



# Federal Register

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**Tuesday,  
October 5, 2004**

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**Part II**

## **Department of Agriculture**

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**Rural Business-Cooperative Service**

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**7 CFR Part 4280**

**Renewable Energy Systems and Energy  
Efficiency Improvements Grant,  
Guaranteed Loan, and Direct Loan  
Program; Proposed Rule**

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

RIN 0570-AA50

**Renewable Energy Systems and Energy Efficiency Improvements Grant, Guaranteed Loan, and Direct Loan Program****AGENCY:** Rural Business-Cooperative Service, USDA.**ACTION:** Proposed rule.

**SUMMARY:** Rural Business-Cooperative Service proposes to implement a program for making grants, loan guarantees, and direct loans to farmers and ranchers (agricultural producers) or rural small businesses to purchase renewable energy systems and make energy efficiency improvements. The Farm Security and Rural Investment Act of 2002 (2002 Act) established the Renewable Energy Systems and Energy Efficiency Improvements Program. This program will help farmers, ranchers, and rural small businesses to reduce energy costs and consumption.

**DATES:** Written comments on this proposed rule must be received on or before November 4, 2004 to be assured of consideration. The comment period for the information collection under the Paperwork Reduction Act of 1995 continues through November 4, 2004.

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

- *Agency Web Site:* <http://rdinit.usda.gov/regs/>. Follow instructions for submitting comments on the Web Site.
  - *E-Mail:* [comments@usda.gov](mailto:comments@usda.gov). Include the RIN No. 0570-0050 in the subject line of the message.
  - *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
  - *Mail:* Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue, SW., Washington, DC 20250-0742.
  - *Hand Delivery/Courier:* Submit written comments via Federal Express Mail or another courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street, SW., 7th Floor, Washington, DC 20024.
- All written comments will be available for public inspection during regular

working hours at 300 7th Street, SW., 7th Floor, address listed above.

**FOR FURTHER INFORMATION CONTACT:**

Georg A. Shultz, Special Advisor for Renewable Energy Policy and Programs, Office of the Deputy Administrator Business Programs, U.S. Department of Agriculture, Mail Stop 3220, 1400 Independence Ave., SW., Washington, DC 20250-3220, Telephone: (202) 720-2976.

**SUPPLEMENTARY INFORMATION:** The information presented in this preamble is organized as follows:

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**I. Background****A. Statutory Authority**

The Farm Security and Rural Investment Act of 2002 (2002 Act) established the Renewable Energy Systems and Energy Efficiency Improvements Program under Title IX,

Section 9006. The 2002 Act mandates that the Secretary of Agriculture create a program to make loans, loan guarantees, and grants to "a farmer, rancher, or rural small business" to purchase renewable energy systems and make energy efficiency improvements. The purpose of the program is to help agricultural producers and rural small businesses to reduce energy costs and consumption. The 2002 Act mandates the maximum percentage that the Agency will provide in funding for these projects. Grant funding is limited to 25 percent of the eligible project cost and will be made only to those who demonstrate financial need. Guaranteed loans and direct loans are each limited to 50 percent of the eligible project costs. Lastly, the Agency may fund up to 50 percent of the eligible cost for any combination of grants, guaranteed loans, and direct loans per project under this program.

In determining the amount of a grant, guaranteed loan, or direct loan for renewable energy systems and energy efficiency improvements, the 2002 Act requires the Agency to take into consideration, as applicable, the following factors:

1. The type of renewable energy system or energy efficiency improvement to be purchased;
2. The estimated quantity of energy to be generated by the renewable energy system or energy efficiency improvement;
3. The expected environmental benefits of the renewable energy system or energy efficiency improvement;
4. The extent to which the renewable energy system or energy efficiency improvement will be replicable;
5. The demonstrated amount of energy savings expected to be derived from this activity or project;
6. The estimated length of time it would take for the energy savings generated by the project to equal the cost of the activity or project; and
7. Other appropriate factors.

**B. Background Information**

Due to time constraints for implementing this program, the Agency decided to institute only the grant program for FY 2003. Therefore, a NOFA inviting applications to purchase renewable energy systems and make energy efficiency improvements under the grant program was published in the **Federal Register** on April 8, 2003 (68 FR 17009). Of the 147 applications for grant funds received, 114 were approved and funded under this program for FY 2003. For FY 2004, the Agency published a second NOFA (May 5, 2004; 69 FR 25234) for a grant program for

renewable energy systems and energy efficiency improvements. For FY 2005, the Agency is in the process of developing a rule for a complete grant, guaranteed loan, and direct loan program. This notice is the first formal step of this process.

In developing the proposed rule, the Agency relied on several main components. First, the rule needs to be consistent with the requirements specified in the 2002 Act. Thus, some of the proposed requirements are statutorily-based. Second, Rural Development is proposing to implement the grant and guaranteed loan program based on the requirements outlined in the NOFA published on April 8, 2003, including stakeholder comments. Third, in proposing the guaranteed loan program, the Agency is proposing requirements based on the experience of other loan programs (e.g., the Business and Industry Loan program) and the need to ensure that loan programs are based on sound financial principles.

Based on experience, the Agency is proposing to require applicants and borrowers as well as their proposed projects to meet certain eligibility requirements to ensure that the funds available under this program are disbursed to those who meet the target market in the 2002 Act. To assess the eligibility and viability of proposed projects, applicants will be required to provide certain information.

Because of limitations of available funds, the Agency is proposing criteria to score and rank eligible projects to determine those projects that are funded first. To make funds available to more agricultural producers and rural small businesses, the Agency is proposing limits to maximum funding levels. In addition, minimum funding levels are being proposed to help ensure that most projects that have beneficial aspects of energy production and energy savings in rural areas can be considered for assistance.

Finally, the Agency is proposing processing and servicing requirements, which are necessary for any grant and guaranteed loan program.

With regards to the direct loan program, the Agency has chosen not to promulgate a regulation for the direct loan program under section 9006 at this time because we believe the government needs to have options for dealing with change and innovation within the renewable energy industry. By allowing the Agency to tailor the direct program to specific needs that are not properly addressed by either the grant or guarantee gives the government some flexibility in dealing with the ever changing and evolving nature of the

renewable energy industry. As funding is provided for this purpose, the Agency will develop the appropriate rules, terms, conditions and criteria for the direct loan program that will address the specific direct loan needs for renewable energy at that time. Finally, the implementation of a direct loan program can require significant staffing and resources, which the Agency does not currently have. By implementing a direct loan program tailored to specific needs at a later time, the Agency will be in a better position to allocate the necessary staff and resources to implement a direct loan program. For these reasons, the Agency is not proposing a specific direct loan program at this time, but is instead identifying the process for developing a direct loan program and the information that would be included in the direct loan program.

### C. Request for Comments

The Agency is requesting comments on the overall program being proposed. The Agency is especially interested in comments on the following areas:

1. The rule sets a minimum funding amount of \$2,500. How would this minimum value affect the projects most likely to otherwise use this program?

2. The rule does not allow non-traditional lenders to participate in the program. Is this appropriate for renewable energy projects or would some non-traditional lenders be likely to lend funds for this type of activity if the rule did not prohibit their participation?

3. Are there ways to improve, streamline, or simplify the application process for the program? The Agency is particularly interested in the views of program applicants and other interested stakeholders. The Agency will consider comments based on its need to assess the eligibility and viability of proposed projects. Applicants and the Agency must meet all applicable laws, regulations and executive orders. The applicants must provide the Agency and other agencies with appropriate information so that all compliance issues can be addressed and competing applications can be evaluated in a fair and objective process. The Agency will balance the above criteria, where possible, with the need to establish information requirements commensurate with the scale and complexity of the proposed renewable energy system or energy efficiency improvement.

Comments are to be submitted as indicated in the **DATES** and **ADDRESSES** sections above. The Agency will consider all comments, although some may be addressed at a future date.

The Agency believes that a 30-day comment period, rather than a 60-day comment period, is sufficient for soliciting public comments on this proposed rulemaking. First, the stakeholders are already very familiar with the grant and guaranteed loan program being proposed. The Agency issued two Notices of Funds Availability (NOFAs) for grant programs under section 9006, one in fiscal year (FY) 2003 and one in FY 2004, and requested public comments on both NOFAs. In addition, the Agency's current Business and Industry (B&I) guaranteed loan program forms the basis of the proposed guaranteed loan program. Second, in developing the proposed program, the Agency considered all of the comments received on the NOFAs and used its experience with the NOFAs in developing the proposed rule. Third, the Agency hosted a national public stakeholders forum for constituents on December 3, 2002, which was simulcast nationwide over the Internet. At this forum, attendees expressed their views on the implementation of section 9006. There was significant participation with both oral and written comments, which were also considered in the development of the proposed rule. Finally, the grant program is identical to the latest NOFA and there are only a few differences being proposed between the section 9006 guaranteed loan program and the existing B&I guaranteed loan program. For these reasons, the Agency believes that 30 days is sufficient for the stakeholders to understand the proposed program and to provide comment on it. If additional time is required, stakeholders can always request an extension of the public comment period.

## II. General Criteria and Terms for Approval of Grants and Guaranteed Loans

There exist thousands of agricultural producers and rural small businesses engaged in meeting the needs of the nation's growing population. The potential contribution of this group toward meeting the national goal of conserving and reducing energy usage nationwide is great. In implementing this program, the Agency encourages agricultural producers and rural small businesses to utilize commercially available technologies.

### Terminology

Throughout this preamble, we use the term "applicant," "borrower," and "grantee" in describing the proposed grant and loan program. The term "applicant" refers to the entity seeking

a grant or loan. For the grant program, this entity is the agricultural producer or rural small business. For the direct loan program, this entity is the agricultural producer. For the guaranteed loan program, however, this entity is the lender. We use the term "borrower" when referring to the agricultural producer or rural small business that is seeking the guaranteed loan or to whom a loan has been made. We use the term "grantee," to refer to the agricultural producer or rural small business that has received a grant.

In summary, when the phrase "applicant or borrower" is used in the preamble, it refers to the agricultural producer or rural small business seeking the grant, guaranteed loan, or direct loan. When just the term "applicant" is used, it refers to the entity (agricultural producer, rural small business, or lender) submitting the application, as described in the above paragraph.

#### *A. Applicant and Applicant/Borrower Eligibility*

To be eligible to receive a grant or guaranteed loan, an applicant or borrower must meet each of the five criteria, as applicable, identified below. These criteria were selected because they are identified in Section 9006 of the 2002 Act.

1. To receive a grant or guaranteed loan, the applicant or borrower must be an agricultural producer (farmer or rancher) or a rural small business;
2. If the applicant or borrower is an individual, the applicant or borrower must be a citizen of the United States (U.S.) or reside in the U.S. after being legally admitted for permanent residence;
3. Entities must be at least 51 percent owned, directly or indirectly, by individuals who are either citizens of the U.S. or reside in the U.S. after being legally admitted for permanent residence;
4. If the applicant or borrower is applying as a rural small business, both the applicant's or borrower's business headquarters and the proposed project must be in a rural area; and
5. For grants only, the applicant must have demonstrated financial need.

Any applicant, borrower, or owner that has an outstanding Federal judgment, is delinquent in paying Federal income taxes, or is delinquent on a Federal debt is ineligible to receive a grant or guaranteed loan under this program. This condition is consistent with standard Agency practice for funding programs.

#### *B. Project Eligibility*

The proposed rule contains criteria to determine if an applicant's proposed project is eligible to receive funds or guarantees under the Renewable Energy Systems and Energy Efficiency Improvements Program. To be eligible, the proposed project is required to meet the following criteria, as applicable:

1. The project must be for the purchase of a renewable energy system or to make energy efficiency improvements;
2. The project must be for a replicable, pre-commercial or a replicable, commercially available technology;
3. The project must be technically feasible;
4. The project must be located in a rural area;
5. The applicant or borrower must be the owner of the system and control the operation and maintenance of the proposed project. However, a qualified third-party operator will be allowed to manage the operation and/or maintenance of the proposed project; and
6. All projects must be based on satisfactory sources of revenues in an amount sufficient to provide for the operation and maintenance of the system or project.

Projects that are still in the research and development stage are not eligible for funds under this program, because the 2002 Act requires projects to be "replicable" and the Agency does not believe projects that are in the research and development stage meet this statutory requirement. In addition, a project for which construction has been initiated will not be considered by the Agency because the necessary environmental assessment cannot be conducted in accordance with the National Environmental Protection Act.

The technical feasibility of each proposed project will be based on all of the information provided by the applicant and on other sources of information, such as recognized industry experts in the applicable technology field, as necessary. If the project is determined to be not technically feasible, the applicant will be notified in writing of this determination and the reasons therefore. The rule allows the applicant or borrower to appeal such determinations.

#### *C. Eligible Project Costs*

Funds may be used only for certain specified project costs, provided these costs are an integral and necessary part of the total project. Funds received under 7 CFR part 4280, subpart B, cannot be used for any other project costs. The eligible project costs are:

1. Post-application purchase and installation of equipment, except agricultural tillage equipment and vehicles. Vehicles are considered to be any powered mobile equipment, including but not limited to cars and tractors;

2. Post-application construction or project improvements, except residential;

3. Energy audits or assessments;
4. Permit fees;
5. Professional service fees, except for application preparation;

6. Feasibility studies;

7. Business plans;

8. Retrofitting;

9. Construction of a new facility only when the facility is used for the same purpose; is approximately the same size; and, based on the energy audit, will provide more energy savings than improving an existing facility. Only costs identified in the energy audit for energy efficiency projects are allowed;
10. Working capital (guaranteed loans only); and
11. Land acquisition (guaranteed loans only).

The Agency selected these items as eligible project costs because they are integral to the acquisition or construction of eligible projects and these items are necessary for the successful implementation and quality assurance of the project; and allowing these costs provides for support of actual purchase of a renewable energy system and energy efficiency improvements. The Agency is allowing working capital and land acquisition as an eligible project costs for guaranteed loans because the Agency wants to ensure that the relatively limited percentage of grant funds (25 percent for grants versus 50 percent for guaranteed loans) are used for the renewable energy system or energy efficiency improvement project itself.

#### *D. Project Funding*

1. *Funding Amounts.* The minimum level of funding available for a grant, guaranteed loan, or a combined grant and guaranteed loan is \$2,500. The Agency believes that including this minimum level of funding will allow more agricultural producers and rural small businesses to qualify and take advantage of this program. The Agency's goal in implementing this program is to distribute all of the available funds quickly and equitably to qualified applicants and borrowers.

To encourage wide participation and distribution of funds, the Agency has established levels of available funding for both funding programs. The following paragraphs discuss maximum

funding levels and specific details related to funding for grants and guaranteed loans, and percentages of eligible project costs available under each funding program.

i. *Grant Funding.* The maximum funding level for grants for renewable energy systems is \$500,000. The maximum funding level for grants for energy efficiency improvements is \$250,000. The maximum amount of grant assistance to one individual or entity is limited to \$750,000.

As required by the 2002 Act, the amount of grant funds made available to an applicant for an eligible project must not exceed 25 percent of eligible project costs. The remaining funds needed to complete the project must come from other sources. The applicant may use third-party, in-kind contributions as part of the remaining funds. Third-party, in-kind contributions, however, cannot exceed 10 percent of the matching funds provided by other sources.

ii. *Loan funding.* For guaranteed loans, the maximum funding level is \$10 million. If a more than \$10 million in loan guarantees is sought, then the loan should be sought under the Agency's B&I program.

The amount of guaranteed loan funds made available to an applicant or borrower for an eligible project will not exceed 50 percent of eligible project costs.

For guaranteed loans, the total amount of Agency loans to one borrower will be limited to no more than \$10 million. The percentage of the guarantee, which will be negotiated between the lender and the borrower, cannot exceed 85 percent for loans of \$600,000 or less; 80 percent for loans greater than \$600,000 but up to \$5 million; and 70 percent for loans greater than \$5 million but up to \$10 million.

c. *Combined Grant and Guaranteed Loan Funding.* As required by the 2002 Act, a combined grant and guaranteed loan under this program cannot exceed 50 percent of eligible project costs and the applicant or borrower is responsible for having other funding sources for the remaining funds. Eligible project costs will be based on costs identified for each type of funding being requested under a combination funding request.

#### 2. Interest rates on loans.

i. *Guaranteed loans.* The interest rate for a guaranteed loan will be negotiated between the lender and the borrower and may be fixed, variable, or a combination of fixed and variable as long as it is a legal rate. If a variable interest rate is used, it must be tied to a base rate agreed to by the lender and

the borrower and may be varied no more than once per quarter.

