitted within 180 days.

(d) *Additional loans.* Instead of complying with the additional expenditures provisions specified in § 4287.107(e), the lender may make additional expenditures or new loans to a borrower with an outstanding loan guaranteed only with prior written Agency approval. The Agency will only approve additional expenditures or new loans where the expenditure or loan will not violate one or more of the loan covenants of the borrower's loan agreement. In all instances, the lender must notify the Agency when they make any additional expenditures or new loans. Any additional expenditure or loan made by the lender must be junior in priority to the loan guaranteed under 7 CFR part 4279 except for working capital loans for which the Agency may consider a subordinate lien provided it is consistent with the conditional provisions specified in § 4279.202(i)(1).

(e) *Interest rate adjustments.* The provisions of § 4287.112 apply, except for § 4287.112(a)(2).

(f) *Collateral inspection and release.* In lieu of complying with § 4287.113, lenders must comply with the provisions of this paragraph. The lender must inspect the collateral as often as necessary to properly service the loan. The Agency must give prior approval for the release of collateral, except as specified in paragraph (f)(1) of this section or where the release of collateral is made under the abundance of collateral provision of the applicable security agreement, subject to the provisions of paragraph (f)(3) of this section. Appraisals on the collateral being released are required on all transactions exceeding $250,000 and will be at the expense of the borrower. The appraisal must meet the requirements of § 4279.244. The sale or release of collateral must be based on an arm's length transaction, unless otherwise approved by the Agency in writing.

(1) Lenders may, over the life of the guaranteed loan, release collateral

with a cumulative value of up to 20 percent of the original loan amount without Agency concurrence (subject to the provisions of paragraph (f)(3) of this section) if the proceeds generated are used to pay down secured debt in order of lien priority or to buy replacement collateral.

(2) Release of collateral with a cumulative value in excess of 20 percent of the original loan or when the proceeds will not be used to pay down secured debt in order of lien priority or to buy replacement collateral, must be requested, in writing, by the lender and concurred by the Agency, in writing, in advance of the release. A written evaluation will be completed by the lender to justify the release.

(3) Lenders may not release collateral with a value of more than 10 percent of the original loan amount at any one time and within any one calendar year without Agency concurrence.

(4) Any release of collateral must not adversely affect the project's operation or financial condition.

(g) *Subordination of lien position*. In addition to complying with the provisions found in § 4287.123, a subordination must not extend the term of the guaranteed loan.

(h) *Transfers and assumptions*. Transfers and assumptions shall comply with § 4287.134, except as specified in paragraphs (h)(1) through (h)(3) of this section, and with paragraphs (h)(4) and (h)(5) of this section.

(1) In complying with § 4287.134(a), eligible applicants shall be determined in accordance with subpart C of part 4279 of this chapter instead of subpart B of part 4279.

(2) Any new loan terms under § 4287.134(b) must be within the terms authorized by § 4279.232 of subpart C of part 4279 of this chapter instead of § 4279.126 of subpart B of part 4279.

(3) Additional loans under § 4287.134(e) will be considered as a new loan application under subpart C of part 4279 of this chapter instead of subpart B of part 4279.

(4) The Agency may charge the lender a nonrefundable transfer fee at the time of a transfer application. The Agency will set the amount of the transfer fee in an annual notice of funds availability published in the FEDERAL REGISTER.

(5) Assumption shall be deemed to occur in the event of a change in the control of the borrower. For purposes of the loan, change of control means the merger of the borrower, sale of all or substantially all of the assets of the borrower, or the sale of more than 25 percent of the stock or other equity interest of either the borrower or its corporate parent.

(6) The Agency will not approve any change in terms that results in an increase in the cost of the loan guarantee, unless the Agency can secure any additional budget authority that would be required and the change otherwise conforms with applicable regulations.

(i) *Substitution of lender after issuance of the Loan Note Guarantee*. All substitutions of lenders must comply with § 4287.135 except that, instead of approving a new lender as a substitute lender using the provisions of § 4287.135(a), the Agency may approve the substitution of a new lender if the proposed substitute lender:

(1) Is an eligible lender in accordance with § 4279.202(b);

(2) Is able to service the loan in accordance with the original loan documents; and

(3) Acquires title to the unguaranteed portion of the loan held by the original lender and assumes all original loan requirements, including liabilities and servicing responsibilities.

(j) *Default by borrower*. The provisions of § 4287.145 apply to this subpart, except that:

(1) Instead of complying with § 4287.145(b)(2), in the event a deferment, rescheduling, reamortization, or moratorium is accomplished, it will be limited to the remaining life of the collateral or remaining limits as contained in § 4279.232(a) of part 4279 of this chapter; and

(2) If a loan goes into default, the lender must provide the notification required under § 4287.145(a) to the Agency within 15 calendar days of when a borrower is 30 days past due on a payment or is otherwise in default of the Loan Agreement.

(k) *Protective advances.* All protective advances made by the lender must comply with § 4287.156 and the provisions of paragraphs (k)(1) and (k)(2) of this section.

(1) Instead of the $5,000 specified in § 4287.156(c), the Agency's written authorization is required when cumulative protective advances exceed $100,000, unless otherwise specified by the Agency at a lesser amount.

(2) The lender must obtain written Agency approval for any protective advance that will singularly or cumulatively amount to more than $100,000 or 10 percent of the guaranteed loan, whichever is less.

(l) *Liquidation.* Liquidations shall comply with § 4287.157, except that, in complying with § 4287.157(d)(13), lenders are to obtain an independent appraisal report meeting the requirements of § 4279.244, instead of § 4279.144, when the outstanding balance of principal and accrued interest is $200,000 or more.

(m) *Determination of loss and payment.* In addition to complying with § 4287.158, if a lender receives a final loss payment, the lender must submit to the Agency an annual report on its collection activities for each unsatisfied account for 3 years following payment of the final loss claim.

§ 4287.308 Fiscal Year 2009 and Fiscal Year 2010 loan guarantees.

Any loan guarantee application that has been submitted to the Agency under this program prior to March 16, 2011 may submit to the Agency a written request for an irrevocable election to have the guaranteed loan serviced in accordance with this subpart. Such an election must be made by October 1, 2011.

§§ 4287.309–4287.400 [Reserved]

PART 4288—PAYMENT PROGRAMS

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AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1989.

SOURCE: 76 FR 7926, Feb. 11, 2011, unless otherwise noted.

Subpart A—Repowering Assistance Payments to Eligible Biorefineries

§ 4288.1 Purpose and scope.

(a) *Purpose*. The purpose of this program is to provide financial incentives to biorefineries in existence on June 18, 2008, the date of the enactment of the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill) (Pub. L. 110–246), to replace the use of fossil fuels used to produce heat or power at their facilities by installing new systems that use renewable biomass, or to produce new energy from renewable biomass.

(b) *Scope*. The Agency may make payments under this program to any biorefinery that meets the requirements of the program up to the limits established for the program. Based on our research and survey of medium-sized project costs, the Agency has determined that the dollar amount identified will provide adequate incentive for biorefineries to apply.

(1) The Agency will determine the amount of payments to be made to a biorefinery taking into consideration the percentage reduction in fossil fuel used by the biorefinery (including the quantity of fossil fuels a renewable biomass system is replacing), and the cost and cost-effectiveness of the renewable biomass system.

(2) The Agency will determine who receives payment under this program based on the percentage reduction in fossil fuel used by the biorefinery that will result from the installation of the renewable biomass system; the cost and cost-effectiveness of the renewable biomass system; and other scoring criteria identified in § 4288.21. The above criteria will be used to determine priority for awards of 50 percent of total eligible project costs, up to the maximum award applicable for the fiscal year.

§ 4288.2 Definitions.

The definitions set forth in this section are applicable for all purposes of program administration under this subpart.

Agency. The USDA Rural Development, Rural Business-Cooperative Service or its successor organization.

Application period. The time period announced by the Agency during which the Agency will accept applications.

Base energy use. The amount of documented fossil fuel energy use over an extended operating period.

(1) The extended operating period must be at least 24 months of recorded usage, and requires metered utility records for electric energy, natural gas consumption, fuel oil, coal shipments and propane use, as applicable for providing heat or power for the operation of the biorefinery.

(2) Utility billing, oil and coal shipments must be actual bills, with meter readings, applicable rates and tariffs, costs and usage. Billing must be complete, without gaps and arranged in chronological order. Drop shipments of coal or oil can be substituted for metered readings, provided the biorefinery documents the usage and its relationship to providing heat or power to the biorefinery.

(3) A biorefinery in existence on or before June 18, 2008 with less than 24 months of actual operating data must provide at least 12 months of data supported by engineering and design calculations, and site plans, prepared by the construction engineering firm.

Biobased products. Products determined by the Secretary to be commercial or industrial products (other than food or feed) that are:

(1) Composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials; or

(2) Intermediate ingredients or feedstocks.

Biofuel. Fuel derived from renewable biomass.

Biorefinery. A facility (including equipment and processes) that converts renewable biomass into biofuels and biobased products, and may produce electricity.

Eligible biorefinery. A biorefinery that has been in existence on or before June 18, 2008.

Energy Information Agency (EIA). The statistical agency of the Department of

Energy and source of official energy statistics from the U.S. Government.

Feasibility study. An Agency-acceptable analysis of the economic, environmental, technical, financial, and management capabilities of a proposed project or business in terms of its expected success. A list of items that must be included in a feasibility study is presented in § 4288.20(c)(9) of this subpart.

Financial interest. Any ownership, creditor, or management interest in the biorefinery.

Fiscal year. A 12-month period beginning each October 1 and ending September 30 of the following calendar year.

Fossil fuel. Coal, oil, propane, and natural gas.

Renewable biomass.

(1) Materials, pre-commercial thinnings, or invasive species from National Forest System land or public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)) that:

(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; and

(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 as per paragraphs (e)(2), (e)(3), and (e)(4), and large tree retention as per paragraph (f), of section 102 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6512); or

(2) Any organic matter that is available on a renewable or recurring basis from non-Federal land or land belonging to an Indian or Indian Tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States, including:

(i) Renewable plant material, including feed grains; other agricultural commodities; other plants and trees; and algae; and

(ii) Waste material, including crop residue; other vegetative waste material (including wood waste and wood residues); animal waste and byproducts (including fats, oils, greases, and manure); and food waste and yard waste.

Rural or rural area. Any area of a State not in a city or town that has a population of more than 50,000 inhabitants, according to the latest decennial census of the United States, or in the urbanized area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants, and any area that has been determined to be ''rural in character'' by the Under Secretary for Rural Development, or as otherwise identified in this definition.

(1) An area that is attached to the urbanized area of a city or town with more than 50,000 inhabitants by a contiguous area of urbanized census blocks that is not more than 2 census blocks wide. Applicants from such an area should work with their Rural Development State Office to request a determination of whether their project is located in a rural area under this provision.

(2) For the purposes of this definition, cities and towns are incorporated population centers with definite boundaries, local self government, and legal powers set forth in a charter granted by the State.

(3) For the Commonwealth of Puerto Rico, the island is considered rural and eligible for Business Programs assistance, except for the San Juan Census Designated Place (CDP) and any other CDP with greater than 50,000 inhabitants. CDPs with greater than 50,000 inhabitants, other than the San Juan CDP, may be determined to be eligible if they are ''not urban in character.''

(4) For the State of Hawaii, all areas within the State are considered rural and eligible for Business Programs assistance, except for the Honolulu CDP within the County of Honolulu.

(5) For the purpose of defining a rural area in the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands, the Agency shall determine what constitutes rural and rural area based on available population data.

(6) The determination that an area is ''rural in character'' will be made by

the Under Secretary of Rural Development. The process to request a determination under this provision is outlined in paragraph (6)(ii) of this definition.

(i) The determination that an area is ''rural in character'' under this definition will apply to areas that are within:

(A) An urbanized area that has two points on its boundary that are at least 40 miles apart, which is not contiguous or adjacent to a city or town that has a population of greater than 150,000 inhabitants or the urbanized area of such a city or town; or

(B) An urbanized area contiguous and adjacent to a city or town of greater than 50,000 inhabitants that is within one-quarter mile of a rural area.

(ii) Units of local government may petition the Under Secretary of Rural Development for a ''rural in character'' designation by submitting a petition to both the appropriate Rural Development State Director and the Administrator on behalf of the Under Secretary. The petition shall document how the area meets the requirements of paragraph (6)(i)(A) or (6)(i)(B) of this definition and discuss why the petitioner believes the area is ''rural in character,'' including, but not limited to, the area's population density, demographics, and topography and how the local economy is tied to a rural economic base. Upon receiving a petition, the Under Secretary will consult with the applicable Governor or leader in a similar position and request comments to be submitted within 5 business days, unless such comments were submitted with the petition. The Under Secretary will release to the public a notice of a petition filed by a unit of local government not later than 30 days after receipt of the petition by way of publication in a local newspaper and posting on the Agency's Web site, and the Under Secretary will make a determination not less than 15 days, but no more than 60 days, after the release of the notice. Upon a negative determination, the Under Secretary will provide to the petitioner an opportunity to appeal a determination to the Under Secretary, and the petitioner will have 10 business days to appeal the determination and provide further information for consideration.

§ 4288.3 Review or appeal rights.

A person may seek a review of an Agency decision or appeal to the National Appeals Division in accordance with 7 CFR part 11 of this title.

§ 4288.4 Compliance with other laws and regulations.

Participating biorefineries must comply with other applicable Federal, State, and local laws, including, but not limited to, the Equal Employment Opportunities Act, the Equal Credit Opportunity Act, Title VI of the Civil Rights Act of 1964, 7 CFR Part 1901, subpart E, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. Applicants must submit and will be subject to preaward and post award compliance reviews with the terms and conditions set forth in Form RD 400–1, ''Equal Opportunity Agreement'' and Form RD 400–4, ''Assurance Agreement.''

§ 4288.5 Oversight, monitoring, and reporting requirements.

(a) *Verification*. The Agency reserves the right to verify all payment requests and subsequent payments made under this program, including field visits, as frequently as necessary to ensure the integrity of the program. Documentation provided will be used to verify, reconcile, and enforce the payment terms of Form RD 4288–5, ''Repowering Assistance Program—Agreement,'' along with any potential refunds that the recipient will be required to make should they fail to adequately document their request.

(b) *Records*. (1) For purposes of verifying the eligible project costs supporting payments under this subpart, each biorefinery must maintain in one place such books, documents, papers, receipts, payroll records and bills of sale adequate to identify the purposes for which, and the manner in which funds were expended for eligible project costs. The biorefinery must maintain copies of all documents submitted to the Agency in connection with payments made hereunder. These records must be available at all reasonable times for examination by the Agency

and must be held and be available for Agency examination for a period of not less than 3 years from the final payment date.

(2) For the purpose of verifying compliance with the fossil fuel reduction and energy production requirements of this subpart, each biorefinery must make available and provide for the metering of all power and heat producing boilers, containment vessels, generators and any other equipment related to the production of heat or power required to displace fossil fuel loads with renewable biomass. These records must be held in one place and be available at all reasonable times for examination by the Agency. Such records include all books, papers, contracts, scale tickets, settlement sheets, invoices, and any other documents related to the program that are within the control of the biorefinery. These records must be held and made available for Agency examination for a period of not less than 3 years from the date the repowering project becomes operational.

(c) *Reporting*. Upon completion of the repowering project, the biorefinery must submit a report using Form RD 4288–6, ''Repowering Assistance Programs—Reporting Form,'' to the Agency annually for the first 3 years after completion of the project. The reports are to be submitted as of October 1 of each year. The report must include the items specified in paragraphs (c)(1) and (c)(2) of this section.

(1) Documentation regarding the usage and production of energy at the biorefinery during the previous year, including both the previous and current fossil fuel load and the renewable biomass energy production.

(i) Metered data documenting the production of heat, steam, gas and power must be obtained utilizing an Agency approved measurement device.

(ii) Metered data must be verifiable and subject to independent calibration testing.

(2) Current utility billing data, indentifying metered loads, from the base energy use period.

§ 4288.6 Forms, regulations, and instructions.

Copies of all forms, regulations, instructions, and other materials related to this program may be obtained from the USDA Rural Development State Office, Renewable Energy Coordinator and the USDA Rural Development Web site at *http://www.rurdev.usda.gov/regs/*.

§ 4288.7 Exception authority.

The Administrator of the Agency (''Administrator'') may, with the concurrence of the Secretary of Agriculture, make an exception, on a case-by-case basis, to any requirement or provision of this subpart that is not inconsistent with any authorizing statute or applicable law, if the Administrator determines that application of the requirement or provision would adversely affect the Federal government's interest.

§§ 4288.8–4288.9 [Reserved]

§ 4288.10 Applicant eligibility.

(a) *Eligible projects*. To be eligible for this program, the applicant must be an eligible biorefinery utilizing only renewable biomass for replacement fuel, and must meet the requirements specified in paragraphs (a)(1) through (a)(5) of this section.

(1) *Timely complete application submission*. To be eligible for this program, the applicant must submit a complete application within the application period. Projects will be selected based on ranking which is derived from the application of the selection criteria stated in § 4288.21.

(2) *Multiple biorefineries*. Corporations and entities with more than one biorefinery can submit an application for only one of their biorefineries. However, if a corporation or entity has multiple biorefineries located at the same location, the entity may submit an application that covers such biorefineries provided the heat and power used in the multiple biorefineries are centrally produced.

(3) *Cost-effectiveness*. The application must be awarded at least minimum points for cost-effectiveness under § 4288.21(b)(1).

(4) *Percentage of reduction of fossil fuel use*. The application must be awarded at least minimum points for percentage of reduction of fossil fuel use under § 4288.21(b)(2).

(5) *Full project financing.* The applicant must demonstrate that it has sufficient funds or has obtained commitments for sufficient funds to complete the repowering project taking into account the amount of the payment request in the application.

(b) *Ineligible projects.* A project is not eligible under this subpart if it is using feedstocks for repowering that are feed grain commodities that received benefits under Title I of the Food, Conservation, and Energy Act of 2008.

§ 4288.11 Eligible project costs.

Eligible project costs will be only for project related construction costs for repowering improvements associated with the equipment, installation, engineering, design, site plans, associated professional fees, permits and financing fees.

§ 4288.12 Ineligible project costs.

Any project costs incurred by the applicant prior to application for payment assistance under this program will be ineligible for payment assistance.

§ 4288.13 Payment information.

(a) *Maximum payment.* For purposes of this program, the maximum payment an applicant may receive will be 50 percent of total eligible project costs up to the applicable fiscal year's maximum award as announced in an annual FEDERAL REGISTER notice. There is no minimum payment to an applicant.

(b) *Reimbursement payments.* The Agency shall only make payments based on the biorefinery's expenditures on eligible project costs. Payments shall be determined by multiplying the amount of eligible expenditures stated on the payment request by a percentage obtained by dividing the aggregate payment award by total eligible project costs.

(c) *Timing of payments.* The Applicant may request payments not more frequently than once a month by submitting an original, completed, validly signed Standard Form (SF) 271, ''Outlay Report and Request for Reimbursement for Construction Programs'' including the supporting documentation identified in § 4288.23, to reimburse the applicant for the Agency's pro rata share of funds expended on eligible project costs. The Agency shall make such payments until 90 percent of the total payment award has been expended. The final 10 percent of the payment award will be paid upon completion of the repowering project and satisfactory evidence has been received by the Agency demonstrating that the biorefinery is operating as described in the Agency approved application.

§§ 4288.14–4288.19 [Reserved]

§ 4288.20 Submittal of applications.

(a) *Address to make application.* Application must be submitted to USDA, Rural Development-Energy Division, Program Branch, Attention: Repowering Assistance Program, 1400 Independence Avenue, SW., Stop 3225, Washington, DC 20250–3225.

(b) *Content and form of submission.* Applicants must submit a signed original and one copy of an application containing the information specified in this section. The applicant must also furnish the Agency the required documentation identified in Form RD 4288–4, ''Repowering Assistance Program Application,'' to verify compliance with program provisions before acceptance into the program. Note that applicants are required to have a Dun and Bradstreet Universal Numbering System (DUNS) number (unless the applicant is an individual). The DUNS number is a nine-digit identification number, which uniquely identifies business entities. A DUNS number can be obtained at no cost via a toll-free request line at 1–866–705–5711, or online at *http://fedgov.dnb.com/webform.* Applicants must submit to the Agency the documents specified in paragraphs (b)(1) through (b)(6) of this section.

(1) *Form RD 4288–4.* Applicants must submit this form and all necessary attachments providing project information on the biorefinery; the facility at which the biorefinery operates, including location and products produced; and the types and quantities of renewable biomass feedstock being proposed to produce heat or power. This form requires the applicant to provide relevant data to allow for technical analysis of their existing facility to demonstrate replacement of fossil fuel by

renewable biomass with reasonable costs and maximum efficiencies. The applicant must also submit evidence that the biorefinery was in existence on or before June 18, 2008. The applicant is required to certify the information provided.

(2) RD Instruction 1940–Q, Exhibit A–1, ''Certification for Contracts, Grants and Loans.''

(3) Form RD 400–1.

(4) Form RD 400–4.

(5) Form RD 1940–20, ''Request for Environmental Information'' (first page only). Note, however, that applicants must substitute the narrative outlined in RD Instruction 1940–G, Exhibit H, in place of the narrative attachment specified in the instructions to Form RD 1940–20.

(6) Certifications. The applicant must furnish the Agency all required certifications before acceptance into the program, and furnish access to records required by the Agency to verify compliance with program provisions. The applicant must submit forms or other written documentation certifying to the following:

(i) AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions'' or other written documentation.

(ii) AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions'' or other written documentation.

(iii) SF–LLL, ''Disclosure of Lobbying Activities.''

(c) *Application package contents.* Applicants are required to provide relevant data to allow for technical analysis of their existing facilities to demonstrate replacement of fossil fuel by renewable biomass with reasonable costs and maximum efficiencies. Applicants in existence on or before June 18, 2008 with more than 24 months of actual operating data must provide data for the most recent 24-month period. Applicants in existence on or before June 18, 2008 with less than 24 months of actual operating data must provide 12 months of data supported by engineering and design calculations, and site plans, prepared by the construction engineering firm. All applicants must submit the information specified in paragraphs (c)(1) through (c)(9) of this section as part of their application package.

(1) *Contact data.* Contact information for the primary technical contact for the biorefinery.

(2) *Biorefinery data.* Basic information on facility operations over time (hours/day, days/year).

(3) *Electric use data.* Information on existing electric service to the facility, data on consumption, peak and average demand, and monthly/seasonal use patterns.

(4) *Fuel use data.* Information on natural gas and current fuel use for boilers and heaters, including fuel type, costs, and use patterns.

(5) *Thermal loads.* Information on existing thermal loads, including type (steam, hot water, direct heat), conditions (temperature, pressure) and use patterns.

(6) *Existing equipment.* Information on existing heating and cooling equipment, including type, capacities, efficiencies and emissions.

(7) *Site-specific data.* Information on other site-specific issues, such as expansion plans or neighborhood considerations that might impact the proposed new system design or operation; or environmental impacts.

(8) *Biofuel and biobased product production.* Information on biofuel and biobased product production, including quantity and units of production.

(9) *Feasibility study.* The applicant must submit a feasibility study by an independent qualified consultant, which has no financial interest in the biorefinery, and demonstrates that the renewable biomass system of the biorefinery is feasible, taking into account the economic, technical and environmental aspects of the system. The feasibility study must include the components specified in paragraphs (c)(9)(i) through (c)(9)(x) of this section.

(i) An executive summary, including resume of the consultant, and an introduction/project overview (brief general overview of project location, size, *etc.*).

(ii) An economic feasibility determination, including:

(A) Information regarding the project site;

(B) Information on the availability of trained or trainable labor; and

(C) Information on the availability of infrastructure and rail and road service to the site.

(iii) A technical feasibility determination, including a report that:

(A) Describes the repowering project, including:

(*1*) Information on heating and cooling equipment, including type, capacities, efficiencies and emissions;

(*2*) Anticipated impacts of the repowering project on the information requested above relating to electric use data, fuel use data, thermal loads and biofuel and biobased product production; and

(*3*) A project development schedule as more fully described in § 4288.21(b)(4)(iv);

(B) Is based upon verifiable data and contains sufficient information and analysis so that a determination may be made on the technical feasibility of achieving the levels of energy production that are projected in the statements. The report must provide the information in a format that is responsive to the scoring criteria specified in § 4288.21(b)(1) through (5) and applicants should identify in their report the information that corresponds to each of the scoring criteria; and

(C) Identifies and estimates project operation and development costs and specifies the level of accuracy of these estimates and the assumptions on which these estimates have been based.

(iv) A financial feasibility determination that discusses the following:

(A) Repowering project construction funding, including repayment terms and security arrangements. Attach any documents relating to the project financing;

(B) The reliability of the financial projections and assumptions on which the project is based including all sources of project capital, both private and public, such as Federal funds;

(C) Projected balance sheets and costs associated with project operations;

(D) Cash flow projections for 3 years;

(E) The adequacy of raw materials and supplies;

(F) A sensitivity analysis, including feedstock and energy costs, product/co-product prices;

(G) Risks related to the project; and

(H) The continuity, maintenance and availability of records.

(v) A management feasibility determination.

(vi) Recommendations for implementation.

(vii) The environmental concerns and issues of the system.

(viii) The availability of feedstock, including discussions of:

(A) Feedstock source management;

(B) Estimates of feedstock volumes and costs;

(C) Collection, pre-treatment, transportation, and storage; and

(D) Impacts on existing manufacturing plants or other facilities that use similar feedstock.

(ix) The feasibility/plans of project to work with producer associations or cooperatives including estimated amount of annual feedstock from those entities.

(x) If woody biomass from National forest system lands or public lands is proposed as the feedstock, documentation must be provided that it cannot be used as a higher value wood-based product.

§ 4288.21 Application review and scoring.

The Agency will evaluate projects based on the cost, cost-effectiveness, and capacity of projects to reduce fossil fuels. The cost of the project will be taken into consideration in the context of each project's ability to economically produce energy from renewable biomass to replace its dependence on fossil fuels. Projects with higher costs that are less efficient will not score well. The scoring criteria are designed to evaluate projects on simple payback as well as the percentage of fossil fuel reduction.

(a) *Review*. The Agency will evaluate each application and make a determination as to whether the applicant is eligible, whether the proposed project is eligible, and whether the proposed payment request complies with all applicable statutes and regulations. This evaluation will be conducted by experts

in the Agency and other Federal agencies, including the U.S. Department of Energy based on the information provided by the applicant.

(b) *Scoring*. The Agency will score each application in order to prioritize each proposed project. The maximum number of points awardable to any applicant will be 100. The evaluation criteria that the Agency will use to score these projects are specified in paragraphs (b)(1) through (b)(6) of this section.

(1) *Cost-effectiveness*. Cost-effectiveness will be scored based on the anticipated simple payback period, or ''simple payback.'' Anticipated simple payback will be demonstrated by calculating documented base energy use costs for the 24-month period prior to submission of the application or at least 12 months of data supported by engineering and design calculations, and site plans, prepared by the construction engineering firm.

(i) The simple payback period is calculated as follows:

- Simple payback = C/S

Where:

C = eligible capital expenses of the repowering project

S = savings in annual operating costs.

Example: Eligible capital expenses of the repowering project, including handling equipment, biomass boiler, piping improvements and plant modifications, are equal to $5,300,500. The annual difference in fossil fuel cost versus the cost for renewable biomass is $990,500. Assume these costs and uses are based on a yearly operating cycle, which may include handling, storage and treatment costs. In this example, C = $5,300,500; S = $990,500; simple payback = 5.35 years (C/S = simple payback).

(ii) A maximum of 20 points will be awarded as follows:

(A) If the anticipated simple payback is less than or equal to 4 years, award 20 points.

(B) If the anticipated simple payback is greater than 4 years but less than or equal to 6 years, award 10 points.

(C) If the anticipated simple payback will be greater than 6 years but less than or equal to 10 years, award 5 points.

(D) If the anticipated simple payback will be greater than 10 years, award 0 points.

(2) *Percentage of reduction of fossil fuel use*. The anticipated percent reduction in the use of fossil fuels will be measured using the same evidence provided by the applicant for measuring cost-effectiveness. However, this set of criteria will measure actual fossil fuel use for the 24-month period prior to submission of the application or for at least 12 months of data supported by engineering and design calculations, and site plans, prepared by the construction engineering firm. All fossil fuel use, for thermal loads as well as for electric use, will be evaluated by using information provided by the Energy Information Agency (EIA). The Agency will determine the percentage reduction of fossil fuel use based on and in cooperation with the applicant's submission of electric power provider contracts, power agreements, and utility billings in relation to available information from the EIA. A maximum of 35 points will be awarded as follows:

(i) Applicant demonstrates an anticipated annual reduction in fossil fuel use of 100 percent, award 35 points.

(ii) Applicant demonstrates an anticipated annual reduction in fossil fuel use of at least 80 percent but less than 100 percent, award 25 points.

(iii) Applicant demonstrates an anticipated annual reduction in fossil fuel use of at least 60 percent but less than 80 percent, award 15 points.

(iv) Applicant demonstrates an anticipated annual reduction in fossil fuel use of at least 40 percent but less than 60 percent, award 5 points.

(v) Applicant demonstrates an anticipated annual reduction in fossil fuel use of less than 40 percent, award 0 points.

(vi) If any of the fossil fuel being replaced is natural gas, deduct 5 points.

(3) *Renewable biomass factors*. If an applicant demonstrates at the time of application that it has on site available access to renewable biomass or enforceable third party commitments to supply renewable biomass for the repowering project for at least 3 years, 5 points will be awarded. If an applicant cannot demonstrate this, no points will be awarded.

(4) *Technical review factors*. Technical reviews will be conducted by a team of

experts, including rural energy coordinators and State engineers. 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. Each section of the technical review will be scored within a range of possible points available within that section. A maximum of 25 points will be awarded as follows:

(i) *Qualifications of the applicant's project team.* The applicant must describe the qualifications of those individuals who will be essential to successful performance of the proposed project. This will include information regarding professional credentials, relevant experience, and education, and must be supported with documentation of service capabilities, professional credentials, licenses, certifications, and resumes, as applicable. Award 0–5 points.

(ii) *Agreements and permits.* The applicant must describe the agreements and permits necessary for project implementation. An Agency-acceptable schedule for securing the required documents and permits must be provided. Award 0–4 points.

(iii) *Design and engineering.* The applicant must describe the design, engineering, and testing needed for the proposed project. The Design and Engineering documents shall demonstrate that they meet the intended purpose, ensure public safety, and comply with all applicable laws, regulations, agreements, permits, codes, and standards. Award 0–4 points.

(iv) *Project development schedule.* The applicant must provide a detailed plan for project development including a proposed schedule of activities, a description of each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through to successful completion. This description must address the applicant's project development cash flow requirements. Award 0–3 points.

(v) *Equipment procurement.* The applicant must describe the equipment needed, and the availability of the equipment needed, to complete installation and activation of the new system. The description supports that the required equipment is available, and can be procured and delivered within the proposed project development schedule. Award 0–3 points.

(vi) *Equipment installation.* The applicant must provide a satisfactory description of the plan for site development and system installation that reflects the soundness of the project plan. Award 0–3 points.

(vii) *Operations and maintenance.* The applicant must describe the operations and maintenance requirements of the system necessary for the system to operate as designed and provide the savings and efficiencies as described. The description and requirements noted must be supportable by the technical review. Award 0–3 points.

(5) *Liquid transportation fuels.* If the biorefinery primarily produces liquid transportation fuels, award 10 points.

(6) *Rural area.* If the biorefinery is located in a Rural Area, award 5 points.

§ 4288.22 Ranking of applications.

All scored applications will be ranked by the Agency as soon after the application deadline as possible. The Agency will consider the score an application has received compared to the scores of other applications in the priority list, with higher scoring applications receiving first consideration for payments.

(a) *Selection of applications for payments.* Using the application scoring criteria point values specified in § 4288.21 of this subpart, the Agency will select applications for payments.

(b) *Availability of funds.* As applications are funded, if insufficient funds remain to pay the next highest scoring application, the Agency may elect to pay a lower scoring application. Before this occurs, the Agency will provide the applicant of the higher scoring application the opportunity to reduce the amount of its payment request to the amount of funds available. If the applicant agrees to lower its payment request, it must certify that the purposes of the project can be met, and the Agency must determine the project is feasible at the lower amount.

§ 4288.23 Notifications.

(a) *Successful applicants.* Successful applicants will receive an award letter notifying them of the award, including the terms and conditions, and Form RD 4288–5. Each funded project is unique, and, therefore, conditions of Form RD 4288–5 may vary among projects. Successful applicants must execute and return the Form RD 4288–5, accompanied by any additional items identified in the award letter.

(b) *Unsuccessful applicants.* Unsuccessful applicants will receive a letter notifying them of their application score and ranking and the score necessary to qualify for payments.

§ 4288.24 Program payment provisions.

The procedure the Agency will use to make payments to eligible biorefineries is specified in paragraphs (a) through (e) of this section.

(a) *Payment applications.* The Agency shall make payments based on the biorefinery's expenditures on eligible project costs. To request payments under this program during a fiscal year, an eligible biorefinery must:

(1) Submit an original, validly signed and completed SF 271 to the Agency not more frequently than once a month with the following supporting documentation:

(i) Evidence of expenditure of funds on eligible project costs which shall include paid third party invoices, receipts, bills of sale, and/or payroll records. Such records must be adequate to identify that funds to be reimbursed were spent on eligible project costs; and

(ii) Evidence that construction of the repowering project is in compliance with the project development schedule.

(2) Certify that the request is accurate.

(3) Furnish the Agency such certifications as required in Form RD 4288–4, Part C, and access to records that verify compliance with program provisions.

(b) *Clarifying information.* After payment applications are submitted, eligible biorefineries may be required to submit additional supporting clarification if their original submittal is not sufficient to verify eligibility for payment.

(c) *Notification.* The Agency will notify the biorefinery, in writing, whenever the Agency determines that a payment request is ineligible and why the request was determined ineligible.

(d) *Refunds and interest payments.* An eligible biorefinery that has received a payment under this program may be required to refund such payment as specified in paragraphs (d)(1) through (d)(5) of this section.

(1) An eligible biorefinery receiving payment under this program will become ineligible for payments if the Agency determines the biorefinery has:

(i) Made any material fraudulent representation;

(ii) Misrepresented any material fact affecting a program determination; or

(iii) Upon completion of the repowering project, failed to reduce its fossil fuel consumption, produce energy from renewal biomass or otherwise operate as described in its Agency approved application.

(2) All payments made to a biorefinery determined by the Agency to be ineligible must be refunded to the Agency with interest and other such sums as may become due, including, but not limited to, any interest, penalties, and administrative costs, as determined appropriate under 31 CFR 901.9.

(3) When a refund is due, it must be paid promptly. If a refund is not made promptly, the Agency may use all remedies available to it, including Treasury offset under the Debt Collection Improvement Act of 1996, financial judgment against the biorefinery, and sharing information with the Department of Justice.

(4) Late payment interest will be assessed on each refund in accordance with provisions and rates as determined by the Agency.

(i) Interest charged by the Agency under this program will be at the rate established annually by the Secretary of the U.S. Treasury pursuant to 31 U.S.C. 3717. Interest will accrue from the date payments were received by the biorefinery to the date of repayment, and the rate will adjust in accordance with applicable regulations.

(ii) The Agency may waive the accrual of interest and/or damages if the Agency determines that the cause of

the erroneous determination was not due to any fraudulent or negligent action of the biorefinery.

(5) A biorefinery or person receiving payment under this program will be liable for any refund or related charges associated with their project due under this program.

(e) *Remedies*. The remedies provided in this subpart will be in addition to other civil, criminal, or administrative remedies that may apply.

§ 4288.25 Succession and control of facilities and production.

Any party obtaining a biorefinery that is participating in this program must request permission to participate in this program as a successor. The Agency may grant such request if it is determined that, the party is eligible, and permitting such succession would serve the purposes of the program. If appropriate, the Agency will require the consent of the previous party to such succession. Also, the Agency may terminate payments and demand full refund of payments made if a party loses control of a biorefinery whose production of heat or power from renewable biomass is the basis of a program payment, or otherwise fails to retain the ability to assure that all program obligations and requirements will be met.

§ 4288.26 Fiscal Year 2009 and Fiscal Year 2010 applications.

Any entity that submitted an application for payment to the Agency under this program prior to March 14, 2011 will have their payments made and serviced in accordance with the provisions specified in this subpart.

§§ 4288.27–4288.100 [Reserved]

Subpart B—Advanced Biofuel Payment Program General Provisions

AUTHORITY: 5 U.S.C. 301.

SOURCE: 76 FR 7967, Feb. 11, 2011, unless otherwise noted.

§ 4288.101 Purpose and scope.

(a) *Purpose*. The purpose of this subpart is to support and ensure an expanding production of advanced biofuels by providing payments to eligible advanced biofuel producers.

(b) *Scope*. This subpart sets forth, subject to the availability of funds as provided herein, or as may be limited by law, the terms and conditions an advanced biofuel producer must meet to obtain payments under this Program from the United States Department of Agriculture for eligible advanced biofuel production. Additional terms and conditions may be set forth in the Program contract and payment agreement prescribed by the Agency.

§ 4288.102 Definitions.

The definitions set forth in this section are applicable for all purposes of program administration under this subpart.

Advanced biofuel. A fuel that is derived from renewable biomass, other than corn kernel starch, to include:

(1) Biofuel derived from cellulose, hemicellulose, or lignin;

(2) Biofuel derived from sugar and starch (other than ethanol derived from corn kernel starch);

(3) Biofuel derived from waste material, including crop residue, other vegetative waste material, animal waste, food waste, and yard waste;

(4) Diesel-equivalent fuel derived from renewable biomass, including vegetable oil and animal fat;

(5) Biogas (including landfill gas and sewage waste treatment gas) produced through the conversion of organic matter from renewable biomass;

(6) Butanol or other alcohols produced through the conversion of organic matter from renewable biomass; or

(7) Other fuel derived from cellulosic biomass.

Advanced biofuel producer. An individual, corporation, company, foundation, association, labor organization, firm, partnership, society, joint stock company, group of organizations, or non-profit entity that produces and sells an advanced biofuel. An entity that blends or otherwise combines advanced biofuels into a blended biofuel is not considered an advanced biofuel producer under this Program.

Agency. The USDA Rural Development, Rural Business-Cooperative Service or its successor organization.

Alcohol. Anhydrous ethyl alcohol manufactured in the United States and its territories and sold either:

(1) For fuel use, rendered unfit for beverage use, produced at a biofuel facility and in a manner approved by the Bureau of Alcohol, Tobacco, Firearms, and Explosives for the production of alcohol for fuel; or

(2) As denatured alcohol used by blenders and refiners and rendered unfit for beverage use.

Alcohol producer. An advanced biofuel producer authorized by ATF to produce alcohol.

ATF. The Bureau of Alcohol, Tobacco, Firearms, and Explosives of the United States Department of Justice.

Biodiesel. A mono alkyl ester, manufactured in the United States and its territories, that meets the requirements of the appropriate ASTM International standard.

Biofuel. Fuel derived from renewable biomass.

Biofuel facility. A facility (including equipment and processes) that converts renewable biomass into biofuels and biobased products and may produce electricity.

Blender. A blender is a processor of fuels who combines two or more fuels, one of which must be an advanced biofuel, for distribution and sale. Producers who blend one or more of their own fuels are not blenders under this definition.

Certificate of analysis. A document approved by the Agency that certifies the quality and purity of the advanced biofuel being produced. The document must be from a qualified, independent third party.

Contract. Form RD 4288–2, ''Advanced Biofuel Payment Program Contract,'' signed by the eligible advanced biofuel producer and the Agency, that defines the terms and conditions for participating in and receiving payment under this Program.

Eligible advanced biofuel producer. A producer of advanced biofuels that meets all requirements of §4288.110 of this subpart.

Eligible renewable biomass. Renewable biomass, as defined in this section, excluding corn kernel starch.

Eligible renewable energy content. That portion of an advanced biofuel's energy content derived from eligible renewable biomass feedstock. The energy content from any portion of the biofuel, whether from, for example, blending with another fuel or a denaturant, that is derived from a non-eligible renewable biomass feedstock (e.g., corn kernel starch) is not eligible for payment under this Program.

Enrollment application. Form RD 4288–1, ''Advanced Biofuel Payment Program Annual Application,'' which is submitted by advanced biofuel producers for participation in this Program.

Ethanol. Anhydrous ethyl alcohol manufactured in the United States and its territories and sold either:

(1) For fuel use, and which has been rendered unfit for beverage use and produced at an advanced biofuel facility approved by the ATF for the production of ethanol for fuel, or

(2) As denatured ethanol used by blenders and energy refiners, which has been rendered unfit for beverage use.

Ethanol producer. An advanced biofuel producer authorized by ATF to produce ethanol.

Fiscal Year. A 12-month period beginning each October 1 and ending September 30 of the following calendar year.

Flared gas. The burning of unwanted gas through a pipe (also called a flare). Flaring is a means of disposal used when the operator cannot transport the gas to market or convert to electricity and cannot use the gas for any other purpose.

Forest biomass. Any plant or tree material produced by forest growth, such as trees, wood, brush, thinning, chips, and slash.

Incremental production. The quantity of eligible advanced biofuel produced at an advanced biofuel biorefinery in the fiscal year for which payment is sought that exceeds the quantity of advanced biofuel produced at the biorefinery over the prior fiscal year.

Larger producer. An eligible advanced biofuel producer with a refining capacity as determined for the prior fiscal

year, based on all of the advanced biofuel facilities in which the producer has 50 percent or more ownership, exceeding:

(1) 150,000,000 gallons of liquid advanced biofuel per year; or

(2) 15,900,000 MMBTU of biogas and solid advanced biofuel per year.

Payment application. Form RD 4288–3, ''Advanced Biofuel Payment Program—Payment Request,'' which is submitted by an eligible advance producer to the Agency in order to receive payment under this Program.

Quarter. The Federal fiscal time period for any fiscal year as follows:

(1) 1st Quarter: October 1 through December 31;

(2) 2nd Quarter: January 1 through March 31;

(3) 3rd Quarter: April 1 through June 30; and

(4) 4th Quarter: July 1 through September 30.

Renewable biomass.

(1) Materials, pre-commercial thinnings, or invasive species from National Forest System land and public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)) that:

(i) Are byproducts of preventive treatments that are removed to reduce hazardous fuels; to reduce or contain disease or insect infestation; or to restore ecosystem health;

(ii) Would not otherwise be used for higher-value products; and

(iii) Are harvested in accordance with applicable law and land management plans and the requirements for old-growth maintenance, restoration, and management direction of paragraphs (e)(2), (e)(3), and (e)(4) and large-tree retention of paragraph (f) of section 102 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6512); or

(2) Any organic matter that is available on a renewable or recurring basis from non-Federal land or land belonging to an Indian or Indian Tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States, including:

(i) Renewable plant material, including feed grains; other agricultural commodities; other plants and trees; and algae; and

(ii) Waste material, including crop residue; other vegetative waste material (including wood waste and wood residues); animal waste and byproducts (including fats, oils, greases, and manure); and food waste and yard waste.

Sign-up period. The time period during which the Agency will accept enrollment applications.

Smaller producer. An eligible advanced biofuel producer with a refining capacity as determined for the prior fiscal year, based on all of the advanced biofuel facilities in which the producer has 50 percent or more ownership, equal to or less than:

(1) 150,000,000 gallons of liquid advanced biofuel per year; or

(2) 15,900,000 MMBTU of biogas and solid advanced biofuel per year.

State. Any of the 50 States of the United States, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

USDA. The United States Department of Agriculture.

§ 4288.103 Review or appeal rights.

A person may seek a review of an Agency decision or appeal to the National Appeals Division in accordance with 7 CFR part 11 of this title.

§ 4288.104 Compliance with other laws and regulations.

(a) Advanced biofuel producers must comply with other applicable Federal, State, and local laws, including, but not limited to, the Equal Employment Opportunity Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, The Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and 7 CFR part 1901, subpart E. This includes collection and maintenance of race, sex, and national origin data of the recipient's employee.

(b) Producers must comply with equal opportunity and nondiscriminatory requirements in accordance with 7 CFR 15d. Rural Development

will not discriminate against an applicant on the bases of race, color, religion, national origin, sex, sexual orientation, marital status, familial status, disability, or age (provided that the applicant has the capacity to contract); to the fact that all or part of the applicant's income derives from public assistance program; or to the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

§ 4288.105 Oversight and monitoring.

(a) *Verification*. The Agency reserves the right to verify all payment applications and subsequent payments made under this subpart, as frequently as necessary, to ensure the integrity of the Program. The Agency will conduct site visits as necessary.

(1) *Production and feedstock verification*. The Agency will review producer records to verify the type and amount of biofuel produced and the type and amount of feedstocks used.

(2) *Blending verification*. The Agency will review the producer's certificates of analysis and feedstock records to verify the portion of the advanced biofuel eligible for payment.

(3) *Certificate of Analysis*. The Agency will review the producer records for quarterly payments to ensure that each certificate of analysis has been issued by a qualified, independent third party, which may include the blender only if the blender is not associated with the facility.

(b) *Records*. For the purpose of verifying compliance with the requirements of this subpart, each eligible advanced biofuel producer shall make available at one place at a reasonable time for examination by representatives of USDA, all books, papers, records, contracts, scale tickets, settlement sheets, invoices, written price quotations, and other documents related to the Program that is within the control of such advanced biofuel producer for not less than 3 years from each Program payment date.

§ 4288.106 Forms, regulations, and instructions.

Copies of all forms, regulations, instructions, and other materials related to this Program may be obtained from the USDA Rural Development State Office, Rural Energy Coordinator and the USDA Rural Development Web site at *http://www.rurdev.usda.gov*.

§ 4288.107 Exception authority.

The Administrator of the Agency (''Administrator'') may, with the concurrence of the Secretary of Agriculture, make an exception, on a case-by-case basis, to any requirement or provision of this subpart that is not inconsistent with any authorizing statute or applicable law, if the Administrator determines that application of the requirement or provision would adversely affect the Federal government's interest.

§§ 4288.108–4288.109 [Reserved]

ELIGIBILITY PROVISIONS

§ 4288.110 Applicant eligibility.

Sections 4288.110 through 4288.119 present the requirements associated with advanced biofuel producer eligibility, biofuel eligibility, eligibility notifications, and payment record requirements. To be eligible for this Program, the applicant must meet the requirements specified in paragraph (a) of this section and must provide additional information as may be requested by the Agency under paragraph (b) of this section. Public bodies and educational institutions are not eligible for this Program.

(a) *Eligible producer*. The applicant must be an advanced biofuel producer, as defined in this subpart.

(b) *Eligibility determination*. The Agency will determine an applicant's eligibility for participation in this Program. If an applicant's original submittal is not sufficient to verify an applicant's eligibility, the Agency will notify the applicant, in writing, as soon as practicable after receipt of the application. This notification will identify, at a minimum, the additional information being requested to enable the Agency to determine the applicant's eligibility and a timeframe in which to supply the information.

(1) If the applicant provides the requested information to the Agency within the specified timeframe, the

Agency will determine the applicant's eligibility for the upcoming fiscal year.

(2) If the applicant does not provide the requested information to the Agency within the specified timeframe, the Agency will not consider the applicant any further for participation in the upcoming fiscal year. Such applicants may elect to enroll during the next sign-up period.

(c) *Ineligibility determination*. An otherwise eligible producer will be determined to be ineligible if the producer:

(1) Refuses to allow the Agency to verify any information provided by the advanced biofuel producer under this subpart, including information for determining applicant eligibility, advanced biofuel eligibility, and application payments;

(2) Fails to meet any of the conditions set out in this subpart, in the contract, or in other Program documents; or

(3) Fails to comply with all applicable Federal, State, or local laws.

§ 4288.111 Biofuel eligibility.

To be eligible for this Program, a biofuel must meet the requirements specified in paragraph (a) of this section and the biofuel's producer must provide additional information as may be requested by the Agency under paragraph (b) of this section. Notwithstanding the provisions of paragraph (a) of this section, for the purposes of this subpart, flared gases are not eligible.

(a) *Eligible advanced biofuel*. For an advanced biofuel to be eligible, each of the following conditions must be met, as applicable:

(1) The advanced biofuel must meet the definition of advanced biofuel and be produced in a State;

(2) The advanced biofuel must be a solid, liquid, or gaseous advanced biofuel;

(3) The advanced biofuel must be a final product; and

(4) The advanced biofuel must be sold as an advanced biofuel through an arm's length transaction to a third party.

(b) *Eligibility determination*. The Agency will determine a biofuel's eligibility for payment under this Program. If an applicant's original submittal is not sufficient to verify a biofuel's eligibility, the Agency will notify the applicant, in writing, as soon as practicable after receipt of the application. This notification will identify, at a minimum, the additional information being requested to enable the Agency to determine the biofuel's eligibility and a timeframe in which to supply the information.

(1) If the applicant provides the requested information to the Agency within the specified timeframe, the Agency will determine the biofuel's eligibility for the upcoming fiscal year.

(2) If the applicant does not provide the requested information to the Agency within the specified timeframe, the biofuel will not be eligible for payment under this Program in the upcoming fiscal year. Applicants may elect to include such biofuels in the application form submitted during the next sign-up period.

§ 4288.112 Eligibility notifications.

(a) *Applicant eligibility*. If an applicant is determined by the Agency to be eligible for participation, the Agency will notify the applicant, in writing, as soon as practicable after receipt of the application and will assign the applicant a contract number.

(b) *Ineligibility notifications*. If an applicant or a biofuel is determined by the Agency to be ineligible, the Agency will notify the applicant, in writing, as soon as practicable after receipt of the application, as to the reason(s) the applicant or biofuel was determined to be ineligible. Such applicant will have appeal rights as specified in this subpart.

(c) *Subsequent ineligibility determinations*. If at any time a producer or an advanced biofuel is determined to be ineligible, the Agency will notify the producer in writing of its determination.

§ 4288.113 Payment record requirements.

To be eligible for Program payments, an advanced biofuel producer must maintain records for all relevant fiscal years and fiscal year quarters for each advanced biofuel facility indicating:

(a) The type of eligible renewable biomass used in the production of advanced biofuel;

(b) The quantity of advanced biofuel produced from eligible renewable biomass at each advanced biofuel facility;

(c) The quantity of eligible renewable biomass used at each advanced biofuel facility to produce the advanced biofuel; and

(d) All other records required to establish Program eligibility and compliance.

§ 4288.114–4288.119 [Reserved]

ENROLLMENT PROVISIONS

§ 4288.120 Enrollment.

In order to participate in the Program, a producer of advanced biofuels must be approved by the Agency and enter into a contract with the Agency. The process for enrolling in the Program is presented in this section. Advanced biofuel producers who expect to produce eligible advanced biofuels at any time during a fiscal year must enroll in the Program as described in this section.

(a) *Enrollment*. To enroll in the Program, an advanced biofuel producer must submit to the Agency a completed enrollment application during the applicable sign-up period, as specified in paragraph (b) of this section. An original, signed hard copy of the enrollment application must be submitted as specified in the annual FEDERAL REGISTER notice for this program. All applicants, except those that are individuals, are required to have a Dun and Bradstreet Universal Numbering System (DUNS) number, which can be obtained online at *http://fedgov.dnb.com/webform*.

(1) Eligible advanced biofuel producers must submit enrollment applications during each sign-up period in order to continue participating in this Program. If a participating producer fails to submit the enrollment application during a fiscal year's applicable sign-up period, the producer's contract will be terminated and the producer will be ineligible to receive payments for that fiscal year. Such a producer must reapply, and sign a new contract, to participate in the Program for future fiscal years.

(2) Eligible advanced biofuel producers may submit an enrollment application during a fiscal year's sign-up period even if the advanced biofuel facility is not currently producing, but is scheduled to start producing advanced biofuel in that fiscal year.

(3) The producer must furnish the Agency all required certifications before acceptance into the Program, and furnish access to the advanced biofuel producer's records required by the Agency to verify compliance with Program provisions. The required certifications depend on the type of biofuel produced. Certifications specified in paragraphs (a)(3)(i) through (a)(3)(iv) of this section are to be completed and provided by an accredited independent third party.

(i) *Alcohol*. For alcohol producers with authority from ATF to produce alcohol, copies of either

(A) The Alcohol Fuel Producers Permit (TTB F 5110.74) or

(B) The registration of Distilled Spirits Plant (TTB F 5110.41) and Operating Permit (TTB F 5110.25).

(ii) *Hydrous ethanol*. For hydrous ethanol that is upgraded by another distiller to anhydrous ethyl alcohol, the increased ethanol production is eligible for payment one time only. If the advanced biofuel producer entering into this agreement is:

(A) The hydrous ethanol producer, then the advanced biofuel producer shall include with the contract an affidavit, acceptable to the Agency, from the distiller stating that the:

(*1*) Applicable hydrous ethanol produced is distilled and denatured for fuel use according to ATF requirements, and

(*2*) Distiller will not include the applicable ethanol in any payment requests that the distiller may make under this Program.

(B) The distiller that upgrades hydrous ethanol to anhydrous ethyl alcohol, then the advanced biofuel producer shall include with the contract an affidavit, acceptable to the Agency, from the hydrous ethanol producer stating that the hydrous ethanol producer will not include the applicable ethanol in any payment requests that may be made under this Program.

(iii) *Biodiesel, biomass-based diesel, and liquid hydrocarbons derived from biomass*. For these fuels, the advanced biofuel

producer shall certify that the producer, the advanced biofuel facility, and the biofuel meet the definitions of these terms as defined in § 4288.102, the applicable registration requirements under the Energy Independence and Security Act and the Clean Air Act and under the applicable regulations of the U.S. Environmental Protection Agency and Internal Revenue Service, and the quality requirements per applicable ASTM International standards (e.g., ASTM D6751) and commercially acceptable quality standards of the local market. If a Renewable Identification Number has been established, the advanced biofuel producer shall also provide documentation of the most recent Renewable Identification Number for a typical gallon of each type of advanced biofuel produced.

(iv) *Gaseous advanced biofuel*. For gaseous advanced biofuel producers, certification that the biofuel meets commercially acceptable pipeline quality standards of the local market; that the flow meters used to determine the quantity of advanced biofuel produced are industry standard and properly calibrated by a third-party professional; and that the readings have been taken by a qualified individual.

(v) *Woody biomass feedstock*. If the feedstock is from National Forest system land or public lands, documentation must be provided that it cannot be used as a higher value wood-based product.

(4) *Supporting documentation*. Each advanced biofuel producer participating in this program for the first time must submit documentation to support the actual production and capacity reported in the enrollment application.

(5) *Additional forms*. Applicants must submit the forms specified in this paragraph with the enrollment application when applying for participation under this subpart and as needed when re-enrolling in the program.

(i) RD Instruction 1940–Q, Exhibit A–1, ''Certification for Contracts, Grants and Loans.''

(ii) SF–LLL, ''Disclosure of Lobbying Activities.''

(iii) Form RD 400–4, ''Assurance Agreement.''

(b) *Sign-up period*. The sign-up period is October 1 to October 31 of the fiscal year for which payment is sought, unless otherwise announced by the Agency in a FEDERAL REGISTER notice.

§ 4288.121 Contract.

Advanced biofuel producers determined to be eligible to receive payments must then enter into a contract with the Agency in order to participate in this Program.

(a) *Contract*. The Agency will forward the contract to the advanced biofuel producer. The advanced biofuel producer must agree to the terms and conditions of the contract, sign, date, and return it to the Agency within the time provided by the Agency.

(b) *Length of contract*. Once signed, a contract will remain in effect until terminated as specified in paragraph (d) of this section.

(c) *Contract review*. All contracts will be reviewed at least annually to ensure compliance with the contract and ensure the integrity of the program.

(d) *Contract termination*. Contracts under this Program will be terminated in writing by the Agency. Contracts may be terminated under any one of the following conditions:

(1) At the mutual agreement of the parties;

(2) In accordance with applicable Program notices and regulations;

(3) The advanced biofuel producer withdraws from the Program and so notifies the Agency, in writing;

(4) The advanced biofuel producer fails to submit the enrollment application during a sign-up period;

(5) The Program is discontinued or not funded;

(6) All of a participating advanced biofuel producer's advanced biofuel facilities no longer exist or no longer produce any eligible advanced biofuel; or

(7) The Agency determines that the advanced biofuel producer is ineligible for participation.

§§ 4288.122–4288.129 [Reserved]

PAYMENT PROVISIONS

§ 4288.130 Payment applications.

Sections 4288.130 through 4288.189 identify the process and procedures the Agency will use to make payments to eligible advanced biofuel producers. In

order to receive payments under this Program, eligible advanced biofuel producers with valid contracts must submit a payment application, as required under paragraph (a) of this section. The Agency will review the payment application and, if necessary, may request additional information, as specified under paragraph (b) of this section.

(a) *Applying for payment.* To apply for payments under this subpart for a fiscal year, an eligible advanced biofuel producer must:

(1) After a quarter has been completed, submit a payment application covering the quarter;

(2) Certify that the request is accurate;

(3) Furnish the Agency such certification, and access to such records, as the Agency considers necessary to verify compliance with Program provisions; and

(4) Provide documentation as requested by the Agency of the net production of advanced biofuel at all advanced biofuel facilities during the relevant quarter.

(b) *Review of payment applications.* The Agency will review each payment application it receives to determine if it is eligible for payment.

(1) *Review factors.* Factors that the Agency will consider in reviewing payments applications include, but are not necessarily limited to:

(i) *Contract validity.* Whether the entity submitting the payment application has a valid contract with the Agency under this Program;

(ii) *Biofuel eligibility.* Whether the biofuel for which payment is sought is an eligible advanced biofuel; and

(iii) *Calculations.* Whether the calculations for determining the requested payment are complete and accurate.

(2) *Additional documentation.* If the Agency determines additional information is required for the Agency to complete its review of a payment application, eligible advanced biofuel producers shall submit such additional supporting documentation as requested by the Agency. If the producer does not provide the requested information within the required time period, the Agency will not make payment.

(c) *Payment application eligibility.* The Agency will notify the advanced biofuel producer, in writing, as soon as practicable after the payment application, whenever the Agency determines that a payment application, or any portion thereof, is ineligible for payment and the basis for the Agency's determination of ineligibility.

(d) *Submittal information.* Eligible advanced biofuel producers must submit payment applications as specified in the annual FEDERAL REGISTER notice for this program no later than 4:30 p.m. local time on the last day of the calendar month following the quarter for which payment is being requested. Neither complete nor incomplete payment applications received after this date and time will be considered, regardless of the postmark on the application.

(1) Any payment application form that is received by the Agency after October 31 of the calendar year for the preceding fiscal year is ineligible for payment.

(2) If the actual deadline falls on a weekend or a Federally-observed holiday, the deadline is the next Federal business day.

§4288.131 Payment provisions.

Payments to advanced biofuel producers for eligible advanced biofuel production will be determined in accordance with the provisions of this section.

(a) *Types of payments.* The Agency will make available each fiscal year an actual production payment and an incremental production payment to participating producers, as specified in paragraphs (a)(1) and (a)(2), respectively, of this section. As provided in paragraph (a)(2) of this section, not all participating producers will receive an incremental production payment.

(1) *Actual production.* Participating producers will be paid on a quarterly basis for the actual quantity of eligible advanced biofuel produced during the quarter. Payment for actual production will be determined according to paragraph (c) of this section.

(2) *Incremental production.* For each participating advanced biofuel facility, the Agency will make an end-of-the-year payment for that facility's incremental production, if any, during the

fiscal year provided the advanced biofuel facility has fewer than 20 days (excluding weekends) of non-production of eligible advanced biofuels during the previous fiscal year. Payment for incremental production will be determined according to paragraph (d) of this section.

(b) *Amount of payment funds available.* Based on the amount of funds made available to this program each fiscal year, the Agency will allocate available program funds according to paragraphs (b)(1) and (b)(2) of this section.

(1) *Actual versus incremental production.* The Agency will determine the amount of funds for actual production payments and for incremental production payment as follows:

(i) For fiscal year 2010, 80 percent of the funds will be allocated for actual production payments and 20 percent of the funds will be allocated for incremental production payments.

(ii) For fiscal year 2011, 70 percent of the funds will be allocated for actual production payments and 30 percent of the funds will be allocated for incremental production payments.

(iii) For fiscal year 2012, 60 percent of the funds will be allocated for actual production payments and 40 percent of the funds will be allocated for incremental production payments.

(iv) For fiscal year 2013 and beyond, 50 percent of the funds will be allocated for actual production payments and 50 percent of the funds will be allocated for incremental production payments.

(2) *Quarterly allocations.* For each fiscal year, the Agency will allocate in each quarter one-fourth of the funds allocated to actual production for the entire fiscal year.

(c) *Determination of payment for actual production.* Each quarter, the Agency will establish an actual production payment rate using the procedures specified in paragraphs (c)(1) through (c)(5) of this section. This rate will be applied to the actual quantity of eligible advanced biofuel produced to determine payments to eligible advanced biofuel producers, as described in paragraph (c)(6) of this section.

(1) Based on the information provided in each payment application, the Agency will determine the eligible advanced biofuel production. If the Agency determines that the amount of advanced biofuel production reported in a payment application is not supported by the documentation submitted with the payment application, the Agency may reduce the production reported in the payment application.

(2) For each producer, the Agency will convert the production determined to be eligible under paragraph (c)(1) of this section into British Thermal Unit (BTU) equivalent using factors published by the Energy Information Administration (or successor organization). If the Energy Information Administration does not publish such conversion factor for a specific type of advanced biofuel, the Agency will use a conversion factor developed by another appropriate entity. If no such conversion factor exists, the Agency will, in consultation with other Federal agencies, establish and use a conversion formula as appropriate, that it publishes in the FEDERAL REGISTER, until such time as the Energy Information Administration or other appropriate entity publishes a conversion factor for said advanced biofuel. The Agency will then calculate the total eligible BTUs across all eligible applications.

(i) If the advanced biofuel is a liquid or gaseous advanced biofuel produced from forest biomass, the BTUs will be discounted 10 percent.

(ii) If the advanced biofuel is a solid advanced biofuel produced from forest biomass, the BTUs will be discounted 85 percent.

(iii) If the advanced biofuel meets an applicable renewable fuel standard, the BTUs will be increased by 10 percent.

(3) For each quarter, the Agency will determine the actual production payment rate ($/BTU) based on paragraphs (b) and (c)(2) of this section. The rate will be calculated such that all of the quarterly funds for actual production will be distributed.

(4) Using the actual production payment rate determined above and the actual production for each type of advanced biofuel produced at an advanced biofuel facility, the Agency will calculate each quarter a payment for each eligible advanced biofuel producer for that quarter.

(d) *Determination of payment for incremental production.* At the end of each

fiscal year, the Agency will establish incremental production payment rate using the procedures specified in paragraphs (d)(1) through (d)(6) of this section. This rate will be applied to the quantity of eligible incremental advanced biofuel produced to determine payments to eligible advanced biofuel producers, as described in paragraph (d)(7) of this section.

(1) For each participating advanced biofuel facility that produced eligible advanced biofuels during the fiscal year prior to the fiscal year for which payment is sought provided the advanced biofuel facility has fewer than 20 days (excluding weekends) of nonproduction of eligible advanced biofuels during that previous fiscal year, the Agency will determine the quantity of eligible advanced biofuel produced in that prior fiscal year based on information provided by the producer.