The interest rate for a guaranteed loan is to be based on indices, such as money market indices, that are published in a recognized banking industry source. As in the Agency's B&I program, the interest rate can not be more than that rate customarily charged borrowers in similar circumstances in the ordinary course of business and is subject to Agency review and approval.

ii. *Combination Funding.* The interest rate for the loan portion of a combined funding request will be determined based on the procedures specified for guaranteed loans.

3. *Terms of Loan.* This rule sets maximum loan term limits for guaranteed loans and also applies when they are part of a combination funding request. These term limits vary according to the type of item and will be utilized only when the loan cannot reasonably be repaid over a shorter term. The maximum loan terms being proposed are established loan terms used under the Agency's B&I program and are familiar to commercial lenders. The maximum loan term limits in this rule are as follows:

- i. For real estate, 30 years.
- ii. For machinery and equipment, 15 years, or the useful life, whichever is less.
- iii. For repayment for combined loans on real estate and equipment, 20 years.
- iv. For working capital, 7 years.

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.

4. *Guaranteed Loan Fees.* This rule sets the maximum guarantee fee at 1 percent and the maximum annual renewal fee at 0.5 percent. The Agency considered establishing a higher guarantee fee (2 percent), which would help leverage funds. However, the Agency believes that the lower fee is more appropriate because it provides a financial incentive, relative to other programs, to agricultural producers and rural small businesses to participate in this program. The maximum annual renewal fee is based on Small Business Administration (SBA) programs and is adopted for this program to provide additional funds to supplement the available funds appropriate to the program, thereby allowing the program to reach more potential applicants. The Agency will publish each year in the **Federal Register** the fee levels in effect for that year.

#### E. Appeals

Consistent with standard Agency policy, 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.

#### F. Insurance

This rule will require the applicant or borrower to carry certain types of insurance. The insurance requirements are consistent with other Rural Development programs and are applicable to this program. All insurance must be maintained for the life of the grant or loan, unless such requirement is waived or modified by the Agency.

#### G. Construction Planning and Performing Development

Consistent with Agency policies, construction planning and performing development requirements of 7 CFR part 1924, subpart A, will be used for grants.

Under the Guaranteed Loan program, lenders will be required to ensure that all project facilities are designed utilizing accepted architectural and engineering practices, conform to applicable Federal, state, and local codes and requirements, and meet the requirements of this regulation.

#### H. Laws That Contain Other Requirements

There are several laws that applicants and borrowers must comply with under this program. These are:

- Executive Order 11246, "Equal Employment Opportunity;"
- Americans with Disabilities Act of 1990;
- Title VI of the Civil Rights Act of 1964 (grants only);
- Section 504 of the Rehabilitation Act of 1973 (grants only);
- Equal Credit Opportunity Act (Title V of Pub. L. 90-321, as amended) (guaranteed loans only);
- 7 CFR part 1940, subpart G, which requires an environmental impact analysis; and
- Executive Order 12898, "Environmental Justice," under which the Agency will conduct a Civil Rights Impact Analysis in regard to environmental justice.

#### III. Application and Documentation Requirements for Grants and Guaranteed Loans

The Agency is requiring the minimum amount of information that it needs to evaluate an applicant's or borrower's

eligibility, evaluate the proposed project's eligibility, evaluate the applications and establish selection priorities among competing projects, ensure compliance with applicable regulations, and effectively monitor the applicant's or borrower's activities after the loan is made or the grant is awarded. The following paragraphs describe the Agency's proposed application and documentation requirements when applying for a grant or guaranteed loan.

In applying for grant or guaranteed loan funds under this program, the applicant will be required to submit an application; submit a series of forms, certifications, and agreements; perform a feasibility study for renewable energy systems projects of more than \$100,000; and prepare technical requirements reports.

#### A. Application

Separate applications must be submitted for renewable energy system and for energy efficiency improvement projects from applicants applying for both. Only one application per each type of project may be submitted. Applicants applying for a combined grant and guaranteed loan will submit a separate application for each grant and guaranteed loan, with at least one set of documentation. The separate applications must be submitted simultaneously.

Applications will consist of:

- A table of contents;
- A one page summary of the project;
- A description of applicant/borrower eligibility and project eligibility;
- A description of agricultural producer's/rural small business' business, farm, or ranch operation and ownership;
- Management information;
- Financial information including an explanation of financial need (grants only), balance sheets and income statements or equivalent, information to allow assessment of annual receipts (rural small businesses only), historical financial statements, pro forma balances sheets, and gross market value of agricultural products (agricultural producers only); and
- A Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number (grants only).

For renewable energy systems, the applicant must also indicate whether the technology to be employed is commercially or pre-commercially available and is replicable, the information to support this position, and a description of the availability of materials, labor, and equipment for the facility. Also required is information on the demand for the product and/or

service; who will buy the product and/or service, identification of the supply (past, present, and future) of the product and/or service; identification of competitors; and a description how the business will be able to sell enough of its product/service to be profitable given the trends in demand and supply.

The Agency will then evaluate applications to determine if the applicant or borrower is eligible and if the project is eligible to receive funds and to score each application to assist in determining those projects that are funded first.

#### B. Forms, Certifications, and Agreements

Applicants must submit a series of forms, certifications, and agreements with each application. These forms, certifications, and agreements are necessary for the Agency to evaluate applications and to administer this program. Some of these are applicable to both funding programs. Applicants applying for a combined grant and guaranteed loan will be required to submit all applicable forms for both types of funding.

Most of the forms being used for this program have been used in other, similar programs. Rather than develop new forms, which would be very time consuming, the Agency is amending these existing forms. For example, Form 4279-4, "Lender's Agreement," would be amended to note that Section III, Item A.2, is only applicable to the Business and Industry program.

1. *Grants.* For grants, an applicant will be required to submit the following:

- i. Form SF-424, "Application for Federal Assistance."
- ii. Form SF-424C, "Budget Information—Construction Programs."
- iii. Form SF-424D, "Assurances—Construction Programs."
- iv. AD-1049, "Certification Regarding Drug-Free Workplace Requirements (Grants)."
- v. AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -Lower Tiered Covered Transactions."
- vi. A copy of a bank statement or a copy of the commitment letter from the funding source.
- vii. Exhibit A-1 of RD Instruction 1940-Q, "Certification for Contracts, Grants and Loans," if the grant exceeds \$100,000 (or Exhibit A-2 of RD Instruction 1940-Q, "Statement for Loan Guarantees," if the guaranteed loan exceeds \$150,000).
- viii. Form SF-LLL, "Disclosure of Lobbying Activities."
- ix. AD-1047, "Certification Regarding Debarment, Suspension, and Other

Responsibility Matters—Primary Covered Transactions."

x. Form RD 400-1, "Equal Opportunity Agreement."

xi. Form RD 400-4, "Assurance Agreement."

xii. Where applicable, a copy of a letter of intent to purchase power, a power purchase agreement, a copy of a letter of intent for an interconnection agreement, or an interconnection agreement will be required from your utility company or other purchaser for renewable energy systems.

xiii. Where applicable, intergovernmental consultation comments in accordance with Executive Order 12372.

xiv. Certification indicating whether or not there is a known relationship or association with an Agency employee.

xv. An environmental impact analysis prepared in accordance with 7 CFR part 1940, subpart G, using Form RD 1940-20, "Request for Environmental Information."

2. *Guaranteed loans.* For guaranteed loans, an applicant will be required to submit the items described above in paragraphs B.1.vii through xv as well as the following items:

- i. Form 4279-1, "Application for Loan Guarantee."
- ii. A personal credit report for the borrower, a proprietor (owner), and anyone owning 20 percent or more interest in the borrower's business from a credit reporting company acceptable to the Agency.
- iii. 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.
- iv. Lender's complete comprehensive written analysis.
- v. Commercial credit reports on the borrower and any parent, affiliate, and subsidiary firms.
- vi. Current personal and corporate financial statements of any guarantors.
- vii. A proposed Loan Agreement or a sample Loan Agreement with an attached list of the proposed Loan Agreement provisions.
- viii. 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, and there is reasonable assurance of repayment ability based on the borrower's history, projections and equity, and the collateral to be obtained.

### C. Studies and Reports

1. *Feasibility Study for Renewable Energy Systems.* Because of factors of cost and complexity for renewable energy system projects of more than \$100,000, a project-specific feasibility study prepared by a qualified independent consultant will be required. The feasibility study will have to include an analysis of the market, financial, economic, technical, and management feasibility of the proposed project. The feasibility study will also have to include an opinion and a recommendation by the independent consultant. Applicants for renewable energy system projects of \$100,000 or less and for all energy efficiency improvement projects will not be required to conduct a feasibility study.

2. *Technical Requirements Reports.* This rule contains technical requirements for renewable energy systems and energy efficiency improvement projects. The rule identifies the following project technology categories:

- Biomass, bioenergy.
- Biomass, digesters.
- Geothermal, electric.
- Geothermal, direct use.
- Hydrogen.
- Solar, small.
- Solar, large.
- Wind, small.
- Wind, large.
- Energy efficiency improvements.

The purpose of these technical requirements reports is to ensure that the renewable energy system or energy efficiency improvement operates or performs as expected over its design life in a reliable and cost effective manner. To this end, the applicant must provide information on project design, procurement, startup, operation, and maintenance.

The technical requirements vary for each different system and project. In general, smaller projects will require less information than larger projects, projects using mature technologies will require less information than pre-commercial technologies or technologies with limited commercial operational history; projects using pre-engineered systems or kits will require less information than projects that require system design engineering; and systems or improvements using design-build project delivery methods where the supplier assumes all project delivery risks will require less information than those projects utilizing design-bid-construction methods where the risks of project delivery fall on the applicant or borrower. Small projects using pre-engineered kits or appliances utilizing a

mature technology with significant commercial operational history will require the least information.

The type of information to be provided includes the qualifications of the project team, agreements and permits, resource assessment, preliminary design and engineering, project development schedules, economic/feasibility modeling, equipment procurement, equipment installation, operations and maintenance, and project decommissioning. Energy efficiency improvement projects of more than \$100,000 would be required to conduct an energy audit. The specific inputs for each of the ten technologies are identified in the proposed rule. The Agency allows for the use of an abbreviated set of requirements for small projects using a pre-engineered kits or complete integrated appliances utilizing a mature technology.

Projects costing more than \$100,000 will be required to employ the services of a professional engineer (PE). The applicant or borrower may be required to use the services of a PE for projects of \$100,000 or less, depending on the level of engineering required for the specific project or if necessary to ensure public safety.

To facilitate the review of proposed projects, all technical information provided will be required to follow a specific format, which is set forth in § 4280.111(d). However, supporting information may be submitted in other formats as determined by the applicant. Although not required in the proposed rule, the Agency recommends that the narrative portion of the technical requirements portion of the application for small solar and small wind projects be less than 10 pages. For all proposed projects, the applicant will be required to submit the original technical requirements report plus one copy to the State Rural Development Office.

### IV. Evaluation of Grant and Guaranteed Loan Applications

The Agency will evaluate each application and make a determination as to whether the applicant or borrower is eligible, whether the proposed project is eligible, and whether the proposed grant or guaranteed loan or combined funding request complies with all applicable statutes and regulations. The Agency will also evaluate the technical feasibility of each grant, while the lender will make this evaluation for guaranteed loans. The evaluation will be based on the information provided by the applicant and on other sources of information, such as recognized

industry experts in the applicable technology field, as necessary.

If the Agency determines that either the applicant or borrower or the project is ineligible, the Agency will notify the applicant in writing of the decision, reasons therefore, and any appeal rights, and no further evaluation will take place.

If the Agency determines that the application is incomplete, the Agency will return it to the applicant to provide the applicant the opportunity to resubmit the application. The Agency will identify those parts of the application that are incomplete. Upon receipt of a complete application, the Agency will complete its evaluation of the application and forward a copy of the technical requirements to outside qualified industry experts for review.

The Agency will score each application in order to prioritize each proposed project. The evaluation criteria that the Agency will use to score renewable energy systems and energy efficiency improvement projects are discussed in Sections IV.A and IV.B, respectively. The rationale for the selection criteria and their point values is presented in Sections IV.C.1 and IV.C.2, respectively.

#### A. Criteria for Applications for Renewable Energy Systems

1. *Quantity of Energy Produced.* Points are earned for the amount of energy replaced or the amount of energy generated, not both.

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 75 percent, 20 points will be awarded; greater than 50 percent, but equal to or less than 75 percent, 15 points will be awarded; or greater than 25 percent, but equal to or less than 50 percent, 10 points will be awarded. The energy replacement should be determined by dividing the estimated quantity of energy to be generated by at least the past 12 months' energy profile of the agricultural producer or rural small business or anticipated energy use.

ii. *Energy generation.* If the proposed renewable energy system is intended primarily for production of energy for sale, 20 points will be awarded.

2. *Environmental Benefits.* If the purpose of the proposed renewable energy system is to upgrade an existing facility or construct a new facility required to meet applicable health or sanitary standards, 10 points will be awarded. The applicant must supply appropriate documentation.

3. *Commercial Availability.* If the renewable energy system is currently commercially available and replicable, an additional 10 points will be awarded.

4. *Cost Effectiveness.* If the proposed renewable energy system will return the cost of the investment in 5 years or less, 25 points will be awarded; up to 10 years, 20 points will be awarded; up to 15 years, 15 points will be awarded; or up to 20 years, 10 points will be awarded. The estimated return on investment will be determined by dividing the total project cost by the estimated projected net annual income and/or energy savings of the renewable energy system.

5. *Matching Funds (for Grants only).* If the agricultural producer or rural small business has provided eligible matching funds of over 90 percent, 15 points will be awarded; 85–90 percent, 10 points will be awarded; or at least 80 and up to but not including 85 percent, 5 points will be awarded.

6. *Management.* If the renewable energy system will be monitored and managed by a qualified third-party operator, an additional 10 points will be awarded.

7. *Small Agricultural Producer.* If the applicant (for grants) or borrower (for guaranteed loans) is an agricultural producer producing agricultural products with a gross market value of less than \$1 million in the preceding year, an additional 10 points will be awarded.

8. *Loan Rate (Guaranteed loans only).* If the rate of the loan is below the Prime Rate (as published in The Wall Street Journal) plus 1.75 percent, 5 points will be awarded. If the rate of the loan is below the Prime Rate (as published in The Wall Street Journal) plus 1 percent, an additional 5 points will be awarded.

#### *B. Criteria for Applications for Energy Efficiency Improvements*

1. *Energy savings.* If the estimated energy expected to be saved, as determined by an energy assessment or audit, will be 35 percent or greater, 20 points will be awarded; 30 and up to but not including 35 percent, 15 points will be awarded; 25 and up to but not including 30 percent, 10 points will be awarded; or 20 and up to but not including 25 percent, 5 points will be awarded.

2. *Cost Effectiveness.* If the proposed energy efficiency improvements will return the cost of the investment in 2 years or less, 25 points will be awarded; greater than 2 and up to and including 5 years, 20 points will be awarded; greater than 5 and up to and including 9 years, 15 points will be awarded; or

greater than 9 and up to and including 11 years, 10 points will be awarded.

3. *Matching Funds (for Grants only).* If the agricultural producer or rural small business has provided eligible matching funds of over 90 percent, 15 points will be awarded; 85–90 percent, 10 points will be awarded; or 80 and up to but not including 85 percent, 5 points will be awarded.

4. *Small Agricultural Producer.* If the applicant (for grants) or borrower (for guaranteed loans) is an agricultural producer producing agricultural products with a gross market value of less than \$1 million in the preceding year, an additional 10 points will be awarded.

5. *Loan Rate (Guaranteed loans only).* If the rate of the loan is below the Prime Rate (as published in The Wall Street Journal) plus 1.75 percent, 5 points will be awarded. If the rate of the loan is below the Prime Rate (as published in The Wall Street Journal) plus 1 percent, an additional 5 points will be awarded.

#### *C. Selection of Evaluation Criteria and Their Point Values*

1. *Selection of Evaluation Criteria.* The 2002 Act requires the Agency to consider the following factors in determining the amount of a grant or loan to be awarded or approved under this program:

- i. The type of renewable energy systems to be purchased;
- ii. The estimated quantity of energy to be generated by the renewable energy system;
- iii. The expected environmental benefits of the renewable energy system;
- iv. The extent to which the renewable energy system is replicable.
- v. The amount of energy savings expected to be derived from the activity, as determined by an energy audit comparable to an energy audit conducted under section 9004;
- vi. The estimated length of time it would take for the energy savings generated by the activity to equal the cost of the activity; and
- vii. Other factors as appropriate.

The Agency has incorporated Items C.1.ii through vi into the evaluation criteria for renewable energy systems and Items C.1.v and vi into the evaluation criteria for energy efficiency improvements (Items C.1.i through iv are not applicable to energy efficiency improvements). The Agency did not use Item C.1.i, the type of renewable energy system, as an evaluation criteria because the rule specifies the types of renewable energy systems that are approvable and no reason was found to “favor” one technology over another.

The Agency identified up to four additional factors that were considered appropriate. These factors, the programs to which they are applicable, and the reasons for their selection, are:

- Matching funds, which is applicable to both renewable energy systems and energy efficiency improvements. One of the Agency’s goals for this program is to fund as many projects as possible. To enable more projects to be funded, the Agency elected to include as a criterion the amount of funds being requested. Those projects requesting less assistance will be awarded more points than those projects requesting more assistance. As there are no matching funds associated with guaranteed loans, this criterion is applicable only to grants.

- Management, which is applicable to renewable energy systems only. One of the Agency’s goals for this program is to fund projects that have a high likelihood of success. One key component to a successful project is the quality of the management team. Therefore, the Agency believes it appropriate to include management as an evaluation criterion for renewable energy projects. This criterion is applicable for grants and guaranteed loans.

- Small agricultural producers, which is applicable to renewable energy systems and energy efficiency improvements. The 2002 Act specifies the target market as rural small businesses and agricultural producers, but does not limit the size associated with agricultural producers. Another of the Agency’s goals for this program is to help ensure additional income to small agricultural producers, thereby assisting in their economic sustainability. In order to help meet this goal, the Agency has elected to include as an evaluation criterion the size of the agricultural producer. This criterion is applicable to grants and guaranteed loans.

- Loan rate, which is only appropriate for guaranteed loans, because there are no loan rates associated with grants. The Agency is adopting loan rate as a criterion because it is consistent with Agency procedures under the B&I program and are applicable to this program.

2. *Evaluation Criteria Point Values.* The Agency has assigned point values or point value ranges to each of the criterion identified above. Generally, the Agency considers all of the evaluation criteria to be of similar value for scoring applications and, therefore, most have similar point values. It is possible, and likely, that many applications will receive no points for some of the criteria because the application does not meet the conditions for being awarded points.



For example, a guaranteed loan with an interest at the Prime Rate plus 2 percent would receive no points for the Loan Rate criterion.

The criterion that the Agency believes should have the highest potential weight is cost effectiveness, because this criterion evaluates the overall return on investment for each project. Point values for this criterion range from 10 to 25.

After this criterion, the Agency believes the criterion for the amount of energy generated or saved is the second most important criterion because it reflects the basic goals of the program's projects—to create new renewable energy systems and to improve energy efficiency. Point values for this criterion range from 10 to 20 for energy replacement and 20 points for energy generation for renewable energy systems, and from 5 to 20 points for energy savings for energy improvement projects.

The remaining criteria all have point values of about 10 points, although some have the potential to be slightly higher (e.g., 15 points under matching funds for those seeking the lowest percentage assistance) or lower (e.g., 5 points under loan rate for higher interest rates).

## V. Processing and Servicing Grants and Guaranteed Loans

### A. Processing and Servicing Grants

The Agency will prepare a Letter of Conditions, which establishes conditions that must be understood and agreed to by the applicant before the Agency will obligate any funds. The applicant must sign the Letter of Intent to Meet Conditions, if they accept the conditions of the grant. The grantee must sign a Grant Agreement (Form RD 4280-2) and abide by all requirements contained in the Grant Agreement as well as other requirements specified.

Grants will be serviced in accordance with 7 CFR part 1951, subpart E and the Grant Agreement. The Agency is using 7 CFR part 1951, subpart E, for this program because it is the Agency's regulations for servicing Agency grant programs.

### B. Processing and Servicing Guaranteed Loans

Under the proposed program, guaranteed loans will be processed and serviced in essentially the same manner as guaranteed loans are processed and serviced under the Agency's B&I program. The Agency determined that the requirements in the B&I program for processing and servicing guaranteed loans under the renewable energy

systems and energy efficiency improvements program are applicable and therefore have essentially adopted the B&I requirements. Two exceptions to note are:

- Under the proposed program, the Agency is not utilizing the "Certified Lender" aspect of the B&I program because the Agency believes that there are few, if any, lenders who would pre-qualify as "certified" lenders for making guaranteed loans for renewable energy systems and energy efficiency improvements.

- Under the proposed program, the Agency is only allowing a single note system and is not incorporating the multi-note system from the B&I program. The Agency is doing this because the size of the loans associated with the renewable energy systems and energy efficiency improvements program are likely to be small enough that there is minimal benefit to allowing multi-notes and the program becomes simpler to implement without multi-notes.

The following paragraphs discuss the processing and servicing requirements of the guaranteed loan program.

1. *Eligible Lenders.* Lenders eligible to make guaranteed loans under this program are the "traditional" lenders, as identified under the B&I guaranteed loan program. Such lenders include, but are not limited to: Federal or State chartered banks, Farm Credit Banks, other Farm Credit System institutions with direct lending authority, Banks for Cooperatives, or Savings and Loan Associations. These lenders have a broad range of experience and expertise to make, secure, service, and collect loans. In addition, these lenders allow the Agency to implement this program quickly because of the similarities between this program and the B&I program.

2. *Lender's Functions and Responsibilities.* As under the B&I program, lenders are responsible for properly implementing the guaranteed loan program, making sound loans, and conducting all servicing in a reasonable and prudent manner, in accordance with Agency regulations and approvals, as required. Lender's responsibilities in fulfilling this requirement include, but are not limited to:

- i. Processing applications;
- ii. Developing and maintaining loan files. Both the lender and borrower must permit representatives of the Agency to inspect and make copies of any records of the lender or borrower pertaining to the loan;
- iii. Obtaining valid evidence of debt and collateral. Complete, self, contained appraisals are required for loans of

\$600,000 or more. Complete summary appraisals are required for loans less than \$600,000. Unconditional personal and corporate guarantees for those owning or having a beneficial interest greater than 20 percent of the borrower will be required where legally permissible;

- iv. Supervising and monitoring project construction and ensuring all projects are designed according to accepted practices;

- v. Distributing loan funds;

- vi. Conducting credit evaluations. For each proposed project, lenders will be required to conduct a credit analysis in order to determine credit quality of the borrower. Elements of credit quality to be addressed include adequacy of equity, cash flow, collateral, history, management, and the current status of the industry for which credit is to be extended. In determining the adequacy of equity, the lender must ensure that, for loans over \$600,000, evidence of cash equity injection in the project of not less than 25 percent of eligible project costs is demonstrated and that, for loans of \$600,000 or less, evidence of cash equity injection in the project of not less than 15 percent of eligible project costs is demonstrated;

- vii. Ensuring that borrowers furnish all required environmental information and reporting any environmental issues to the Agency; and

- viii. Closing loans. 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 to the Agency the lender's certifications (as required by § 4280.146), an executed Form 4279-4, "Lender's Agreement," an executed Form RD 1980-19, "Guaranteed Loan Closing Report," and appropriate guarantee fee, copies of legal loan documents, and disbursement plan if working capital is a purpose of the project. Note that, if a valid Lender's Agreement already exists, the lender will not be required to execute a new Lender's Agreement with each loan guarantee.

3. *Loan Note Guarantee.* A loan guarantee will be evidenced by Form 4279-5, "Loan Note Guarantee," which is prepared and issued by the Agency. The entire loan must be evidenced by one note, and the Agency will issue only one Loan Note Guarantee. The lender may assign all or part of the guaranteed portion of the loan to one or more holders.

The Agency will not issue the Loan Note Guarantee until the lender certifies certain conditions have been met (e.g., all required insurance is in effect, the loan has been properly closed). If the

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

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.

Upon approval of a loan guarantee, the Agency will issue a Conditional Commitment, which contains the conditions under which a Loan Note Guarantee will be issued. If certain conditions cannot be met, the lender and/or borrower may propose alternate conditions and the Agency may negotiate with the lender and/or borrower regarding any proposed changes to the Conditional Commitment.

4. *Additional actions.* This rule also provides procedures for actions that may be made in connection to a guaranteed loan. Actions covered include:

i. *Sale or assignment.* A lender may sell all or part of the guaranteed portion of the loan on the secondary market or retain the entire loan, provided the loan is not in default. Sale or assignment cannot be made to the borrower or members of the borrower's immediate families, officers, directors, stockholders, other owners, or a parent, subsidiary or affiliate.

ii. *Participation.* The lender may obtain participation in the loan under its normal operating procedures. However, the lender must retain title to the note and retain its interest in the collateral.

iii. *Minimum retention.* The lender must 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. Sale of this part of the unguaranteed portion, while allowable, will not be guaranteed.

iv. *Repurchase from holder.* A holder may submit a written demand for repurchase of the unpaid guaranteed portion of the loan to the lender or to the Agency under certain conditions. The lender has the option to repurchase. The lender must notify, in writing, the holder and the Agency of its decision. If the lender declines, the Agency will purchase from the holder the unpaid

principal balance of the guaranteed portion according to the conditions set forth in the regulations and instruments.

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 has 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.

Alternatively to the holder requesting repurchase, if the lender determines that 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 according to the requirements of the regulations and instruments.

v. *Transfer of lenders.* The Agency may approve the substitution of a new eligible lender provided 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. The Agency will analyze the new lender's servicing capability, eligibility, and experience prior approving the substitution.

5. *Servicing guaranteed loans.* The lender is responsible for servicing the entire loan and for taking all servicing actions that a reasonable, prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The lender must remain mortgagee and secured party of record. The entire loan must be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan.

i. *Servicing.* Servicing responsibilities include, but are 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. Lenders will be responsible for:

A. Submitting semiannual reports on the outstanding principal and interest balance on each guaranteed loan using Form RD 1980-41, "Guaranteed Loan Status Report."

B. Notifying the Agency, in writing, of the loan's classification or rating under its regulatory standards.

C. Attending meetings 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; and

D. Submitting annual financial statements and 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.

The lender will not be allowed to make additional loans to the borrower without first obtaining the prior written approval of the Agency, even though such loans will not be guaranteed.

ii. *Changes to the loan.* This rule allows changes in the interest rate, the release of collateral, subordination of lien position, alterations of the loan instrument, and loan transfer and assumption.

A. Under certain circumstances, interest rates may be temporarily or permanently reduced or increased, and fixed rates can be changed to variable rates.

B. All releases of collateral with a value exceeding \$100,000 must be supported by a current appraisal. The remaining collateral must be sufficient to provide for repayment of the Agency's guaranteed loan. Sale or release of collateral must be based on an arm's-length transaction as specified in the regulations and instruments.

C. The Agency will only consider a parity or junior lien position. After the subordination, collateral must be adequate to secure the loan.

D. Agency approval is required before the lender can alter or approve changes to any loan instrument.

E. All transfers and assumptions must be approved by the Agency, in writing, and must be to borrowers eligible under this program and any new loan terms must be within the terms authorized by § 4280.125. Other transfer and assumption conditions include: loan terms can only be changed with Agency approval and concurrence of any holder and the transferor (including guarantors); loans to provide additional funds in connection with a transfer and assumption will be considered as a new loan application under § 4280.128; the lender must make a complete credit analysis, which is subject to Agency review and approval; and document and ensure that the transaction can be and is properly and legally transferred, and the conveyance instruments will be and are filed, registered, or recorded as appropriate.

iii. *Other servicing requirements.* This rule also contains requirements for:

A. *Substitution of Lender.* Agency written approval is required. The Agency will not pay any loss or share

in any costs with a new lender unless a relationship is established through a substitution of lender that has been approved by the Agency. The proposed substitute lender must be an eligible lender under this program, must be able to service the loan in accordance with the original loan documents, and must agree in writing to acquire and must acquire title to the unguaranteed portion of the loan held by the original lender and to assume all original loan requirements, including liabilities and servicing responsibilities.

**B. Default by Borrower.** This rule outlines options a borrower can use to resolve a default. These include, but are not limited to, deferment of principal, reamortization and rescheduling, and liquidation.

**C. Protective Advances.** If a borrower cannot meet its obligations, the lender will be required to make protective advances for the purpose of preserving and protecting the collateral as required in the regulations and instruments. Protective advances, however, cannot be made in lieu of additional loans.

**D. Liquidation.** Liquidation of the loan may be considered by the lender under certain circumstances and must be concurred with by the Agency. Conditions and requirements associated with many aspects of liquidation are specified in the regulations and instruments, including, but not limited to, those for the decision to liquidate, liquidation plans, accounting and reports, abandonment of collateral, and settlements. The procedures and requirements are the same as those associated with the B&I guaranteed loan program.

**E. Bankruptcy.** The lender will be required to protect the guaranteed loan and all collateral securing the loan in bankruptcy proceedings. This rule specifies procedures to be followed in reorganization proceedings and in liquidation proceeding covering such items, as applicable, as estimated loss, interest loss, and final loss payments; payment application, overpayments; and protective advances.

**F. Requirements After Project Construction.** Once the project has been constructed, the lender must provide the Agency periodic reports from the borrower. For renewable energy systems, this report will be required beginning the first full calendar year following the year in which project

construction was completed and continuing for 3 full years. Information in this report will include the actual amount of energy produced in BTUs, kilowatts, or similar energy equivalents; if applicable, documentation that identified health and/or sanitation problem has been solved; the annual income and/or energy savings of the renewable energy system; a summary of the cost of operating and maintaining the facility; a description of any maintenance or operational problems associated with the facility; and recommendations for development of future similar projects.

For energy efficiency improvement projects, this report will be required beginning the first full calendar year following the year in which project construction was completed and continuing for 2 full years. This report will specify the actual amount of energy saved due to the energy efficiency improvements.

**G. Replacement of Documents.** The Agency may issue a replacement Loan Note Guarantee or Assignment Guarantee Agreement, which has been lost, stolen, destroyed, mutilated, or defaced, to the lender or holder upon receipt of an acceptable certificate of loss and an indemnity bond. This rule identifies responsibilities for replacing documents and the information required for their replacement.

#### **C. Processing and Servicing Combined Funding**

Where the Agency approves a combined funding request, the grant portion will be processed and serviced according to the procedures described in paragraph A for grants. The guaranteed loan portion will be processed and serviced according to the procedures described in paragraph B for guaranteed loans.

### **VI. Economic Analysis**

To support the development of this rule, a benefit-cost analysis was performed. In addition, an assessment of the potential impacts on small businesses was made. The following paragraphs summarize the benefit-cost analysis that was performed and the results. This summary is then followed by a brief discussion of the benefit-cost analysis as it applies to small businesses. Because this rule is not an economically significant rule under

Executive Order 12866, the economic analysis conducted by USDA in support of this rule does not necessarily conform to OMB Circular A-4, Regulatory Analysis.

#### **A. Benefit-Cost Analysis**

1. *Scope of the Analysis.* This analysis looks at the social benefits and costs from the implementation of the proposed rule. The social benefits examined are:

i. The value of the energy produced or saved, including green tag values. "Green tag" refers to the positive environmental attributes of renewable energy compared to "dirtier" generation power sources. The green tag value refers to the additional amount an electricity service provider will pay to "green" their energy supply or to the additional amount a retail customer is willing to pay to purchase "green" power.

ii. The amount of carbon emissions reduced as the result of electricity generation being displaced or reduced.

The social costs examined are the costs of participating in the proposed program and the amount of USDA funds used in the program.

Other effects examined included:

i. The number of agricultural producers and rural small businesses that are served by the program.

ii. The number of jobs created.

iii. The amount of electricity generated or saved (energy cost savings).

iv. The amount of energy displaced (e.g., the number of barrels of oil no longer needed).

2. *Scenarios Analyzed.* The analysis examines a baseline case and several policy alternatives. In addition, the analysis varied several of the parameters to assess the sensitivity of the results. The basic inputs into the analysis are:

i. The total amount of program funding in FYs 2003 through 2007;

ii. The amount of program funding obligated for grants, guaranteed loans, and direct loans;

iii. The amount of program funding for renewable energy projects and for energy efficiency improvements;

iv. The subsidy rate;

v. The discount rate; and

vi. The useful life of projects.

#### **3. Results—Baseline Case**

Table 1 summarizes the social benefits and costs of the proposed rule.

TABLE 1.—SUMMARY OF SOCIAL BENEFITS AND COSTS BY FY FOR BASELINE CASE  
[Million dollars]

Item	FY				
	2003	2004	2005	2006	2007
Social Costs:					
Participation .....	2.4	2.4	2.4	2.4	2.4
USDA Funds .....	19.8	15.7	20.0	20.0	20.0
Social Benefits:					
Green Tag Value .....	1.2	3.5	6.8	6.9	7.1
Carbon Emission Reduction (million tons per year) .....	0.055	0.22	0.44	0.44	0.44

As seen in Table 1, the annual estimated social cost (in year 2000 dollars) for each of the five FYs ranges from \$18 to \$22.4 million. In return, the annual estimated social benefits (in year 2000 dollars) of the green tag values for each of the five FYs ranges from \$1 million to \$7 million, while carbon emission reductions range from 55,000

tons in FY 2003 up to 440,000 tons in the last three FYs.