(2) Using the information in the payment applications submitted for the fiscal year for which payment is sought, the Agency will determine the actual amount of eligible advanced biofuel produced in the fiscal year for which payment is sought.

(3) Using the results from paragraphs (d)(1) and (d)(2) of this section, the Agency will determine the quantity of advanced biofuel produced in excess of the previous year's advanced biofuel production.

(4) For each advanced biofuel facility that shows incremental production under paragraph (d)(3) of this section, the Agency will convert the production into British Thermal Unit (BTU) equivalent using factors published by the Energy Information Administration (or successor organization). If the Energy Information Administration does not publish such conversion factor for a specific type of advanced biofuel, the Agency will use a conversion factor developed by another appropriate entity. If no such conversion factor exists, the Agency will establish and use a conversion formula as appropriate, that it publishes in the FEDERAL REGISTER, until such time as the Energy Information Administration or other appropriate entity publishes a conversion factor for said advanced biofuel. The Agency will then calculate the total eligible BTUs across all eligible applications.

(i) If the advanced biofuel is a liquid or gaseous advanced biofuel produced from forest biomass, the BTUs will be discounted 10 percent.

(ii) If the advanced biofuel is a solid advanced biofuel produced from forest biomass, the BTUs will be discounted 85 percent.

(iii) If the advanced biofuel meets an applicable renewable fuel standard, the BTUs will be increased by 10 percent.

(5) The Agency will sum all of the BTUs determined under paragraph (d)(4) of this section.

(6) Using the results from paragraph (d)(5) of this section and the amount of incremental funds available, the Agency will determine the incremental production payment rate ($/BTU). The rate will be calculated such that all of the incremental production funds will be distributed.

(7) Using the incremental production payment rate determined above and the incremental production for each advanced biofuel facility eligible for an incremental production payment, the Agency will calculate an incremental production payment for each eligible advanced biofuel producer.

(e) *Other payment provisions.* The following provisions apply.

(1) Notwithstanding any other provision, the Agency will provide payments to larger producers of not more than 5 percent of available program funds in any fiscal year. At any time during the year, if the limit on payments to larger producers would be reached, the Agency will pro-rate payments to larger producers based on the BTU content of their eligible advanced biofuel production so as not to exceed the limit.

(2) Notwithstanding any other provision, the Agency will provide payments to solid eligible advanced biofuels produced from forest biomass of not more than 5 percent of available program funds in any fiscal year. At any time during the year, if the limit on payments to such advanced biofuels would be reached, the Agency will pro-rate payments for such advanced biofuels based on the BTU content of the quantity of such advanced biofuels produced so as not to exceed the limit.

(3) Advanced biofuel producers will be paid on the basis of the amount of eligible renewable energy content of the advanced biofuels only if the producer provides documentation sufficient, including a Certificate of Analysis, for the Agency to determine the eligible renewable energy content for which payment is being requested, and quantity produced through such documentation as, but not limited to, records of sale and calibrated flow meter records.

(4) Payment will be made to only one eligible advanced biofuel producer per advanced biofuel facility.

(5) Subject to other provisions of this section, advanced biofuel producers shall be paid any sum due subject to the requirements and refund provisions of this subpart.

(6) Advanced biofuels produced under the situations identified in paragraphs (e)(6)(i) through (e)(6)(iii) of this section are ineligible for incremental production payment, but are still eligible for actual production payment.

(i) Advanced biofuels produced at an advanced biofuel facility that did not produce any eligible advanced biofuel in year prior to the fiscal year in which payment is sought (e.g., a new advanced biofuel facility).

(ii) Advanced biofuels produced at an advanced biofuel facility that had 20 or more days (excluding weekends) of non-production of eligible advanced biofuels during the fiscal year immediately prior to the fiscal year in which payment is sought.

(iii) Advanced biofuels produced from forest biomass.

(iv) For larger producers only, when all of the funds available to larger producers have been distributed based on actual production.

(7) If an advanced biofuel producer transfers any production capacity for one advanced biofuel facility to another, such transferred production capacity shall be considered production for the advanced biofuel facility to which the production was transferred.

(8) A producer will only be paid for the advanced biofuels identified in the enrollment application submitted during the sign-up period and which are actually produced during the fiscal year. If the producer starts producing a new advanced biofuel or changes the type of advanced biofuel during the fiscal year, the producer will not receive any payments for those new advanced biofuels. However, during each sign-up period, a producer can identify new advanced biofuels and production levels compared to the previous year.

(9) When determining the quantity of eligible advanced biofuel, if an applicant is blending its advanced biofuel using ineligible feedstocks (e.g., fossil gasoline or methanol, corn kernel starch), only the quantity of advanced biofuel being produced from eligible feedstocks will be used in determining the payment rates and for which payments will be made.

§ 4288.132 Payment adjustments.

The Agency will adjust the payments otherwise payable to the advanced biofuel producer if there is a difference between the amount actually produced and the amount determined by the Agency to be eligible for payment.

§ 4288.133 Payment liability.

Any payment, or portion thereof, made under this subpart shall be made without regard to questions of title under State law and without regard to any claim or lien against the advanced biofuel, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government.

§ 4288.134 Refunds and interest payments.

An eligible advanced biofuel producer who receives payments under this subpart may be required to refund such payments as specified in this section. If the Agency suspects fraudulent representation through its site visits and records inspections under § 4288.105(b), it will be referred to the Office of Inspector General for appropriate action.

(a) An eligible advanced biofuel producer receiving payments under this subpart shall become ineligible if the Agency determines the advanced biofuel producer has:

(1) Made any fraudulent representation; or

(2) Misrepresented any material fact affecting a Program determination.

(b) If an Agency determination that a producer is not eligible for participation under this subpart is appealed and overturned, the Agency will make appropriate and applicable payments to the producer from Program funds, to the extent such funds are available, that remain from the fiscal year in which the original adverse Agency decision was made.

(c) All payments made to an entity determined by the Agency to be ineligible shall be refunded to the Agency with interest and other such sums as may become due, including, but not limited to, any interest, penalties, and administrative costs as determined appropriate under 31 CFR 901.9.

(d) When a refund is due, it shall be paid promptly. If a refund is not made promptly, the Agency may use all remedies available to it, including Treasury offset under the Debt Collection Improvement Act of 1996, financial judgment against the producer, and referral to the Department of Justice.

(e) Late payment interest shall be assessed on each refund in accordance with the provisions and rates as established by the United States Treasury.

(1) Interest charged by the Agency under this subpart shall be established by the United States Treasury. Such interest shall accrue from the date such payments were made by the Agency to the date of repayment by the producer.

(2) The Agency may waive the accrual of interest or damages if the Agency determines that the cause of the erroneous payment was not due to any action of the advanced biofuel producer.

(f) Any advanced biofuel producer or person engaged in an act prohibited by this section and any advanced biofuel producer or person receiving payment under this subpart shall be jointly and severally liable for any refund due under this subpart and for related charges.

§4288.135 Unauthorized payments and offsets.

When unauthorized assistance has been made to an advanced biofuel producer under this Program, the Agency reserves the right to collect from the recipient the sum that is determined to be unauthorized. If the recipient fails to pay the Agency the unauthorized assistance plus other sums due under this section, the Agency reserves the right to offset that amount against Program payments.

(a) *Unauthorized assistance*. The Agency will seek to collect from recipients all unauthorized assistance made under this Program using the procedures specified in paragraphs (a)(1) through (a)(4) of this section.

(1) *Notification to the producer*. Upon determination that unauthorized assistance has been made to an advanced biofuel producer under this Program, the Agency will send a demand letter to the producer. Unless the Agency modifies the original demand, it will remain in full force and effect. The demand letter will:

(i) Specify the amount of unauthorized assistance, including any accrued interest to be repaid, and the standards for imposing accrued interest;

(ii) State the amount of penalties and administrative costs to be paid, the standards for imposing them and the date on which they will begin to accrue;

(iii) Provide detailed reason(s) why the assistance was determined to be unauthorized;

(iv) State the amount is immediately due and payable to the Agency;

(v) Describe the rights the producer has for seeking review or appeal of the Agency's determination pursuant to 7 CFR part 11;

(vi) Describe the Agency's available remedies regarding enforced collection, including referral of debt delinquent after due process for Federal salary, benefit and tax offset under the Department of Treasury Offset Program; and

(vii) Provide an opportunity for the producer to meet with the Agency and to provide to the Agency facts, figures, written records, or other information that might refute the Agency's determination.

(A) If the producer meets with the Agency, the producer will be given an opportunity to provide information to refute the Agency's findings.

(B) When requested by the producer, the Agency may grant additional time

for the producer to assemble documentation. Such extension of time for payment will be valid only if the Agency documents the extension in writing and specifies the period in days during which period the payment obligation created by the demand letter (but not the ongoing accrual of interest) will be suspended. Interest and other charges will continue to accrue pursuant to the initial demand letter during any extension period unless the terms of the demand letter are modified in writing by the Agency.

(2) *Payment in full.* If the producer agrees with the Agency's determination or will pay the amount in question, the Agency may allow a reasonable period of time (usually not to exceed 90 days) for the producer to arrange for repayment. The amount due will be the unauthorized payments made plus interest accrued beginning on the date of the demand letter at the interest rate stipulated until the date paid unless otherwise agreed, in writing, by the Agency.

(3) *Promissory note.* If the producer agrees with the Agency's determination or is willing to pay the amount in question, but cannot repay the unauthorized assistance within a reasonable period of time, the Agency will convert the unauthorized assistance amount to a loan provided all of the conditions specified in paragraphs (a)(3)(i) through (a)(3)(iii) of this section are met. Loans established under this paragraph will be at the Treasury interest rate in effect on the date the financial assistance was provided and that is consistent with the term length of the promissory note. In all cases, the receivable will be amortized per a repayment schedule satisfactory to the Agency that has the producer pay the unauthorized assistance as quickly as possible, but in no event will the amortization period exceed fifteen (15) years. The producer will be required to execute a debt instrument to evidence this receivable, and the best security position practicable in a manner that will adequately protect the Agency's interest during the repayment period will be taken as security.

(i) The producer did not provide false information;

(ii) It would be highly inequitable to require prompt repayment of the unauthorized assistance; and

(iii) Failure to collect the unauthorized assistance immediately will not adversely affect the Agency's interests.

(4) *Appeals.* Appeals resulting from the demand letter prescribed in paragraph (a)(1) of this section will be handled according to the provisions of § 4288.103. All appeal provisions will be concluded before proceeding with further actions.

(b) *Offsets.* Failure to make payment as determined under paragraph (a) of this section will be treated by the Agency as a debt that can be collected by an Administrative offset, unless written agreements to repay such debt as an alternative to administrative offset is agreed to between the Agency and the producer.

(1) Any debtor who wishes to reach a written agreement to repay the debt as an alternative to administrative offset must submit a written proposal for repayment of the debt, which must be received by the Agency within 20 calendar days of the date the notice was delivered to the debtor. In response, the Agency will notify the debtor in writing whether the proposed agreement is acceptable. In exercising its discretion, the Agency will balance the Government's interest in collecting the debt against fairness to the debtor.

(2) When the Agency receives a debtor's proposal for a repayment agreement, the offset is stayed until the debtor is notified as to whether the initial agreement is acceptable. If a Government payment will be made before the end of the fiscal year and the review is not yet completed, payment will be deferred pending resolution of the review.

§ 4288.136 Remedies.

In addition to the steps available under the provisions of §§ 4288.134 and 4288.135, if the Agency has determined that a producer has misrepresented the information or defrauded the Government, the Agency will take one of the following steps in accordance to 7 CFR part 3017, Government-wide Debarment and Suspension:

(a) Suspend payments on the Contract until the violation has been reconciled;

(b) Terminate the Contract; or

(c) Debarment to participate in any Federal Government program.

§ 4288.137 Succession and loss of control of advanced biofuel facilities and production.

(a) *Contract succession*. An entity who becomes the eligible advanced biofuel producer for an advanced biofuel facility that is under contract under this subpart must request permission from the Agency to succeed to the Program contract and the Agency may grant such request if it is determined that the entity is an eligible producer and permitting such succession would serve the purposes of the Program. If appropriate, the Agency may require the consent of the previous eligible advanced biofuel producer to such succession.

(b) *Loss of control*. Payments will be made only for eligible advanced biofuels produced at an advanced biofuel facility owned or controlled by an eligible advanced biofuel producer with a valid contract. If payments are made to an advanced biofuel producer for production at an advanced biofuel facility no longer owned or controlled by said producer or to an otherwise ineligible advanced biofuel producer, the Agency will demand full refund of all such payments.

§§ 4288.138–4288.189 [Reserved]

FISCAL YEAR 2010 APPLICATIONS

§ 4288.190 Fiscal Year 2010 applications.

(a) *General*. This section provides the requirements associated with applying for funds under this subpart for Fiscal Year 2010.

(b) *Applicability*. The provisions specified in §§ 4288.101 through 4288.137 are applicable to applicants, applications, and awards made for Fiscal Year 2010, except as follows:

(1) Applications for participation in this program must be received by May 6, 2011. Applications received after this date will not be considered by the Agency for Fiscal Year 2010 funding.

(2) Payment applications for Fiscal Year 2010 funding are due by 4:30 p.m. local time May 12, 2011. Any application received after this date and time is ineligible for payment.

(3) Payment applications for Fiscal Year 2010 funding must contain actual production for October 1, 2009 through September 30, 2010.

(4) If an applicant has submitted an application for participation or payment in this program for Fiscal Year 2010 funding prior to March 14, 2011, the applicant must submit new applications in accordance with this subpart for Fiscal Year 2010 funding.

[76 FR 7967, Feb. 11, 2011, as amended at 76 FR 24343, May 2, 2011]

§§ 4288.191–4288.200 [Reserved]

PART 4290—RURAL BUSINESS INVESTMENT COMPANY (“RBIC”) PROGRAM

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AUTHORITY: 7 U.S.C. 1989 and 2009cc *et seq.*

SOURCE: 69 FR 32202, June 8, 2004, unless otherwise noted.

Subpart A—Introduction to Part 4290

§ 4290.10 Description of the Rural Business Investment Company Program.

The Rural Business Investment Company (''RBIC'') Program is a Developmental Venture Capital program for the purpose of promoting economic development and the creation of wealth and job opportunities in Rural Areas and among individuals living in such Areas. To this end, the Secretary will select and license RBIC Applicants that will agree to address the unmet Equity Capital needs of Smaller Enterprises primarily located in Rural Areas.

§ 4290.15 Leveraged and Non-leveraged Rural Business Investment Companies.

The regulations in this part apply to rural business investment companies (RBICs) that seek leverage and to RBICs that do not seek leverage. The provisions of subparts A through N of this part apply to Leveraged RBICs and, except as indicated or as otherwise modified by subpart O of this part, to Non-leveraged RBICs. The provisions in subpart O of this part apply to Non-leveraged RBICs and, in addition, modify certain provisions in subparts A through N of this part as they apply to Non-leveraged RBICs.

[76 FR 80221, Dec. 23, 2011]

EFFECTIVE DATE NOTE: At 76 FR 80221, Dec. 23, 2011, § 4290.15 was added, effective Jan. 23, 2012.

§ 4290.20 Legal basis and applicability of this part 4290.

The regulations in this part implement Subtitle H of the Consolidated Farm and Rural Development Act, as amended (7 U.S.C. 2009cc *et seq.*) (''Act''). All RBICs must comply with all applicable regulations, accounting guidelines and valuation guidelines for RBICs.

§ 4290.30 Amendments to Act and regulations.

A RBIC is subject to all existing and future provisions of the Act and part 4290 of title 7 of the Code of Federal Regulations.

§ 4290.40 How to read this part 4290.

(a) *Center Headings*. Center headings are descriptive and are used for convenience only. They have no regulatory effect.

(b) *Capitalizing defined terms*. Terms defined in § 4290.50 have initial capitalization in this part 4290.

(c) ''*You*.'' The pronoun ''you'' as used in this part 4290 means a RBIC unless otherwise noted.

(d) *Forms*. All references in this part to forms, and instructions for their preparation, are to the current issue of such forms.

§ 4290.45 Responsibility for implementing this part 4290.

The Secretary has delegated to the U.S. Small Business Administration (SBA), pursuant to an agreement under the Economy Act (31 U.S.C. 1535), the authority to implement the RBIC program, including implementing and enforcing the regulations in this part 4290. Therefore, unless specifically stated otherwise, SBA will exercise on behalf of the Secretary all responsibilities and authorities assigned to the Secretary in this part 4290.

Subpart B—Definition of Terms Used in Part 4290

§ 4290.50 Definition of terms.

Act means Subtitle H of the Consolidated Farm and Rural Development Act, as amended (7 U.S.C. 2009cc *et seq*.).

Administrator means the Administrator of SBA.

Affiliate or *Affiliates* has the meaning set forth in title 13 CFR 121.103.

Applicant means any entity submitting an application to be licensed as a RBIC.

Articles mean articles of incorporation or charter and bylaws for a Corporate RBIC, the certificate and limited partnership agreement for a Partnership RBIC, and the operating agreement or other organizational documents for an LLC RBIC.

Assistance or *Assisted* means Financing of or management services rendered to a Portfolio Concern by or through a RBIC pursuant to the Act and this part.

Associate of a RBIC means any of the following:

(1)(i) An officer, director, employee or agent of a Corporate RBIC;

(ii) A Control Person, employee or agent of a Partnership RBIC;

(iii) A managing member of an LLC RBIC;

(iv) An Investment Adviser/Manager of any RBIC, including any Person who contracts with a Control Person of a RBIC to be the Investment Adviser/Manager of such RBIC; or

(v) Any Person regularly serving a RBIC on retainer in the capacity of attorney at law.

(2) Any Person who owns or controls, or who has entered into an agreement to own or control, directly or indirectly, at least 10 percent of any class of stock of a Corporate RBIC or 10 percent of the membership interests of an LLC RBIC, or a limited partner's interest of at least 10 percent of the partnership capital of a Partnership RBIC. However, neither a limited partner in a Partnership RBIC nor a non-managing member in an LLC RBIC is considered an Associate if such Person is an Entity Institutional Investor whose investment in the Partnership, including commitments, represents no more than 33 percent of the capital of the RBIC and no more than five percent of such Person's net worth.

(3) Any officer, director, partner (other than a limited partner), manager, agent, or employee of any Associate described in paragraph (1) or (2) of this definition.

(4) Any Person that directly or indirectly Controls, or is Controlled by, or is under Common Control with, a RBIC.

(5) Any Person that directly or indirectly Controls, or is Controlled by, or is under Common Control with, any Person described in paragraphs (1) and (2) of this definition.

(6) Any Close Relative of any Person described in paragraphs (1), (2), (4), and (5) of this definition.

(7) Any Secondary Relative of any Person described in paragraphs (1), (2), (4), and (5) of this definition.

(8) Any concern in which—

(i) Any person described in paragraphs (1) through (6) of this definition

is an officer; general partner, or managing member; or

(ii) Any such Person(s) singly or collectively Control or own, directly or indirectly, an equity interest of at least 10 percent (excluding interests that such Person(s) own indirectly through ownership interests in the RBIC).

(9) Any concern in which any Person(s) described in paragraph (7) of this definition singly or collectively own (including beneficial ownership) a majority equity interest, or otherwise have Control. As used in this paragraph (9), ''collectively'' means together with any Person(s) described in paragraphs (1) though (7) of this definition.

(10) For the purposes of this definition, any Associate relationship described in paragraphs (1) through (7) of this definition that exists at any time within six months before or after the date that a RBIC provides Financing, will be considered to exist on the date of the Financing.

Capital Impairment has the meaning set forth in § 4290.1830(b).

Central Registration Agent or *CRA* means one or more agents appointed for the purpose of issuing Trust Certificates (TCs) and performing the functions enumerated in § 4290.1620 and performing similar functions for Debentures funded outside the pooling process.

Close Relative of an individual means:

(1) A current or former spouse;

(2) A father, mother, guardian, brother, sister, son, daughter; or

(3) A father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law.

Commitment means a written agreement between a RBIC and an Enterprise that obligates the RBIC to provide Financing (except a guarantee) to that Enterprise in a fixed or determinable sum, by a fixed or determinable future date. In this context the term ''agreement'' means that there has been agreement on the principal economic terms of the Financing. The agreement may include reasonable conditions precedent to the RBIC's obligation to fund the Commitment, but these conditions must be outside the RBIC's control.

Common Control means a condition such that two or more Persons, either through ownership, management, contract, or otherwise, are under the Control of one group or Person. Two or more RBICs are presumed to be under Common Control if they are Affiliates of each other by reason of common ownership or common officers, directors, or general partners; or if they are managed or their investments are significantly directed either by a common independent Investment Advisor/Manager or managerial contractor, or by two or more such advisors or contractors that are Affiliates of each other. This presumption may be rebutted by evidence satisfactory to the Secretary.

Community Development Finance means debt or equity-type investments in Rural Areas.

Control means the possession, direct or indirect, of the power to direct or cause, or the power to stop or hinder (also referred to as ''negative Control''), the direction of the management and policies of a RBIC or other concern, whether through the ownership of voting securities, by contract, or otherwise.

Control Person means any Person that controls a RBIC, either directly or through an intervening entity. A Control Person includes:

(1) A general partner of a Partnership RBIC;

(2) Any Person serving as a general partner (in the case of a partnership), an officer or director (in the case of a corporation), or a manager (in the case of a limited liability company) of any entity that controls a RBIC, either directly or through an intervening entity;

(3) Any Person that—

(i) Controls or owns, directly or through an intervening entity, at least 10 percent of a Partnership RBIC, a LLC RBIC, or any entity described in paragraphs (1) or (2) of this definition; and

(ii) Participates in the investment decisions of a general partner of such Partnership RBIC or of a managing member of such LLC RBIC;

(4) Any Person that controls or owns, directly or through an intervening entity, at least 50 percent of a RBIC or any entity described in paragraphs (1) or (2) of this definition.

Corporate RBIC has the meaning set forth in the definition of RBIC in this section.

Debenture means a debt obligation issued by RBICs pursuant to section 384E of the Act and held or guaranteed by the Secretary.

Debt Securities means instruments evidencing a loan with an option or any other right to acquire Equity Securities in an Enterprise or its Affiliates, or a loan which by its terms is convertible into an equity position. Consideration must be paid for all options acquired.

Developmental Venture Capital means Equity Capital invested in Rural Business Concerns, with an objective of fostering economic development in Rural Areas.

Distribution means any transfer of cash or non-cash assets to the Secretary, the Secretary's agent or Trustee, or to partners in a Partnership RBIC, or to shareholders in a Corporate RBIC, or to members in an LLC RBIC. Capitalization of Retained Earnings Available for Distribution constitutes a Distribution to the RBIC's partners, shareholders, or members.

Enterprise means a Person engaged in a business or commercial activity which charges for the goods and services it provides, whether such Person is operating for profit or is subject to any legal restrictions on the distribution of profits to its owners, members, or suppliers of its equity or quasi-equity capital. An Enterprise includes:

(1) A public, private, or cooperative for-profit or non-profit organization;

(2) A for-profit or nonprofit business controlled by an Indian tribe on a Federal or State reservation or other federally recognized Indian tribal group; or

(3) Any other Person.

Entity General Partner has the meaning set forth in §4290.160.

Entity Managing Member has the meaning set forth in §4290.160.

Equity Capital means Equity Securities or Subordinated Debt With Equity Features.

Equity Securities means stock of any class in a corporation, stock options, warrants, limited partnership interests in a limited partnership, membership interests in a limited liability company, or joint venture interests.

Farm Credit System Institution means an institution defined in section 1.2(a) of the Farm Credit Act of 1971 (12 U.S.C. 2002(a)).

Financing or *Financed* means outstanding financial assistance provided to a Portfolio Concern by a RBIC, whether through:

(1) Loans, with or without a right to acquire Equity Securities;

(2) Debt Securities;

(3) Equity Securities;

(3) Subordinated Debt With Equity Features;

(4) Guarantees; or

(5) Purchases of securities of an Enterprise through or from an underwriter as permitted by §4290.825.

Guaranty Agreement means the contract entered into by the Secretary which is a guarantee backed by the full faith and credit of the United States Government as to timely payment of principal and interest on Debentures and the Secretary's rights in connection with such guarantee.

Includible Non-Cash Gains means those non-cash gains (as reported on SBA Form 468) that are realized in the form of Publicly Traded and Marketable securities or investment grade debt instruments. For purposes of this definition, investment grade debt instruments means those instruments that are rated ''BBB'' or ''Baa'', or better, by Standard & Poor's Corporation or Moody's Investors Service, respectively. Non-rated debt may be considered to be investment grade if a RBIC obtains a written opinion from an investment banking firm acceptable to the Secretary stating that the non-rated debt instrument is equivalent in risk to the issuer's investment grade debt.

Institutional Investor means Entity Institutional Investor or Individual Institutional Investor, each defined as follows:

(1) *Entity Institutional Investors.* Any of the following entities if the entity has a net worth (exclusive of unfunded commitments from investors) of at least $1 million, or such higher amount as is specified in this paragraph (1). (*See also* §4290.230(c)(4) for limitations

on the amount of an Entity Institutional Investor's commitment that may be included in Private Capital.)

(i) A State or National bank, Farm Credit System Institution, trust company, savings bank, or savings and loan association.

(ii) An insurance company.

(iii) A 1940 Act Investment Company or Business Development Company (each as defined in the Investment Company Act of 1940, as amended (15 U.S.C. 80a–1 *et seq.*).

(iv) A holding company of any entity described in paragraph (l)(i), (ii) or (iii) of this definition.

(v) An employee benefit or pension plan established for the benefit of employees of the Federal government, any State or political subdivision of a State, or any agency or instrumentality of such government unit.

(vi) An employee benefit or pension plan (as defined in the Employee Retirement Income Security Act of 1974, as amended (Public Law 93–406, 88 Stat. 829), excluding plans established under § 401(k) of the Internal Revenue Code of 1986 (26 U.S.C. 401(k)), as amended).

(vii) A trust, foundation or endowment exempt from Federal income taxation under the Internal Revenue Code of 1986, 26 U.S.C. 1, as amended.

(viii) A corporation, partnership or other entity with a net worth (exclusive of unfunded commitments from investors) of more than $10 million.

(ix) A State, a political subdivision of a State, or an agency or instrumentality of a State or its political subdivision.

(x) An entity whose primary purpose is to manage and invest non-Federal funds on behalf of at least three Institutional Investors described in paragraphs (l)(i) through (ix) of this definition, each of whom must have at least a 10 percent ownership interest in the entity.

(xi) Any other entity that the Secretary determines to be an Institutional Investor.

(2) *Individual Institutional Investor*. (i) Any of the following individuals if he/she is also a permanent resident of the United States:

(A) An individual who is an Accredited Investor (as defined in the Securities Act of 1933, as amended (15 U.S.C. 77a–77aa)) and whose commitment to the RBIC is backed by a letter of credit from a State or National bank acceptable to the Secretary.

(B) An individual whose personal net worth is at least $2 million and at least ten times the amount of his or her commitment to the RBIC. The individual's personal net worth must not include the value of any equity in his or her most valuable residence.

(C) An individual whose personal net worth, not including the value of any equity in his or her most valuable residence, is at least $10 million.

(ii) Any individual who is not a permanent resident of the United States but who otherwise satisfies paragraph (2)(i) of this definition provided such individual has irrevocably appointed an agent within the United States for the service of process.

Investment Adviser/Manager means any Person who furnishes advice or assistance with respect to operations of a RBIC under a written contract executed in accordance with the provisions of § 4290.510.

Lending Institution means a concern that is operating under regulations of a state or Federal licensing, supervising, or examining body, or whose shares are publicly traded and listed on a recognized stock exchange or is listed in the Automated Quotation System of the National Association of Securities Dealers (NASDAQ) and which has assets in excess of $500 million; and which, in either case, holds itself out to the public as engaged in the making of commercial and industrial loans and whose lending operations are not for the purpose of financing its own or an Associate's sales or business operations.

Leverage means financial assistance provided to a RBIC by the Secretary either through the purchase or guaranty of a RBIC's Debentures and any other SBA financial assistance evidenced by a security of the RBIC.

Leverageable Capital means Regulatory Capital, excluding unfunded commitments.

LLC RBIC has the meaning set forth in the definition of RBIC in this section.

Loan means a transaction evidenced by a debt instrument with no provision for you to acquire Equity Securities.

Loans and Investments means Portfolio securities, assets acquired in liquidation of Portfolio securities, operating Enterprises acquired, and notes and other securities received, as set forth in the Statement of Financial Position on SBA Form 468.

Management Expenses has the meaning set forth in §4290.520.

NAICS Manual means the latest issue of the North American Industrial Classification System (NAICS) Manual, prepared by the Office of Management and Budget, and available from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA, 15250–7954.

1940 Act Company means a RBIC which is registered under the Investment Company Act of 1940.

1980 Act Company means a RBIC which is registered under the Small Business Investment Incentive Act of 1980.

Operational Assistance means management, marketing, and other technical assistance that assists a Smaller Enterprise with its business development.

Original Issue Price means the price paid by the purchaser for securities at the time of issuance.

Participation Agreement means an agreement between the Secretary and an Applicant licensed as a RBIC pursuant to §4290.390 of this part, that details the RBIC's operating plan and investment criteria and requires the RBIC to operate pursuant to the Act and this part.

Partnership RBIC has the meaning set forth in the definition of RBIC in this section.

Person means a natural person or legal entity.

Pool means an aggregation of guaranteed Debentures approved by the Secretary.

Portfolio means the securities representing a RBIC's total outstanding Financings of Enterprises. It does not include idle funds or assets acquired in liquidation of Portfolio securities.

Portfolio Concern means any Enterprise Assisted by a RBIC.

Principal Office means the location where the greatest number of the Enterprise's employees at any one location perform their work. However, for those Enterprises whose ''primary industry'' (*see* 13 CFR 121.107) is service or construction (*see* 13 CFR 121.201), the determination of principal office excludes the Enterprise's employees who perform the majority of their work at job-site locations to fulfill specific contract obligations.

Private Capital has the meaning set forth in §4290.230.

Publicly Traded and Marketable means securities that are salable without restriction or that are salable within 12 months pursuant to Rule 144 (17 CFR 230.144) of the Securities Act of 1933, as amended, by the holder thereof, and are of a class which is traded on a regulated stock exchange, or is listed in NASDAQ, or has, at a minimum, at least two market makers as defined in the relevant sections of the Securities Exchange Act of 1934, as amended (15 U.S.C. 77b *et seq.*), and in all cases the quantity of which can be sold over a reasonable period of time without having an adverse impact upon the price of the stock.

Qualified Non-private Funds means:

(1) Funds directly or indirectly invested in any RBIC or Applicant on or after May 13, 2002 by any Federal agency other than USDA under a provision of law explicitly mandating the inclusion of those funds in the definition of ''Private Capital;'' and

(2) The aggregate amount of funds invested in any Applicant or RBIC by one or more States, or any political subdivisions, agencies or instrumentalities thereof, including any guarantee extended by such entities.

Regulatory Capital means Private Capital, excluding non-cash assets contributed to a RBIC or an Applicant unless such assets have been converted to cash or have been approved by the Secretary for inclusion in Regulatory Capital. For purposes of this definition, sales of contributed non-cash assets with recourse or borrowings against such assets shall not constitute a conversion to cash.

Relevant Venture Capital Finance means Equity Capital in Rural Business Concerns or benefiting Rural Areas.

Retained Earnings Available for Distribution means Undistributed Net Realized Earnings less any Unrealized Depreciation on Loans and Investments (as reported on SBA Form 468), and represents the amount that a RBIC may distribute to investors as a profit Distribution, or transfer to Private Capital.

Rural Area means an area that is located outside a standard metropolitan statistical area, or within a community that has a population of 50,000 or less inhabitants. As used in this definition, ''community'' means any area outside of a metropolitan statistical area (MSA) or any territory within an MSA that is not within an urbanized area, all as defined by the Bureau of the Census of the United States Department of Commerce (Census Bureau) at the last decennial census.

Rural Business Concern means an Enterprise whose Principal Office is located in a Rural Area.

Rural Business Concern Investment means a Financing in a Rural Business Concern whose Principal Office was located in a Rural Area at the time of the initial Financing.

Rural Business Investment Company or *RBIC* means a corporation organized as required by § 4290.100 (Corporate RBIC), a limited partnership organized as required by §§ 4290.100 and 4290.160 (Partnership RBIC), or a limited liability company organized as required by §§ 4290.100 and 4290.160 (LLC RBIC), that has been licensed as a RBIC pursuant to § 4290.390.

SBA means the U.S. Small Business Administration, an agency of the Federal Government headquartered at 409 Third Street, SW, Washington, DC 20416.

Secondary Relative of an individual means:

(1) A grandparent, grandchild, or any other ancestor or lineal descendent who is not a Close Relative;

(2) An uncle, aunt, nephew, niece, or first cousin; or

(3) A spouse of any person described in paragraph (1) or (2) of this definition.

Secretary means the Secretary of Agriculture.

Small Business Concern means a for-profit Smaller Enterprise that meets the definition of ''business concern'' in 13 CFR 121.105 and that, together with its Affiliates, meets the small business size standards set forth in 13 CFR 121.201 or 13 CFR 121.301(c) for the industry in which it is primarily engaged on the date the Financing is made (the term ''primarily engaged'' for purposes of this definition is defined in 13 CFR 121.107).

Small Business Concern Investments means a Financing in the form of Equity Capital in an Enterprise that qualified as both a Smaller Enterprise and a Small Business Concern at the time of the initial Financing.

Small Business Investment Company or *SBIC* means a Licensee, as that term is defined in 13 CFR 107.50.

Smaller Enterprise means any Rural Business Concern that, together with its Affiliates and by itself—

(1) Meets the size standard established by SBA in 13 CFR 121.201, corresponding to each type of economic activity or industry described in the NAICS Manual for the industry in which it is primarily engaged on the date on which the Financing is made (the term ''primarily engaged'' for purposes of this definition is defined in 13 CFR 121.107); or

(2) Has—

(i) A net financial worth of not more than $6,000,000 as of the date on which the Financing is made; and

(ii) An average net income for the two year period preceding the date on which the Financing is made of not more than $2,000,000, after Federal income taxes (excluding any carryover losses), except that, for purposes of this clause, if the Rural Business Concern is not required by law to pay Federal income taxes at the enterprise level, but is required to pass income through to the shareholders, partners, beneficiaries, or other equitable owners of the Rural Business Concern, its net income is determined by allowing a deduction in an amount equal to the total of—

(A) If it is not required by law to pay State (and local, if any) income taxes at the enterprise level, the net income (determined without regard to this paragraph (2)(ii)(A)) multiplied by the marginal State income tax rate (or by the combined State and local income

tax rates, as applicable) that would have applied if the Rural Business Concern were a corporation; and

(B) The net income (so determined) less any deduction for State (and local) income taxes calculated under paragraph (2)(ii)(A) of this definition multiplied by the marginal Federal income tax rate that would have applied if the Rural Business Concern were a corporation.

Smaller Enterprise Investment means a Financing in the form of Equity Capital in an Enterprise that qualified as a Smaller Enterprise at the time of the initial Financing.

State means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Federated States of Micronesia.

Subordinated Debt means a debt of a debtor, common to more than one creditor, that is the subject of an agreement between two groups of creditors (whose claims would otherwise be in parity) setting forth the circumstances under which the claims of one group (senior creditors) shall be satisfied out of the resources of the common debtor that would otherwise be available for the payment of the claims of the other group (junior creditors).

Subordinated Debt With Equity Features means a Subordinated Debt obligation that gives to the junior creditor such additional compensation as warrants, conversion rights, any other interest in the debtor's equity, profits, increased future revenue, or a royalty interest.

Trust means a legal entity created for the purpose of holding guaranteed Debentures and the guaranty agreement related thereto, receiving, holding and making any related payments, and accounting for such payments.

Trust Certificate Rate means a fixed rate determined at the time Debentures are pooled.

Trust Certificates (TCs) means certificates issued by the Secretary, the Secretary's agent or Trustee and representing ownership of all or a fractional part of a Trust or Pool of Debentures.

Trustee means the trustee or trustees of a Trust.

Undistributed Net Realized Earnings means Undistributed Realized Earnings less Non-cash Gains/Income, each as reported on SBA Form 468.

Unrealized Appreciation means the amount by which a RBIC's valuation of each of its Loans and Investments, as determined by its board of directors, general partner(s), or managing member(s) in accordance with the RBIC's valuation policies, exceeds the cost basis thereof.

Unrealized Depreciation means the amount by which a RBIC's valuation of each of its Loans and Investments, as determined by its board of directors, general partner(s), or managing member(s) in accordance with the RBIC's valuation policies, is below the cost basis thereof.

Unrealized Gain (Loss) on Securities Held means the sum of the Unrealized Appreciation and Unrealized Depreciation on all of a RBIC's Loans and Investments, less estimated future income tax expense or estimated realizable future income tax benefit, as appropriate.

Urban Area means an area containing a city (or its equivalent), or any equivalent geographic area determined by the Census Bureau and adopted by the Secretary for purposes of this definition (about which the Secretary will publish a document in the FEDERAL REGISTER from time to time), which had a population of over 150,000 in the last decennial census and the urbanized areas containing or adjacent to that city, both as determined by the Census Bureau for the last decennial census.

Urban Area Investment means a Financing in an Enterprise whose Principal Office was located in an Urban Area at the time of the initial Financing.

USDA means the U.S. Department of Agriculture, a department of the Federal government headquartered at 1400 Independence Avenue, SW., Washington, DC 20250.

EFFECTIVE DATE NOTE: At 76 FR 80221, Dec. 23, 2011, § 4290.50 was amended by revising the definitions of *Community Development Finance, Debenture, Includible Non-Cash Gains, Loans and Investments, Retained Earnings Available for Distribution, Rural Area, Secretary, State, and Undistributed Net Realized*

Earnings; revising the definition of *Institutional Investor;* in paragraph (1)(i), and adding definitions of *Leveraged RBIC* and *Non-leveraged RBIC* in alphabetical order, effective Jan. 23, 2012. For the convenience of the user, the added and revised text is set forth as follows:

§ 4290.50 Definition of terms.

* * * * *

Community Development Finance means debt securities or equity-type investments in Rural Areas.

* * * * *

Debenture means a debt obligation issued by RBICs pursuant to section 384E of the Act and held or guaranteed by the Secretary. A Debenture may be prepaid at any time without penalty.

* * * * *

Includible Non-Cash Gains means those non-cash gains (as reported on SBA Form 468 or other USDA-approved form(s)) that are realized in the form of Publicly Traded and Marketable securities or investment grade debt instruments. For purposes of this definition, investment grade debt instruments means those instruments that are rated ''BBB'' or ''Baa'', or better, by Standard & Poor's Corporation or Moody's Investors Service, respectively. Non-rated debt may be considered to be investment grade if a RBIC obtains a written opinion from an investment banking firm acceptable to the Secretary stating that the non-rated debt instrument is equivalent in risk to the issuer's investment grade debt.

Institutional Investor * * *

(1) * * *

(i) A State or National bank, Farm Credit System Institution, trust company, savings bank, or savings and loan association, including an investment pool created entirely by such bank or savings association, the deposits of which are insured under the Federal Deposit Insurance Act.

* * * * *

Leveraged RBIC means a RBIC that received financial assistance under this part.

* * * * *

Loans and Investments means Portfolio securities, assets acquired in liquidation of Portfolio securities, operating Enterprises acquired, and notes and other securities received, as set forth in the Statement of Financial Position on SBA Form 468 or other USDA-approved form(s).

* * * * *

Non-leveraged RBIC means a RBIC that has not received financial assistance under this part.

* * * * *

Retained Earnings Available for Distribution means Undistributed Net Realized Earnings less any Unrealized Depreciation on Loans and Investments (as reported on SBA Form 468 or other USDA-approved form(s)), and represents the amount that a RBIC may distribute to investors as a profit Distribution, or transfer to Private Capital.

Rural Area means any area of a State not in a city or town that has a population of more than 50,000 inhabitants, according to the latest decennial census of the United States, or in the urbanized area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants, and any area that has been determined to be ''rural in character'' by the Under Secretary for Rural Development, or as otherwise identified in this definition.

(1) An area that is attached to the urbanized area of a city or town with more than 50,000 inhabitants by a contiguous area of urbanized census blocks that is not more than 2 census blocks wide. Applicants from such an area should work with their Rural Development State Office to request a determination of whether their project is located in a rural area under this provision.

(2) For the purposes of this definition, cities and towns are incorporated population centers with definite boundaries, local self government, and legal powers set forth in a charter granted by the State.

(3) For the Commonwealth of Puerto Rico, the island is considered rural and eligible for Business Programs assistance, except for the San Juan Census Designated Place (CDP) and any other CDP with greater than 50,000 inhabitants. CDPs with greater than 50,000 inhabitants, other than the San Juan CDP, may be determined to be eligible if they are ''not urban in character.''

(4) For the State of Hawaii, all areas within the State are considered rural and eligible for Business Programs assistance, except for the Honolulu CDP within the County of Honolulu.

(5) For the purpose of defining a rural area in the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands, the USDA shall determine what constitutes rural and rural area based on available population data.

(6) The determination that an area is ''rural in character'' will be made by the Under Secretary of Rural Development. The

process to request a determination under this provision is outlined in paragraph (6)(ii) of this definition.

(i) The determination that an area is ''rural in character'' under this definition will apply to areas that are within:

(A) An urbanized area that has two points on its boundary that are at least 40 miles apart, which is not contiguous or adjacent to a city or town that has a population of greater than 150,000 inhabitants or the urbanized area of such a city or town; or

(B) An urbanized area contiguous and adjacent to a city or town of greater than 50,000 inhabitants that is within one-quarter mile of a rural area.

(ii) Units of local government may petition the Under Secretary of Rural Development for a ''rural in character'' designation by submitting a petition to both the appropriate Rural Development State Director and the Rural Business-Cooperative Service Administrator of USDA on behalf of the Under Secretary. The petition shall document how the area meets the requirements of paragraph (6)(i)(A) or (B) of this definition and discuss why the petitioner believes the area is ''rural in character,'' including, but not limited to, the area's population density, demographics, and topography and how the local economy is tied to a rural economic base. Upon receiving a petition, the Under Secretary will consult with the applicable Governor or leader in a similar position and request comments to be submitted within 5 business days, unless such comments were submitted with the petition. The Under Secretary will release to the public a notice of a petition filed by a unit of local government not later than 30 days after receipt of the petition by way of publication in a local newspaper and posting on the Agency's Web site, and the Under Secretary will make a determination not less than 15 days, but no more than 60 days, after the release of the notice. Upon a negative determination, the Under Secretary will provide to the petitioner an opportunity to appeal a determination to the Under Secretary, and the petitioner will have 10 business days to appeal the determination and provide further information for consideration.

* * * * *

Secretary means the Secretary of Agriculture or his or her designee.

* * * * *

State means each of the 50 states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the U.S. Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Federated States of Micronesia.

* * * * *

Undistributed Net Realized Earnings means Undistributed Realized Earnings less Noncash Gains/Income, each as reported on SBA Form 468 or other USDA-approved form(s).

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Subpart C—Qualifications for the RBIC Program

ORGANIZING A RBIC

§4290.100 Business form.

(a) *Newly-formed for-profit*. An Applicant for a RBIC license must be a newly formed for-profit entity or, subject to §4290.150, a newly formed for-profit subsidiary of an existing entity. It must be organized under the law of a State. An Applicant may be organized as a corporation (''Corporate RBIC''), a limited partnership (''Partnership RBIC''), or a limited liability company (''LLC RBIC'').

(b) *Purpose*. An Applicant must be organized solely for the purpose of performing the functions and conducting the activities contemplated under the Act: making Developmental Venture Capital investments and providing Operational Assistance to eligible Smaller Enterprises.

(c) *Articles*. The RBIC's Articles—

(1) Must specify in general terms:

(i) The purposes for which the RBIC is formed;

(ii) The name of the RBIC;

(iii) The Rural Area or Areas in which it will operate;

(iv) The place where the RBIC's headquarters will be located; and

(v) The amount and classes of the RBIC's ownership interests.

(2) May contain any other provisions consistent with the Act that the RBIC may determine is appropriate to adopt to regulate its business and the conduct of its affairs.

(3) Are subject to the Secretary's approval.

(d) *Duration*—(1) *Partnership RBICs*. If you are a Partnership RBIC:

(i) You must have a minimum duration of 10 years, or two years following

the maturity of your last-maturing Leverage security, whichever is longer. After 10 years, if all Leverage has been repaid or redeemed and all amounts due the Secretary, his or her agent, or Trustee have been paid, the Partnership RBIC may be terminated by a vote of your partners;

(ii) None of your general partner(s) may be removed or replaced by your limited partners without prior written approval of the Secretary;

(iii) Any transferee of, or successor in interest to, your general partner shall have only the rights and liabilities of a limited partner prior to the Secretary's written approval of such transfer or succession; and

(iv) You must incorporate all the provisions in this paragraph (d) in your limited partnership agreement.

(2) *LLC RBICs*. If you are a LLC RBIC, you must have a minimum duration of 10 years, or two years following the maturity of your last-maturing Leverage security, whichever is longer. After 10 years, if all Leverage has been repaid or redeemed and all amounts due the Secretary, his or her agent, or Trustee have been paid, the LLC RBIC may be terminated by a vote of your members.

(3) *Corporate RBICs*. If you are a Corporate RBIC, you must have a duration of not less than 30 years unless earlier dissolved by the shareholders, except that the Corporate RBIC must not dissolve until at least two years following the maturity of your last-maturing Leverage security.

§ 4290.110 Qualified management.

An Applicant must show, to the satisfaction of the Secretary, that its current or proposed management team is qualified and has the knowledge, experience, and capability in Community Development Finance or Relevant Venture Capital Finance, necessary for investing in the types of Enterprises contemplated by the Act, regulations in this part, and its business plan. In determining whether an Applicant's current or proposed management team has sufficient qualifications, the Secretary will consider information provided by the Applicant and third parties concerning the background, capability, education, training and reputation of its general partners, managers, officers, key personnel, and investment committee and governing board members. The Applicant must designate at least one individual as the official responsible for contact with the Secretary.

EFFECTIVE DATE NOTE: At 76 FR 80222, Dec. 23, 2011, § 4290.110 was revised, effective Jan. 23, 2012. For the convenience of the user, the revised text is set forth as follows:

§ 4290.110 Qualified management.

An Applicant must show, to the satisfaction of the Secretary, that its current or proposed management team is qualified and has the knowledge, experience, and capability in Community Development Finance or Relevant Venture Capital Finance, necessary for investing in the types of Enterprises contemplated by the Act, regulations in this part, and its business plan. In determining whether an Applicant's current or proposed management team has sufficient qualifications, the Secretary will consider information provided by the Applicant and third parties concerning the background, capability, education, training and reputation (and any other managerial aspect identified by the USDA in a FEDERAL REGISTER notice) of its general partners, managers, officers, key personnel, and investment committee and governing board members. The Applicant must designate at least one individual as the official responsible for contact with the Secretary.

§ 4290.120 Plan to invest in Rural Areas.

An Applicant must agree that if licensed as a RBIC, it will make Developmental Venture Capital investments in Enterprises that will create wealth and job opportunities in Rural Areas and among individuals living in those areas.

§ 4290.130 Identified Rural Areas.

A RBIC must identify the specific Rural Area or Areas in which it intends to make Developmental Venture Capital investments and provide Operational Assistance under the RBIC program. The scope of the identified areas must be consistent with Applicant's business plan, especially as the plan relates to the Applicant's ability to operate actively, soundly, and profitably in such areas.

§4290.140 Approval of initial Management Expenses.

A RBIC must have its Management Expenses approved by the Secretary at the time it is licensed. (*See* §4290.520 for the definition of Management Expenses.)

§4290.150 Management and ownership diversity requirement.

(a) *Diversity requirement.* You must have diversity between management and ownership in order to be licensed as a RBIC and to maintain your license. To establish diversity, you must meet the requirements in paragraphs (b) and (c) of this section.

(b) *Percentage ownership requirement.* No Person or group of Persons who are Affiliates of one another may own or control, directly or indirectly, more than 70 percent of your Regulatory Capital or your Leverageable Capital.

(c) *Non-affiliation requirement.* At least 30 percent of your Regulatory Capital and Leverageable Capital must be owned and controlled by Persons unaffiliated with your management and unaffiliated with each other, and whose investments are significant in dollar and percentage terms as determined by the Secretary. Such Persons must not be your Associates (except for their status as your shareholders, limited partners or members) and must not Control, be Controlled by, or be under Common Control with any of your Associates. A single ''acceptable'' Institutional Investor may be substituted for two or three of the three investors who are otherwise required. The following Institutional Investors are ''acceptable'' for this purpose:

(1) Entities whose overall activities are regulated and periodically examined by State, Federal or other governmental authorities satisfactory to the Secretary;

(2) Entities listed on the New York Stock Exchange;

(3) Entities that are publicly-traded and that meet both the minimum numerical listing standards and the corporate governance listing standards of the New York Stock Exchange;

(4) Public or private employee pension funds;

(5) Trusts, foundations, or endowments, but only if exempt from Federal income taxation; and

(6) Other Institutional Investors satisfactory to the Secretary.

(d) *Voting requirement.* The investors relied upon to satisfy the diversity requirement may not delegate their voting rights to any Person who is your Associate, or who Controls, is Controlled by, or is under Common Control with any of your Associates, without prior approval by the Secretary.

(e) *Requirement to maintain diversity.* You must maintain management-ownership diversity while you are a RBIC. If, at any time, you no longer have the required management-ownership diversity, you must:

(1) Notify the Secretary within 10 days; and

(2) Re-establish diversity within six months after loss of diversity.

§4290.160 Special rules for Partnership RBICs and LLC RBICs.

(a) *Entity General Partner or Entity Managing Member.* (1) A general partner of a Partnership RBIC which is a corporation, limited liability company or partnership (an ''Entity General Partner''), or a managing member of an LLC RBIC which is a corporation, limited liability company, or partnership (an ''Entity Managing Member'') shall be organized under State law solely for the purpose of serving as the general partner or managing member of one or more RBICs, and shall be organized for profit.

(2) The Secretary must approve any person who will serve as an officer, director, manager, or general partner of the Entity General Partner or Entity Managing Member and of an entity that Controls the Entity General Partner or Entity Managing Member. This provision must be stated in an Entity General Partner's or Entity Managing Member's articles of incorporation or charter and bylaws if a corporation, operating agreement if a limited liability company, or partnership agreement if a partnership.

(3) An Entity General Partner or Entity Managing Member is subject to the same examination and reporting requirements as a RBIC under sections

384K and 384L of the Act. The restrictions and obligations imposed upon a RBIC by §§ 4290.1810, 4290.30, 4290.410 through 4290.450, 4290.470, 4290.500, 4290.510, 4290.585, 4290.600, 4290.680, 4290.690 through 4290.692, and 4290.1910 apply also to an Entity General Partner or Entity Managing Member of a RBIC.

(4) The general partner(s) of your Entity General Partner(s) or Entity Managing Member(s) will be considered your general partner.

(5) If your Entity General Partner or Entity Managing Member is a limited partnership, its limited partners may be considered your Control Person(s) if they meet the definition for Control Person in § 4290.50.

(b) *Liability of general partner of Partnership RBIC.* Subject to section 384O(b) of the Act, your general partner(s) is not liable solely by reason of its status as a general partner for repayment of any Leverage or debts you owe to the Secretary unless the Secretary, in the exercise of reasonable investment prudence, and with regard to your financial soundness, determines otherwise prior to the purchase or guaranty of your Leverage. The conditions specified in § 4290.1810 and § 4290.1910 apply to all general partners.

(c) *Special Leverage requirement for Partnership RBICs and LLC RBICs.* Before your first issuance of Leverage, you must furnish the Secretary with evidence that you qualify as a partnership for tax purposes, either by a ruling from the Internal Revenue Service or by an opinion of counsel.

§ 4290.165 Obligations of Control Persons.

All Control Persons are bound by the provisions of sections 384O and 384P of the Act and by the conflict-of-interest rules under § 4290.730. The term RBIC, as used in §§ 4290.30, 4290.460, and 4290.680, includes all of the RBIC's Control Persons.

CAPITALIZING A RBIC

§ 4290.200 Adequate capital for RBICs.

You must meet the requirements of §§ 4290.200 through 4290.230 in order to qualify as a RBIC and to receive Leverage.

EFFECTIVE DATE NOTE: At 76 FR 80222, Dec. 23, 2011, § 4290.200 was revised, effective Jan. 23, 2012. For the convenience of the user, the revised text is set forth as follows:

§ 4290.200 Adequate capital for RBICs.

You must meet the requirements of §§ 4290.210 through 4290.230 in order to qualify as a RBIC.

§ 4290.210 Minimum capital requirements for RBICs.

(a) *General Rule.* You must have Regulatory Capital of at least $10,000,000, or such lesser amount (but not less than $5,000,000) as the Secretary may prescribe by notice published from time to time in the FEDERAL REGISTER, and Leverageable Capital of at least $500,000, to become a RBIC.

(b) *Exception.* (1) The Secretary in his or her sole discretion and based on a showing of special circumstances and good cause may license an Applicant with Regulatory Capital of at least $2,500,000, but only if the Applicant:

(i) Has satisfied all eligibility criteria for licensing as a RBIC as described in § 4290.390(a) of this part, except the capital requirement specified in paragraph (a)(1) of that section, as determined solely by the Secretary;

(ii) Has a viable business plan reasonably projecting profitable operations; and

(iii) Has a reasonable timetable for achieving Regulatory Capital of at least $10,000,000.

(2) A RBIC licensed under this exception is not eligible to receive Leverage until it has complied with paragraph (a) of this section.

EFFECTIVE DATE NOTE: At 76 FR 80222, Dec. 23, 2011, § 4290.210 was amended by revising paragraph (a) and adding a new paragraph (c), effective Jan. 23, 2012. For the convenience of the user, the added and revised text is set forth as follows:

§ 4290.210 Minimum capital requirements for RBICs.

(a) *General Rule.* Unless otherwise specified in a FEDERAL REGISTER notice, you must have Regulatory Capital of at least $10,000,000, or such lesser amount (but not less than $5,000,000) and Leverageable Capital of at least $500,000, to become a RBIC.

* * * * *

(c) *Time frame.* Each RBIC shall have a period of 2 years to meet the capital requirements set forth in this section.

§4290.230 Private Capital for RBICs.

(a) *General.* Private Capital means the contributed capital of a RBIC, plus unfunded binding commitments by Institutional Investors (including commitments evidenced by a promissory note) to contribute capital to a RBIC.

(b) *Contributed capital.* For purposes of this section, contributed capital means the paid-in capital and paid-in surplus of a Corporate RBIC, the members' contributed capital of a LLC RBIC, or the partners' contributed capital of a Partnership RBIC, in each case subject to the limitations in paragraph (c) of this section.

(c) *Exclusions from Private Capital.* Private Capital does not include:

(1) Funds borrowed by an Applicant or a RBIC from any source.

(2) Funds obtained through the issuance of Leverage.

(3) Funds obtained directly or indirectly from the Federal government or any State (including by a political subdivision, agency or instrumentality of the Federal government or a State), except that the following categories of such funds are not excluded from Private Capital—

(i) Funds obtained directly or indirectly from the business revenues (excluding any governmental appropriation) of any federally-chartered or government-sponsored enterprise established prior to May 13, 2002;

(ii) Funds invested by an employee welfare benefit plan or pension plan; and

(iii) Qualified Non-private Funds in an amount not to exceed 33 percent of the total Private Capital of any Applicant or RBIC, *provided, however,* that in no event may any investor or investors of Qualified Non-private Funds have the power to Control, directly or indirectly, the management, board of directors, general partners, or members of the RBIC.

(4) Any portion of an unfunded commitment from an Institutional Investor with a net worth of less than $10 million that exceeds 10 percent of such Institutional Investor's net worth.

(5) An unfunded commitment from an investor if the Secretary determines that the collectibility of the commitment is questionable.

(d) *Non-cash capital contributions.* Capital contributions in a form other than cash are subject to the limitations in §4290.240 of this part.

(e) *Contributions with borrowed funds.* You may not accept any capital contribution made with funds borrowed by a Person seeking to own an equity interest (whether direct or indirect, beneficial or of record) of at least 10 percent of your Private Capital. This exclusion does not apply if:

(1) Such Person's net worth is at least twice the amount borrowed; or

(2) The Secretary gives his or her prior written approval of the capital contribution.

§4290.240 Limitations on non-cash capital contributions in Private Capital.

Non-cash capital contributions to a RBIC or Applicant are included in Private Capital only if they are approved by the Secretary and they fall into one of the following categories:

(a) Direct obligations of, or obligations guaranteed as to principal and interest by, the United States having a term of no more than one year.

(b) Services rendered or to be rendered to you, priced at no more than their fair market value.

(c) Other non-cash assets approved by the Secretary.

Subpart D—Application and Approval Process for RBIC Licensing

§4290.300 When and how to apply for a RBIC License.

(a) *Notice of Funds Availability ("NOFA").* The Secretary will publish a NOFA in the FEDERAL REGISTER advising potential applicants of the availability of funds for the RBIC program and inviting the submission of applications. The NOFA may specify limitations, special rules, procedures, and restrictions for a particular funding round. When submitting its application, an Applicant must comply with both this part 4290 and any requirements specified in the NOFA, including the opening and closing dates for submission of an application.

(b) *Application form.* An Applicant must apply for a RBIC license using the application packet provided by the Secretary. Upon receipt of a completed application packet, the Secretary may request clarifying or technical information on the materials submitted as part of the application.

EFFECTIVE DATE NOTE: At 76 FR 80222, Dec. 23, 2011, § 4290.300 was amended by revising paragraph (b), effective Jan. 23, 2012. For the convenience of the user, the revised text is set forth as follows:

§ 4290.300 When and how to apply for a RBIC license.

* * * * *

(b) *Application form.* An Applicant must apply for a RBIC license using an appropriate application packet provided by the Secretary. Upon receipt of a completed application packet, the Secretary may request clarifying or technical information on the materials submitted as part of the application.

§ 4290.310 Contents of application.

Each Applicant must submit a complete application, including the following:

(a) *Management team experience.* The Applicant must provide information generally as to the background, capability, education, reputation and training of its management team, including general partners, managers, officers, key personnel, and investment committee and governing board members. The Applicant also must provide information specifically on these individuals' qualifications and reputation in the areas of Community Development Finance and/or Relevant Venture Capital Finance, including the impact of these individuals' activities in these areas.

(b) *Amount of Regulatory Capital.* The Applicant must indicate the amount of Regulatory Capital it has raised or proposes to raise, which amount must satisfy the requirements of § 4290.210(a) of this part, unless the Applicant indicates that it has raised or proposes to raise at least $2,500,000 and is applying for an exception pursuant to § 4290.210(b) of this part and includes in its application—

(1) A showing of special circumstances and good cause for the exception:

(2) Will satisfy all eligibility criteria for licensing as a RBIC as set forth in § 4290.390(a) of this part, except the capital requirement specified in paragraph (a)(1) of that section, as determined solely by the Secretary;

(3) Has a viable business plan reasonably projecting profitable operations; and

(4) Has a reasonable timetable for achieving Regulatory Capital in an amount that satisfies the requirements of § 4290.210(a) of this part.

(c) *Comprehensive business plan.* The Applicant must submit a comprehensive business plan covering at least a five-year period, addressing the specific items described in § 4290.320, and which demonstrates that the Applicant has the capacity to operate successfully as a RBIC.

§ 4290.320 Contents of comprehensive business plan.

(a) *Plan for Developmental Venture Capital investing.* The Applicant must describe its plans and strategies for how it proposes to make successful Developmental Venture Capital investments in identified Rural Areas.

(b) *Working with Rural Area community-based organizations.* The Applicant must describe how it intends to work with community-based organizations and local entities (including local economic development companies, local lenders, and local investors) in order to facilitate its Developmental Venture Capital investments.

(c) *Market analysis.* The Applicant must provide an analysis of the Rural Areas in which it intends to focus its Developmental Venture Capital investments and Operational Assistance to Smaller Enterprises, demonstrating that the Applicant understands the market and the unmet Equity Capital needs in such areas and how its activities will meet these unmet needs and will have a positive economic impact on those areas. The Applicant also must analyze the extent of the demand

in such areas for Developmental Venture Capital investments and any factors or trends that may affect the Applicant's ability to make effective Developmental Venture Capital investments.

(d) *Operational capacity and investment strategies.* The Applicant must submit information concerning its policies and procedures for underwriting and approving its Developmental Venture Capital investments, monitoring its portfolio, and maintaining internal controls and operations.

(e) *Plan to raise Regulatory Capital.* The Applicant must include a detailed description of how it plans to raise its Regulatory Capital if it has not yet done so at the time of application. The Applicant must discuss its potential sources of Regulatory Capital, the estimated timing for raising such funds, and the extent of the expressions of interest to commit such funds to the Applicant.

(f) *Plan for providing Operational Assistance.* The Applicant must describe how it plans to use its grant funds to provide Operational Assistance to Smaller Enterprises in which it makes or expects to make Developmental Venture Capital investments. Its plan must address the types of Operational Assistance it proposes to provide, and how it plans to provide the Operational Assistance through the use of licensed professionals, when necessary, either from its own staff or from outside entities.

(g) *Projected amount of investment in Rural Areas.* The Applicant must describe how it proposes to meet the requirements set forth in §4290.700. An Applicant must project the amount of its total Regulatory Capital and Leverage that it proposes to invest in Smaller Enterprises and in Rural Business Concerns that are not Smaller Enterprises. The Applicant also must describe the amount of its total Regulatory Capital and Leverage that it proposes to invest in Urban Area Investments.

(h) *Projected impact.* The Applicant must describe the criteria and economic measurements to be used to evaluate whether and to what extent it has met the objectives of the RBIC program. It must include:

(1) A description of the extent to which it will concentrate its Developmental Venture Capital investments and Operational Assistance activities in identified Rural Areas;

(2) An estimate of the economic development benefits to be created within identified Rural Areas over the next five years or more as a result of its activities;

(3) A description of the criteria to be used to measure the benefits created as a result of its activities;

(4) A discussion about the amount of such benefits created that it will consider to constitute successfully meeting the objectives of the RBIC program.

(i) *Affiliates and business relationships.* The Applicant must submit information describing the management and financial strength of any parent or holding entity, affiliated firm or entity, or any other firm or entity essential to the success of the Applicant's business plan.

§4290.330 Grant issuance fee.

The Applicant must pay to the Secretary a grant issuance fee of $5,000. An Applicant must submit this fee in advance, at the time of application submission.

EFFECTIVE DATE NOTE: At 76 FR 80222, Dec. 23, 2011, §4290.330 was revised, effective Jan. 23, 2012. For the convenience of the user, the revised text is set forth as follows:

§4290.330 Grant and guarantee issuance fee.

The Applicant must pay to the Secretary an issuance fee for each grant or debenture guarantee of $500. If both a grant and debenture guarantee are issued for the same RBIC, the issuance fee for both is $500. An Applicant must submit this fee in advance, at the time of application submission.