In addition to the social benefits, the proposed program is also projected to provide other benefits, as noted earlier. These other benefits are summarized in Table 2 for each of the five FYs. Once the program is fully implemented, approximately 300 agricultural

producers and rural small businesses are estimated to participate in the program. The projects that these participants would implement are estimated to create approximately 1,800 jobs per year, provide energy cost savings up to \$131 million in FY 2007, and save approximately 3 million barrels of oil each year.

TABLE 2.—OTHER BENEFITS—BASELINE CASE

Item	Units	FY				
		2003	2004	2005	2006	2007
Agricultural producers and rural small businesses served.	Number .....	113	238	300	300	300
Jobs Created .....	Number of full time equivalents .....	243	887	1,770	1,830	1,890
Energy Cost Savings .....	Million dollars .....	8.4	35.6	78.4	108.6	131.7
Energy Displaced .....	Million barrels .....	0.5	1.7	3.3	3.1	3.1

4. Results—Other Scenarios. As noted earlier, several alternative policy scenarios and sensitivity analysis scenarios were examined to evaluate the effect of variations in several of the parameters. The following paragraphs summarize the effects of three of these other scenarios on green tag values. For more details, please refer to the complete analysis document.

i. Grants Only. Under this alternative policy scenario, the Agency would only provide grants in FY 2004 through FY 2007; no guaranteed or direct loans would be made. The effect under this scenario is estimated to be a reduction in green tag benefits of over 75 percent for both the five year period and the useful life of the projects.

ii. Change in Subsidy Rate. A 1 percent drop in the subsidy rate (from 5.18 percent to 4.18 percent) in FY 2005 through FY 2007 is estimated to increase green tag benefits by over 30 percent. On the other hand, a 1 percent increase in the subsidy rate (to 6.18 percent) is estimated to result in a 10 percent decrease in green tag benefits.

iii. Change in Discount Rate. A decrease in the discount rate from 7 percent to 3 percent increases the present value of the green tag benefits

by about 16 percent over the five year period and by over 55 percent over the useful life of the projects.

**B. Small Businesses**

This program is targeted to agricultural producers and rural small businesses. Based on data compiled by the USDA Economic Research Service and the Small Business Administration, over 3 million entities would be eligible for this program. The vast majority of agricultural producers also fit the definition of small businesses. Excluding the small percentage of agricultural producers that do not qualify as small entities, the almost 3 million entities would qualify as small businesses under this program. Given this situation, the benefit-cost analysis discussed above can be considered as the relevant analysis for analyzing the impacts of the proposed program on small businesses.

**VII. Administrative Requirements**

**A. Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995, Rural Development will seek OMB approval of the reporting and recordkeeping requirements contained in this proposed

rule. Rural Development is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

The following estimates are based on the average over the first three years the program is in place.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 6 hours per response.

*Respondents:* Agricultural producers and rural small businesses.

*Estimated Number of Respondents:* 388.

*Estimated Number of Responses per Respondent:* 14.

*Estimated Number of Responses:* 5,335.

*Estimated Total Annual Burden on Respondents:* 32,149.

*Type of Request:* New collection.

*Abstract:* The Farm Security and Rural Investment Act of 2002 (2002 Act) established the Renewable Energy Systems and Energy Efficiency Improvements Program under Title IX, Section 9006. The 2002 Act requires the

Secretary of Agriculture to create a program to make grants, loan guarantees, and direct loans to agricultural producers and rural small businesses to purchase renewable energy systems and make energy efficiency improvements. The program will help agricultural producers and rural small businesses to reduce energy costs and consumption and help meet the nation's energy needs.

The information requirements contained in this proposed rule require information from grant, guaranteed loan, and direct loan applicants and borrowers. The information is vital for Rural Development to make wise decisions regarding the eligibility of applicants and borrowers, establish selection priorities among competing applicants, ensure compliance with applicable Rural Development regulations, and effectively monitor the grantees and borrowers activities to protect the Government's financial interest and ensure that funds obtained from the Government are use appropriately. This collection of information is necessary in order to implement the grant, guaranteed loan, and direct loan program for Renewable Energy Systems and Energy Efficiency Improvements established under the 2002 Act.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Burden at (202) 692-0043.

Comments are invited on (1) whether the proposed collection of information is necessary for the proper performance of the functions of Rural Development, including whether the information will have practical utility; (2) the accuracy of the new Rural Development estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Cheryl Thompson, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

#### *B. Intergovernmental Review*

The Rural Development Grant, Guaranteed Loan, and Direct Loan Program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. Rural Development will conduct intergovernmental consultation in the manner delineated in RD Instruction 1940-J, "Intergovernmental Review of Rural Development Programs and Activities," and in the notice related to 7 CFR part 3015, subpart V.

#### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governments. The major purpose of the RFA is to keep paperwork and regulatory requirements from getting out of proportion to the scale of the entities being regulated, without compromising the objectives of the Act.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business according to the Small Business Administration (SBA) size standards by NAICS code ranging from 500 to 1,000 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-602), the undersigned has determined and certified by signature of this document that this proposed rule would not have a significant economic impact on a substantial number of small entities. This action impacts those who choose to participate in the grant, guaranteed loan, and direct loan program and requires only minimum information/paperwork to evaluate an application. Therefore, a regulatory flexibility analysis was not performed.

Although a regulatory flexibility analysis was not performed, the Agency conducted a benefit-cost analysis and an initial regulatory flexibility analysis (IRFA) that examines the impact on

small entities. The benefit-cost analysis and the IRFA (referred to as the Unified Analysis) are available for review in the docket and the results are summarized below.

The program targets rural small businesses plus agricultural producers. The vast majority of these agricultural producers qualify as small businesses too. Based on data compiled by the USDA Economic Research Service and the SBA, there are approximately 3 million of the entities who would qualify under this program.

The benefit-cost analysis reflects a large net beneficial impact. The expenditure of slightly less than \$100 million in nominal USDA funds over five years (approximately \$20 million per year) from FY 2003 through FY 2007 represents a present value cost in constant year 2000 dollars of approximately \$71 million. This sum in turn supports total program funding (USDA funds and private funds) of over \$1 billion. The cumulative cash flow benefits through 2007 are \$360 million in comparison to the \$71 million cost. The cash flow benefits based upon life cycle analysis are \$1.5 billion, again based upon this \$71 million cost.

Given that almost the entire program is directed at small businesses, the burden analysis is a representative measure for small businesses of the reporting, recordkeeping, and other compliance costs. The burden analysis estimated an annual (three-year average) cost of \$1.9 million for an estimated 388 applicants per year.

As noted above, the proposed rule is directed almost entirely at small businesses. Therefore, the benefit-cost analysis represents the results as it affects small businesses.

#### *D. Civil Justice Reform*

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

#### *E. National Environmental Policy Act*

This document has been reviewed in accordance with 7 CFR part 1940, subpart G. Rural Development has determined that this action does not constitute a major Federal action significantly affecting the quality of the

human environment, and, in accordance with the National Environmental Policy Act of 1969, Pub.L. 91-190, an Environmental Impact Statement is not required.

#### *F. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, Rural Development must prepare a written statement, including a benefit-cost analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local or tribal governments, in the aggregate, or to the private sector of \$100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of UMRA generally requires Rural Development to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

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

#### *G. Executive Order 13132, Federalism*

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

#### *H. Executive Order 12866, Regulatory Planning and Review*

Under Executive Order 12866, this proposed rule has been determined to be "significant" and, therefore, has been reviewed by the Office of Management and Budget (OMB). The Order defines "significant" regulatory action as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

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

Business and industry, Direct loan programs, Economic development, Energy, Energy efficiency improvements, Grant programs, Guaranteed loan programs, Renewable energy systems, Rural areas.

For the reasons stated in the preamble, title 7, chapter XLII of the Code of Federal Regulations is amended as follows:

#### **CHAPTER XLII—RURAL BUSINESS—COOPERATIVE SERVICE AND RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE**

1. Part 4280 is added to read as follows:

#### **PART 4280—LOANS AND GRANTS**

##### **Subpart A—[Reserved]**

##### **Subpart B—Renewable Energy Systems and Energy Efficiency Improvements Grant, Guaranteed Loan, and Direct Loan Program**

###### **Sec.**

- 4280.101 Purpose.
- 4280.102 General.
- 4280.103 Definitions.
- 4280.104 Exception authority.
- 4280.105 Appeals.
- 4280.106 Conflict of interest.

###### **Grants**

- 4280.107 Applicant eligibility.
- 4280.108 Project eligibility.
- 4280.109 Grant funding.
- 4280.110 [Reserved]
- 4280.111 Application and documentation.
- 4280.112 Evaluation of grant applications.
- 4280.113 Insurance requirements.
- 4280.114 Laws that contain other compliance requirements.
- 4280.115 Construction planning and performing development.
- 4280.116 Grantee requirements.
- 4280.117 Servicing grants.
- 4280.118–.120 [Reserved]

###### **Guaranteed Loans**

- 4280.121 Borrower eligibility.
- 4280.122 Project eligibility.
- 4280.123 Guaranteed loan funding.
- 4280.124 Interest rates.
- 4280.125 Terms of loan.
- 4280.126 Guarantee/annual renewal fee percentages.
- 4280.127 [Reserved]
- 4280.128 Application and documentation.
- 4280.129 Evaluation of guaranteed loan applications.

- 4280.130 Eligible lenders.
- 4280.131 Lender's functions and responsibilities.
- 4280.132 Access to records.
- 4280.133 Conditions of guarantee.
- 4280.134 Sale or assignment of guaranteed loan.
- 4280.135 Participation.
- 4280.136 Minimum retention.
- 4280.137 Repurchase from holder.
- 4280.138 Replacement of document.
- 4280.139 Credit quality.
- 4280.140 Financial statements.
- 4280.141 Appraisals.
- 4280.142 Personal and corporate guarantees.
- 4280.143 Loan approval and obligation of funds.
- 4280.144 Transfer of lenders.
- 4280.145 Changes in borrower.
- 4280.146 Conditions precedent to issuance of Loan Note Guarantee.
- 4280.147 Issuance of the guarantee.
- 4280.148 Refusal to execute Loan Note Guarantee.
- 4280.149 Requirements after project construction.
- 4280.150 Insurance requirements.
- 4280.151 Laws that contain other compliance requirements.
- 4280.152 Servicing guaranteed loans.
- 4280.153 Substitution of lender.
- 4280.154 Default by borrower.
- 4280.155 Protective advances.
- 4280.156 Liquidation.
- 4280.157 Determination of loss and payment.
- 4280.158 Future recovery.
- 4280.159 Bankruptcy.
- 4280.160 Termination of guarantee.

###### **Direct Loans**

- 4280.161 Direct Loan Process
- 4280.162–.192 [Reserved]

###### **Combined Funding**

- 4280.193 Combined funding.
- 4280.194–.199 [Reserved]
- 4280.200 OMB control number. [Reserved]

**Authority:** 7 U.S.C. 8106.

##### **Subpart A—[Reserved]**

##### **Subpart B—Renewable Energy Systems and Energy Efficiency Improvements Grant, Guaranteed Loan, and Direct Loan Program**

###### **§ 4280.101 Purpose.**

This subpart contains a program of procedures and requirements for making grants and guaranteed loans, or a combination thereof, to agricultural producers and rural small businesses for the purchase of renewable energy systems and energy efficiency improvements in rural areas. This subpart also presents the process that will be used to provide funds for direct loans.

###### **§ 4280.102 General.**

Sections 4280.103 through 4280.105 contain definitions, exception authority,

and appeals, which are applicable to all of the funding programs under this subpart. Sections 4280.107 through 4280.117 contain the procedures and requirements for obtaining a grant, and processing and servicing of grants by the Agency. Sections 4280.121 through 4280.151 contain the procedures and requirements for making and processing loans guaranteed by the Agency. Sections 4280.152 through 4280.160 contain the requirements for servicing loans guaranteed by the Agency. These requirements apply to lenders, holders, and other parties involved in making, guaranteeing, holding, servicing, or liquidating such loans. Section 4280.161 presents the process the Agency will use to make direct loans available. Section 4280.193 contains the requirements for obtaining and servicing a combined grant and guaranteed loan.

#### **§ 4280.103 Definitions.**

The following definitions are applicable to this subpart.

*Agency.* Rural Development or successor Agency assigned by the Secretary of Agriculture to administer the program.

*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.

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

*Applicant.* For grant programs, the applicant is the agricultural producer or rural small business that is seeking a grant under this subpart. For guaranteed loan programs, the applicant is the lender that is seeking a loan guarantee under this subpart.

*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.* Form 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.

*Assumption of debt.* The signed agreement by one party to legally bind itself to pay the debt incurred by another.

*Biogas.* Biomass converted to gaseous fuels.

*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; and fats, oils, and 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.

*Capacity.* The load that a power generation unit or other electrical apparatus or heating unit is rated by the manufacturer to be able to meet or supply.

*Commercially available.* Systems that have a proven operating history and an established design, installation, equipment, and service industry.

*Conditional commitment (Form 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.

*Default.* The condition where a borrower is not in compliance with one or more loan covenants as stipulated in the Letter of Conditions, Conditional Commitment, or Loan Agreement.

*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.

*Delinquent loan.* A loan where a scheduled loan payment has not been received within the due date and any grace period as stipulated in the promissory note and loan agreement.

*Demonstrated financial need.* The demonstration by an applicant that the applicant is unable to finance the project from its own resources or other funding sources without grant assistance.

*Eligible project cost.* The total project costs that are eligible to be paid with grant and/or guaranteed loan funds.

*Energy audit.* A written report by an independent, qualified entity or individual that documents current energy usage, recommended improvements and their costs, energy savings from these improvements, dollars saved per year, and the weighted-average payback period in years.

*Energy efficiency improvement.* Improvements to a facility or process that reduce energy consumption.

*Existing business.* A business that has completed at least one full business cycle.

*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.

*Fair market value of equity in real property.* Fair market value of real property as established by appraisal; less the outstanding balance of any mortgages, liens, or enhancements.

*Financial feasibility.* The ability of the business to achieve the projected income and cash flow. The concept includes assessments of the cost-accounting system, the availability of short-term credit for seasonal business, and the adequacy of raw materials and supplies, where necessary.

*Grant close-out.* When all required work is completed, administrative actions relating to the completion of work and expenditures of funds have been accomplished, and the Agency accepts final expenditure information.

*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.

*In-kind contributions.* Applicant or third-party real or personal property or services benefiting the Federally assisted project or program that are contributed by the applicant or a third party. The identifiable value of goods and services must directly benefit the project.

*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. 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 that is guaranteed under the provisions of this subpart.

*Lender's agreement, Form 4279-4.* Agreement between the Agency and the lender setting forth the lender's loan responsibilities when the Loan Note Guaranteed is issued.



*Loan agreement.* For guaranteed loans, the agreement between the borrower and lender containing the terms and conditions of the guaranteed loan and the responsibilities of the borrower and lender.

*Loan Note Guarantee, Form 4279-5.* The terms and conditions of the guarantee issued and executed by the Agency.

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

*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. Matching funds can not include grants from any Federal grant program.

*Negligent servicing.* The failure to perform those services which a reasonable, 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 reasonable, prudent lender would act.

*Nonprogram (NP) loan.* An NP loan exists when credit is extended to an ineligible applicant and/or transferee in connection with a loan assumption or sale of inventory property; in cases of unauthorized assistance; or a borrower whose legal organization has changed, resulting in the borrower being ineligible for program benefits.

*Other waste materials.* Inorganic or organic materials that are used as inputs for energy production or are by-products of the energy production process.

*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.

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

*Pre-commercial technology.* Technologies that have emerged through the research and development process and have technical and economic potential for application in commercial energy markets but are not yet commercially available.

*Promissory Note.* Evidence of debt. A note that a loan recipient signs

promising to pay a specific amount of money at a stated time or on demand.

*Renewable energy.* Energy derived from a wind, solar, biomass, or geothermal source; or hydrogen derived from biomass or water using wind, solar, or geothermal energy sources.

*Renewable energy system.* A process that produces energy from a renewable energy source.

*Rural.* Any area other than a city or town that has a population of greater than 50,000 inhabitants and the urbanized area contiguous and adjacent to such a city or town according to the latest decennial census of the United States.

*Small business.* A private entity including a sole proprietorship, partnership, corporation, and a cooperative (including a cooperative qualified under section 501(c)(12) of the Internal Revenue Code) but excluding any private entity formed solely for a charitable purpose, and which private entity is considered a small business concern in accordance with the Small Business Administration's (SBA) Small Business Size Standards by North American Industry Classification System (NAICS) Industry found in 13 CFR part 121; provided the entity has 500 or fewer employees and \$20 million or less in total annual receipts including all parent, affiliate, or subsidiary entities at other locations.

*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.

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

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

#### **§ 4280.104 Exception authority.**

The Administrator may, in individual cases, make an exception 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 USDA'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. 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.

#### **§ 4280.106 Conflict of interest.**

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 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.

#### **Grants**

#### **§ 4280.107 Applicant eligibility.**

To receive a grant under this subpart, an applicant must meet each of the criteria, as applicable, as set forth in paragraphs (a) through (f) of this section.

(a) The applicant or borrower must be an agricultural producer or rural small business.

(b) Individuals must be citizens of the United States (U.S.) or reside in the U.S. after being legally admitted for permanent residence.

(c) Entities must be at least 51 percent owned, directly or indirectly, by individuals who are either citizens of the U.S. or reside in the U.S. after being legally admitted for permanent residence.

(d) If the applicant or borrower or an owner has an outstanding judgment obtained by the United States 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 or borrower 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.

(e) In the case of an applicant or borrower that is applying as a rural small business, the business headquarters must be in a rural area and the project to be funded also must be in a rural area.

(f) The applicant must have demonstrated financial need.

#### **§ 4280.108 Project eligibility.**

For a project to be eligible to receive a grant under this subpart, the proposed project must meet each of the criteria, as applicable, in paragraphs (a) through (f) of this section.

(a) The project must be for the purchase of a renewable energy system or to make energy efficiency improvements.

(b) The project must be for a pre-commercial or commercially available and replicable technology.

(c) The project must be technically feasible, as determined using the procedures specified in § 4280.112(c).

(d) The project must be located in a rural area.

(e) The applicant (for grants) or borrower (for guaranteed loans) must be the owner of the system and control the operation and maintenance of the proposed project. A qualified third-party operator may be used to manage the operation and/or maintenance of the proposed project.

(f) All projects financed under this subpart must be based on satisfactory sources of revenues in an amount sufficient to provide for the operation and maintenance of the system or project.

#### **§ 4280.109 Grant funding.**

(a) The amount of grant funds that will be made available to an eligible project under this subpart will not exceed 25 percent of eligible project costs.

(1) The only eligible project costs are those costs associated with the items identified in paragraphs (a)(1)(i) through (ix) of this section, as long as the items are an integral and necessary part of the total project:

(i) Post-application purchase and installation of equipment, except agricultural tillage equipment and vehicles;

(ii) Post-application construction or project improvements, except residential;

(iii) Energy audits or assessments;  
(iv) Permit fees;  
(v) Professional service fees, except for application preparation;

(vi) Feasibility studies;

(vii) Business plans;

(viii) Retrofitting; and

(ix) Construction of a new facility only when the facility is used for the same purpose, is approximately the same size, and based on the energy audit will provide more energy savings than improving an existing facility. Only costs identified in the energy audit for energy efficiency projects are allowed.

(2) The applicant must provide at least 75 percent of eligible project costs to complete the project. Applicant in-kind and other Federal grant awards cannot be used to meet the matching fund requirement. However, the Agency will allow third-party, in-kind contributions to be used in meeting the matching fund requirement. Third-party, in-kind contributions will be limited to 10 percent of the matching fund requirement of the grantee. The Agency will advise if the third-party, in-kind contributions are acceptable in accordance with 7 CFR part 3015.

(b) The maximum amount of grant assistance to one individual or entity will not exceed \$750,000.

(c) Applications for renewable energy systems must be for a minimum grant request of \$2,500, but no more than \$500,000.

(d) Applications for energy efficiency improvements must be for a minimum grant request of \$2,500, but no more than \$250,000.

#### **§ 4280.110 [Reserved]**

#### **§ 4280.111 Application and documentation.**

The following requirements apply to all grant applications under this subpart.

(a) *Application.* Separate applications must be submitted for renewable energy system and energy efficiency improvement projects. For each type of project, only one application may be submitted.

(1) *Table of Contents.* The first item in each application will be a detailed Table of Contents in the order presented below. Include page numbers for each component of the proposal. Begin pagination immediately following the Table of Contents.

(2) *Project Summary.* A summary of the project proposal, not to exceed one page, must include the following: Title of the project, description of the project including goals and tasks to be accomplished, names of the individuals

responsible for conducting and completing the tasks, and the expected timeframes for completing all tasks, including an operational date. The applicant must also clearly state whether the application is for the purchase of a renewable energy system or to make energy efficiency improvements.

(3) *Eligibility.* Each applicant must describe how the grantee or borrower meets the requirements of § 4280.107.

(4) *Agricultural producer/rural small business information.* All applications must contain the following information on the agricultural producer or rural small business seeking funds under this program:

(i) Business/farm/ranch operation.

(A) A description of the ownership, 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.

(B) A description of the operation.

(ii) Management. The resume of key managers focusing on relevant business experience. If a third-party operator is used to monitor and manage the project, provide a discussion on the benefits and burdens of such monitoring and management as well as the qualifications of the third party.

(iii) Financial Information.

(A) Explanation of demonstrated financial need.

(B) For rural small businesses, a current balance sheet and income statement prepared in accordance with generally accepted accounting principles (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. Financial information is required on the total operations of the agricultural producer/rural small business and its parent, subsidiary, or affiliates at other locations.

(C) Rural small businesses must provide sufficient information to determine total annual receipts of the business and any parent, subsidiary, or affiliates at other locations. Voluntarily providing tax returns is one means of satisfying this requirement. Information provided must be sufficient for the Agency to make a determination of total income and cost of goods sold by the business.

(D) If available, historical financial statements prepared in accordance with 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 3 years in the format that is generally required by commercial agriculture lenders.

(E) Pro forma balance sheet at startup 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.

(F) For agricultural producers, identify the gross market value of your agricultural products for the calendar year preceding the year in which you submit your application.

(iv) Production information for renewable energy system projects.

(A) Provide a statement as to whether the technology to be employed by the facility is commercially or pre-commercially available and replicable. Provide information to support this position.

(B) Describe the availability of materials, labor, and equipment for the facility.

(v) Business market information for renewable energy system projects.

(A) Demand. Identify the demand (past, present, and future) for the product and/or service and who will buy the product and/or service.

(B) Supply. Identify the supply (past, present, and future) of the product and/or service and your competitors.

(C) Market niche. Given the trends in demand and supply, describe how the business will be able to sell enough of its product/service to be profitable.

(vi) A Dun and Bradstreet Universal Numbering System (DUNS) number.

(b) *Forms, certifications, and agreements.* Each application submitted under paragraph (a) of this section must contain, as applicable, the items identified in paragraphs (b)(1) through (15) of this section.

(1) Form SF-424, "Application for Federal Assistance."

(2) Form SF-424C, "Budget Information—Construction Programs." Each cost classification category listed on the form must be filled out if it applies to your project. Any cost category item not listed on the form that applies to your project can be put under the miscellaneous category. Attach a separate sheet if you are using the miscellaneous category and list each miscellaneous cost by not allowable and allowable costs in the same format as on Form 424C, "Budget Information—

Construction Programs." All project costs must be categorized as either allowable or not allowable.

(3) Form SF-424D, "Assurances—Construction Programs."

(4) AD-1049, "Certification Regarding Drug-Free Workplace Requirements."

(5) AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tiered Covered Transactions."

(6) A copy of a bank statement or a copy of the confirmed funding commitment from the funding source. Matching funds must be included on the Application for Federal Assistance (SF 424) and Budget Information—Construction Programs (SF 424C).

(7) Exhibit A-1 of RD Instruction 1940-Q, "Certification for Contracts, Grants and Loans," required by Section 319 of Public Law 101-121 if the grant exceeds \$100,000 or Exhibit A-2 of RD Instruction 1940-Q, "Statement for Loan Guarantees," required by Section 319 of Public Law 101-121 if the guaranteed loan exceeds \$150,000.

(8) 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, Form SF-LLL, "Disclosure of Lobbying Activities," must be completed.

(9) AD-1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions."

(10) Form RD 400-1, "Equal Opportunity Agreement."

(11) Form RD 400-4, "Assurance Agreement."

(12) If the project involves interconnection to an electric utility, a copy of a letter of intent to purchase power, a power purchase agreement, a copy of a letter of intent for an interconnection agreement, or an interconnection agreement will be required from your utility company or other purchaser for renewable energy systems.

(13) If applicable, intergovernmental consultation comments in accordance with Executive Order 12372.

(14) Applicants and borrowers must provide a certification indicating whether or not there is a known relationship or association with an Agency employee.

(15) Each applicant must prepare an environmental impact analysis as specified in § 4280.114(d).

(c) *Feasibility study for renewable energy systems.* Each application for a renewable energy system project, except for requests of \$100,000 or less, must include a project-specific feasibility

study prepared by a qualified independent consultant. The feasibility study must include an analysis of the market, financial, economic, technical, and management feasibility of the proposed project. The feasibility study must also include an opinion and a recommendation by the independent consultant.

(d) *Technical requirements reports.* The technical report 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 paragraphs (d)(1) through (10) of this section. Supporting information may be submitted in other formats. Design drawings and process flow charts are encouraged as exhibits. A discussion of each topic identified in paragraphs (d)(1) through (10) 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. The applicant must submit the original technical requirements report plus one copy to the State Rural Development Office. For small solar and small wind projects, the narrative portion of technical requirements portion of the proposals, excluding supporting documentation and drawings, should be less than ten pages. Projects costing more than \$100,000 require the services of a professional engineer (PE). Depending on the level of engineering required for the specific project or if necessary to ensure public safety, the services of a PE may be required for smaller projects.

(1) *Biomass, bioenergy.* The technical requirements specified in paragraphs (d)(1)(i) through (x) of this section apply to renewable energy projects that produce fuel, thermal energy, or electric power from a lignocellulosic biomass source, including wood, agricultural residue excluding animal wastes, or other energy crops considered biomass or bioenergy projects. The major components of bioenergy systems will vary significantly depending on the type of feedstock, product, type of process, and size of the process but in general

includes components around which the balance of the system is designed.

(i) *Qualifications of project team.* The biomass 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 biomass systems development, engineering, installation, and maintenance. The applicant must provide authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services. The applicant must also provide authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life. The application must:

(A) 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 turn key, 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;

(B) Discuss the biomass 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;

(C) Discuss the project manager, equipment supplier, system designer, project engineer, and construction contractor qualifications for engineering, designing, and installing biomass energy systems 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 and with references if available; and

(D) Describe the system operator's qualifications and experience for servicing, operating, and maintaining biomass renewable energy equipment or projects. Provide a list of the same or similar projects designed, installed, or supplied and currently operating and with references if available.

(ii) *Agreements and permits.* The applicant 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 (d)(1)(ii)(A) through (G) of this section.

(A) Biomass systems must be installed in accordance with applicable local, State, and national codes and regulations. Identify zoning and code issues, and required permits and the schedule for meeting those requirements and securing those permits.

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

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

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

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

(F) Systems interconnected to the electric power system will need arrangements to interconnect with the utility. Identify utility system interconnection requirements, power purchase arrangements, or licenses where required and the 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, describe the applicable local net metering program.

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

(iii) *Resource assessment.* The applicant must 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, also indicate shipping or receiving method and required infrastructure for shipping. For proposed projects with an established resource, provide a summary of the resource.

(iv) *Design and engineering.* The applicant must 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 entity. 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 entity.

(A) The application must include a concise but complete description of the biomass 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 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.

(B) The application must include a description of the project site and address issues such as site access, foundations, backup equipment when applicable, and environmental concerns with emphasis on visibility, odor, noise, construction, and installation issues. Identify any unique construction and installation issues.

(C) Sites must be controlled by the agricultural producer or rural small business for the proposed project life or for the financing term of any associated federal loans or loan guarantees.

(v) *Project development schedule.* The applicant must 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.

(vi) *Financial feasibility.* The applicant must provide a study that describes costs and revenues of the proposed project to demonstrate the financial performance of the 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 analysis and description of annual project revenues and expenses. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants.

(vii) *Equipment procurement.* The applicant must demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Biomass 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. Procurement must be made in accordance with the requirements of 7 CFR part 1924, subpart A.

(viii) *Equipment installation.* The applicant must 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 specification and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole.

(ix) *Operations and maintenance.* The applicant must identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The applicant must:

(A) Provide information regarding available system and component warranties and availability of spare parts;

(B) For systems having a biomass input capacity exceeding 10 tons of biomass per day,

(1) 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; and

(2) Discuss the costs and labor associated with operations and maintenance of system and plans for in or outsourcing. Describe opportunities for technology transfer for long term

project operations and maintenance by a local entity or owner/operator; and

(C) Provide and discuss the risk management plan for handling large, unanticipated failures or major components. Include in the discussion, costs and labor associated with operations and maintenance of system and plans for in-sourcing or outsourcing.

(x) *Decommissioning.* When uninstalling or removing the project, describe the decommissioning process. Describe any issues, requirements, and costs for removal and disposal of the system.

(2) *Anaerobic digester projects.* The technical requirements specified in paragraphs (d)(2)(i) through (x) of this section apply to renewable energy projects, called anaerobic digester projects, that use animal waste and other organic substrates to produce thermal or electrical energy via anaerobic digestion. The major components of an anaerobic digester system include the digester, the gas handling and transmission systems, and the gas use system.

(i) *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. The applicant must provide authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services. The applicant must also provide authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life. The applicant must:

(A) 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 turn key, 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;

(B) 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;

(C) 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 or bodies. Provide a list of the same or similar projects designed, installed, or supplied and currently operating consistent with the substrate material and with references if available; and

(D) 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 and with references if available.

(ii) *Agreements and permits.* The applicant 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 (d)(2)(ii)(A) through (G) of this section.

(A) Anaerobic digester systems must be installed in accordance with applicable local, State, and national codes and regulations. Anaerobic digesters must also be designed and constructed in accordance with USDA anaerobic digester standards. Identify zoning and code issues, and required permits and the schedule for meeting those requirements and securing those permits.

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

(C) For regional or centralized digester plants, identify feedstock access agreements required for the project and the schedule for securing those agreements and the term of those agreements.

(D) Identify any permits or agreements required for transport and ultimate waste disposal and the schedule for securing those agreements and permits.

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

(F) Systems interconnected to the electric power system will need arrangements to interconnect with the

utility. Identify utility system interconnection requirements, power purchase arrangements, or licenses where required and the 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, describe the applicable local net metering program.

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

(iii) *Resource assessment.* The applicant must provide adequate and appropriate evidence of the availability of the renewable resource required for the system to operate as designed. 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.

(iv) *Design and engineering.* The applicant must 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 entity. 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 entity.

(A) The application must include 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, material balances as part of the unit operations flowchart.

(B) The application must include a description of the project site and address issues such as site access, foundations, backup equipment when

applicable, and environmental concerns with emphasis on visibility, odor, noise, construction and installation issues. Identify any unique construction and installation issues.

(C) Sites must be controlled by the agricultural producer or rural small business for the proposed project life or for the financing term of any associated federal loans or loan guarantees.

(v) *Project development schedule.* The applicant must 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 design, permits and agreements, equipment procurement, system installation from excavation through startup and shakedown, and operator training.

(vi) *Financial feasibility.* The applicant must provide a study that describes costs and revenues of the proposed project to demonstrate the financial performance of the project. 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.

(vii) *Equipment procurement.* The applicant must 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. Procurement must be made in accordance with the requirements of 7 CFR part 1924, subpart A.

(viii) *Equipment installation.* The applicant must 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 specification and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole.

(ix) *Operations and maintenance.* The applicant must identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The applicant must:

(A) 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;

(B) 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;

(C) Provide information that supports expected design life of the system and the timing of major component replacement or rebuilds;

(D) Provide and discuss the risk management plan for handling large, unanticipated failures of major components. Include in the discussion, costs and labor associated with operations and maintenance of system and plans for insourcing or outsourcing; and

(E) Describe opportunities for technology transfer for long-term project operations and maintenance by a local entity or owner/operator.

(x) *Decommissioning.* When uninstalling or removing the project, describe the decommissioning process. Describe any issues, requirements, and costs for removal and disposal of the system.

(3) *Geothermal, electric generation.* The technical requirements specified in paragraphs (d)(3)(i) through (x) of this section apply to geothermal projects that produce electric power from the thermal potential of a geothermal source. The major components of an electric generating geothermal system include the production well, the separator or heat exchanger, the turbine, the generator, condenser, and the balance of station elements including the field piping, roads, fencing and grading, plant buildings, transformers and other electrical infrastructure such as interconnection equipment.