Subpart E—Evaluation and Selection of RBICs

§4290.340 Evaluation and selection—general.

The Secretary on behalf of USDA and the Administrator on behalf of SBA, in their sole discretion, will evaluate and select an Applicant to participate in the RBIC program based on a review of the Applicant's application materials,

interviews or site visits with the Applicant (if any), and background investigations conducted by the Secretary and other Federal agencies. The Secretary's evaluation and selection process is intended to—

(a) Ensure that Applicants are evaluated on a competitive basis and in a fair and consistent manner;

(b) Take into consideration the unique proposals presented by Applicants;

(c) Ensure that each Applicant licensed as a RBIC can fulfill successfully the goals of its comprehensive business plan; and

(d) Ensure that the Secretary selects Applicants in such a way as to promote nationwide geographic distribution of Developmental Venture Capital investments.

§ 4290.350 Eligibility and completeness.

The Secretary will not consider any application that is not complete or that is submitted by an Applicant that does not meet the eligibility criteria described in subpart C of this part. The Secretary at his or her sole discretion, may request from an Applicant additional information concerning eligibility criteria or easily completed portions of the application in order to facilitate consideration of its application.

§ 4290.360 Initial review of Applicant's management team's qualifications.

The Secretary will review the information submitted by the Applicant concerning the qualifications of the Applicant's management team to determine in his or her sole discretion whether the team meets the minimum requirements deemed by the Secretary to be critical to successful venture capital investing. In making this determination, the Secretary will consider, among other things, the general business reputation of the owners and managers of the Applicant. Only those Applicants considered to have a management team qualified for venture capital investing will be further considered for selection as a RBIC.

§ 4290.370 Evaluation criteria.

Of those Applicants whose management team is considered qualified for venture capital investing and who have submitted an eligible and complete application, the Secretary on behalf of USDA and the Administrator on behalf of SBA, in their sole discretion, will evaluate and select an Applicant for participation in the RBIC program by considering the following criteria—

(a) Whether the Applicant's management team has the knowledge, experience, and capability necessary to manage a sound, economically viable RBIC and to comply with the Act;

(b) The quality of the Applicant's comprehensive business plan in terms of meeting the objectives of the RBIC program;

(c) The likelihood that the Applicant will achieve the goals described in its comprehensive business plan;

(d) The strength and likelihood for success of the Applicant's operations and investment strategies, including whether the Applicant has projected adequate profitability and financial soundness;

(e) Whether the Applicant will be able to operate soundly and profitably over the long term;

(f) Whether the Applicant will be able to operate actively in its identified Rural Areas in accordance with its business plan;

(g) The need for Developmental Venture Capital investments in the Rural Areas in which the Applicant intends to invest;

(h) The extent to which the Applicant will concentrate its activities on serving Smaller Enterprises and Small Business Concerns located in the Rural Areas in which it intends to invest, including the ratio of resources that it proposes to invest in such Enterprises as compared to other Enterprises;

(i) The Applicant's demonstrated understanding of the markets in the Rural Areas in which it intends to focus its activities;

(j) The likelihood that and the time frame within which the Applicant will be able to raise the Regulatory Capital it proposes to raise for its investments;

(k) The strength of the Applicant's proposal to provide Operational Assistance to Smaller Enterprises in which it plans to invest;

(l) The extent to which the activities proposed by the Applicant will promote economic development and the creation of wealth and job opportunities in the Rural Areas in which it intends to invest and among individuals living in such Areas; and

(m) The strength of the Applicant's application compared to applications submitted by other Applicants intending to invest in the same or proximate Rural Areas.

§ 4290.380 Selection.

From among the Applicants that have submitted eligible and complete applications, the Secretary on behalf of USDA and the Administrator on behalf of SBA, in their sole discretion, will select some, all, or none of such Applicants to participate in the RBIC program. Selection will entitle the Applicant to proceed with obtaining a license as a RBIC but only if the Applicant also meets the conditions set forth in § 4290.390.

§ 4290.390 Licensing as a RBIC.

(a) *Eligibility criteria for licensing as a RBIC*. Each selected Applicant must meet the following conditions before it is eligible to be licensed as a RBIC:

(1) Raise, within a time period specified by the Secretary but not to exceed 12 months after selection under § 4290.380 the specific amount of Regulatory Capital that the Applicant had projected in its application that it would raise (*see* § 4290.210 for additional information);

(2) Raise $500,000 in Leverageable Capital as required by § 4290.210;

(3) Complete and submit to the Secretary all legal and other documentation concerning the RBIC, including but not limited to its Articles and updated financial information concerning the RBIC in order to qualify for a Leverage commitment; and

(4) Enter into a Participation Agreement with the Secretary.

(b) *Licensing as a RBIC*. If the selected Applicant has satisfactorily met all the conditions specified in paragraph (a) of this section, as determined within the sole discretion of the Secretary, then the Secretary on behalf of USDA and the Administrator on behalf of SBA will license the Applicant as a RBIC.

(c) *Failure to meet eligibility criteria for licensing*. Each selected Applicant that does not meet the eligibility criteria for licensing described in paragraph (a) of this section, within a time period specified by the Secretary, will not be licensed as a RBIC. Failure to meet any of those conditions, including but not limited to failure to raise the projected Regulatory Capital within the required time period, will cause the Applicant's selection to lapse. The Secretary will not restore the selection of such an Applicant after the expiration of that time period. After the expiration of that time period, an Applicant that is not licensed as a RBIC must cease to represent itself as a participant or potential participant in the RBIC program.

(d) *Effect of a RBIC license*. The Participation Agreement executed by the Secretary with each Applicant licensed as a RBIC will include the following:

(1) Approval to operate as a RBIC under the Act;

(2) A commitment of Leverage; and

(3) An Operational Assistance grant award.

Subpart F—Changes in Ownership, Structure, or Control

CHANGES IN CONTROL OR OWNERSHIP OF RBIC

§ 4290.400 Changes in ownership of 10 percent or more of RBIC but no change of Control.

You must obtain the Secretary's prior written approval for any proposed transfer or issuance of ownership interests that results in the ownership (beneficial or of record) by any Person, or group of Persons acting in concert, of at least 10 percent of any class of your stock, partnership capital or membership interests.

§ 4290.410 Changes in Control of RBIC (through change in ownership or otherwise).

You must obtain the Secretary's prior written approval for any proposed

transaction or event that results in Control by any Person(s) not previously approved by the Secretary.

§ 4290.420 Prohibition on exercise of ownership or Control rights in RBIC before approval.

Without the Secretary's prior written approval, no change of ownership or Control may take effect and no officer, director, employee or other Person acting on your behalf shall:

(a) Register on your books any transfer of ownership interest to the proposed new owner(s);

(b) Permit the proposed new owner(s) to exercise voting rights with respect to such ownership interest (including directly or indirectly procuring or voting any proxy, consent or authorization as to such voting rights at any meeting of shareholders, partners or members);

(c) Permit the proposed new owner(s) to participate in any manner in the conduct of your affairs (including exercising control over your books, records, funds or other assets; participating directly or indirectly in any disposition thereof; or serving as an officer, director, partner, manager, employee or agent); or

(d) Allow ownership or Control to pass to another Person.

§ 4290.430 Notification of transactions that may change ownership or Control.

You must promptly notify the Secretary as soon as you have knowledge of transactions or events that may result in a transfer of Control or ownership of at least 10 percent of your Regulatory Capital. If the effect of a particular transaction or event is unclear, you must report all pertinent facts to the Secretary.

§ 4290.440 Standards governing prior approval for a proposed transfer of Control.

The Secretary's approval of a proposed transfer of Control is contingent upon full disclosure of the real parties in interest, the source of funds for the new owners' interest, and other data requested by the Secretary. As a condition of approving a proposed transfer of control, the Secretary may:

(a) Require an increase in your Regulatory Capital;

(b) Require the new owners or the transferee's Control Person(s) to assume, in writing, personal liability for your Leverage, effective only in the event of their direct or indirect participation in any transfer of Control not approved by the Secretary; or

(c) Require compliance with any other conditions set by the Secretary, including compliance with the requirements for minimum capital and management-ownership diversity in effect at such time for new RBICs.

§ 4290.450 Notification of pledge of RBIC's shares.

(a) You must notify the Secretary in writing, within 30 calendar days, of the terms of any transaction in which:

(1) Any Person, or group of Persons acting in concert, pledges shares of your stock (or equivalent ownership interests) as collateral for indebtedness; and

(2) The shares pledged constitute at least 10 percent of your Regulatory Capital.

(b) If the transaction creates a change of ownership or Control, you must comply with § 4290.400 or § 4290.410, as appropriate.

RESTRICTIONS ON COMMON CONTROL OR OWNERSHIP OF TWO OR MORE RBICS

§ 4290.460 Restrictions on Common Control or ownership of two (or more) RBICs.

Without the Secretary's prior written approval, you must not have an officer, director, manager, Control Person, or owner (with a direct or indirect ownership interest of at least 10 percent) who is also:

(a) An officer, director, manager, Control Person, or owner (with a direct or indirect ownership interest of at least 10 percent) of another RBIC; or

(b) An officer or director of any Person that directly or indirectly controls, or is controlled by, or is under Common Control with, another RBIC.

CHANGE IN STRUCTURE OF RBIC

§ 4290.470 Prior approval of merger, consolidation, or reorganization of RBIC.

You may not merge, consolidate, change form of organization (corporation, limited liability company, or limited partnership) or reorganize without the Secretary's prior written approval. Any such merger, consolidation, or change of form is subject to § 4290.440.

§ 4290.480 Prior approval of changes to RBIC's business plan.

Without the Secretary's prior written approval, no change in your business plan, upon which you were selected and licensed as a RBIC, may take effect.

Subpart G—Managing the Operations of a RBIC

GENERAL REQUIREMENTS

§ 4290.500 Lawful operations under the Act.

You must engage only in the activities permitted by the Act and in no other activities.

§ 4290.502 Representations to the public.

You may not represent or imply to anyone that the Secretary, the U.S. Government, or any of its agencies or officers has approved any ownership interests you have issued, obligations you have incurred, or Financings you have made. You must include a statement to this effect in any solicitation provided to investors. Example: You may not represent or imply that ''USDA stands behind the RBIC'' or that ''Your capital is safe because the Secretary's experts review proposed investments to make sure they are safe for the RBIC.''

§ 4290.503 RBIC's adoption of an approved valuation policy.

(a) *Valuation guidelines.* You must prepare, document and report the valuations of your Loans and Investments in accordance with the Valuation Guidelines for SBICs issued by SBA. These guidelines may be obtained from SBA's Investment Division or at *http://www.sba.gov/INV/valuation.pdf.*

(b) *The Secretary's approval of valuation policy.* You must have a written valuation policy approved by the Secretary for use in determining the value of your Loans and Investments. You must either:

(1) Adopt without change the model valuation policy set forth in section III of the Valuation Guidelines for SBICs; or

(2) Obtain the Secretary's prior written approval of an alternative valuation policy.

(c) *Responsibility for valuations.* Your board of directors, managing member(s), or general partner(s) will be solely responsible for adopting your valuation policy and for using it to prepare valuations of your Loans and Investments for submission to the Secretary. If the Secretary reasonably believes that your valuations, individually or in the aggregate, are materially misstated, he or she reserves the right to require you to engage, at your expense, an independent third party acceptable to the Secretary to substantiate the valuations.

(d) *Frequency of valuations.* (1) You must value your Loans and Investments at the end of the second quarter of your fiscal year, and again at the end of your fiscal year.

(2) On a case-by-case basis, the Secretary may require you to perform valuations more frequently.

(3) You must report material adverse changes in valuations at least quarterly, within 30 days following the close of the quarter.

(e) *Review of valuations by independent public accountant.* (1) For valuations performed as of the end of your fiscal year, your independent public accountant must review your valuation procedures and the implementation of such procedures, including adequacy of documentation.

(2) The independent public accountant's report on your audited annual financial statements (SBA Form 468) must include a statement that your valuations were prepared in accordance with your approved valuation policy.

EFFECTIVE DATE NOTE: At 76 FR 80222, Dec. 23, 2011, § 4290.503 was amended by revising paragraphs (a) and (e)(2), effective Jan. 23,

2012. For the convenience of the user, the revised text is set forth as follows:

§ 4290.503 RBIC's adoption of an approved valuation policy.

(a) *Valuation guidelines.* You must prepare, document and report the valuations of your Loans and Investments in accordance with the Valuation Guidelines for SBICs issued by SBA. These guidelines may be obtained from SBA's Investment Division or at *http://www.sba.gov/sites/default/files/files/inv_valuation.pdf.*

* * * * *

(e) * * *

(2) The independent public accountant's report on your audited annual financial statements (SBA Form 468 or other USDA-approved form(s)) must include a statement that your valuations were prepared in accordance with your approved valuation policy.

§ 4290.504 Equipment and office requirements.

(a) *Computer capability.* You must have a personal computer with access to the Internet and be able to use this equipment to prepare reports, for which you will receive the necessary software, and transmit such reports to the Secretary. In addition, you must have the capability to send and receive electronic mail.

(b) *Facsimile capability.* You must be able to receive facsimile messages 24 hours per day at your primary office.

(c) *Accessible office.* You must maintain an office that is convenient to the public and is open for business during normal working hours.

EFFECTIVE DATE NOTE: At 76 FR 80222, Dec. 23, 2011, § 4290.504 was amended by revising paragraph (a), effective Jan. 23, 2012. For the convenience of the user, the revised text is set forth as follows:

§ 4290.504 Equipment of USDA or SBA officials.

(a) *Computer capability.* You must have a personal computer with access to the Internet and be able to use this equipment to prepare reports and transmit such reports to the Secretary. In addition, you must have the capability to send and receive electronic mail.

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§ 4290.506 Safeguarding the RBIC's assets/Internal controls.

You must adopt a plan to safeguard your assets and monitor the reliability of your financial data, personnel, Portfolio, funds and equipment. You must provide your bank and custodian with a certified copy of your resolution or other formal document describing your control procedures.

§ 4290.507 Violations based on false filings and nonperformance of agreements with the Secretary or SBA.

The following shall constitute a violation of this part:

(a) *Nonperformance.* Failure to perform any of the requirements of any Debenture or of any written agreement with the Secretary or SBA.

(b) *False statement.* In any document submitted to the Secretary or SBA:

(1) Any false statement knowingly made; or

(2) Any misrepresentation of a material fact; or

(3) Any failure to state a material fact.

(4) A material fact is any fact that is necessary to make a statement not misleading in light of the circumstances under which the statement was made.

§ 4290.508 Compliance with non-discrimination laws and regulations applicable to federally-assisted programs.

In conducting your operations and providing Assistance to your Portfolio Concerns, you must comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1 *et seq.*), the Age Discrimination Act of 1975 (Pub. L. 94–135, Title III), and Title V of the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*) and the following regulations promulgated by USDA to implement and enforce such laws: 7 CFR part 15.

§ 4290.509 Employment of USDA or SBA officials.

(a) Without the Secretary's prior written approval, for a period of two years after the date of your most recent issuance of Leverage or after the receipt of any assistance as defined in paragraph (b) of this section, you are

not permitted to employ, offer employment to, or retain for professional services, any person who:

(1) Served as an officer, attorney, agent, or employee of SBA or USDA within one year before such date; and

(2) In that capacity, occupied a position or engaged in activities which, in SBA's or the Secretary's determination, involved discretion with respect to the issuing of Leverage or the granting of such assistance.

(b) For purposes of this section, ''assistance'' means financial, contractual, grant, managerial, or other aid, including licensing, certifications, and other eligibility determinations made by USDA or SBA, and any express decision to compromise or defer possible litigation or other adverse action.

EFFECTIVE DATE NOTE: At 76 FR 80222, Dec. 23, 2011, §4290.509 was amended by revising paragraph (a) introductory text, effective Jan. 23, 2012. For the convenience of the user, the revised text is set forth as follows:

§4290.509 Employment of USDA or SBA officials.

(a) Without the Secretary's prior written approval, for a period of two years after the date of your most recent issuance of Leverage or after the receipt of any assistance as defined in paragraph (b) of this section, whichever is later, you are not permitted to employ, offer employment to, or retain for professional services, any person who:

* * * * *

MANAGEMENT AND COMPENSATION

§4290.510 Approval of RBIC's Investment Adviser/Manager.

(a) *General.* You may employ an Investment Adviser/Manager who will be subject to the supervision of your board of directors, managing member(s), or general partner(s). If you have Leverage or plan to seek Leverage, you must obtain the Secretary's prior written approval of the management contract. Approval of an Investment Adviser/Manager for one RBIC does not indicate approval of that manager for any other RBIC.

(b) *Management contract.* The contract must:

(1) Specify the services the Investment Adviser/Manager will render to you and to your Portfolio Concerns; and

(2) Indicate the basis for computing Management Expenses.

(c) *Material change to approved management contract.* Any proposed material change must be approved by both you and the Secretary in advance. If you are uncertain whether the change is material, submit the proposed revision to the Secretary.

§4290.520 Management Expenses of a RBIC.

The Secretary must approve your initial Management Expenses and any increases in your Management Expenses.

(a) *Definition of Management Expenses.* Management Expenses include:

(1) Salaries;

(2) Office expenses;

(3) Travel;

(4) Business development, including finders' fees;

(5) Office and equipment rental;

(6) Bookkeeping; and

(7) Expenses related to developing, investigating and monitoring investments.

(b) Management Expenses do not include services provided by specialized outside consultants, outside lawyers and independent public accountants, if they perform services not generally performed by a venture capital company.

CASH MANAGEMENT BY A RBIC

§4290.530 Restrictions on investments of idle funds by RBICs.

(a) *Permitted investments of idle funds.* Funds not invested in Portfolio Concerns must be maintained in:

(1) Direct obligations of, or obligations guaranteed as to principal and interest by, the United States, which mature within 15 months from the date of the investment; or

(2) Repurchase agreements with federally insured institutions, with a maturity of seven days or less. The securities underlying the repurchase agreements must be direct obligations of, or obligations guaranteed as to principal and interest by, the United States. The securities must be maintained in a custodial account at a federally insured institution; or

(3) Certificates of deposit with a maturity of one year or less, issued by a federally insured institution; or

(4) A deposit account in a federally insured institution, subject to a withdrawal restriction of one year or less; or

(5) A checking account in a federally insured institution; or

(6) A reasonable petty cash fund.

(b) *Deposit of funds in excess of the insured amount*—(1) *General rule.* You are permitted to deposit in a federally insured institution funds in excess of the institution's insured amount, but only if the institution is ''well capitalized'' in accordance with the definition set forth in regulations of the Federal Deposit Insurance Corporation (12 CFR 325.103).

(2) *Exception.* You may make a temporary deposit (not to exceed 30 days) in excess of the insured amount, in a transfer account established to facilitate the receipt and disbursement of funds or to hold funds necessary to honor Commitments issued.

(c) *Deposit of funds in Associate institution.* A deposit in, or a repurchase agreement with, a federally insured institution that is your Associate is not considered a Financing of such Associate under § 4290.730, provided the terms of such deposit or repurchase agreement are no less favorable than those available to the general public.

SECURED BORROWING BY RBICS

§ 4290.550 Prior approval of secured third-party debt of RBICs.

(a) *Definition.* In this § 4290.550, ''secured third-party debt'' means any debt that is secured by any of your assets and not guaranteed by the Secretary, including secured guarantees and other contingent obligations that you voluntarily assume and secured lines of credit.

(b) *General rule.* You must get the Secretary's written approval before you incur any secured third-party debt or refinance any debt with secured third-party debt, including any renewal of a secured line of credit, increase in the maximum amount available under a secured line of credit, or expansion of the scope of a security interest or lien. For purposes of this paragraph (b), ''expansion of the scope of a security interest or lien'' does not include the substitution of one asset or group of assets for another, provided the asset values (as reported on your most recent annual SBA Form 468) are comparable.

(c) *Conditions for approval.* As a condition of granting its approval under this § 4290.550, the Secretary may impose such restrictions or limitations as he or she deems appropriate, taking into account your historical performance, current financial position, proposed terms of the secured debt and amount of aggregate debt you will have outstanding (including Leverage). The Secretary will not favorably consider any requests for approval which include a blanket lien on all your assets, or a security interest in your investor commitments in excess of 125 percent of the proposed borrowing.

(d) *Thirty-day approval.* Unless the Secretary notifies you otherwise within 30 days after he or she receives your request, you may consider your request automatically approved if:

(1) You are in regulatory compliance;

(2) The security interest in your assets is limited to either those assets being acquired with the borrowed funds or an asset coverage ratio of no more than 2:1;

(3) Your request is for approval of a secured line of credit that would not cause your total outstanding borrowings (not including Leverage) to exceed 50 percent of your Leverageable Capital.

EFFECTIVE DATE NOTE: At 76 FR 80223, Dec. 23, 2011, § 4290.550 was amended by revising paragraphs (a), (b), (c), and (d)(2), effective Jan. 23, 2012. For the convenience of the user, the revised text is set forth as follows:

§ 4290.550 Prior approval of secured third-party debt of RBICs.

(a) *Definition.* For the purposes of this section, ''secured third-party debt'' means any debt that is secured by any of your assets and not guaranteed by the Secretary, including secured guarantees and other contingent obligations that you voluntarily assume and secured lines of credit.

(b) *General rule.* You must get the Secretary's written approval before you incur any secured third-party debt or refinance any debt with secured third-party debt, including any renewal of a secured line of credit, increase in the maximum amount available under a secured line of credit, or expansion of the scope of a security interest or lien. For purposes of this paragraph (b), ''expansion of the scope of a security interest or

lien'' does not include the substitution of one asset or group of assets for another, provided the asset values (as reported on your most recent annual SBA Form 468 or other USDA-approved form(s)) are comparable.

(c) *Conditions for approval.* As a condition of granting its approval under this section, the Secretary may impose such restrictions or limitations as he or she deems appropriate, taking into account your historical performance, current financial position, proposed terms of the secured debt and amount of aggregate debt you will have outstanding (including Leverage). The Secretary will not favorably consider any requests for approval which include a blanket lien on all your assets, or a security interest in your investor commitments in excess of 125 percent of the proposed borrowing.

(d) * * *

(2) The security interest in your assets is limited to either those assets being acquired with the borrowed funds or an asset coverage ratio of no more than 2:1; and

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VOLUNTARY DECREASE IN REGULATORY CAPITAL

§ 4290.585 Voluntary decrease in RBIC's Regulatory Capital.

You must obtain the Secretary's prior written approval to reduce your Regulatory Capital by more than two percent in any fiscal year. At all times, you must retain sufficient Regulatory Capital to meet the minimum capital requirements in the Act and § 4290.210, and sufficient Leverageable Capital to avoid having excess Leverage in violation of section 384E(d) of the Act.

Subpart H—Recordkeeping, Reporting, and Examination Requirements for RBICs

RECORDKEEPING REQUIREMENTS FOR RBICS

§ 4290.600 General requirement for RBIC to maintain and preserve records.

(a) *Maintaining your accounting records.* You must establish and maintain your accounting records using SBA's standard chart of accounts for SBICs, unless the Secretary approves otherwise. You may obtain this chart of accounts from SBA or at *http://www.sba.gov/INV/chartof.pdf.*

(b) *Location of records.* You must keep the following records at your principal place of business or, in the case of paragraph (b)(3) of this section, at the branch office that is primarily responsible for the transaction:

(1) All your accounting and other financial records;

(2) All minutes of meetings of directors, stockholders, executive committees, partners, members, or other officials; and

(3) All documents and supporting materials related to your business transactions, except for any items held by a custodian under a written agreement between you and a Portfolio Concern or lender, or any securities held in a safe deposit box, or by a licensed securities broker in an amount not exceeding the broker's per-account insurance coverage.

(c) *Preservation of records.* You must retain all the records that are the basis for your financial reports. Such records must be preserved for the periods specified in this paragraph (c) and must remain readily accessible for the first two years of the preservation period.

(1) You must preserve for at least 15 years or, in the case of a Partnership RBIC or LLC RBIC, at least two years beyond the date of liquidation:

(i) All your accounting ledgers and journals, and any other records of assets, asset valuations, liabilities, equity, income, and expenses;

(ii) Your Articles, bylaws, minute books, and RBIC application; and

(iii) All documents evidencing ownership of the RBIC including ownership ledgers and ownership transfer registers.

(2) You must preserve for at least six years all supporting documentation (such as vouchers, bank statements, or canceled checks) for the records listed in paragraph (b)(1) of this section.

(3) After final disposition of any item in your Portfolio, you must preserve for at least six years:

(i) Financing applications and Financing instruments;

(ii) All loan, participation, and escrow agreements;

(iii) All certifications listed in § 4290.610 of this part;

(iv) Any capital stock certificates and warrants of the Portfolio Concern

that you did not surrender or exercise; and

(v) All other documents and supporting material relating to the Portfolio Concern, including correspondence.

(4) You may substitute a microfilm or computer-scanned or generated copy for the original of any record covered by this paragraph (c).

(d) *Additional requirement.* You must comply with the recordkeeping and record retention requirements set forth in Circular A–110 of the Office of Management and Budget. (OMB Circulars are available from the addresses listed in 5 CFR 1310.3 and at *http://www.whitehouse.gov/omb/circulars/index.html.)*

EFFECTIVE DATE NOTE: At 76 FR 80223, Dec. 23, 2011, § 4290.600 was amended by revising paragraphs (a) and (d), effective Jan. 23, 2012. For the convenience of the user, the revised text is set forth as follows:

§ 4290.600 General requirement for RBIC to maintain and preserve records.

(a) Maintaining your accounting records. You must establish and maintain your accounting records using SBA's standard chart of accounts for SBICs, unless the Secretary approves otherwise. You may obtain this chart of accounts from SBA or at *http://www.sba.gov/sites/default/files/files/inv__charts__of__accounts.pdf.*

* * * * *

(d) *Additional requirement.* You must comply with the recordkeeping and record retention requirements set forth in Circular A–110 of the Office of Management and Budget. (OMB Circulars are available from the addresses listed in 5 CFR 1310.3 and at *http://www.whitehouse.gov/omb/circulars__default.*)

§ 4290.610 Required certifications for Loans and Investments.

For each of your Loans and Investments, you must have the documents listed in this section. You must keep these documents in your files and make them available to the Secretary upon request.

(a) For each Financing made to a Rural Business Concern or Smaller Enterprise, a certification by the Portfolio Concern stating the basis for its qualification as a Rural Business Concern or Smaller Enterprise.

(b) For each Financing made to a Small Business Concern, Size Status Declaration (SBA Form 480), executed both by you and by the Portfolio Concern certifying that the concern is a Small Business Concern. For securities purchased from an underwriter in a public offering, you may substitute a prospectus showing that the concern is a Small Business Concern.

(c) A certification by the Portfolio Concern that it will not discriminate in violation of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Title V of the Equal Credit Opportunity Act.

(d) A certification by the Portfolio Concern of the intended use of the proceeds. For securities purchased from an underwriter in a public offering, you may substitute a prospectus indicating the intended use of proceeds.

EFFECTIVE DATE NOTE: At 76 FR 80223, Dec. 23, 2011, § 4290.610 was amended by revising paragraph (b), effective Jan. 23, 2012. For the convenience of the user, the revised text is set forth as follows:

§ 4290.610 Required certifications for Loans and Investments.

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(b) For each Financing made to a Small Business Concern, Size Status Declaration (SBA Form 480 or other USDA-approved form(s)), executed both by you and by the Portfolio Concern certifying that the concern is a Small Business Concern. For securities purchased from an underwriter in a public offering, you may substitute a prospectus showing that the concern is a Small Business Concern.

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§ 4290.620 Requirements to obtain information from Portfolio Concerns.

All the information required by this section is subject to the requirements of § 4290.600 and must be in English.

(a) *Information for initial Financing decision.* Before extending any Financing, you must require the Enterprise to submit such financial statements, plans of operation (including intended use of financing proceeds), cash flow analyses, projections, and such economic development information about the Enterprise, as are necessary to support your investment decision. The information submitted must be consistent with the size and type of the

Enterprise and the amount of the proposed Financing.

(b) *Updated financial and economic development information.* (1) The terms of each Financing must require the Portfolio Concern to provide, at least annually, sufficient financial and economic development information to enable you to perform the following required procedures:

(i) Evaluate the financial condition of the Portfolio Concern for the purpose of valuing your investment;

(ii) Determine the continued eligibility of the Portfolio Concern;

(iii) Verify the use of Financing proceeds;

(iv) Evaluate the economic development impact of the Financing; and

(v) In the case of any Portfolio Concern that is not a Rural Business Concern, the number and percentage of its employees residing in Rural Areas.

(2) The president, chief executive officer, treasurer, chief financial officer, general partner, or proprietor of the Portfolio Concern must certify the information submitted to you.

(3) For financial and valuation purposes, you may accept a complete copy of the Federal income tax return filed by the Portfolio Concern (or its proprietor) in lieu of financial statements, but only if appropriate for the size and type of the Enterprise involved.

(4) The requirements in this paragraph (b) do not apply when you acquire securities from an underwriter in a public offering (*see* §4290.825). In that case, you must keep copies of all reports furnished by the Portfolio Concern to the holders of its securities.

(c) *Information required for examination purposes.* You must obtain any information requested by the Secretary's examiners for the purpose of verifying the certifications made by a Portfolio Concern under §4290.610. In this regard, your Financing documents must contain provisions requiring the Portfolio Concern to give you and/or the Secretary's examiners access to its books and records for such purpose.

REPORTING REQUIREMENTS FOR RBICS

§4290.630 Requirement for RBICs to file financial statements and supplementary information with the Secretary (SBA Form 468).

(a) *Annual filing of SBA Form 468.* For each fiscal year, you must submit financial statements and supplementary information prepared on SBA Form 468. You must file Form 468 on or before the last day of the third month following the end of your fiscal year, except for the information required under paragraphs (e) and (f) of this section, which must be filed on or before the last day of the fifth month following the end of your fiscal year.

(1) *Audit of Form 468.* An independent public accountant acceptable to the Secretary must audit the annual Form 468.

(2) *Insurance requirement for public accountant.* Unless the Secretary approves otherwise, your independent public accountant must carry at least $1,000,000 of Errors and Omissions insurance, or be self-insured and have a net worth of at least $1,000,000.

(b) *Interim filings of Form 468.* When requested by the Secretary, you must file interim reports on Form 468. The Secretary may require you to file the entire form or only certain statements and schedules. You must file such reports on or before the last day of the month following the end of the reporting period. When you submit a request for a draw under a Leverage commitment, you must also comply with any applicable filing requirements set forth in §4290.1220.

(c) *Standards for preparation of Form 468.* You must prepare SBA Form 468 in accordance with SBA's Accounting Standards and Financial Reporting Requirements for SBICs, which you may obtain from SBA or at *http://www.sba.gov/INV/standards.pdf.*

(d) *Where to file Form 468.* Submit all filings of Form 468 to the Investment Division of SBA.

(e) *Reporting of economic development impact information for each Financing on Form 468.* Your annual filing of SBA Form 468 must include an assessment of the economic development impact of each Financing. This assessment must specify the fulltime equivalent jobs

created, the impact of the Financing on the revenues and profits of the business and on taxes paid by the business and its employees, and a listing of the number and percentage of employees who reside in Rural Areas.

(f) *Reporting of economic development information for certain Financings.* For each Rural Business Concern Investment and each Smaller Enterprise Investment, your Form 468 must include an assessment of each such Financing with respect to:

(1) The economic development benefits achieved as a result of the Financing;

(2) How and to what extent such benefits fulfilled the goals of your comprehensive business plan and Participation Agreement; and

(3) Whether you consider the Financing or the results of the Financing to have fulfilled the objectives of the RBIC program.