(i) *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. The applicant must provide authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services. The applicant must also provide authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life. The applicant must:

(A) 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 turn key, 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;

(B) 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;

(C) 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 or bodies. Provide a list of the same or similar projects designed, installed, or supplied and currently operating and with references if available; and

(D) Describe 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 and with references if available.

(ii) *Agreements and permits.* The applicant 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 (d)(3)(ii)(A) through (F) of this section.

(A) Electric generating geothermal systems must be installed in accordance with applicable local, State, and national codes and regulations. Identify

zoning and code issues, and required permits and the schedule for meeting those requirements and securing those permits.

(B) 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.

(C) Identify land use or access to the resource agreements required for the project and the schedule for securing the agreements and the term of those agreements.

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

(E) Systems interconnected to the electric power system will need arrangements to interconnect with the utility. Identify utility system interconnection requirements, power purchase arrangements, or licenses where required and the schedule for meeting those requirements and obtaining those agreements.

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

(iii) *Resource assessment.* The applicant must 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.

(iv) *Design and engineering.* The applicant must 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 entity. 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 entity.

(A) The application must include 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.

(B) The application must include a description of the project site and address issues such as site access, proximity to the electrical grid, environmental concerns with emphasis on visibility, noise, construction, and installation issues. Identify any unique construction and installation issues.

(C) Sites must be controlled by the agricultural producer or rural small business for the proposed project life or for the financing term of any associated federal loans or loan guarantees.

(v) *Project development schedule.* The applicant must 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.

(vi) *Financial feasibility.* The applicant must provide a study that describes costs and revenues of the proposed project to demonstrate the financial performance of the 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 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.

(vii) *Equipment procurement.* The applicant must 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. Procurement must be made in accordance with the requirements of 7 CFR part 1924, subpart A.

(viii) *Equipment installation.* The applicant must 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 specification and process and the conditions required for startup or shakedown for each equipment item individually and for the system as a whole.

(ix) *Operations and maintenance.* The applicant must identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The applicant must:

(A) Ensure that systems must have at least a 3-year warranty for equipment. Provide information regarding turbine warranties and availability of spare parts;

(B) 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;

(C) Provide information that supports expected design life of the system and timing of major component replacement or rebuilds;

(D) Provide and discuss the risk management plan for handling large, unanticipated failures of major components such as the turbine. Include in the discussion, costs and labor associated with operations and maintenance of system and plans for insourcing or outsourcing; and

(E) Describe opportunities for technology transfer for long term project operations and maintenance by a local entity or owner/operator.

(x) *Decommissioning.* When uninstalling or removing the project, describe the decommissioning process. Describe any issues, requirements, and costs for removal and disposal of the system.

(4) *Geothermal, direct use.* The technical requirements specified in paragraphs (d)(4)(i) through (x) of this section apply to geothermal projects that directly use thermal energy from a geothermal source. The major components of a direct use geothermal

system include the production well, the heat exchanger, pumps, and the balance of station elements including the, field piping, re-injection wells or other disposal equipment as required, and final point-of-use heat exchangers and control systems.

(i) *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. The applicant must provide authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services. The applicant must also provide authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life. The applicant must:

(A) Discuss the proposed project delivery method. Such method 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 turn key, 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;

(B) 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;

(C) 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 or bodies. Provide a list of the same or similar projects designed, installed, or supplied and currently operating and with references if available; and

(D) 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 and with references if available.

(ii) *Agreements and permits.* The applicant 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 (d)(4)(ii)(A) through (F) of this section.

(A) Direct use geothermal systems must be installed in accordance with applicable local, State, and national codes and regulations. Identify zoning and code issues, and required permits and the schedule for meeting those requirements and securing those permits.

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

(C) Identify land use or access to the resource agreements required for the project and the schedule for securing the agreements and the term of those agreements.

(D) 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 permits and agreements.

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

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

(iii) *Resource assessment.* The applicant must 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.

(iv) *Design and engineering.* The applicant must 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 entity. 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 entity.

(A) The application must include 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.

(B) The application must include a description of the project site and address issues such as, site access, thermal backup equipment, environmental concerns with emphasis on visibility, noise, construction, and installation issues. Identify any unique construction and installation issues.

(C) Sites must be controlled by the agricultural producer or rural small business for the proposed project life or for the financing term of any associated federal loans or loan guarantees.

(v) *Project development schedule.* The applicant must 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.

(vi) *Financial feasibility.* The applicant must provide a study that describes costs and revenues of the proposed project to demonstrate the financial performance of the 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 analysis and description of annual project revenues and expenses. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants.

(vii) *Equipment procurement.* The applicant must 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. Procurement must be made in accordance with the requirements of 7 CFR part 1924, subpart A.

(viii) *Equipment installation.* The applicant must 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 specification and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole.

(ix) *Operations and maintenance.* The applicant must identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The applicant must:

(A) Ensure that systems must have at least a 3-year warranty for equipment. Provide information regarding system warranties and availability of spare parts;

(B) 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;

(C) Provide information that supports expected design life of the system and timing of major component replacement or rebuilds;

(D) Provide and discuss the risk management plan for handling large, unanticipated failures of major components. Include in the discussion, costs and labor associated with operations and maintenance of system and plans for insourcing or outsourcing; and

(E) Describe opportunities for technology transfer for long term project operations and maintenance by a local entity or owner/operator.

(x) *Decommissioning.* When uninstalling or removing the project, describe the decommissioning process. Describe any issues, requirements, and costs for removal and disposal of the system.

(5) *Hydrogen.* The technical requirements specified in paragraphs (d)(5)(i) through (x) of this section apply to renewable energy projects that produce hydrogen and renewable energy projects that use mechanical or electric power or thermal energy from a renewable resource using hydrogen as an energy transport medium. The major components of hydrogen systems include reformers, electrolyzers,

hydrogen compression and storage components, and fuel cells.

(i) *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. The applicant must provide authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services. The applicant must also provide authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life. The applicant must:

(A) 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 turn key, 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;

(B) 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;

(C) 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 or bodies. Provide a list of the same or similar projects designed, installed, or supplied and currently operating and with references if available; and

(D) 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 and with references if available.

(ii) *Agreements and permits.* The applicant 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 (d)(5)(ii)(A) through (G) of this section.

(A) Hydrogen systems must be installed in accordance with applicable local, State, and national codes and regulations. Identify zoning and building code issues, and required permits and the schedule for meeting those requirements and securing those permits.

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

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

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

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

(F) Systems interconnected to the electric power system will need arrangements to interconnect with the utility. Identify utility system interconnection requirements, power purchase arrangements, or licenses where required and the 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, provide a description of the applicable local net metering program.

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

(iii) *Resource assessment.* The applicant must 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. 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.

(iv) *Design and engineering.* The applicant must 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 entity. 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 entity.

(A) The application must include 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.

(B) The application must include a description of the project site and address issues such as site access, foundations, backup equipment when applicable, and any environmental and safety concerns. Identify any unique construction and installation issues.

(C) Sites must be controlled by the agricultural producer or rural small business for the proposed project life or for the financing term of any associated federal loans or loan guarantees.

(v) *Project development schedule.* The applicant must 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.

(vi) *Financial feasibility.* The applicant must provide a study that describes costs and revenues of the proposed project to demonstrate the financial performance of the project. 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.

(vii) *Equipment procurement.* The applicant must demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Hydrogen systems may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues, such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, and receiving, and on-site storage or inventory. Procurement must be made in accordance with the requirements of 7 CFR part 1924, subpart A.

(viii) *Equipment installation.* The applicant must 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 specification and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole.

(ix) *Operations and maintenance.* The applicant must identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The applicant must:

(A) Provide information regarding system warranties and availability of spare parts;

(B) 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;

(C) Provide information that supports expected design life of the system and timing of major component replacement or rebuilds;

(D) Provide and discuss the risk management plan for handling large, unanticipated failures of major components. Include in the discussion, costs and labor associated with operations and maintenance of system and plans for in or outsourcing; and

(E) Describe opportunities for technology transfer for long term project operations and maintenance by a local entity or owner/operator.

(x) *Decommissioning*. When uninstalling or removing the project, describe the decommissioning process. Describe any issues, requirements, and costs for removal and disposal of the system.

(6) *Solar, small*. The technical requirements specified in paragraphs (d)(6)(i) through (x) of this section apply to small solar electric projects and small solar thermal projects. Small solar electric projects are those for which the rated power of the system is 10kW or smaller. The major components of a small solar electric system are the solar panels, the support structure, the foundation, the power conditioning equipment, the interconnection equipment, surface or submersible water pumps, energy storage equipment and supporting documentation including operations and maintenance manuals. 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. The major components of a small solar thermal system are the solar collector(s), the support structure, the foundation, the circulation pump(s) and piping, heat exchanger (if required), energy storage equipment and support

(i) *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. The applicant must provide authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services. The applicant must also provide authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life. The applicant must:

(A) Discuss the qualifications of the suppliers of major components being considered;

(B) Describe the knowledge, skills, and abilities needed to service, operate, and maintain the system for the proposed application; and

(C) 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 or bodies. Provide a list of the same or similar systems designed or

installed by the design and installation team and currently operating and with references if available.

(ii) *Agreements and permits*. The applicant 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 (d)(6)(ii)(A) through (D) of this section.

(A) Small solar systems must be installed in accordance with local, State, and national building and electrical codes and regulations. Identify zoning, building and electrical code issues, and required permits and the schedule for meeting those requirements and securing those permits.

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

(C) Small solar electric systems interconnected to the electric power system will need arrangements to interconnect with the utility. Identify utility system interconnection requirements, power purchase arrangements, or licenses where required and the 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, describe the applicable local net metering program.

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

(iii) *Resource assessment*. The applicant must provide adequate and appropriate evidence of the availability of the renewable resource required for the system to operate as designed. Describe the local solar resource where the solar system is to be installed. Acceptable sources of solar resource data include state solar maps and nearby weather station data. Incorporate information from state solar resource maps when possible. Indicate the source of the solar data and assumptions made when applying nearby solar data to the site.

(iv) *Design and engineering*. The applicant must 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.

(A) The application must include 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.

(B) The application must include a description of the project site and address issues such as solar access, orientation, proximity to the load or the electrical grid, environmental concerns, unique safety concerns, construction, and installation issues, and whether special circumstances exist.

(C) Sites and application load must be controlled by the agricultural producer or rural small business for the proposed project life or for the financing term of any associated federal loans or loan guarantees.

(v) *Project development schedule*. The applicant must 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.

(vi) *Financial feasibility*. The applicant must provide a study that describes costs and revenues of the proposed project to demonstrate the financial performance of the project. 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 monthly and annual bases.

(vii) *Equipment procurement*. The applicant must 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. Procurement must be made in accordance with the requirements of 7 CFR part 1924, subpart A.

(viii) *Equipment installation.* The applicant must 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 specification and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole.

(ix) *Operations and maintenance.* The applicant must identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The applicant must:

(A) Ensure that systems must have at least a 5-year warranty for equipment. Provide information regarding system warranty and availability of spare parts;

(B) Describe the routine operations and maintenance requirements of the proposed system, including maintenance schedules for the mechanical and electrical and software systems;

(C) For owner maintained portions of the system, describe any unique knowledge, skills, or abilities needed for service operations or maintenance; and

(D) Provide information regarding expected system design life and timing of major component replacement or rebuilds. Include in the discussion, costs and labor associated with operations and maintenance of system and plans for in or outsourcing.

(x) *Decommissioning.* When uninstalling or removing the project, describe the decommissioning process. Describe any issues, requirements, and costs for removal and disposal of the system.

(7) *Solar, large.* The technical requirements specified in paragraphs (d)(7)(i) through (x) of this section apply to large solar electric projects and large solar thermal projects. Large solar electric systems are those for which the

rated power of the system is larger than 10kW. The major components of a large solar electric system are the solar panels, the support structure, the foundation, the power conditioning equipment, the interconnection equipment, surface or submersible water pumps and energy storage equipment and supporting documentation including operations and maintenance manuals. 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. The major components of a small solar thermal system are the solar collector(s), the support structure, the foundation, the circulation pump(s) and piping, heat exchanger (if required), energy storage equipment and supporting documentation including operations and maintenance manuals.

(i) *Qualifications of project team.* The large solar project team should consist of an equipment supplier of major components, a project manager, general contractor, a system engineer, a system installer, and system maintainer. One individual or entity may serve more than one role. The applicant must provide authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services. The applicant must also provide authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life. The applicant must:

(A) 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 turn key, 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;

(B) Discuss the qualifications of the suppliers of major components being considered;

(C) 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 or bodies. Provide a list of the same or similar systems designed or installed by the design, engineering, and installation team and currently

operating and with references if available; and

(D) 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 and with references if available.

(ii) *Agreements and permits.* The applicant 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 (d)(7)(ii)(A) through (D) of this section.

(A) Large solar systems must be installed in accordance with local, State, and national building and electrical codes and regulations. Identify zoning, building and electrical code issues, and required permits and the schedule for meeting those requirements and securing those permits.

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

(C) Large solar electric systems interconnected to the electric power system will need arrangements to interconnect with the utility. Identify utility system interconnection requirements, power purchase arrangements, or licenses where required and the 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, describe the applicable local net metering program.

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

(iii) *Resource assessment.* The applicant must provide adequate and appropriate evidence of the availability of the renewable resource required for the system to operate as designed. Describe the local solar resource where the solar system is to be installed. Acceptable sources of solar resource data include state solar maps and nearby weather station data. Incorporate information from state solar resource maps when possible. Indicate the source of the solar data and assumptions made when applying nearby solar data to the site.

(iv) *Design and engineering.* The applicant must 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.

(A) 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.

(B) For large solar thermal systems, the engineering must be comprehensive, including solar collector 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.

(C) 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.

(D) 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, unique safety concerns, construction, and installation issues and whether special circumstances exist.

(E) Sites must be controlled by the agricultural producer or rural small business for the proposed project life or for the financing term of any associated federal loans or loan guarantees.

(v) *Project development schedule.* The applicant must 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.

(vi) *Financial feasibility.* The applicant must provide a study that describes costs and revenues of the proposed project to demonstrate the financial performance of the project. 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.

(vii) *Equipment procurement.* The applicant must 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. Procurement must be made in accordance with the requirements of 7 CFR part 1924, subpart A.

(viii) *Equipment installation.* The applicant must fully describe 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 specification and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole.

(ix) *Operations and maintenance.* The applicant must identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The applicant must:

(A) Ensure that systems must have at least a 5-year warranty for equipment. Provide information regarding system warranty and availability of spare parts;

(B) Describe the routine operations and maintenance requirements of the proposed system, including maintenance schedules for the mechanical and electrical and software systems;

(C) For owner maintained portions of the system, describe any unique knowledge, skills, or abilities needed for service operations or maintenance; and

(D) Provide information regarding expected system design life and timing of major component replacement or rebuilds. Include in the discussion,

costs and labor associated with operations and maintenance of system and plans for insourcing or outsourcing.

(x) *Decommissioning.* When uninstalling or removing the project, describe the decommissioning process. Describe any issues, requirements, and costs for removal and disposal of the system.

(8) *Wind, small.* The technical requirements specified in paragraphs (d)(8)(i) through (x) apply to 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. Such systems are considered small wind systems. The major components of a small wind system are the wind turbine, the tower, the foundation, the inverter, the interconnection equipment and energy storage when applicable. A small wind system is either stand-alone or connected to the local electrical system at less than 600 volts.

(i) *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. The applicant must provide authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services. The applicant must also provide authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life. The applicant must:

(A) Discuss the small 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;

(B) Describe the knowledge, skills, and abilities needed to service, operate, and maintain the system for the proposed application; and

(C) 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 or bodies. Provide a list of the same or similar systems designed, installed, or supplied and currently operating and with references if available.

(ii) *Agreements and permits.* The applicant 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 (d)(8)(ii)(A) through (D) of this section.

(A) Small wind systems must be installed in accordance with applicable local, State, and national building and electrical codes and regulations. Identify zoning, building and electrical code issues, and required permits and the schedule for meeting those requirements and securing those permits.

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

(C) Small wind systems interconnected to the electric power system will need arrangements to interconnect with the utility. Identify utility system interconnection requirements, power purchase arrangements, or licenses where required and the 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, describe the applicable local net metering program.

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

(iii) *Resource assessment.* The applicant must provide adequate and appropriate evidence of the availability of the renewable resource required for the system to operate as designed. Indicate the local wind resource where the small wind turbine is to be installed. Acceptable sources of wind resource data include state wind maps and nearby weather station data. Incorporate information from state wind resource maps when possible. 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.

(iv) *Design and engineering.* The applicant must 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.

(A) The application must include 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 monthly (when possible) and annual basis and how the energy produced by the system will be used.

(B) The application must include a description of 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 visibility, noise, and avian impacts, 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.

(C) Sites and application loads must be controlled by the agricultural producer or rural small business for the proposed project life or for the financing term of any associated federal loans or loan guarantees.

(v) *Project development schedule.* The applicant must 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.

(vi) *Financial feasibility.* The applicant must provide a study that describes costs and revenues of the proposed project to demonstrate the financial performance of the project. 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.

(vii) *Equipment procurement.* The applicant must 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. Procurement must be made in accordance with the requirements of 7 CFR part 1924, subpart A.

(viii) *Equipment installation.* The applicant must fully describe 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 specification and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole.

(ix) *Operations and maintenance.* The applicant must identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The applicant must:

(A) 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;

(B) Describe the routine operations and maintenance requirements of the proposed system, including maintenance schedules for the mechanical and electrical and software systems;

(C) 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 operations and maintenance of system and plans for in or outsourcing; and

(D) For owner maintained portions of the system, describe any unique

knowledge, skills, or abilities needed for service operations or maintenance.

(x) *Decommissioning.* When uninstalling or removing the project, describe the decommissioning process. Describe any issues, requirements, and costs for removal and disposal of the system.

(9) *Wind, large.* The technical requirements specified in paragraphs (d)(9)(i) through (x) of this section apply to wind energy systems for which the rated power of the individual wind turbine(s) is larger than 100kW. Such systems are considered large wind systems. The major components of a large wind system are the wind turbine rotor, the gearbox, the generator, the tower, the power electronics, the local collection grid, and the interconnection equipment.

(i) *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. The applicant must provide authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services. The applicant must also provide authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life. The applicant must:

(A) 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 turn key, 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;

(B) 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;

(C) 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 or bodies. Provide a list of the same or similar projects designed, installed, or supplied and currently operating and with references if available;

(D) Discuss the qualifications of the meteorologist, including references; and

(E) 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 and with references if available.

(ii) *Agreements and permits.* The applicant 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 (d)(9)(ii)(A) through (E) of this section.

(A) Large wind systems must be installed in accordance with local, State, and national building and electrical codes and regulations. Identify zoning, building and electrical code issues, and required permits and the schedule for meeting those requirements and securing those permits.

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

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

(D) Large wind systems interconnected to the electric power system will need arrangements to interconnect with the utility. Large wind systems interconnected to the electric power system will need arrangements to interconnect with the utility. Identify utility system interconnection requirements, power purchase arrangements, or licenses where required and the schedule for meeting those requirements and obtaining those agreements.

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

(iii) *Resource assessment.* The applicant must provide adequate and appropriate evidence of the availability of the renewable resource required for the system to operate as designed. Indicate the local wind resource where the wind turbine is to be installed. Wind resource maps may be used as an acceptable preliminary source of wind resource data. 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 one year of on-site monitoring. If less than one year of data is used, the qualified meteorological consultant must provide a detailed analysis of correlation between the site data and a near-by long-term measurement site.

(iv) *Design and engineering.* The applicant must 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 entity. Systems must be engineered as a complete, integrated system 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.

(A) The application must include 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 monthly and annual bases. 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.

(B) The application must include a description of the project site and address issues such as site access, proximity to the electrical grid or application load, environmental concerns with emphasis on visibility, noise, and avian impacts, construction, and installation issues and whether special circumstances such as proximity to airports exist.

(C) Sites must be controlled by the agricultural producer or rural small business for the proposed project life or

for the financing term of any associated federal loans or loan guarantees.

(v) *Project development schedule.* The applicant must 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.

(vi) *Financial feasibility.* The applicant must provide a study that describes costs and revenues of the proposed energy efficiency improvement(s) to demonstrate the financial performance of the energy efficiency improvement(s). 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.

(vii) *Equipment procurement.* The applicant must 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. Procurement must be made in accordance with the requirements of 7 CFR part 1924, subpart A.

(viii) *Equipment installation.* The applicant must fully describe 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 specification and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole.

(ix) *Operations and maintenance.* The applicant must identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The applicant must:

(A) Ensure that systems must have at least a 3-year warranty for equipment. Provide information regarding turbine warranties and availability of spare parts;

(B) 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;

(C) Provide information that supports expected design life of the system and timing of major component replacement or rebuilds;

(D) Provide and discuss the risk management plan for handling large, unanticipated failures of major components such as the turbine gearbox or rotor. Include in the discussion, costs and labor associated with operations and maintenance of system and plans for insourcing or outsourcing;

(E) Describe opportunities for technology transfer for long term project operations and maintenance by a local entity or owner/operator; and

(F) For owner maintained portions of the system, describe any unique knowledge, skills, or abilities needed for service operations or maintenance.

(x) *Decommissioning.* When uninstalling or removing the project, describe the decommissioning process. Describe any issues, requirements, and costs for removal and disposal of the system.

(10) *Energy efficiency improvements.* The technical requirements specified in paragraphs (d)(10)(i) through (ix) of this section apply to projects that involve improvements to a facility, building or process resulting in reduced energy consumption or reduced amount of energy required per unit of production are regarded as energy efficiency projects. Projects in excess of \$100,000 require a full energy audit as specified in paragraph (d)(10)(iii)(B) of this section. The system engineering for such projects must be performed by a qualified entity certified Professional Engineer as specified in paragraph (d)(10)(iv)(A) of this section.

(i) *Qualifications of project team.* The energy efficiency project team is expected to consist of an energy auditor, 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.

The applicant must provide authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services. The applicant must also provide authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life. The applicant must:

(A) Discuss the qualifications of the various project team members including any relevant certifications by recognized organizations or bodies;

(B) Describe qualifications or experience of the team as related to installation, service, operation and maintenance of the project;

(C) Provide a list of the same or similarly engineered projects designed, installed, or supplied by the team or by team members and currently operating.

(D) Discuss the manufacturers of major energy efficiency equipment being considered including length of time in business.

(ii) *Agreements and permits.* The applicant must identify all necessary agreements and permits required for the energy efficiency improvement(s) and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (d)(10)(ii)(A) through (C) of this section.

(A) Energy efficiency improvements must be installed in accordance with local, State, and national building and electrical codes and regulations. Identify building code, electrical code, and zoning issues and required permits, and the schedule for meeting those requirements and securing those permits.

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

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

(iii) *Energy assessment.* The applicant must provide adequate and appropriate evidence of energy savings expected when the system is operated as designed.

(A) The application must include information on baseline energy usage (preferably including energy bills for at least one year), expected energy savings based on manufacturers specifications



or other estimates, estimated dollars saved per year, and payback period in years (total investment cost equal to cumulative total dollars of energy savings). Calculation of energy savings should follow accepted methodology and practices. System interactions should be considered and discussed.

(B) For energy efficiency improvement projects in excess of \$100,000, an energy audit is required. An energy audit is a written report by an independent, qualified entity that documents current energy usage, recommended potential improvements and their costs, energy savings from these improvements, dollars saved per year, and simple payback period in years (total costs divided by annual dollars of energy savings). The methodology of the energy audit must meet professional and industry standards. The energy audit must cover the following:

(1) *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.

(2) *Potential improvements.* List specific information on all potential energy-saving opportunities and their costs.

(3) *Technical analysis.* Give consideration to the interactions among the potential improvements and other energy systems:

(i) Estimate the annual energy and energy costs savings expected from each improvement identified in the potential project.

(ii) Calculate all direct and attendant indirect costs of each improvement.

(iii) Rank potential improvements 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. 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.

(iv) *Design and engineering.* The applicant must 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.

(A) Energy efficiency improvement projects in excess of \$100,000 must be engineered by a qualified entity. Systems must be engineered as a complete, integrated system with matched components.

(B) 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.

(C) Identify possible suppliers and model of major pieces of equipment.

(v) *Project development schedule.* The applicant must 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.

(vi) *Equipment procurement.* The applicant must 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. Procurement must be made in accordance with the requirements of 7 CFR part 1924, subpart A.

(vii) *Equipment installation.* The applicant must fully describe 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 specification 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.

(viii) *Operations and maintenance.* The applicant must identify the operations and maintenance requirements of the energy efficiency improvement(s) necessary for the energy efficiency improvement(s) to operate as designed over the design life. The applicant must:

(A) Provide information regarding component warranties and the availability of spare parts;

(B) 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;

(C) Provide information that supports expected design life of the system and timing of major component replacement or rebuilds;

(D) Provide and discuss the risk management plan for handling large, unanticipated failures of major components. Include in the discussion, costs and labor associated with operations and maintenance of system and plans for in or outsourcing; and

(E) For owner maintained portions of the system, describe any unique knowledge, skills, or abilities needed for service operations or maintenance.

(ix) *Decommissioning.* Where appropriate, describe the decommissioning process. Describe the



decommissioning budget and any unique concerns to the decommissioning process.

**§ 4280.112 Evaluation of grant applications.**

(a) *General review.* The Agency will evaluate each application and make a determination 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) *Ineligible or incomplete applications.* If either the applicant or the project is ineligible, the Agency will inform the applicant in writing of the decision, reasons therefore, and any appeal rights, and no further evaluation of the application will occur. If the application is incomplete, the Agency will return it to the applicant to provide the applicant the opportunity to resubmit the application. The Agency will identify those parts of the application that are incomplete. Upon receipt of a complete application, the Agency will complete its evaluation of the application.

(c) *Technical feasibility determination.* The Agency's determination of a project's technical feasibility will be based on the information provided by the applicant and on other sources of information, such as recognized industry experts in the applicable technology field, as necessary, to determine technical feasibility of the proposed project.

(d) *Evaluation criteria.* Agency personnel will score and fund each application based on the evaluation criteria specified in paragraph (d)(1) of this section for renewable energy systems and in paragraph (d)(2) of this section for energy efficiency improvements. These criteria must be individually addressed in narrative form on a separate sheet of paper.

(1) *Criteria for applications for renewable energy systems.* Criteria for applications for renewable energy systems are:

(i) *Quantity of energy produced.* Points may only be awarded for either energy replacement or energy generation, but not for both;

(A) *Energy replacement.* If the proposed renewable energy system is intended primarily for self use by the farm, ranch, or rural small business and will provide energy replacement of greater than 75 percent, 20 points will be awarded; greater than 50 percent, but equal to or less than 75 percent, 15 points will be awarded; or greater than 25 percent, but equal to or less than 50 percent, 10 points will be awarded. The energy replacement should be

determined by dividing the estimated quantity of energy to be generated by at least the past 12 months' energy profile of the agricultural producer or rural small business or anticipated energy use. The estimated quantity of energy may be described in Btu's, kilowatts, or similar energy equivalents. Energy profiles can be obtained from the utility company;

(B) *Energy generation.* If the proposed renewable energy system is intended primarily for production of energy for sale, 20 points will be awarded;

(ii) *Environmental benefits.* If the purpose of the proposed renewable energy system is to upgrade an existing facility or construct a new facility required to meet applicable health or sanitary standards, 10 points will be awarded. Documentation must be obtained by the applicant from the appropriate regulatory agency with jurisdiction to establish the standard, to verify that a bona fide standard exists, what that standard is, and that the proposed project is needed and required to meet the standard;

(iii) *Commercial availability.* If the renewable energy system is currently commercially available and replicable, an additional 10 points will be awarded;

(iv) *Cost effectiveness.* If the proposed renewable energy system will return the cost of the investment in 5 years or less, 25 points will be awarded; up to 10 years, 20 points will be awarded; up to 15 years, 15 points will be awarded; or up to 20 years, 10 points will be awarded. The estimated return on investment is calculated by dividing the total project cost by the estimated projected net annual income and/or energy savings of the renewable energy system;

(v) *Matching funds.* If the agricultural producer or rural small business has provided eligible matching funds of over 90 percent, 15 points will be awarded; 85–90 percent, 10 points will be awarded; or at least 80 and up to but not including 85 percent, 5 points will be awarded;

(vi) *Management.* If the renewable energy system will be monitored and managed by a qualified third-party operator, such as pursuant to a service contract, maintenance contract, or remote telemetry, an additional 10 points will be awarded; and

(vii) *Small agricultural producer.* If the applicant (for grants) or borrower (for guaranteed loans) is an agricultural producer producing agricultural products with a gross market value of less than \$1 million in the preceding year, an additional 10 points will be awarded.

(2) *Criteria for applications for energy efficiency improvements.* Criteria for applications for energy efficiency improvements are:

(i) *Energy savings.* If the estimated energy expected to be saved by the installation of the energy efficiency improvements will be 35 percent or greater, 20 points will be awarded; 30 and up to but not including 35 percent, 15 points will be awarded; 25 and up to but not including 30 percent, 10 points will be awarded; or 20 and up to but not including 25 percent, 5 points will be awarded. Energy savings will be determined by the projections in an energy assessment or audit;

(ii) *Cost effectiveness.* If the proposed energy efficiency improvements will return the cost of the investment in 2 years or less, 25 points will be awarded; greater than 2 and up to and including 5 years, 20 points will be awarded; greater than 5 and up to and including 9 years, 15 points will be awarded; or greater than 9 and up to and including 11 years, 10 points will be awarded. The estimated return on investment is calculated by dividing the total project cost by the project net annual energy savings of the energy efficiency improvements;

(iii) *Matching funds.* If the agricultural producer or rural small business has provided eligible matching funds of over 90 percent, 15 points will be awarded; 85–90 percent, 10 points will be awarded; or 80 and up to but not including 85 percent, 5 points will be awarded; and

(iv) *Small agricultural producer.* If the applicant (for grants) or borrower (for guaranteed loans) is an agricultural producer producing agricultural products with a gross market value of less than \$1 million in the preceding year, an additional 10 points will be awarded.

**§ 4280.113 Insurance requirements.**

Insurance is required to protect the interest of the recipient of funds under this subpart and the Agency. The coverage must be maintained for the life of the grant unless this requirement is waived or modified by the Agency in writing.

(a) Worker compensation insurance is required in accordance with State law.

(b) National flood insurance is required in accordance with 7 CFR part 1806, subpart B (RD Instructions 426.2).

(c) Business interruption insurance will be required.

**§ 4280.114 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 and borrower are responsible for ensuring that the contractor complies with these requirements.

(b) *Americans with Disabilities Act (ADA)*. Loans and grants 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 applicant and borrower are responsible for compliance.

(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 on the recipient's membership/ownership and employees. These data should be available to conduct compliance reviews in accordance with 7 CFR part 1901, subpart E, § 1901.204, Compliance Review. Initial reviews will be conducted after Form RD 400-4, "Assurance Agreement," is signed and all subsequent reviews every three years thereafter. The Agency should be contacted to provide further guidance on collection of information and compliance with Civil Rights laws.

(d) *Environmental analysis*. Each applicant must prepare an environmental impact analysis using Form 1940-20, "Request for Environmental Information," pursuant to Rural Development environmental regulations found at 7 CFR part 1940, subpart G. The applicant will contact the appropriate State Agency office located in the applicant's State for assistance in completing this form. A site visit by the Agency will be scheduled, if necessary, to determine the scope of the review. The applicant will be notified of all specific compliance requirements, such as the publication of public notices. Any required environmental review must be completed by the Agency prior to the Agency obligating any grant or loan funds. The taking of 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.

(e) *Executive Order 12898, Environmental Justice*. When grant and

loans are proposed, Rural Development employees are to conduct a Civil Rights Impact Analysis in regard to environmental justice. The CIRA must be conducted and the analysis documented utilizing Form RD 2006-38, Civil Rights Impact Analysis Certification. This must be done prior to loan approval, obligation of funds, or other commitments of agency resources, including issuance of a Letter of Conditions or a Conditional Commitment (Form 4279-3) of guarantee, whichever occurs first.

#### **§ 4280.115 Construction planning and performing development.**

The requirements of 7 CFR part 1924, except as identified in paragraph (a) of this section, apply for construction of renewable energy systems and energy efficiency improvement projects as applicable.

(a) The following sections and paragraphs either do not apply to this subpart or are modified for the purposes of this subpart as described:

- (1) Under § 1924.4,
- (i) For the purposes of this subpart, "County Supervisor," "Assistant County Supervisor," "District Director," and "Assistant District Director" means the Agency. Wherever those terms are used in 7 CFR part 1924, subpart A, read "the Agency."
- (ii) The definition for "manufactured housing" does not apply; and
- (iii) The definition for "modular/panelized housing" does not apply;
- (2) § 1924.5(c) does not apply;
- (3) § 1924.5(d)(1)(i), (ii), and (vi) do not apply;
- (4) § 1924.5(d)(2) does not apply;
- (5) § 1924.5(d)(4)(i) and (iv) do not apply;
- (6) § 1924.5(f)(1)(i), (ii), (iii)(A), (iii)(B), (iii)(D), and (iii)(F) do not apply;
- (7) § 1924.5(f)(2) does not apply;
- (8) § 1924.5(i) does not apply;
- (9) § 1924.6(a)(1), (2), and (3) do not apply;
- (10) § 1924.6(b) does not apply;
- (11) § 1924.6(c) does not apply;
- (12) § 1924.6(d) does not apply;
- (13) § 1924.8 does not apply;
- (14) § 1924.10(c)(1) does not apply;
- (15) § 1924.12 does not apply;
- (16) § 1924.13(c) does not apply;
- (17) § 1924.13(e)(1) does not apply; and
- (18) § 1924, Exhibits A through E and I through M do not apply.