EFFECTIVE DATE NOTE: At 76 FR 80223, Dec. 23, 2011, § 4290.630 was amended by revising paragraphs (a) introductory text, (a)(1), (b) through (e), and (f) introductory text, effective Jan. 23, 2012. For the convenience of the user, the revised text is set forth as follows:

§ 4290.630 Requirement for RBICs to file financial statements and supplementary information with the Secretary.

(a) *Annual filing.* For each fiscal year, you must submit financial statements and supplementary information prepared on SBA Form 468 or other USDA-approved form(s). You must file SBA Form 468 (or other USDA-approved form(s)) on or before the last day of the third month following the end of your fiscal year, except for the information required under paragraphs (e) and (f) of this section, which must be filed on or before the last day of the fifth month following the end of your fiscal year.

(1) *Audit of annual filing form.* An independent public accountant acceptable to the Secretary must audit the annual form submitted under paragraph (a) of this section.

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(b) *Interim filings.* When requested by the Secretary, you must file interim reports on SBA Form 468 or other USDA-approved form(s). The Secretary may require you to file the entire form or only certain statements and schedules. You must file such reports on or before the last day of the month following the end of the reporting period. When you submit a request for a draw under a Leverage commitment, you must also comply with any applicable filing requirements set forth in § 4290.1220.

(c) *Standards for preparation.* You must prepare SBA Form 468 or other USDA-approved form(s) in accordance with SBA's Accounting Standards and Financial Reporting Requirements for SBICs, which you may obtain from SBA or at *http://www.sba.gov/content/accounting-standards-sbics.*

(d) *Where to file.* Unless otherwise identified in a notice published in the FEDERAL REGISTER, submit all filings of forms under this section to the Investment Division of SBA.

(e) *Reporting of economic development impact information for each Financing.* Your annual filing of SBA Form 468 or other USDA-approved form(s) must include an assessment of the economic development impact of each Financing. This assessment must specify the fulltime equivalent jobs created, the impact of the Financing on the revenues and profits of the business and on taxes paid by the business and its employees, and a listing of the number and percentage of employees who reside in Rural Areas.

(f) *Reporting of economic development information for certain Financings.* For each Rural Business Concern Investment and each Smaller Enterprise Investment, your SBA Form 468 or other USDA-approved form(s) must include an assessment of each such Financing with respect to:

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§ 4290.640 Requirement to file portfolio financing reports with the Secretary (SBA Form 1031).

For each Financing you make (excluding guarantees), you must submit a Portfolio Financing Report on SBA Form 1031 within 30 days of the closing date.

EFFECTIVE DATE NOTE: At 76 FR 80223, Dec. 23, 2011, § 4290.640 was revised, effective Jan. 23, 2012. For the convenience of the user, the revised text is set forth as follows:

§ 4290.640 Requirement to file portfolio financing reports with the Secretary.

For each Financing you make (excluding guarantees), you must submit a Portfolio Financing Report on SBA Form 1031 or other USDA-approved form(s) within 30 days of the closing date.

§ 4290.650 Requirement to report portfolio valuations to the Secretary

You must determine the value of your Loans and Investments in accordance with § 4290.503. You must report such valuations to the Secretary within 90 days of the end of the fiscal year

in the case of annual valuations, and within 30 days following the close of other reporting periods. You must report material adverse changes in valuations at least quarterly, within 30 days following the close of the quarter.

§ 4290.660 Other items required to be filed by RBIC with the Secretary.

(a) *Reports to owners.* You must give the Secretary a copy of any report you furnish to your investors, including any prospectus, letter, or other publication concerning your financial operations or those of any Portfolio Concern.

(b) *Documents filed with SEC.* You must give the Secretary a copy of any report, application or document you file with the Securities and Exchange Commission.

(c) *Litigation reports.* When you become a party to litigation or other proceedings, you must give the Secretary a report within 30 days that describes the proceedings and identifies the other parties involved and your relationship to them.

(1) The proceedings covered by this paragraph (c) include any action by you, or by your security holder(s) in a personal or derivative capacity, against an officer, director, Investment Adviser/Manager or other Associate of yours for alleged breach of official duty.

(2) The Secretary may require you to submit copies of the pleadings and other documents he or she may specify.

(3) Where proceedings have been terminated by settlement or final judgment, you must promptly advise the Secretary of the terms.

(4) This paragraph (c) does not apply to collection actions or proceedings to enforce your ordinary creditors' rights.

(d) *Notification of criminal charges.* If any officer, director, general partner, or managing member of the RBIC, or any other person who was required by the Secretary to complete a personal history statement, is charged with or convicted of any criminal offense other than a misdemeanor involving a minor motor vehicle violation, you must report the incident to the Secretary within 5 calendar days. Such report must fully describe the facts that pertain to the incident.

(e) *Reports concerning Operational Assistance grant funds.* You must comply with all reporting requirements set forth in Circular A–110 of the Office of Management and Budget and any grant award document executed between you and the Secretary.

(f) *Other reports.* You must file any other reports the Secretary may require in writing.

§ 4290.680 Reporting changes in RBIC not subject to prior approval.

(a) *Changes to be reported for post-approval.* This section applies to any changes in your Articles, ownership, capitalization, management, operating area, or investment policies that do not require the Secretary's prior approval. You must report such changes to the Secretary within 30 days after the change, for post approval.

(b) *Approval by the Secretary.* You may consider any change submitted under this § 4290.680 to be approved unless the Secretary notifies you to the contrary within 90 days after receiving it. Approval is contingent upon your full disclosure of all relevant facts and is subject to any conditions the Secretary may prescribe.

EXAMINATIONS OF RBICS BY THE SECRETARY FOR REGULATORY COMPLIANCE

§ 4290.690 Examinations.

All RBICs must submit to annual examinations by or at the direction of the Secretary for the purpose of evaluating regulatory compliance.

§ 4290.691 Responsibilities of RBIC during examination.

You must make all books, records and other pertinent documents and materials available for the examination, including any information required by the examiner under § 4290.620(c). In addition, the agreement between you and the independent public accountant performing your audit must provide that any information in the accountant's working papers be made available to the examiners upon request.

§ 4290.692 Examination fees.

(a) *General.* The Secretary will assess fees for examinations in accordance

with this § 4290.692. Unless the Secretary determines otherwise on a case by case basis, he or she will not assess fees for special examinations to obtain specific information.

(b) *Base fee.* A base fee of $9,200 + 0.015 percent of your assets will be assessed, subject to adjustment in accordance with paragraph (c) of this section.

(c) *Adjustments to base fee.* The base fee will be decreased based on the following criteria:

(1) If you have no outstanding regulatory violations at the time of the commencement of the examination or the Secretary did not identify any violations as a result of the most recent prior examination, you will receive a 15% discount on your base fee; and

(2) If you were fully responsive to the letter of notification of examination (that is, you provided all requested documents and information within the time period stipulated in the notification letter in a complete and accurate manner, and you prepared and had available all information requested by the examiner for on-site review), you will receive a 10% discount on your base fee.

(d) *Delay fee.* If, in the sole discretion of the Secretary, the time required to complete your examination is delayed due to your lack of cooperation or the condition of your records, the Secretary may assess an additional fee of up to $500 per day.

EFFECTIVE DATE NOTE: At 76 FR 80224, Dec. 23, 2011, § 4290.692 was amended by revising paragraph (d), effective Jan. 23, 2012. For the convenience of the user, the revised text is set forth as follows:

§ 4290.692 Examination Fees.

* * * * *

(d) *Examination delay fee.* If, in the sole discretion of the Secretary, the time required to complete your examination is delayed due to your lack of cooperation or the condition of your records, the Secretary may assess an additional examination fee of up to $500 per day.

Subpart I—Financing of Enterprises by RBICs

DETERMINING ELIGIBILITY OF AN ENTERPRISE FOR RBIC FINANCING

§ 4290.700 Requirements concerning types of Enterprises to receive Financing.

(a) *Rural Business Concern Investments.* At the close of each of your fiscal years—

(1) At least 75 percent of your Portfolio Concerns must have received a Rural Business Concern Investment; and

(2) For all Financings you have extended, you must have invested at least 75 percent (in total dollars) in Rural Business Concern Investments.

(b) *Smaller Enterprise Investments.* At the close of each of your fiscal years—

(1) More than 50 percent of your Portfolio Concerns must be Smaller Enterprises that, at the time of the initial Financing to such Enterprise, meet either the net worth/net income test or the size standard set forth in the ''Smaller Enterprise'' definition in § 4290.50 of this part; and

(2) For all Financings that you have extended, you must have invested more than 50 percent (in total dollars) in Financings in the form of Equity Capital in such Enterprises.

(c) *Small Business Concern Investments.* At the close of each of your fiscal years—

(1) At least 50 percent of the Portfolio Concerns referenced in paragraph (b)(1) of this section must be Small Business Concerns; and

(2) For all Financings referenced in paragraph (b)(2) of this section, you must have invested at least 50 percent (in total dollars) in Small Business Concerns.

(d) *Urban Area Investments.* At the close of each of your fiscal years—

(1) No more than 10 percent of your Portfolio Concerns must have received Urban Area Investments; and

(2) For all Financings you have extended, you must not have invested more than 10 percent (in total dollars) in Urban Area Investments.

(e) *Non-compliance with this section.* If you have not met the percentages required in paragraphs (a), (b), (c), or (d)

of this section at the end of any fiscal year, then you must be in compliance by the end of the following fiscal year. However, you will not be eligible for additional Leverage until such time as you meet the required percentages (*see* §4290.1120).

§4290.720 Enterprises that may be ineligible for Financing.

(a) *Re-lenders or re-investors.* You are not permitted to finance any Enterprise that is a re-lender or re-investor. The primary business activity of re-lenders or re-investors involves, directly or indirectly, providing funds to others, purchasing debt obligations, factoring, or long-term leasing of equipment with no provision for maintenance or repair.

(b) *Passive Enterprises.* You are not permitted to finance a passive Enterprise.

(1) *Definition.* An Enterprise is passive if:

(i) It is not engaged in a regular and continuous business operation (for purposes of this paragraph (b), the mere receipt of payments such as dividends, rents, lease payments, or royalties is not considered a regular and continuous business operation); or

(ii) Its employees are not carrying on the majority of day to day operations, and the Enterprise does not provide effective control and supervision, on a day to day basis, over persons employed under contract; or

(iii) It passes through substantially all of the proceeds of the Financing to another entity.

(2) *Exception for pass-through of proceeds to subsidiary.* With the prior written approval of the Secretary, you may finance a passive Enterprise if it passes substantially all of the proceeds through to one or more subsidiary companies, each of which is an eligible Enterprise that is not passive. For the purpose of this paragraph (b)(2), ''subsidiary company'' means a company in which at least 50 percent of the outstanding voting securities are owned by the Financed passive Enterprise.

(3) *Exception for certain Partnership RBICs or LLC RBICs.* With the prior written approval of the Secretary, if you are a Partnership RBIC or LLC RBIC, you may form one or more wholly owned corporations in accordance with this paragraph (b)(3). The sole purpose of such corporation(s) must be to provide Financing to one or more eligible, unincorporated Enterprise. You may form such corporation(s) only if a direct Financing to such Enterprise would cause any of your investors to incur unrelated business taxable income under section 511 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 511). Your investment of funds in such corporation(s) will not constitute a violation of §4290.730(a).

(c) *Real Estate Enterprises.* (1) You are not permitted to finance:

(i) Any Enterprise classified under sector 233 (Building, Developing, and General Contracting) of the NAICS Manual, or

(ii) Any Enterprise listed under sector 531 (Real Estate) unless at least 80 percent of its revenue is derived from non-Affiliate sources.

(2) You are not permitted to finance an Enterprise, regardless of NAICS classification, if the Financing is to be used to acquire or refinance real property, unless the Enterprise:

(i) Is acquiring an existing property and will use at least 51 percent of the usable square footage for an eligible business or commercial purpose; or

(ii) Is constructing or renovating a building and will use at least 67 percent of the usable square footage for an eligible business or commercial purpose; or

(iii) Occupies the subject property and uses at least 67 percent of the usable square footage for an eligible business or commercial purpose.

(d) *Project Financing.* You are not permitted to finance an Enterprise if:

(1) The assets of the Enterprise are to be reduced or consumed, generally without replacement, as the life of the Enterprise progresses, and the nature of the Enterprise requires that a stream of cash payments be made to the Enterprise's financing sources, on a basis associated with the continuing sale of assets. Examples include real estate development projects, oil and gas wells, wind farms, or power facilities (including solar, geothermal, hydroelectric, or biomass power facilities); or

(2) The primary purpose of the Financing is to fund production of a single item or defined limited number of items, generally over a defined production period, and such production will constitute the majority of the activities of the Enterprise. Examples include motion pictures.

(e) *Farm land purchases.* You are not permitted to finance the acquisition of farmland. Farmland means land which is or is intended to be used for agricultural or forestry purposes such as the production of food, fiber, or wood, or is so taxed or zoned.

(f) *Public interest.* You are not permitted to finance any business if the proceeds are to be used for purposes contrary to the public interest, including but not limited to or activities which are in violation of law, or inconsistent with free competitive enterprise.

(g) *Foreign investment*—(1) *General rule.* You are not permitted to finance an Enterprise if:

(i) The funds will be used substantially for a foreign operation; or

(ii) At the time of the Financing or within one year thereafter, more than 49 percent of the employees or tangible assets of the Enterprise are located outside the United States (unless you can show, to the Secretary's satisfaction, that the Financing was used for a specific domestic purpose).

(2) *Exception.* This paragraph (g) does not prohibit a Financing used to acquire foreign materials and equipment or foreign property rights for use or sale in the United States.

(h) *Financing RBICs, SBICs, or New Markets Venture Capital Companies (NMVC Companies).* (1) You are not permitted to provide funds, directly or indirectly, that will be used:

(i) To purchase stock in or otherwise provide capital to a RBIC, SBIC or NMVC Company; or

(ii) To repay an indebtedness incurred for the purpose of investing in a RBIC, SBIC, or NMVC Company.

(2) ''NMVC Company'' is defined in 13 CFR 108.50.

(i) *Entities ineligible for Farm Credit System Assistance.* If one or more Farm Credit System Institutions or their Affiliates owns 15 percent or more of your Regulatory Capital, you may not provide Financing to any entity that is not otherwise eligible to receive Financing from the Farm Credit System under the Farm Credit Act of 1971 (12 U.S.C. 2001 *et seq.*).

(j) *Gaming establishments.* You are not permitted to Finance an Enterprise that derives, or is expected to derive, more than one-third of its gross annual revenue from legal gaming activities.

(k) *Change of ownership of an Enterprise.* You are not permitted to Finance a change of ownership of an Enterprise unless otherwise approved by the Secretary.

EFFECTIVE DATE NOTE: At 76 FR 80224, Dec. 23, 2011, § 4290.720 was amended by revising paragraphs (d)(1) and (i), effective Jan. 23, 2012. For the convenience of the user, the revised text is set forth as follows:

§ 4290.720 Enterprises that may be ineligible for Financing.

* * * * *

(d) * * *

(1) The assets of the Enterprise are to be reduced or consumed, generally without replacement, as the life of the Enterprise progresses, and the nature of the Enterprise requires that a stream of cash payments be made to the Enterprise's financing sources, on a basis associated with the continuing sale of assets. Examples include real estate development projects and oil and gas wells; or

* * * * *

(i) *Entities ineligible for Farm Credit System Assistance.* If one or more Farm Credit System Institutions or their Affiliates owns more than 25 percent of the ownership interests of a Rural Business Investment Company, either alone or in conjunction with other Farm Credit System Institutions (or affiliates), the Rural Business Investment Company may not provide Financing to any entity that is not otherwise eligible to receive Financing from a Farm Credit System Institution under the Farm Credit Act of 1971 (12 U.S.C. 2001 *et seq.*).

* * * * *

§ 4290.730 Financings which constitute conflicts of interest.

(a) *General rule.* You must not selfdeal to the prejudice of an Enterprise, the RBIC, its shareholders, partners or, members, or the Secretary. Unless you obtain a prior written exemption from

the Secretary for special instances in which a Financing may further the purposes of the Act despite presenting a conflict of interest, you must not directly or indirectly:

(1) Provide Financing to any of your Associates, except for an Enterprise that satisfies all of the following conditions:

(i) Your Associate relationship with the Enterprise is described by paragraph (8) or (9) of the definition of *Associate* in §4290.50,

(ii) No Person triggering the Associate relationship identified in paragraph (a)(1)(i) of the definition of Associate in §4290.50 is a Close Relative or Secondary Relative of any Person described in paragraphs (1), (2), (4), or (5) of the definition of *Associate* in §4290.50, and

(iii) No single Associate of yours has either a voting interest or an economic interest in the Enterprise exceeding 20 percent, and no two or more of your Associates have either a voting interest or an economic interest exceeding 33 percent. Economic interests shall be computed on a fully diluted basis, and both voting and economic interests shall exclude any interest owned through the RBIC.

(2) Provide Financing to an Associate of another RBIC if one of your Associates has received or will receive any direct or indirect Financing or a Commitment from that RBIC or any other RBIC (including Financing or Commitments received under any understanding, agreement, or cross dealing, reciprocal or circular arrangement).

(3) Borrow money from:

(i) An Enterprise Financed by you;

(ii) An officer, director, or owner of at least a 10 percent equity interest in such Enterprise; or

(iii) A Close Relative of any such officer, director, or equity owner.

(4) Provide Financing to an Enterprise to discharge an obligation to your Associate or free other funds to pay such obligation. This paragraph (a)(4) does not apply if the obligation is to an Associate Lending Institution and is a line of credit or other obligation incurred in the normal course of business.

(b) *Rules applicable to Associates.* Without the Secretary's prior written approval, your Associates must not, directly or indirectly:

(1) Borrow money from any Person described in paragraph (a)(3) of this section.

(2) Receive from an Enterprise any compensation or anything of value in connection with Assistance you provide (except as permitted under §4290.825(c)), or anything of value for procuring, attempting to procure, or influencing your action with respect to such Assistance.

(c) *Applicability of other laws.* You are also bound by Federal or State laws applicable to you that govern conflicts of interest and fiduciary obligations.

(d) *Financings with Associates*—(1) *Financings with Associates requiring prior approval.* Without the Secretary's prior written approval, you may not Finance any Enterprise in which your Associate has either a voting equity interest or total equity interests (including potential interests) of at least five percent, or effective control, except as otherwise permitted under paragraph (a)(1) of this section.

(2) *Other Financings with Associates.* If you and an Associate provide Financing to the same Enterprise, either at the same time or at different times, you must be able to demonstrate to the Secretary's satisfaction that the terms and conditions are (or were) fair and equitable to you, taking into account any differences in the timing of each party's financing transactions.

(3) *Exceptions to paragraphs (d)(1) and (d)(2) of this section.* A Financing that falls into one of the following categories is exempt from the prior approval requirement in paragraph (d)(1) of this section or is presumed to be fair and equitable to you for the purposes of paragraph (d)(2) of this section, as appropriate:

(i) Your Associate is a Lending Institution that is providing financing under a credit facility in order to meet the operational needs of the Enterprise and the terms of such financing are usual and customary.

(ii) Your Associate invests in the Enterprise on the same terms and conditions and at the same time as you.

(iii) Both you and your Associate are RBICs.

(e) *Use of Associates to manage Portfolio Concerns.* To protect your investment, you may designate an Associate to serve as an officer, director, or other participant in the management of a Portfolio Concern. You must identify any such Associate in your records available for the Secretary's review under § 4290.600. Without the Secretary's prior written approval, such Associate must not:

(1) Have any other direct or indirect financial interest in the Portfolio Concern that exceeds, or has the potential to exceed, the percentages of the Portfolio Concern's equity set forth in paragraph (a)(1) of this section.

(2) Receive any income or anything of value from the Portfolio Concern unless it is for your benefit, with the exception of director's fees, expenses, and distributions based upon the Associate's ownership interest in the Concern.

(f) *1940 and 1980 Act Companies: SEC exemptions.* If you are a 1940 or 1980 Act Company and you receive an exemption from the Securities and Exchange Commission for a transaction described in this § 4290.730, you need not obtain the Secretary's approval of the transaction. However, you must promptly notify the Secretary of the transaction.

(g) *Restriction on options obtained by RBIC's management and employees.* Your employees, officers, directors, managing members or general partners, or the general partners or managing members of the Investment Adviser/Manager that is providing services to you or to your general partner or managing member, may obtain options in a Portfolio Concern only if:

(1) They participate in the Financing on a *pari passu* basis with you; or

(2) The Secretary gives prior written approval; or

(3) The options received are compensation for service as a member of the board of directors of the Portfolio Concern, and such compensation does not exceed that paid to other outside directors. In the absence of such directors, fees must be reasonable when compared with amounts paid to outside directors of similar companies.

§ 4290.740 Portfolio diversification ("overline" limitation).

(a) Without the Secretary's prior written approval, you may provide Financing or a Commitment to an Enterprise only if the resulting amount of your aggregate outstanding Financings and Commitments to that Enterprise and its Affiliates does not exceed 20 percent of the sum of:

(1) Your Regulatory Capital as of the date of the Financing or Commitment; plus

(2) Any permitted Distribution(s) you made during the five years preceding the date of the Financing or Commitment which reduced your Regulatory Capital.

(b) For the purposes of paragraph (a) of this section, you must measure each outstanding Financing at its current cost plus any amount of the Financing that was previously written off.

EFFECTIVE DATE NOTE: At 76 FR 80224, Dec. 23, 2011, § 4290.740 was amended by revising paragraphs (a) introductory text and (a)(2), adding a new paragraph (a)(3), and revising paragraph (b), effective Jan. 23, 2012. For the convenience of the user, the added and revised text is set forth as follows:

§ 4290.740 Portfolio diversification ("overline" limitation).

(a) Without the Secretary's prior written approval, you may provide Financing or a Commitment to an Enterprise only if the resulting amount of your aggregate outstanding Financings and Commitments to that Enterprise and its Affiliates does not exceed 10 percent of the sum of:

* * * * *

(2) Any permitted Distribution(s) you made during the five years preceding the date of the Financing or Commitment which reduced your Regulatory Capital; plus

(3) The total amount of Leverage provided to the Rural Business Investment Company by the Secretary since it was licensed under § 4290.390.

(b) For the purposes of paragraph (a) of this section, you must measure each outstanding Financing at its original cost plus any amount of the Financing that was previously written off.

§4290.760 How a change in size or activity of a Portfolio Concern affects the RBIC and the Portfolio Concern.

(a) *Effect on RBIC of a change in size of a Portfolio Concern.* If a Portfolio Concern was a Smaller Enterprise or Small Business Concern at the time of the initial Financing but no longer qualifies as such under the size standard applicable to such entity, you may keep your investment in the Portfolio Concern and:

(1) Subject to the overline limitations of §4290.740, you may provide additional Financing to the Portfolio Concern up to the time it makes a public offering of its securities.

(2) Even after the Portfolio Concern makes a public offering, you may exercise any stock options, warrants, or other rights to purchase Equity Securities which you acquired before the public offering, or fund Commitments you made before the public offering.

(b) *Effect of a change in business activity occurring within one year of RBIC's initial Financing*—(1) *Retention of Financing.* Unless you receive the Secretary's written approval, you may not keep your Financing in a Portfolio Concern which becomes ineligible for financing by a RBIC by reason of a change in its business or commercial activity or for any other reason within one year of your initial Financing in the Portfolio Concern.

(2) *Request for approval to retain Financing.* If you request that the Secretary approve the retention of your investment, your request must include sufficient evidence to demonstrate that the change in business or commercial activity was caused by an unforeseen change in circumstances and was not contemplated at the time the Financing was made.

(3) *Additional Financing.* If the Secretary approves your request to retain a Financing under paragraph (b)(2) of this section, you may provide additional Financing to the Portfolio Concern to the extent necessary to protect against the loss of the amount of your original investment, subject to the overline limitations of §4290.740.

(c) *Effect of a change in business activity occurring more than one year after the initial Financing.* If a Portfolio Concern becomes ineligible because of a change in business activity more than one year after your initial Financing you may:

(1) Retain your investment; and

(2) Provide additional Financing to the Portfolio Concern to the extent necessary to protect against the loss of the amount of your original investment, subject to the overline limitations of §4290.740.

STRUCTURING RBIC FINANCING OF ELIGIBLE ENTERPRISES—TYPES OF FINANCINGS

§4290.800 Financings in the form of Equity Securities.

You may purchase the Equity Securities of an Enterprise. You may not, inadvertently or otherwise:

(a) Become a general partner in any unincorporated business; or

(b) Become jointly or severally liable for any obligations of an unincorporated business.

§4290.810 Financings in the form of Loans.

You are permitted to make Loans to an Enterprise only if:

(a) The maturity or term of the Loan is five years or less; and

(b) You determine that making the Loan is necessary to preserve an existing Financing (other than a Loan) in that same Enterprise.

§4290.815 Financings in the form of Debt Securities.

(a) *General rule.* You may purchase Debt Securities from an Enterprise.

(b) *Restriction of options obtained by RBIC's management and employees.* If you have outstanding Leverage or plan to obtain Leverage, your employees, officers, directors, general partners, or managing members, or the general partners or managing members of your Investment Advisor/Manager, may obtain options in a Portfolio Concern only if:

(1) They participate in the Financing on a *pari passu* basis with you; or

(2) The Secretary gives its prior written approval; or

(3) The options received are compensation for services as a member of the board of directors of the Enterprise, and such compensation does not

exceed that paid to other outside directors. In the absence of such directors, fees must be reasonable when compared with amounts paid to outside directors of similar Enterprises.

EFFECTIVE DATE NOTE: At 76 FR 80224, Dec. 23, 2011, § 4290.815 was amended by revising paragraph (b) introductory text, effective Jan. 23, 2012. For the convenience of the user, the revised text is set forth as follows:

§ 4290.815 Financings in the form of Debt Securities.

* * * * *

(b) *Restriction of options obtained by RBIC's management and employees.* Your employees, officers, directors, general partners, or managing members, or the general partners or managing members of your Investment Advisor/Manager, may obtain options in a Portfolio Concern only if:

§ 4290.820 Financings in the form of guarantees.

(a) *General rule.* At the request of an Enterprise or where necessary to protect your existing Financing in a Portfolio Concern, you may guarantee the monetary obligation of an Enterprise to any non-Associate creditor.

(b) *Exception.* You may not issue a guaranty if:

(1) You would become subject to State regulation as an insurance, guaranty or surety business; or

(2) The amount of the guaranty plus any direct Financings to the Enterprise exceed the overline limitations of § 4290.740, except that a pledge of the Equity Securities of the issuer or a subordination of your lien or creditor position does not count toward your overline.

(c) *Pledge of RBIC's assets as guaranty.* For purposes of this section, a guaranty with recourse only to specific asset(s) you have pledged is equal to the fair market value of such asset(s) or the amount of the debt guaranteed, whichever is less.

§ 4290.825 Purchasing securities from an underwriter or other third party.

(a) *Securities purchased through or from an underwriter.* You may purchase the securities of an Enterprise through or from an underwriter if:

(1) You purchase such securities within 90 days of the date the public offering is first made;

(2) Your purchase price is no more than the original public offering price; and

(3) The amount paid by you for the securities (less ordinary and reasonable underwriting charges and commissions) has been, or will be, paid to the issuer, and the underwriter certifies in writing that this requirement has been met.

(b) *Recordkeeping requirements.* You must keep records available for the Secretary's inspection which show the relevant details of the transaction, including but not limited to, date, price, commissions, and the underwriter's certifications required under paragraphs (a)(3) and (c) of this section.

(c) *Underwriter's requirements.* The underwriter must certify whether it is your Associate. You may pay reasonable and customary commissions and expenses to an Associate underwriter for the portion of an offering that you purchase.

(d) *Securities purchased from another RBIC.* You may purchase from, or exchange with, another RBIC, Portfolio securities (or any interest therein). Such purchase or exchange may only be made on a non-recourse basis. You may not have more than one-third of your total assets (valued at cost) invested in such securities. If you have previously sold Portfolio securities (or any interest therein) on a recourse basis, you must include the amount for which you may be contingently liable in your overline computation.

(e) *Purchases of securities from other non-issuers.* You may purchase securities of an Enterprise from a non-issuer not previously described in this § 4290.825 if such acquisition is a reasonably necessary part of the overall sound Financing of the Enterprise.

§ 4290.830 Minimum term of Financing.

(a) *General rule.* The minimum term of each of your Financings is one year.

(b) *Restrictions on mandatory redemption of Equity Securities.* If you have acquired Equity Securities, options, or warrants on terms that include redemption by the Portfolio Concern, you must not require redemption by

the Portfolio Concern within the first year of your acquisition except as permitted in §4290.850.

(c) *Special rules for Loans and Debt Securities*—(1) *Term.* The minimum term for Loans and Debt Securities starts with the first disbursement of the Financing.

(2) *Prepayment.* You must permit voluntary prepayment of Loans and Debt Securities by the Portfolio Concern. You must obtain the Secretary's prior written approval of any restrictions on the ability of the Portfolio Concern to prepay other than the imposition of a reasonable prepayment penalty under paragraph (c)(3) of this section.

(3) *Prepayment penalties.* You may charge a reasonable prepayment penalty which must be agreed upon at the time of the Financing. If the Secretary determines that a prepayment is unreasonable, you must refund the entire penalty to the Portfolio Concern. A prepayment penalty equal to five percent of the outstanding balance during the first year of any Financing, declining by one percentage point per year through the fifth year, is considered the maximum reasonable amount.

§4290.835 Exceptions to minimum term of Financing.

You may make a Financing with a term of less than one year but only if such Financing is in contemplation of another Financing, with a term of one year or more, to the same Enterprise.

§4290.840 Maximum term of Financing.

The maximum term of any Debt Security must be no longer than 20 years.

§4290.845 Maximum rate of amortization on Loans and Debt Securities.

The principal of any Loan, or the loan portion of any Debt Security, with a term of one year or less, cannot be amortized faster than straight line. If the term is greater than one year, the principal cannot be amortized faster than straight line for the first year.

§4290.850 Restrictions on redemption of Equity Securities.

(a) *Restriction on redemption.* A Portfolio Concern cannot be required to redeem Equity Securities earlier than one year from the date of the first closing unless:

(1) The Portfolio Concern makes a public offering, or has a change of management or control, or files for protection under the provisions of the Bankruptcy Code, or materially breaches your Financing agreement; or

(2) You make a follow-on Financing, in which case the new securities may be redeemed in less than one year, but no earlier than the redemption date associated with your earliest Financing of the Portfolio Concern.

(b) *Redemption price.* The redemption price must be either:

(1) A fixed amount that is no higher than the price you paid for the securities; or

(2) An amount that cannot be fixed or determined before the time of the redemption. In this case, the redemption price must be based on:

(i) A reasonable formula that reflects the performance of the Portfolio Concern (such as one based on earnings or book value); or

(ii) The fair market value of the Portfolio Concern at the time of redemption, as determined by a professional appraisal performed under an agreement acceptable to both parties.

(c) *Method.* Any method for determining the redemption price must be agreed upon no later than the date of the first (or only) closing of the Financing.

§4290.860 Financing fees and expense reimbursements a RBIC may receive from an Enterprise.

(a) *General rule.* You may collect Financing fees and receive expense reimbursements from an Enterprise only as permitted under this §4290.860.

(b) *Application fee.* You may collect a nonrefundable application fee from an Enterprise to review its Financing application. The application fee may be collected at the same time as the closing fee under paragraph (d) or (e) of this section, or earlier. The fee must be:

(1) No more than one percent of the amount of Financing requested (or, if two or more RBICs participate in the Financing, their combined application fees are no more than one percent of the total Financing requested); and

(2) Agreed to in writing by the Financing applicant.

(c) *The Secretary's review of application fees.* For any fiscal year, if the number of application fees you collect is more than twice the number of Financings closed, the Secretary in its sole discretion may determine that you are engaged in activities not contemplated by the Act, in violation of § 4290.500.

(d) *Closing fee—Loans.* You may charge a closing fee on a Loan if:

(1) The fee is no more than two percent of the Financing amount (or, if two or more RBICs participate in the Financing, their combined closing fees are no more than two percent of the total Financing amount); and

(2) You charge the fee no earlier than the date of the first disbursement.

(e) *Closing fee—Debt or Equity Financings.* You may charge a Closing Fee on a Debt Security or Equity Security Financing if:

(1) The fee is no more than four percent of the Financing amount (or, if two or more RBICs participate in the Financing, their combined closing fees are no more than four percent of the total Financing amount); and

(2) You charge the fee no earlier than the date of the first disbursement.

(f) *Limitation on dual fees.* If another RBIC or an Associate of yours collects a transaction fee under § 4290.900(e) in connection with your Financing of an Enterprise, the sum of the transaction fee and your application and closing fees cannot exceed the maximum application and closing fees permitted under this § 4290.860.

(g) *Expense reimbursements.* You may charge an Enterprise for the reasonable out-of-pocket expenses, other than Management Expenses, that you incur to process its Financing application. If the Secretary determines that any of your reimbursed expenses are unreasonable or are Management Expenses, the Secretary will require you to refund them to the Enterprise.

(h) *Breakup fee.* If an Enterprise accepts your Commitment and then fails to close the Financing because it has accepted funds from another source, you may charge a ''breakup fee'' equal to the closing fee that you would have been permitted to charge under paragraph (d) or (e) of this section.

§ 4290.880 Assets acquired in liquidation of Portfolio securities.

(a) *General rule.* You may acquire assets in full or partial liquidation of a Portfolio Concern's obligation to you under the conditions permitted by this § 4290.880. The assets may be acquired from the Portfolio Concern, a guarantor of its obligation, or another party.

(b) *Timely disposition of assets.* You must dispose of assets acquired in liquidation of a Portfolio security within a reasonable period of time.

(c) *Permitted expenditures to preserve assets.* (1) You may incur reasonably necessary expenditures to maintain and preserve assets acquired.

(2) You may incur reasonably necessary expenditures for improvements to render such assets saleable.

(3) You may make payments of mortgage principal and interest (including amounts in arrears when you acquired the asset), pay taxes when due, and pay for necessary insurance coverage.

(d) *The Secretary approval of expenditures.* This paragraph (d) applies if you have outstanding Leverage or are applying for Leverage. Any application for the Secretary's approval under this paragraph must specify all expenses estimated to be necessary pending disposal of the assets. Without the Secretary's prior written approval:

(1) Your total expenditures under paragraphs (c)(1) and (c)(2) of this section plus your total Financing(s) to the Portfolio Concern must not exceed your overline limit under § 4290.740; and

(2) Your total expenditures under paragraph (b) of this section plus your total Financing(s) to the Portfolio Concern must not exceed 35 percent of your Regulatory Capital.

LIMITATIONS ON DISPOSITION OF ASSETS

§ 4290.885 Disposition of assets to RBIC's Associates or to competitors of Portfolio Concerns.

Except with the Secretary's prior written approval, you are not permitted to dispose of assets (including assets acquired in liquidation) to any Associate or to competitors of Portfolio Concerns if you have outstanding

Leverage. As a prerequisite to such approval, you must demonstrate that the proposed terms of disposal are at least as favorable to you as the terms obtainable elsewhere.

§4290.900 Management fees for services provided to an Enterprise by RBIC or its Associate.

(a) *General*. This §4290.900 applies to management services that you or your Associate provide to a Portfolio Concern during the term of a Financing or prior to Financing. It does not apply to management services that you or your Associate provide to an Enterprise that you do not finance.

(b) *The Secretary's approval*. You must obtain the Secretary's prior written approval of any management services fees and other fees described in this section that you or your Associate charge.

(c) *Permitted management fees*. You or your Associate may provide management services to a Portfolio Concern financed by you if:

(1) You or your Associate have entered into a written contract with the Portfolio Concern;

(2) The fees charged are for services actually performed;

(3) Services are provided on an hourly fee, project fee, or other reasonable basis;

(4) You can demonstrate to the Secretary, upon request, that the rate does not exceed the prevailing rate charged for comparable services by other organizations in the geographic area of the Portfolio Concern; and

(5) All of the management services fees paid to your Associate by a Portfolio Concern for management services provided by the Associate are allocated back to you for your benefit.

(d) *Fees for service as a board member*. You or your Associate may receive fees in the form of cash, warrants, or other payments, for services provided as members of the board of directors of a Portfolio Concern Financed by you. The fees must not exceed those paid to other outside board members. In the absence of such board members, fees must be reasonable when compared with amounts paid to outside directors of similar companies. At least 50 percent of any board member services fees paid to your Associate by a Portfolio Concern for board member services provided by the Associate must be allocated back to you for your benefit.

(e) *Approval required*. You must obtain the Secretary's prior written approval of any management contract that does not satisfy paragraphs (c) or (d) of this section.

(f) *Transaction fees*. (1) You or your Associate may charge reasonable transaction fees for work performed preparing an Enterprise for a public offering, private offering, or sale of all or part of the business, and for assisting with the transaction. Compensation may be in the form of cash, notes, stock, and/or options. All of the transaction services fees paid to your Associate by a Portfolio Concern for transaction services provided by the Associate must be allocated back to you for your benefit.

(2) Your Associate may charge market rate investment banking fees to a Portfolio Concern on that portion of a Financing that you do not provide.

(g) *Recordkeeping Requirements*. You must keep a record of hours spent and amounts charged to the Portfolio Concern, including expenses charged.

Subpart J—Financial Assistance for RBICs (Leverage)

GENERAL INFORMATION ABOUT OBTAINING LEVERAGE

§4290.1100 Type of Leverage and application procedures.

(a) *Type of Leverage available*. You may apply for Leverage from the Secretary in the form of a guarantee of your Debentures.

(b) *Applying for Leverage*. The Leverage application process has two parts. You must first apply for the Secretary's conditional commitment to reserve a specific amount of Leverage for your future use. You may then apply to draw down Leverage against the commitment. *See* §§4290.1200 through 4290.1240.

(c) *Where to send your application*. Send all Leverage draw-down applications to Funding Control Officer, Investment Division, U.S. Small Business Administration, 409 Third Street, SW.,

Suite 6300, Mail Code 7050, Washington, DC 20416.

§ 4290.1120 General eligibility requirements for Leverage.

To be eligible for Leverage, you must be in compliance with the Act, the regulations in this part, and your Participation Agreement.

§ 4290.1130 Leverage fees payable by RBIC.

(a) *Leverage fee.* You must pay the Secretary a non-refundable leverage fee for each issuance of a Debenture. The fee is 3 percent of the face amount of the Debenture issued, and will be deducted from the proceeds remitted to you.

(b) *Additional charge.* You must pay the Secretary an additional annual charge of 1 percent of the outstanding amount of your Debenture.

(c) *Other Leverage fees.* The Secretary may establish a fee structure for services performed by the Central Registration Agent (CRA). The Secretary will not collect any fee for its guarantee of TCs.

§ 4290.1140 RBIC's acceptance of remedies under § 4290.1810.

If you issue Leverage, you automatically agree to the terms and conditions in § 4290.1810 as it exists at the time of issuance. The effect of these terms and conditions is the same as if they were fully incorporated in the terms of your Leverage.

MAXIMUM AMOUNT OF LEVERAGE FOR WHICH A RBIC IS ELIGIBLE

§ 4290.1150 Maximum amount of Leverage for a RBIC.

The face amount of a RBIC's outstanding Debentures may not exceed the lesser of 200 percent of its Leverageable Capital or $105,000,000.

CONDITIONAL COMMITMENTS TO RESERVE LEVERAGE FOR A RBIC

§ 4290.1200 Leverage commitment to a RBIC—application procedure, amount, and term.

(a) *General.* Under the provisions in §§ 4290.1200 through 4290.1240, you may apply for the Secretary's conditional commitment to reserve a specific amount of Leverage and type of Debenture (standard or discounted) for your future use. You may then apply to draw down Leverage against the commitment.

(b) *Applying for a Leverage commitment.* The Secretary will notify you when requests for Leverage commitments are being accepted, and upon receipt of your request, will send you a complete application package.

(c) *Limitations on the amount of a Leverage commitment.* The amount of a Leverage commitment must be a multiple of $5,000. The Secretary in his or her discretion may determine a minimum dollar amount for Leverage commitments. Any such minimum amounts will be published in Notices in the FEDERAL REGISTER from time to time.

(d) *Term of Leverage commitment.* Your Leverage commitment will automatically lapse on the expiration date stated in the commitment letter issued to you by the Secretary. The Secretary's Leverage commitment will be included in the Participation Agreement at the time of your licensing as a RBIC, under § 4290.390.

§ 4290.1220 Requirement for RBIC to file financial statements at the time of request for a draw.

(a) If you submit a request for a draw against your Leverage commitment more than 90 days following your submission of an annual SBA Form 468 or a SBA Form 468 (Short Form), you must:

(1) Give the Secretary a financial statement on Form 468 (Short Form), and

(2) File a statement of no material adverse change in your financial condition since your last filing of SBA Form 468.

(b) You will not be eligible for a draw if you are not in compliance with this § 4290.1220.

EFFECTIVE DATE NOTE: At 76 FR 80224, Dec. 23, 2011, § 4290.1220 was amended by revising paragraph (a), effective Jan. 23, 2012. For the convenience of the user, the revised text is set forth as follows:

§ 4290.1220 Requirement for RBIC to file financial statements at the time of request for a draw.

(a) If you submit a request for a draw against your Leverage commitment more

than 90 days following your submission of an annual SBA Form 468 or a SBA Form 468 (Short Form) or other USDA-approved form(s), you must:

(1) Give the Secretary a financial statement on Form 468 (Short Form) or other USDA-approved form(s), and

(2) File a statement of no material adverse change in your financial condition since your last filing of SBA Form 468 or other USDA-approved form(s).

§ 4290.1230 Draw-downs by RBIC under Leverage commitment.

(a) *RBIC's authorization of the Secretary to guarantee securities.* By submitting a request for a draw against the Leverage commitment, you authorize the Secretary, or the Secretary's designated agent or trustee, to guarantee your Debenture and to sell it with the Secretary's guarantee.

(b) *Limitations on amount of draw.* The amount of a draw must be a multiple of $5,000. The Secretary, in his or her discretion, may determine a minimum dollar amount for draws against Leverage commitments. Any such minimum amounts will be published in Notices in the FEDERAL REGISTER from time to time.

(c) *Effect of regulatory violations on RBIC's eligibility for draws*—(1) *General rule.* You are eligible to make a draw against your Leverage commitment only if you are in compliance with all applicable provisions of the Act and this part (*i.e.*, no unresolved statutory or regulatory violations) and your Participation Agreement.

(2) *Exception to general rule.* If you are not in compliance, you may still be eligible for draws if:

(i) The Secretary determines that your outstanding violations are of non-substantive provisions of the Act or this part or your Participation Agreement and that you have not repeatedly violated any non-substantive provisions; or

(ii) You have agreed with the Secretary in writing on a course of action to resolve your violations and such agreement does not prevent you from issuing Leverage.

(d) *Procedures for funding draws.* You may request a draw at any time during the term of the commitment. With each request, submit the following documentation:

(1) A statement certifying that there has been no material adverse change in your financial condition since your last filing of SBA Form 468 (*see* also § 4290.1220 for SBA Form 468 filing requirements).

(2) If your request is submitted more than 30 days following the end of your fiscal year, but before you have submitted your annual filing of SBA Form 468 in accordance with § 4290.630(a), a preliminary unaudited annual financial statement on SBA Form 468 (Short Form).

(3) A statement certifying that to the best of your knowledge and belief, you are in compliance with all provisions of the Act and this part (*i.e.*, no unresolved regulatory or statutory violations) and your Participation Agreement, or a statement listing any specific violations you are aware of. Either statement must be executed by one of the following:

(i) An officer of the RBIC;

(ii) An officer of a corporate general partner or managing member of the RBIC;

(iii) An individual who is authorized to act as or for a general partner of the RBIC; or

(iv) An individual who is authorized to act as or for a managing member of the RBIC.

(4) A statement that the proceeds are needed to fund one or more particular Enterprises or to provide liquidity for your operations. If required by the Secretary, the statement must include the name and address of each Enterprise, and the amount and anticipated closing date of each proposed Financing.

(e) *Reporting requirements after drawing funds.* (1) Within 30 calendar days after the actual closing date of each Financing funded with the proceeds of your draw, you must file an SBA Form 1031 confirming the closing of the transaction.

(2) If the Secretary required you to provide information concerning a specific planned Financing under paragraph (d)(4) of this section, and such Financing has not closed within 60 calendar days after the anticipated closing date, you must provide a written explanation of the failure to close.

(3) If you do not comply with this paragraph (e), you will not be eligible

for additional draws. The Secretary may also determine that you are not in compliance with the terms of your Leverage under § 4290.1810.

EFFECTIVE DATE NOTE: At 76 FR 80224, Dec. 23, 2011, § 4290.1230 was amended by revising paragraphs (d)(1), (d)(2), and (e)(1), effective Jan. 23, 2012. For the convenience of the user, the revised text is set forth as follows:

§ 4290.1230 Draw-downs by RBIC under Leverage commitment.

* * * * *

(d) * * *

(1) A statement certifying that there has been no material adverse change in your financial condition since your last filing of SBA Form 468 or other USDA-approved form(s) (see also § 4290.1220 for filing requirements).

(2) If your request is submitted more than 30 days following the end of your fiscal year, but before you have submitted your annual filing of SBA Form 468 or other USDA-approved form(s) in accordance with § 4290.630(a), a preliminary unaudited annual financial statement on SBA Form 468 (Short Form) or other USDA-approved form(s).

* * * * *

(e) * * *

(1) Within 30 calendar days after the actual closing date of each Financing funded with the proceeds of your draw, you must file an SBA Form 1031 or other USDA-approved form(s) confirming the closing of the transaction.

* * * * *

§ 4290.1240 Funding of RBIC's draw request through sale to third-party.

(a) *RBIC's authorization of the Secretary to arrange sale of Debentures to third-party*. By submitting a request for a draw of Debenture Leverage, you authorize the Secretary, or any agent or trustee the Secretary designates, to enter into any agreements (and to bind you to such agreements) necessary to accomplish:

(1) The sale of your Debenture to a third-party at a price approved by the Secretary; and

(2) The purchase of your Debenture from the third-party and the pooling of your Debenture with other Debentures with the same maturity date.

(b) *Sale of Debentures to a third-party*. If the Secretary arranges for the sale of your Debenture to a third-party, the sale price may be an amount discounted from the face amount of the Debenture.

DISTRIBUTIONS BY RBICS WITH OUTSTANDING LEVERAGE

§ 4290.1500 Restrictions on distributions to RBIC investors while RBIC has outstanding Leverage.

(a) *Restriction on distribution*. If you have outstanding Leverage, whenever you make a distribution to your investors you must make, at the same time, a prepayment to or for the benefit of the third-party holder of the Debenture sold pursuant to § 4290.1240 of this part, accrued unpaid interest and the principal, in whole or in part, of one or more of your Debentures outstanding as of the date of the distribution (subject to the terms of such Debentures).

(b) *Amount of prepayment*. You must calculate the amount due the third-party holder by multiplying the total amount you intend to distribute by a fraction whose numerator is the outstanding principal of your Debenture(s) immediately preceding your distribution, and whose denominator is the sum of your Leverageable Capital as of that time plus the outstanding principal amount of your Debentures. For purposes of the preceding sentence ''principal'' means both the net proceeds and interest accrued to date of a discounted Debenture. The amount of any payment received under this section will be credited first against unpaid interest accrued to the date of distribution and then to the principal in whole or in part of the first Debenture you select to prepay and then to the interest and principal in whole or in part of such other Debenture(s) as you select to prepay. You may elect to prepay in whole any discounted Debenture under this section only within five years of its maturity date. Payments under this section must be made on the next occurring March 1 or September 1.

(c) *Effect of prepayment*. Subject to the terms of the Debenture(s), you may voluntarily prepay additional principal, but neither mandatory nor voluntary prepayment will increase your future Leverage eligibility.

FUNDING LEVERAGE BY USE OF GUARANTEED TRUST CERTIFICATES (''TCS'')

§ 4290.1600 Secretary's authority to issue and guarantee Trust Certificates.

(a) *Authorization*. Section 384F of the Act authorizes the Secretary to issue TCs and to guarantee the timely payment of the principal and interest thereon. Any such guarantee of such TC is limited to the principal and interest due on the Debentures in any Trust or Pool backing such TC. The full faith and credit of the United States is pledged to the payment of all amounts due under the guarantee of any TC.

(b) *Authority to arrange public or private fundings of Leverage*. The Secretary in his or her discretion may arrange for public or private financing under his or her guarantee authority. Such financing may be accomplished by the sale of individual Debentures, aggregations of Debentures, or Pools or Trusts of Debentures.

(c) *Pass-through provisions*. TCs shall provide for a pass-through to their holders of all amounts of principal and interest paid on the Debentures in the Pool or Trust against which they are issued.

(d) *Formation of a Pool or Trust holding Leverage Securities*. The Secretary shall approve the formation of each Pool or Trust. The Secretary may, in his or her discretion, establish the size of the Pools and their composition, the interest rate on the TCs issued against Trusts or Pools, fees, discounts, premiums and other charges made in connection with the Pools, Trusts, and TCs, and any other characteristics of a Pool or Trust he or she deems appropriate.

EFFECTIVE DATE NOTE: At 76 FR 80224, Dec. 23, 2011, § 4290.1600 was amended by revising paragraph (d), effective Jan. 23, 2012. For the convenience of the user, the revised text is set forth as follows:

§ 4290.1600 Secretary's authority to issue and guarantee Trust Certificates.

* * * * *

(d) *Formation of a Pool or Trust holding Leverage Securities*. The Secretary shall approve the formation of each Pool or Trust. The Secretary may, in his or her discretion, establish the size of the Pools and their composition, the interest rate on the TCs issued against Trusts or Pools, discounts, premiums and other charges made in connection with the Pools, Trusts, and TCs, and any other characteristics of a Pool or Trust he or she deems appropriate. Notwithstanding § 4290.1130(c), any agent of the Secretary may collect a fee for the functions described in 7 U.S.C. 2009cc–5(e)(2) that does not exceed $500.

§ 4290.1610 Effect of prepayment or early redemption of Leverage on a Trust Certificate.

(a) The rights, if any, of a RBIC to prepay any Debenture is established by the terms of such security, and no such right is created or denied by the regulations in this part.

(b) The Secretary's rights to purchase or prepay any Debenture without premium are established by the terms of the Guaranty Agreement relating to the Debenture.

(c) Any prepayment of a Debenture pursuant to the terms of the Guaranty Agreement relating to such security shall reduce the Secretary's guarantee of timely payment of principal and interest on a TC in proportion to the amount of principal that such prepaid Debenture represents in the Trust or Pool backing such TC.

(d) The Secretary shall be discharged from his or her guarantee obligation to the holder or holders of any TC, or any successor or transferee of such holder, to the extent of any such prepayment, whether or not such successor or transferee shall have notice of any such prepayment.

(e) Interest on prepaid Debentures shall accrue only through the date of prepayment.

(f) In the event that all Debentures constituting a Trust or Pool are prepaid, the TCs backed by such Trust or Pool shall be redeemed by payment of the unpaid principal and interest on the TCs; provided, however, that in the case of the prepayment of a Debenture pursuant to the provisions of the Guaranty Agreement relating to the Debenture, the Central Registration Agent (CRA) shall pass through pro rata to the holders of the TCs any such prepayments including any prepayment penalty paid by the obligor RBIC pursuant to the terms of the Debenture.

§ 4290.1620 Functions of agents, including Central Registration Agent, Selling Agent and Fiscal Agent.

(a) *Agents*. The Secretary may appoint or cause to be appointed agent(s) to perform functions necessary to market and service Debentures or TCs pursuant to this part.

(1) *Selling Agent*. As a condition of guaranteeing a Debenture, the Secretary may cause each RBIC to appoint a Selling Agent to perform functions that include, but are not limited to:

(i) Selecting qualified entities to become pool or Trust assemblers (''Poolers'').

(ii) Receiving guaranteed Debentures as well as negotiating the terms and conditions of sales or periodic offerings of Debentures and/or TCs on behalf of RBICs.

(iii) Directing and coordinating periodic sales of Debentures and/or TCs.

(iv) Arranging for the production of Offering Circulars, certificates, and such other documents as may be required from time to time.

(2) *Fiscal Agent*. The Secretary shall appoint a Fiscal Agent to:

(i) Establish performance criteria for Poolers.

(ii) Monitor and evaluate the financial markets to determine those factors that will minimize or reduce the cost of funding Debentures.

(iii) Monitor the performance of the Selling Agent, Poolers, CRA, and the Trustee.

(iv) Perform such other functions as the Secretary, from time to time, may prescribe.

(3) *Central Registration Agent*. Pursuant to a contract entered into with the Secretary, the CRA, as the Secretary's agent, will do the following with respect to the Pools or Trust Certificates for the Debentures:

(i) Form an approved Pool or Trust;

(ii) Issue the TCs in the prescribed form;

(iii) Transfer the TCs upon the sale of original issue TCs in any secondary market transaction;

(iv) Receive payments from RBICs;

(v) Make periodic payments as scheduled or required by the terms of the TCs, and pay all amounts required to be paid upon prepayment of Debentures;

(vi) Hold, safeguard, and release all Debentures constituting Trusts or Pools upon instructions from the Secretary;

(vii) Remain custodian of such other documentation as the Secretary shall direct by written instructions;

(viii) Provide for the registration of all pooled Debentures, all Pools and Trusts, and all TCs; and

(ix) Perform such other functions as the Secretary may deem necessary to implement the provisions of this section.

(b) *Functions*. Either the Secretary or an agent appointed by the Secretary may perform the function of locating purchasers, and negotiating and closing the sale of Debentures and TCs. Nothing in the regulations in this part shall be interpreted to prevent the CRA from acting as the Secretary's agent for this purpose.

§ 4290.1630 Regulation of Brokers and Dealers and disclosure to purchasers of Leverage or Trust Certificates.

(a) *Brokers and Dealers*. Each broker, dealer, and Pool or Trust assembler approved by the Secretary pursuant to these regulations shall either be regulated by a Federal financial regulatory agency, or be a member of the National Association of Securities Dealers (NASD), and shall be in good standing in respect to compliance with the financial, ethical, and reporting requirements of such body. It also shall be in good standing with the Secretary as determined by the SBA official with delegated authority to made this determination (*see* paragraph (c) of this section) and shall provide a fidelity bond or insurance in such amount as the Secretary may require.

(b) *Suspension and/or termination of Broker or Dealer*. The Secretary shall exclude from the sale and all other dealings in Debentures or TCs any broker or dealer:

(1) If such broker's or dealer's authority to engage in the securities business has been revoked or suspended by a supervisory agency. When such authority has been suspended, the Secretary will suspend such broker or dealer for the duration of such suspension by the supervisory agency.

(2) If such broker or dealer has been indicted or otherwise formally charged with a misdemeanor or felony bearing on its fitness, such broker or dealer may be suspended while the charge is pending. Upon conviction, participation may be terminated.

(3) If such broker or dealer has suffered an adverse final civil judgment holding that such broker or dealer has committed a breach of trust or violation of law or regulation protecting the integrity of business transactions or relationships, participation in the market for Debentures or TCs may be terminated.

(c) *Termination/suspension proceedings.* A broker's or dealer's participation in the market for Debentures or TCs will be conducted in accordance with 7 CFR part 11. The Secretary may, for any of the reasons stated in paragraphs (b)(1) through (3) of this section, suspend the privilege of any broker or dealer to participate in this market. The Secretary shall give written notice at least ten business days prior to the effective date of such suspension. Such notice shall inform the broker or dealer of the opportunity for a hearing pursuant to 7 CFR part 11.

§ 4290.1640 Secretary's access to records of the CRA, Brokers, Dealers and Pool or Trust assemblers.

The CRA and any broker, dealer and Pool or Trust assembler operating under the regulations in this part shall make all books, records and related materials associated with Debentures and TCs available to the Secretary for review and copying purposes. Such access shall be at such party's primary place of business during normal business hours.

MISCELLANEOUS

§ 4290.1700 Secretary's transfer of interest in a RBIC's Leverage security.

Upon such conditions and for such consideration as he or she deems reasonable, the Secretary may sell, assign, transfer, or otherwise dispose of any Debenture held by or on behalf of the Secretary. Upon notice by the Secretary, a RBIC will make all payments of principal and interest as shall be directed by the Secretary. A RBIC will be liable for all damage or loss which the Secretary may sustain by reason of the RBIC's failure to follow such payment instructions, up to the amount of the RBIC's liability under such security, plus court costs and reasonable attorney's fees incurred by the Secretary.

§ 4290.1710 Secretary's authority to collect or compromise claims.

The Secretary may, upon such conditions and for such consideration as he or she deems reasonable, collect or compromise all claims relating to obligations he or she holds or has guaranteed, and all legal or equitable rights accruing to him or her.

§ 4290.1720 Characteristics of Secretary's guarantee.

If the Secretary agrees to guarantee a RBIC's Debentures, such guarantee will be unconditional, irrespective of the validity, regularity or enforceability of the Debentures or any other circumstances that might constitute a legal or equitable discharge or defense of a guarantor. Pursuant to its guarantee, the Secretary will make timely payments of principal and interest on the Debentures.

Subpart K—RBIC's Noncompliance With Terms of Leverage

§ 4290.1810 Events of default and the Secretary's remedies for RBIC's noncompliance with terms of Debentures.

(a) *Applicability of this section.* By issuing Debentures, you automatically agree to the terms, conditions and remedies in this section, as in effect at the time of issuance and as if fully set forth in the Debentures.

(b) *Automatic events of default.* The occurrence of one or more of the events in this paragraph (b) causes the remedies in paragraph (c) of this section to take effect immediately.

(1) *Insolvency.* You become equitably or legally insolvent.

(2) *Voluntary assignment.* You make a voluntary assignment for the benefit of creditors without the Secretary's prior written approval.

(3) *Bankruptcy*. You file a petition to begin any bankruptcy or reorganization proceeding, receivership, dissolution or other similar creditors' rights proceeding, or such action is initiated against you and is not dismissed within 60 days.

(c) *Remedies for automatic events of default*. Upon the occurrence of one or more of the events in paragraph (b) of this section:

(1) Without notice, presentation or demand, the entire indebtedness evidenced by your Debentures, including accrued interest, and any other amounts owed with respect to your Debentures, is immediately due and payable; and

(2) You automatically consent to the appointment of the Secretary or his or her designee, as your receiver under section 384M of the Act.

(d) *Events of default with notice*. For any occurrence (as determined by the Secretary) of one or more of the events in this paragraph (d), the Secretary may avail him or herself of one or more of the remedies in paragraph (e) of this section.

(1) *Fraud*. You commit a fraudulent act that causes detriment to the Secretary's position as a creditor or guarantor.

(2) *Fraudulent transfers*. You make any transfer or incur any obligation that is fraudulent under the terms of 11 U.S.C. 548.

(3) *Willful conflicts of interest*. You willfully violate § 4290.730.

(4) *Willful non-compliance*. You willfully violate one or more of the substantive provisions of the Act or any substantive regulation promulgated under the Act or any substantive provision of your Participation Agreement.

(5) *Repeated Events of Default*. At any time after being notified of the occurrence of an event of default under paragraph (f) of this section, you engage in similar behavior that results in another occurrence of the same event of default.

(6) *Transfer of Control*. You willfully violate § 4290.410, and as a result of such violation you undergo a transfer of Control.

(7) *Non-cooperation under § 4290.1810(h)*. You fail to take appropriate steps, satisfactory to the Secretary, to accomplish any action the Secretary may have required under paragraph (h) of this section.

(8) *Non-notification of Events of Default*. You fail to notify the Secretary as soon as you know or reasonably should have known that any event of default exists under this section.

(9) *Non-notification of defaults to others*. You fail to notify the Secretary in writing within ten days from the date of a declaration of an event of default or nonperformance under any note, debenture or indebtedness of yours, issued to or held by anyone other than the Secretary.

(e) *Remedies for events of default with notice*. Upon written notice to you of the occurrence (as determined by the Secretary) of one or more of the events in paragraph (d) of this section:

(1) The Secretary may declare the entire indebtedness evidenced by your Debentures, including accrued interest and/or any other amounts owed the Secretary with respect to your Debentures, immediately due and payable: and

(2) The Secretary may avail himself or herself of any remedy available under the Act, specifically including institution of proceedings for his or her, or his or her designee's appointment as your receiver under section 384M(c) of the Act.

(f) *Events of default with opportunity to cure*. For any occurrence (as determined by the Secretary) of one or more of the events in this paragraph (f), the Secretary may avail him or herself of one or more of the remedies in paragraph (g) of this section.

(1) *Excessive Management Expenses*. Without the Secretary's prior written consent, you incur Management Expenses in excess of those permitted under §§ 4290.510 and 4290.520.

(2) *Improper Distributions*. You make any Distribution to your shareholders or partners, except with the Secretary's prior written consent, other than:

(i) Distributions permitted under § 4290.585; and

(ii) Payments from Retained Earnings Available for Distribution based

on either the shareholders' or members' pro-rata interests or the provisions for profit distributions in your partnership agreement, as appropriate.

(3) *Failure to make payment*. Unless otherwise approved by the Secretary, you fail to make timely payment of any amount due under any security or obligation of yours that is issued to, held or guaranteed by the Secretary.

(4) *Failure to maintain Regulatory Capital*. You fail to maintain the minimum Regulatory Capital required under these regulations or, without the Secretary's prior written consent, you reduce your Regulatory Capital except as permitted by §4290.585.

(5) *Capital Impairment*. You have a condition of Capital Impairment as determined under §4290.1830.

(6) *Cross-default*. An obligation of yours that is greater than $100,000 becomes due or payable (with or without notice) before its stated maturity date, for any reason including your failure to pay any amount when due. This provision does not apply if you pay the amount due within any applicable grace period or contest the payment of the obligation in good faith by appropriate proceedings.

(7) *Nonperformance*. You violate or fail to perform one or more of the terms and conditions of any security or obligation of yours that is issued to, held or guaranteed by the Secretary, or of any agreement (including your Participation Agreement) with or conditions imposed by the Secretary in the administration of the Act and the regulations promulgated under the Act.

(8) *Noncompliance*. Except as otherwise provided in paragraph (d)(5) of this section, the Secretary determines that you have violated one or more of the substantive provisions of the Act or any substantive regulation promulgated under the Act.

(9) *Failure to maintain diversity*. You fail to maintain diversity between management and ownership as required by §4290.150.

(g) *Remedies for events of default with opportunity to cure*. (1) Upon written notice to you of the occurrence (as determined by the Secretary) of one or more of the events of default in paragraph (f) of this section, and subject to the conditions in paragraph (g)(2) of this section:

(i) The Secretary may declare the entire indebtedness evidenced by your Debentures, including accrued interest, and/or any other amounts owed the Secretary with respect to your Debentures, immediately due and payable; and

(ii) The Secretary may avail himself or herself of any remedy available under the Act, specifically including institution of proceedings for the appointment of the Secretary or a designee as your receiver under §348M of the Act.

(2) The Secretary may invoke the remedies in paragraph (g)(1) of this section only if:

(i) You have been given at least 15 days to cure the default(s); and

(ii) You fail to cure the default(s) to the Secretary's satisfaction within the allotted time.

(h) *Repeated non-substantive violations*. If you repeatedly fail to comply with one or more of the non-substantive provisions of the Act or any non-substantive regulation promulgated under the Act, the Secretary, after written notification to you and until you cure such condition to the Secretary's satisfaction, may deny you additional Leverage and/or require you to take such actions as the Secretary may determine to be appropriate under the circumstances.

(i) *Consent to removal of officers, directors, or general partners and/or appointment of receiver*. The Articles of each RBIC must include the following provisions as a condition to the purchase or guarantee of Leverage. Upon the occurrence of any of the events specified in paragraphs (d)(1) through (d)(6) or (f)(l) through (f)(3) of this section as determined by the Secretary, the Secretary shall have the right, and you consent to the Secretary's exercise of such right:

(1) With respect to a Corporate RBIC, upon written notice, to require you to replace, with individuals approved by the Secretary, one or more of your officers and/or such number of directors of your board of directors as is sufficient to constitute a majority of such board; or

(2) With respect to a Partnership RBIC or an LLC RBIC, upon written notice, to require you to remove the person(s) responsible for such occurrence and/or to remove the general partner or manager of the RBIC, which general partner or manager shall then be replaced in accordance with the RBIC's Articles by a new general partner or manager approved by the Secretary; and/or

(3) With respect to a Corporate RBIC, Partnership RBIC, or LLC RBIC, to obtain the appointment of the Secretary or his or her designee as your receiver under section 384M of the Act for the purpose of continuing your operations. The appointment of a receiver to liquidate an RBIC is not within such consent, but is governed instead by the relevant provisions of the Act.

EFFECTIVE DATE NOTE: At 76 FR 80224, Dec. 23, 2011, § 4290.1810 was amended by revising paragraph (a), effective Jan. 23, 2012. For the convenience of the user, the revised text is set forth as follows:

§ 4290.1810 Events of default and the Secretary's remedies for RBICs noncompliance with terms of Debentures.

(a) *Applicability of this section.* Upon acceptance of a license to operate as an RBIC, you automatically agree to the terms, conditions and remedies in this section, as in effect at the time of issuance of the license and as fully set forth in all documents relating to the license, including, without limitation, the Participation Agreement and Debentures.

* * * * *

COMPUTATION OF RBIC'S CAPITAL IMPAIRMENT

§ 4290.1830 RBIC's Capital Impairment definition and general requirements.

(a) *Significance of Capital Impairment condition.* If you have a condition of Capital Impairment, you are not in compliance with the terms of your Leverage. As a result, the Secretary has the right to impose the applicable remedies for noncompliance in § 4290.1810(g).

(b) *Definition of Capital Impairment condition.* You have a condition of Capital Impairment if your Capital Impairment Percentage, as computed pursuant to the procedures set forth in § 4290.1840, exceeds 70 percent.

(c) *Quarterly computation requirement and procedure.* You must determine whether you have a condition of Capital Impairment as of the end of each fiscal quarter. You must notify the Secretary promptly if you are Capitally Impaired.

(d) *The Secretary's right to determine RBIC's Capital Impairment condition.* The Secretary may make his or her own determination of your Capital Impairment condition at any time.

§ 4290.1840 Computation of RBIC's Capital Impairment Percentage.

(a) *General.* This section contains the procedures you must use to determine your Capital Impairment Percentage. You must compare your Capital Impairment Percentage to the maximum permitted under § 4290.1830(b) to determine whether you have a condition of Capital Impairment.

(b) *Preliminary impairment test.* If you satisfy the preliminary impairment test, your Capital Impairment Percentage is zero and you do not have to perform any more procedures in this § 4290.1840. Otherwise, you must continue with paragraph (c) of this section. You satisfy the test if each of the following amounts is zero or greater:

(1) The sum of Undistributed Net Realized Earnings, as reported on SBA Form 468, and Includible Non-Cash Gains.

(2) Unrealized Gain (Loss) on Securities Held.

(c) *How to compute your Capital Impairment Percentage.* (1) If you have an Unrealized Gain on Securities Held, compute your Adjusted Unrealized Gain using paragraph (d) of this section. If you have an Unrealized Loss on Securities Held, continue with paragraph (c)(2) of this section.

(2) Add together your Undistributed Net Realized Earnings, your Includible Non-cash Gains, and either your Unrealized Loss on Securities Held or your Adjusted Unrealized Gain.

(3) If the sum in paragraph (c)(2) of this section is zero or greater, your Capital Impairment Percentage is zero.

(4) If the sum in paragraph (c)(2) of this section is less than zero, drop the

negative sign, divide by your Regulatory Capital (excluding Treasury Stock), and multiply by 100. The result is your Capital Impairment Percentage.

(d) *How to compute your Adjusted Unrealized Gain.* (1) Subtract Unrealized Depreciation from Unrealized Appreciation. This is your ''Net Appreciation''.

(2) Determine your Unrealized Appreciation on Publicly Traded and Marketable securities. This is your ''Class I Appreciation''.

(3) Determine your Unrealized Appreciation on securities that are not Publicly Traded and Marketable and meet the following criteria, which must be substantiated to the Secretary's satisfaction (this is your ''Class 2 Appreciation''):

(i) The Portfolio Concern that issued the security received a significant subsequent equity financing by an investor whose objectives were not primarily strategic and at a price that conclusively supports the Unrealized Appreciation;

(ii) Such financing represents a substantial investment in the form of an arm's-length transaction by a sophisticated new investor in the issuer's securities; and

(iii) Such financing occurred within 24 months of the date of the Capital Impairment computation, or the Portfolio Concern's pre-tax cash flow from operations for its most recent fiscal year was at least 10 percent of its average contributed capital for such fiscal year.

(4) Perform the appropriate computation from the table in 13 CFR 107.1840(d)(4).

(5) Reduce the gain computed in paragraph (d)(4) of this section by your estimate of related future income tax expense. Subject to any adjustment required by paragraph (d)(6) of this section, the result is your Adjusted Unrealized Gain for use in paragraph (c)(2) of this section.

(6) If any securities that are the source of either Class 1 or Class 2 Appreciation are pledged or encumbered in any way, you must reduce the Adjusted Unrealized Gain computed in paragraph (d)(5) of this section by the amount of the related borrowing or other obligation, up to the amount of the Unrealized Appreciation on the securities.

EFFECTIVE DATE NOTE: At 76 FR 80225, Dec. 23, 2011, §4290.1840 was amended by revising paragraph (b)(1), effective Jan. 23, 2012. For the convenience of the user, the revised text is set forth as follows:

§4290.1840 Computation of RBIC's Capital Impairment Percentage.

* * * * *

(b) * * *

(1) The sum of Undistributed Net Realized Earnings, as reported on SBA Form 468 or other USDA-approved form(s) and Includible Non-Cash Gains.

* * * * *

Subpart L—Ending Operations as a RBIC

§4290.1900 Termination of participation as a RBIC.

You may not terminate your participation as a RBIC without the Secretary's prior written approval. Your request for approval must be accompanied by an offer of immediate repayment of all of your outstanding Leverage (including any prepayment penalties thereon), or by a plan satisfactory to the Secretary for the orderly liquidation of the RBIC.

Subpart M—Miscellaneous

§4290.1910 Non-waiver of rights or terms of Leverage security.

The Secretary's failure to exercise or delay in exercising any right or remedy under the Act or the regulations in this part does not constitute a waiver of such right or remedy. The Secretary's failure to require you to perform any term or provision of your Leverage does not affect the Secretary's right to enforce such term or provision. Similarly, the Secretary's waiver of, or failure to enforce, any term or provision of your Leverage or of any event or condition set forth in §4290.1810 does not constitute a waiver of any succeeding breach of such term or provision or condition.

§ 4290.1920 RBIC's application for exemption from a regulation in this part 4290.

(a) *General*. You may file an application in writing with the Secretary to have a proposed action exempted from any procedural or substantive requirement, restriction, or prohibition to which it is subject under this part, unless the provision is mandated by the Act. The Secretary may grant an exemption for such applicant, conditionally or unconditionally, provided the exemption would not be contrary to the purposes of the Act.

(b) *Contents of application*. Your application must be accompanied by supporting evidence that demonstrates to the Secretary's satisfaction that:

(1) The proposed action is fair and equitable; and

(2) The exemption requested is reasonably calculated to advance the best interests of the RBIC program in a manner consistent with the policy objectives of the Act and the regulations in this part.

§ 4290.1930 Effect of changes in this part 4290 on transactions previously consummated.

The legality of a transaction covered by the regulations in this part is governed by the regulations in this part in effect at the time the transaction was consummated, regardless of later changes. Nothing in this part bars enforcement action with respect to any transaction consummated in violation of provisions applicable at the time, but no longer in effect.

§ 4290.1940 Integration of this part with other regulations applicable to USDA's programs.

(a) *Intergovernmental review*. To the extent applicable to this part, the Secretary will comply with subpart V of 7 CFR part 3015, ''Intergovernmental Review of Department of Agriculture Programs and Activities.'' The Secretary has not delegated this responsibility to SBA pursuant to § 4290.45 of this part.

(b) *National flood insurance*. To the extent applicable to this part, the Secretary will comply with subpart B of 7 CFR part 1806. The Secretary has not delegated this responsibility to SBA pursuant to § 4290.45 of this part.

(c) *Clean Air Act and Water Pollution Control Act requirements*. To the extent applicable to this part, the Secretary will comply with the requirements of the Clean Air Act, section 306; the Clean Water Act, section 508; Executive Order 11738; and 40 CFR part 32. The Secretary has not delegated this responsibility to SBA pursuant to § 4290.45 of this part.

(d) *Historic preservation requirements*. To the extent applicable to this part, the Secretary will comply with subpart F of 7 CFR part 1901. The Secretary has not delegated this responsibility to SBA pursuant to § 4290.45 of this part.

(e) *Lead-based paint requirements*. To the extent applicable to this part, the Secretary will comply with subpart A of 7 CFR part 1924. The Secretary has not delegated this responsibility to SBA pursuant to § 4290.45 of this part.

(f) *Conflict of interest*. To the extent applicable to this part, the Secretary will comply with subpart D of 7 CFR part 1900 and RD Instruction 2045–BB. The Secretary has not delegated this responsibility to SBA pursuant to § 4290.45 of this part.

(g) *Civil rights impact analysis*. To the extent applicable to this part, the Secretary will comply with RD Instruction 2006–P, ''Civil Rights Impact Analysis.'' The Secretary has not delegated this responsibility to SBA pursuant to § 4290.45 of this part.

(h) *Environmental requirements*. To the extent applicable to this part, the Secretary will comply with subpart G of 7 CFR part 1940. The Secretary has not delegated this responsibility to SBA pursuant to § 4290.45 of this part.

(i) *Appeals to the National Appeals Division for review of adverse decisions*. Applicants and RBICs have the right to request review by the National Appeals Division within the USDA of adverse decisions, as defined in 7 CFR 11.1, pursuant to 7 CFR part 11.

Subpart N—Requirements for Operational Assistance Grants to RBICs

§ 4290.2000 Operational Assistance Grants to RBICs.

(a) *Regulations governing*. Regulations governing Operational Assistance

grants to RBICs may be found in subparts D and E of this part 4290 and in this § 4290.2000.

(b) *Restrictions on use.* A RBIC must use Operational Assistance grant funds only to provide Operational Assistance to Smaller Enterprises to which it either has made, or expects to make, a Financing.

(c) *Amount of grant.* Each RBIC will receive an Operational Assistance grant award equal to the lesser of 10 percent of the Regulatory Capital raised by the RBIC at the time of licensing or $1,000,000.

(d) *Term.* Operational Assistance grants made under this part will be made for a multiyear period (not to exceed 10 years) under such terms as the Secretary may require.

(e) *Reporting and recordkeeping requirements.* Policies governing reporting, record retention, and recordkeeping requirements applicable to RBICs may be found in subpart H of this part 4290.

Subpart O—Additional Requirements for Non-Leveraged Licensees and Exceptions to Regulations

SOURCE: 76 FR 80225, Dec. 23, 2011, unless otherwise noted.

EFFECTIVE DATE NOTE: At 76 FR 80225, Dec. 23, 2011, Subpart O was added, effective Jan. 23, 2012.

§ 4290.3000 Non-leveraged RBICs—General.

This subpart identifies provisions specific to RBICs seeking a non-leveraged license, including exceptions and additions to provisions associated with subparts A through N of this part.

§§ 4290.3001–4290.3002 [Reserved]

§ 4290.3003 Responsibility for implementing Non-leveraged RBICs.

Section 4290.45 does not apply to Non-leveraged RBICs. Instead, for the purposes of this part as it applies to Non-leveraged RBICs, all authorities and responsibilities assigned to the Secretary under this part shall be carried out by the Secretary, and none shall be delegated to the U.S. Small Business Administration (SBA) or the Administrator. Thus, when applying subparts A through N of this part to Non-leveraged RBICs, all references to the Small Business Association (SBA) or Administrator on behalf of USDA shall be read as the Secretary. All forms shall be submitted to USDA or its designee.

§ 4290.3004 [Reserved]

§ 4290.3005 Qualifications for the Non-leveraged RBIC Program.

(a) *Business form.* In addition to complying with the applicable provisions of § 4290.100 not otherwise modified by this section, paragraphs (a)(1) through (a)(4) of this section apply.

(1) For RBICs applying for non-leveraged status, the types of investors eligible to invest in a RBIC must have been approved by the Secretary. Investors seeking approval must submit a request to the Secretary with sufficient documentation to support their request. The USDA will announce such approved categories and types of investors in a public notice published in the FEDERAL REGISTER from time to time. Subsequent notices that modify the types of investors eligible to invest in a RBIC will not be applied retroactively.

(2) In lieu of complying with § 4290.100(d)(1)(i), you must have a minimum duration of 10 years. After 10 years, the Partnership RBIC may be terminated by a vote of your partners.

(3) In lieu of complying with § 4290.100(d)(2), if you are a LLC RBIC, you must have a minimum duration of 10 years. After 10 years, the LLC RBIC may be terminated by a vote of your members.

(4) In lieu of complying with § 4290.100(d)(3), if you are a Corporate RBIC, you must have a duration of not less than 30 years unless earlier dissolved by the shareholders.

(b) *Approval of initial Management Expenses.* Section 4290.140 does not apply to Non-leveraged RBICs. However, the Secretary will provide a cap on these expenses in each FEDERAL REGISTER notice soliciting applications for Non-leveraged RBICs.

(c) *Management and ownership diversity requirements.* A Non-leveraged RBIC is subject to the provisions of § 4290.150

unless it is exempted from these provisions by the Secretary. Exemptions will only be granted when the applicant establishes, to the satisfaction of the Secretary, that granting the exemption will not unduly impair the integrity and soundness of the Non-leveraged RBIC.

(d) *Special rules for Partnership RBICs and LLC RBICs*. Paragraph (c) of § 4290.160 does not apply to Non-leveraged RBICs.

§§ 4290.3006–4290.3009 [Reserved]

§ 4290.3010 Application and Approval Process for RBIC licensing without Leverage.

(a) The provisions of § 4290.300 notwithstanding, the Secretary will accept, at any time, applications for consideration as a Non-leveraged RBIC. The number of applications that the Agency will receive each year, and any fees and conditions, will be announced annually in a FEDERAL REGISTER notice.

(b) The provisions specified in § 4290.340(d) do not apply to this subpart.

(c) The provisions specified in § 4290.370(m) do not apply to this subpart.

§§ 4290.3011–4290.3014 [Reserved]

§ 4290.3015 Evaluation and selection of Non-leveraged RBICs.

(a) *General*. Notwithstanding any other provision in this part, when selecting applications for non-leveraged status, the Secretary may select one or more applications, or none, for further consideration based on the evaluation criteria of this part.

(b) *Eligibility and completeness*. In addition to the requirements specified in § 4290.350, an Applicant under this subpart must complete a written application that includes information not otherwise exempted by the Secretary, in his or her sole discretion. The Secretary may, on his or her own initiative, exempt material from a Non-leveraged RBIC application where the Secretary determines it impedes an expedited process without a commensurate benefit to the program. To the extent that the Secretary's exemption applies to the entire program, an announcement of the exemption will be published in the FEDERAL REGISTER. The Secretary shall make a decision as to licensing an Applicant after the receipt of a complete application and will enter into a Participation Agreement with the RBIC if approved.

(c) *Effect of a RBIC license*. Paragraphs (d)(2) and (d)(3) of § 4290.390 do not apply to Non-leveraged RBICs.

§§ 4290.3016–4290.3019 [Reserved]

§ 4290.3020 Changes in Ownership, Structure, or Control.

Paragraph (b) in § 4290.440 does not apply to Non-leveraged RBICs.

§§ 4290.3021–4290.3024 [Reserved]

§ 4290.3025 Managing the Operations of a RBIC.

(a) *Nonperformance*. In addition to the provisions specified in § 4290.507, failure of an approved Non-leveraged RBIC to maintain sound investment practice, as determined by the Secretary, may result in loss of approval for participating in this program.

(b) *Employment of USDA or SBA officials*. Paragraph (a)(2) of § 4290.509 does not apply to Non-leveraged RBICs.

(c) *Approval of RBIC's Investment Adviser/Manager*. In addition to complying with § 4290.510, a Non-leveraged RBIC must notify the Secretary of the Management Expenses to be incurred under such contract, or of any subsequent material changes in such Management Expenses, within 30 days of execution.

(d) *Management Expenses of a RBIC*. When complying with § 4290.520, Non-leveraged RBICs do not need prior approval of initial Management Expenses and any increases in those expenses.

(e) *Restrictions on investments of idle funds by RBICs*. The provisions of § 4290.530 apply to Non-leveraged RBICs only when the Non-leveraged RBIC engages in activities not contemplated by the Act.

(f) *Prior approval of secured third-party debt of RBICs*. The provisions of § 4290.550 do not apply to Non-leveraged RBICs.

(g) *Voluntary decrease in Regulatory Capital*. When complying with § 4290.585, Non-leveraged RBICs do not need to obtain prior approval for decreases in

Regulatory Capital of more than 2 percent (but not below the minimum required under this Act or these regulations). However, Non-leveraged RBICs must report the reduction to the Secretary within 30 days.

§§ 4290.3026–4290.3029 [Reserved]

§ 4290.3030 Financing of Enterprises by RBICs.

(a) *Non-compliance with this section.* The last sentence of § 4290.700(e) does not apply to Non-leveraged RBICs.

(b) *Enterprises that may be ineligible for Financing.* The provisions associated with real estate enterprises found in § 4290.720(c) apply to Non-leveraged RBICs unless the Non-leveraged RBIC requests, and has received, an irrevocable exemption from the Secretary in accordance with § 4290.1920.

(c) *Farmland purchases.* The provisions associated with farmland purchases found in § 4290.720(e) apply to Non-leveraged RBICs unless the Non-leveraged RBIC requests, and has received, an irrevocable exemption from the Secretary in accordance with § 4290.1920.

(d) *Purchasing securities from an underwriter or other third party.* Non-leveraged RBICs are exempt from the recordkeeping requirements and fee limitations in § 4290.825(b) and (c), respectively, for securities purchased through or from an underwriter.

(e) *Assets acquired in liquidation of Portfolio securities.* The provisions of § 4290.880 do not apply to Non-leveraged RBICs.

§§ 4290.3031–4290.3034 [Reserved]

§ 4290.3035 Recordkeeping, Reporting, and Examination Requirements for RBICs.

Except for § 4290.600(d), Subpart H, Recordkeeping, Reporting, and Examination Requirements for RBICs, of this part applies to Non-leveraged RBICs.

§§ 4290.3036–4290.3039 [Reserved]

§ 4290.3040 Financial Assistance for RBICs.

Subpart J, Financial Assistance for RBICs (Leveraged), of this part does not apply to Non-leveraged RBICs.

§ 4290.3041 Events of default and the Secretary's remedies for RBIC's noncompliance with terms of Debenture.

In addition to complying with the provisions of § 4290.1810, a RBIC's failure to comply with the terms of this part may result in the Secretary revoking the Non-leveraged RBIC's license issued under this part.

§§ 4290.3042–4290.3044 [Reserved]

§ 4290.3045 Computation of RBIC's Capital Impairment.

The provisions specified in §§ 4290.1830 and 4290.1840 do not apply to Non-leveraged RBICs.

§§ 4290.3046–4290.3049 [Reserved]

§ 4290.3050 Operational Assistance Grants for RBICs.

Subpart N, Requirements for Operational Assistance Grant to RBICs, of this part does not apply to Non-leveraged RBICs. All other references to Operational Assistance in this part do not apply to Non-leveraged RBICs.

§§ 4290.3051–4290.3099 [Reserved]

FINDING AIDS

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All changes in this volume of the Code of Federal Regulations that were made by documents published in the FEDERAL REGISTER since January 1, 2001, are enumerated in the following list. Entries indicate the nature of the changes effected. Pages numbers refer to FEDERAL REGISTER pages. The user should consult the entries for chapters and parts as well as sections for revisions.

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3550.50 Amended (OMB number) 78329
3550.52 (b)(1)(i) and (ii) revised 78329
3550.53 (h)(1)(ii) through (ix) redesignated as (h)(1)(iii) through (x); (g) introductory text, (h)(1)(i), new (v) and (ix) revised; new (h)(1)(ii) added 78330
3550.54 (c)(1) amended 78330
3550.57 (a) introductory text revised 78330
3550.59 (a)(2) amended 78330
3550.63 Introductory text and (a) revised 78330
3550.66 Revised 78330
3550.70 Introductory text amended 78330
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3550.101 Amended 78331
3550.103 (i)(1)(ii) through (viii) redesignated as (i)(1)(iii) through (ix); (i)(1)(i), new (v) and new (viii) revised; new (i)(1)(ii) added 78331
3550.106 (a) amended 78331
3550.108 Introductory text amended; (b)(1) revised 78331
3550.114 Amended 78331
3550.115 Added 78331
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3550.118 Added 78331
3550.119 Added 78331
3550.150 Amended (OMB number) 78331
3550.162 (b)(2) revised 78331
3550.163 (b)(2) amended 78331
3550.200 Amended (OMB number) 78332
3550.208 (a)(6) added; (b) amended 78332
3550.210 (a) revised 69672
3550.211 (c) amended 78332
3550.250 Amended (OMB number)3 78332
3550.251 (c)(5)(i)(A) amended; (c)(4)(1) and (ii) revised 78332
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3565.209 Revised 16970
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3565.403 (b)(2) amended 16971

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3565.452 Revised 16971
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4279 Authority citation amended 78130
4279.108 (c) revised 78130
4284 Authority citation revised 63538
4284.603 Amended 63538

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2045 Authority citation revised 61333
2045.1754 (c) amended 61333
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3200.6 (a) revised; (b) and (c) redesignated as (c) and (d); new (b) added; eff. 3-1-04 75107
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4274.302 (a) amended 65519
4279.108 (a) introductory text, (4) and (c) revised; (d) redesignated as (e); new (d) added; interim 64830
4279.113 (j) through (aa) redesignated as (k) through (bb); (i) and new (r) corrected; new (j) added; interim 64831
4279.119 (a) revised; interim 64831
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4279.161 Introductory text amended; (c) added; interim 64831
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3052.230 (b)(2) amended 34986
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3550.110 (b) and (d)(1) revised 6552
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3565.103 (d)(1) revised 2931
3565.212 (c) amended; (d) removed 2931
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3565.403 (a) through (d) redesignated as (b) through (e); new (a) added 2931
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4274.331 (a)(3)(i) and (4) revised 38573
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4274.338 (a)(5)(i) revised; (b)(4)(i)(B) amended 38573
4274.344 (c) introductory text amended; (c)(1)(ii) introductory text revised 38573
4279 Authority citation revised 57485
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4287.107 (a) revised 57486

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3550.57 (c) amended; eff. 1–10–08 70222
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3560.653 (b)(5) amended; (b)(4) and (6) revised 65506
3560.656 (a)(2) and (e) introductory text amended 65506
3560.658 (a)(2) removed; (a)(3), (b)(1), (2) and (3) redesignated as new (a)(2), (b)(2), (3) and (4); new (a)(2) revised; new (b)(1) added 65506
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4274.319 (c) and (d) revised; (m) and (n) added 54307
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4279 Authority citation revised 76769
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3405.4 Amended 4808
3405.5 Amended 4808
3405.11 (a)(1), (2), (4) through (7), (d)(1), (f) and (g)(1)(i) amended 4808
(g)(2)(i), (ii), (iv), (3), (h) and (i) amended 4809
3405.12 Amended 4809
3405.16 Amended 4809
3405.17 (d) amended 4809
3405.22 Amended 4809
3406.1 (a), (b), (c)(1), (2), (d)(1) and (2) amended 4809

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3406.2 Amended 4810
3406.4 (d) amended 4809
3406.5 Amended 4809
3406.6 (b) amended 4809
3406.13 (a)(1), (2), (4) through (7), (e)(1)(i), (g), (h)(1)(i), (2)(i), (ii), (iv), (3)(i)(C), (i) and (j) amended 4809
3406.18 (a)(1), (2), (4) through (7), (e)(1)(i), (g), (h)(1)(i), (2)(i), (ii), (iv), (3)(i)(C), (i), (j), (k), (1) and (2) amended 4809
(k)(2), (3), (l), (1) and (2) amended 4810
3406.21 Amended 4810
3406.23 Amended 4810
2406.24 (d) amended 4810
3406.29 Amended 4810
3407.2 (a) amended 4810
3407.3 (a), (d), (e), (f), (i) and (k) amended 4810
3407.4 Amended; (a), (b), (1), (c) and (d)(1) amended 4810
3407.5 Amended 4810
3407.6 (a), (2) and (b) amended 4810
3407.7 (a) amended 4810
3407.8 Amended 4810
3407.9 Amended; (c) amended 4810
3407.10 (a), (b) and (c) amended 4810
3407.11 (b), (d) and (e) amended 4810
3411 Removed 4811
3415.1 (a) amended 4811
3415.2 (b) revised; (g) through (n) redesignated as (h) through (o); new (g) added; (c), new (h), new (k) and new (m) amended 4811
3415.4 (c)(1), (5), (d)(1), (9), (10)(i), (ii), (iii), (11) and (12) amended 4811
3415.5 (a) and (b) amended 4811
3415.6 (a), (b)(1)(i), (vi), (ix), (c)(1), (2), (3), (d), (1) and (2) amended 4811
3415.7 (b)(1) through (4), (c) and (d) amended 4811
3415.8 Amended 4811
3415.9 Amended 4811
3415.10 Amended 4811
3415.14 (b) and (d) amended 4811
3430.1 (a), (b), (c) and (f) amended 4812
3430.2 Amended 4813
3430.3 Amended 4812
3430.4 Amended 4812
3430.11 (a) and (b) amended 4812
3430.12 (a) and (c) amended 4812

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3430.13 (a) and (b) amended 4812
3430.14 (a), (2), (3), (6), (b) and (1) through (4) amended 4812
3430.15 Amended 4812
3430.16 (b)(1), (2) and (c) amended 4812
3430.17 Amended 4812
3430.18 (a) and (c) amended 4812
3430.19 (a)(1)(i), (b)(1) and (2) amended 4812
3430.20 Amended 4812
3430.31 Amended 4812
3430.32 Amended 4812
3430.33 (a), (b), (d) and (e) amended 4812
3430.34 (a) amended 4812
3430.35 (b) amended 4812
3430.36 Amended 4812
3430.41 (a), (b), (1), (4), (6) and (10) amended 4812
3430.42 (a) through (d) amended 4812
3430.51 (b) amended 4812
3430.52 (a) amended 4812
3430.53 (a) and (b) amended 4812
3430.55 (c) amended 4812
(e) and (f) amended 4813
3430.56 (a), (b), (d) and (f) amended 4813
3430.57 Amended 4813
3430.58 (b)(1) and (3) amended 4813
3430.59 (a) through (e) amended 4813
3430.60 (a), (b) and (c) amended 4813
3430.61 Amended 4813
3430.62 (a), (b) and (c) amended 4813
3430.63 (a) and (b) amended 4813
3430.201 (b) amended 4813
3430.204 Amended 4813
3430.600—3430.609 (Subpart J) Regulation at 74 FR 45970 confirmed 35323
3430.602 Amended 35323
3430.604 (a) amended 4813
(a)(19) revised; (a)(20) and (21) added 35323
3430.607 Amended 4813
3430.608 (a), (b) and (c) amended 4813
3430.609 (a) amended 4813
(a)(3), (c) and (d) revised 35323
3430.700—3430.709 (Subpart K) Regulation at 75 FR 33498 confirmed 35319
3430.700 Revised 38549
3430.701 Introductory text revised 38549

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3430.702 Amended 38549
3430.704 (b) introductory text revised 38549
3430.705 Revised 38549
3430.706 (a) and (b) revised 38549
3430.707 (b)(2) revised 38549
3430.708 (a) revised 38549
3430.904 Amended 4813
3430.907 Amended 4813
3430.908 Amended 4813
3430.1000—3430.1011 (Subpart O) Regulation at 75 FR 70580 confirmed 40593

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3560.4 (a) amended 80731
3565.3 Amended 3
3565.9 (a) amended 80731
3565.51 Revised 3
3565.52 (c) revised; (d) and (e) added 3
3565.103 (d)(9) removed 4
3565.106 Amended 4
3565.303 (c) and (d) revised; (f) added 4
3565.457 (c)(1) amended 5
3570.69 Amended 80732

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4274.337 (a) amended 80732
4274.338 (b)(4)(ii)(D) correctly added; CFR correction 81789
4279 Authority citation revised 8461, 42470
4279.72 (b) amended 42470
4279.201—4279.300 (Subpart C) Added; interim 8461
4280 Authority citation revised 21117
Meeting 22608
Appendices A and B removed 21167
4280.101—4280.200 (Subpart B) Revised 21118
4284.901—4284.999 (Subpart J) Revised; interim 10122
4287.301—4287.400 (Subpart D) Added; interim 8475
4288 Added; interim 7926
4288.101—4288.200 (Subpart B) Added; interim 7967
4288.190 (b)(1) correctly amended 24343
4290.15 Added; interim; eff. 1-23-12 80221
4290.50 Amended; interim; eff. 1-23-12 80221
4290.110 Revised; interim; eff. 1-23-12 80222

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4290.200 Revised; interim; eff. 1-23-12 80222
4290.210 (a) revised; (c) added; interim; eff. 1-23-12 80222
4290.300 (b) revised; interim; eff. 1-23-12 80222
4290.330 Revised; interim; eff. 1-23-12 80222
4290.503 (a) and (e)(2) revised; interim; eff. 1-23-12 80222
4290.504 (a) revised; interim; eff. 1-23-12 80222
4290.509 (a) introductory text revised; interim; eff. 1-23-12 80222
4290.550 (a), (b), (c) and (d)(2) revised; interim; eff. 1-23-12 80223
4290.600 (a) and (d) revised; interim; eff. 1-23-12 80223
4290.610 (b) revised; interim; eff. 1-23-12 80223
4290.630 (a) introductory text, (1), (b) through (e) and (f) introductory text revised; interim; eff. 1-23-12 80223

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4290.640 Revised; interim; eff. 1-23-12 80223
4290.692 (d) revised; interim; eff. 1-23-12 80224
4290.720 (d)(1) and (i) revised; interim; eff. 1-23-12 80224
4290.740 (a) introductory text, (2) and (b) revised; (a)(3) added; interim; eff. 1-23-12 80224
4290.815 (b) introductory text revised; interim; eff. 1-23-12 80224
4290.1220 (a) revised; interim; eff. 1-23-12 80224
4290.1230 (d)(1), (2) and (e)(1) revised; interim; eff. 1-23-12 80224
4290.1600 (d) revised; interim; eff. 1-23-12 80224
4290.1810 (a) revised; interim; eff. 1-23-12 80224
4290.1840 (b)(1) revised; interim; eff. 1-23-12 80224
4290.3000—4290.3099 (Subpart O) Added; interim; eff. 1-23-12 80225