(b) Recipients of grants under this subpart are not authorized to construct the facility, project, or improvement in total, or in part, or utilize their own personnel and/or equipment.

#### **§ 4280.116 Grantee requirements.**

(a) Letter of Conditions, which is prepared by the Agency, establishes

conditions that must be understood and agreed to by the applicant before any obligation of funds can occur. The applicant must sign Letter of Intent to Meet Conditions and Form 1940-1, "Request for Obligation of Funds," if they accept the conditions of the grant. These forms will be enclosed with the Letter of Conditions. The grant will be obligated when the Agency receives an executed Letter of Intent and Request for Obligation of Funds from the applicant agreeing to all provisions in the Letter of Conditions.

(b) The grantee must sign and abide by all requirements contained in Form 4280-2, "Grant Agreement," and this subpart.

#### **§ 4280.117 Servicing grants.**

Grants will be serviced in accordance with 7 CFR part 1951, subpart E and the Grant Agreement.

#### **§§ 4280.118-4280.120 [Reserved]**

#### **Guaranteed Loans**

##### **§ 4280.121 Borrower eligibility.**

To receive a guaranteed loan under this subpart, a borrower must meet each of the criteria, as applicable, identified in § 4280.107(a) through (e).

##### **§ 4280.122 Project eligibility.**

For a project to be eligible to receive a guaranteed loan under this subpart, the project must meet each of the criteria, as applicable, in § 4280.108.

##### **§ 4280.123 Guaranteed loan funding.**

(a) The amount of guaranteed loan funds that will be made available to an eligible project under this subpart will not exceed 50 percent of eligible project costs. Eligible project costs are only those costs associated with the items listed in paragraphs (a)(1) through (11) of this section, as long as the items are an integral and necessary part of the total project.

- (1) Post-application purchase and installation of equipment, except agricultural tillage equipment and vehicles;
- (2) Post-application construction or project improvements, except residential;
- (3) Energy audits or assessments;
- (4) Permit fees;
- (5) Professional service fees, except for application preparation;
- (6) Feasibility studies;
- (7) Business plans;
- (8) Retrofitting;
- (9) Construction of a new facility only when the facility is used for the same purpose, is approximately the same size, and, based on the energy audit, will provide more energy savings than

improving an existing facility. Only costs identified in the energy audit for energy efficiency projects are allowed;

(10) Working capital; and

(11) Land acquisition.

(b) The minimum amount of a guaranteed loan made to a borrower is \$2,500. The maximum amount of a guaranteed loan made to a borrower is \$10 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 but up to \$5 million; 70 percent for loans greater than \$5 million but up to \$10 million.

(d) The total amount of Agency loans under this program 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.

#### § 4280.124 Interest rates.

(a) The interest rate for the guaranteed loan will be negotiated between the lender and the borrower and may be either fixed or variable as long as it is a legal rate. The variable rate will 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) 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 must 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.

(c) 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.

(d) A combination of fixed and variable rates will be allowed.

#### § 4280.125 Terms of loan.

(a) The maximum loan term limits will be utilized only when the loan cannot reasonably be repaid over a shorter term. The repayment term for a loan for:

(1) Real estate must not exceed 30 years.

(2) Machinery and equipment must not exceed 15 years, or the useful life, whichever is less.

(3) Repayment for combined loans on real estate and equipment must occur before 20 years.

(4) Working capital 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) Only loans that require a periodic payment schedule that will fully 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.

(e) All loans guaranteed through this program must be sound, with reasonably assured repayment.

#### § 4280.126 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 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 and billed to the lender in accordance with the **Federal Register** publication. The annual renewal fee may not be passed on to the borrower.

#### § 4280.127 [Reserved]

#### § 4280.128 Application and documentation.

The following requirements apply to all guaranteed loan applications under this subpart.

(a) *Applications.* Applications must be filed with the Agency by submitting the application information required in § 4280.111(a) (except for §§ 4280.111(a)(4)(iii)(A) and 4280.111(a)(4)(vi)).

(b) *Forms, certifications, and agreements.* Each application submitted under paragraph (a) of this section must contain, as applicable, the items described in § 4280.111(b)(7) through (15) and in paragraphs (b)(1) through (8) of this section.

(1) A completed Form 4279-1, "Application for Loan Guarantee."

(2) A personal credit report for the borrower, a proprietor (owner), each partner, officer, director, key employee, and stockholder owning 20 percent or more interest in the borrower's business from a credit reporting company acceptable to the Agency.

(3) 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.

(4) Lender's complete comprehensive written analysis in accordance with § 4280.139.

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

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

(7) 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:

(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 must contain any additional requirements imposed by the Agency in its Conditional Commitment (Form 4279-3).

(xiii) When submitting the proposed Loan Agreement, a section within the loan agreement reserved 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.

(xiv) Allow the Agency access to the project and its performance information during its useful life and permit periodic inspection of the project by a representative of the Agency.

(8) 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, and there is reasonable assurance of repayment ability based on the borrower's history, projections and equity, and the collateral to be obtained.

(c) *Feasibility study for renewable energy systems.* Each applicant must submit the information required under § 4280.111(c), as applicable.

(d) *Technical requirements reports.* Each applicant must submit the information required under § 4280.111(d), as applicable.

#### § 4280.129 Evaluation of guaranteed loan applications.

(a) *General review.* The Agency will evaluate each application and make a determination whether the borrower is eligible, the proposed loan is for an eligible project, 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) *Ineligible or incomplete applications.* If either the borrower or the project is ineligible, the Agency will inform the lender in writing of the decision, reasons therefore, and any appeal rights, and no further evaluation of the application will occur. If the

application is incomplete, the Agency will return it to the lender to provide the lender the opportunity to resubmit the application. The Agency will identify those parts of the application that are incomplete. Upon receipt of a complete application, the Agency will complete its evaluation of the application.

(c) *Evaluation criteria.* Agency personnel will score each application based on the evaluation criteria specified in § 4280.112(d) (except for the criteria specified in § 4280.112(d)(1)(v) and (d)(2)(iii)) and in paragraphs (c)(1) and (2) of this section:

(1) If the rate of the loan is below the Prime Rate (as published in The Wall Street Journal) plus 1.75 percent (5 points); and

(2) If the rate of the loan is below the Prime Rate (as published in The Wall Street Journal) plus 1 percent (an additional 5 points).

(d) *Technical feasibility determination.* The Agency's determination of a project's technical feasibility will be based on the information provided by the applicant and on other sources of information, such as recognized industry experts in the applicable technology field, as necessary, to determine technical feasibility of the proposed project.

#### § 4280.130 Eligible 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, or Savings and Loan Association. These entities must be subject to credit examination and supervision by either an agency of the United States or a State. Eligible lenders will 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.

#### § 4280.131 Lenders' 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 perform the requirements specified in paragraphs (a)(1) through (9) in this section:

(1) Process applications for guaranteed loans;

(2) Develop and maintain adequately documented loan files;

(3) Recommend only loan proposals that are eligible and financially feasible;

(4) Obtain valid evidence of debt and collateral in accordance with sound lending practices;

(5) Supervise construction;

(6) Distribute loan funds; A lender that is considering advancing an interim loan is advised that the Agency assumes no responsibility or obligation to take out an interim loan advanced prior to the Conditional Commitment being issued;

(7) Service guaranteed loans in a reasonable and prudent manner; including liquidation, if necessary;

(8) Follow Agency regulations; and

(9) Obtain Agency approvals or concurrence as required.

(b) *Credit evaluation.* 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 someone other than the originating officer. There must be good credit documentation procedures.

(c) *Environmental information.* Lenders must ensure that borrowers furnish all environmental information required under 7 CFR part 1940, subpart G. 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 RD 1940-20 (when required by 7 CFR part 1940, subpart G); 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. Lenders must alert the Agency to any controversial environmental issues related to a proposed project or items that may require extensive environmental review.

(d) *Construction planning and performing development.*

(1) *Design policy.* The lender must ensure that all project facilities are designed utilizing accepted architectural and engineering practices

and must conform to applicable Federal, state, and local codes and requirements as well as all requirements of this regulation. The lender must also ensure that the project will be completed with 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.

(2) *Project control.* The lender must 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.

(e) *Loan closing.* The lender must conduct loan closings.

**§ 4280.132 Access to records.**

Both the lender and borrower must permit representatives of the Agency (or other agencies of the United States) to inspect and make copies of any records of the lender or borrower pertaining to the Agency guaranteed loans 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.**

A loan guarantee under this subpart will be evidenced by a Loan Note Guarantee issued by the Agency. Each lender must execute a Lender's Agreement (Form 4279-4). 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 subpart apply to all outstanding guarantees. In the event of a conflict between the guarantee documents and this subpart as they exist at the time the documents are executed, this subpart will control.

(a) *Full faith and credit.* A guarantee under this subpart 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 will succeed to all rights of the lender under the Loan Note Guarantee to the extent of the portion purchased. The lender must 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. In the event of material fraud, negligence or misrepresentation by the lender or the lender's participation in or condoning of such material fraud, negligence or misrepresentation, the lender will be liable for payments made by the Agency to any 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.

**§ 4280.134 Sale or assignment of guaranteed loan.**

(a) 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 must not sell or assign 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.

(b) The entire loan must be evidenced by one note, and only one Loan Note Guarantee will be issued. The lender may assign all or part of the guaranteed portion of the loan to one or more holders only 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, the assignee will succeed to all rights and obligations of the holder thereunder.

(c) 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.

**§ 4280.135 Participation.**

The lender may obtain participation in the loan under its normal operating procedures; however, the lender must retain title to the note and retain its interest in the collateral.

**§ 4280.136 Minimum retention.**

The lender must 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.

**§ 4280.137 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 must notify, in writing, the holder and the Agency of its decision.

(b) *Agency repurchase.*

(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 must 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, in writing, 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 the Agency's rights against the lender. The Agency has 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 be made only 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.

**§ 4280.138 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 must 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, mutilation, defacement, 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 must 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 must 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 must be a qualified surety company holding a certificate of authority from the Secretary of the Treasury and listed in Treasury Department Circular 570.

(3) All indemnity bonds must be issued and payable to the United States of America acting through the USDA. The bond must be in an amount not less than the unpaid principal and interest. The bond must 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.

**§ 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 and 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.

(c) *Equity.* In determining the adequacy of equity, the lender must meet the criteria specified in paragraph (c)(1) of this section for loans over \$600,000 and the criteria in paragraph (c)(2) of this section for loans of \$600,000 or less.

(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 one year old and must meet the 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. However, the appraisal completed to establish the fair market value of the real property must not be more than one year old and must meet the Agency appraisal standards.

(d) *Lien priorities.* 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 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 by the Agency provided 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) Except for the requirement to demonstrate financial need for the funding, the financial information

required in § 4280.111(a)(4)(iii) is required for the guaranteed loan program.

(b) If the proposed guaranteed loan exceeds \$3 million, the Agency will require annual audited financial statements.

**§ 4280.141 Appraisals.**

(a) *Loans of \$600,000 or more.* A complete self-contained appraisal must be conducted. 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 must 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). 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. Lenders must complete at least a Transaction Screen Questionnaire environmental site assessment for any new 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. Chattels will be evaluated in accordance with normal banking practices and generally accepted methods of determining value.

(b) *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) of this section. Summary appraisals must be conducted in accordance with USPAP.

(c) *Specialized appraisers.* Specialized appraisers will be required to complete appraisals in accordance with paragraphs (a) and (b) 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) Personal and corporate guarantees, when obtained, are part of the collateral for the loan. However, the value of such guarantee is not considered in determining whether a loan is adequately secured for loanmaking purposes.

(b) Unconditional personal and corporate guarantees for those owning or having a beneficial interest greater than 20 percent of the borrower will be required where legally permissible.

**§ 4280.143 Loan approval and obligation of 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/or borrower may propose alternate conditions. Within the requirements of the applicable regulations and instructions and reasonable and prudent lending practices, the Agency may negotiate with the lender and/or borrower regarding any proposed changes to the Conditional Commitment.

**§ 4280.144 Transfer of lenders.**

(a) The Agency 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, "Application for Loan Guarantee."

**§ 4280.145 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.

**§ 4280.146 Conditions precedent to issuance of Loan Note Guarantee.**

The Loan Note Guarantee will not be issued until the 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 completed, all development has been completed in accordance with



plans and specifications, conforms with applicable Federal, state, and local codes, performed at a steady state operating level in accordance with the technical requirements, and costs have not exceeded the amount approved by the lender and the Agency.

(c) 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.

(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 the Application for Loan Guarantee (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.

#### **§ 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) Executed Form 4279-4, "Lender's Agreement," and

(3) 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 4279-7, "Certificate of Incumbency and Signature," with the signature and title of the Agency official who signs 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, 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.

#### **§ 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, but not be limited to, the information specified in paragraphs (a) and (b) of this section, as applicable.

(a) For renewable energy systems, 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 following will be provided:

(1) Report the actual amount of energy produced in BTUs, kilowatts, or similar energy equivalents.

(2) If applicable, provide documentation that identified health and/or sanitation problem has been solved.

(3) Provide the annual income and/or energy savings of the renewable energy system.

(4) Summarize the cost of operating and maintaining the facility.

(5) Description of any maintenance or operational problems associated with the facility.

(6) Recommendations for development of future similar projects.

(b) 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, report the actual amount of energy saved due to the energy efficiency improvements.

#### **§ 4280.150 Insurance requirements.**

(a) Each borrower must obtain the insurance required in § 4280.113(a) through (c) and in paragraphs (b) and (c) in this section. 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.

(b) 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.

(c) The lender may require life insurance on every loan 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 borrower's working capital must be considered as well as the amount of existing insurance which could be assigned without requiring additional expense.

**§ 4280.151 Laws that contain other compliance requirements.**

(a) Each applicant and borrower must comply with the requirements specified in § 4280.114(a), (b), and (d), as applicable, and with paragraph (b) of this section.

(b) *Equal Credit Opportunity Act.* In accordance with the Equal Credit Opportunity Act (Title V of Pub. L. 90-321, as amended), with respect to any aspect of a credit transaction, neither the lender nor the Agency will discriminate against any borrower on the basis of race, color, religion, national origin, sex, marital status or age (providing the borrower has the capacity to contract), or because all or part of the borrower's income derives from a public assistance program, or because the borrower 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.

**§ 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) *Servicing.* The lender is responsible for servicing the entire loan and for taking all servicing actions that

a reasonable, 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.

(1) *Lender reports.* The lender must report the outstanding principal and interest balance on each guaranteed loan semiannually using Form RD 1980-41, "Guaranteed Loan Status Report."

(2) *Loan classification.* Within 90 days of receipt of the Loan Note Guarantee, the lender must notify the Agency, in writing, of the loan's classification or rating under its regulatory standards. Should the classification be changed at a future time, the lender must notify, in writing, the Agency immediately.

(3) *Agency and lender conference.* At the Agency's request, the lender must 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.

(4) *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 also be included.

(5) *Additional expenditures.* The lender must 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.

(b) *Interest rate adjustments.* The lender must use the procedures described in paragraphs (b)(1) and (2) of this section when adjusting the interest rate on a guaranteed loan.

(1) *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 lender must notify the Agency, 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.

(i) 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.

(ii) Variable rates can be changed to a fixed rate which is at or below the current variable rate.

(iii) The interest rates, after adjustments, must comply with the requirements for interest rates on new loans as established by § 4280.124.

(iv) 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.

(2) *Increases.* No increases in interest rates will be permitted except the normal fluctuations in approved variable interest rates unless a temporary interest-rate reduction occurred.

(c) *Release of collateral.* The lender must use the procedures described in paragraphs (c)(1) through (3) of this section in order to release collateral associated with the guaranteed loan.

(1) 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 § 4280.141. 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 and adequate consideration.

(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 buy real estate equal to or greater than the collateral being replaced.

(3) Within the parameters of paragraph (c)(1) 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.

(d) *Subordination of lien position.* A subordination of the lender's lien position must be requested in writing by the lender and concurred by the Agency in writing in advance of the subordination. The Agency will only consider a parity or junior lien position. 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. The subordination must be for a fixed period of time, 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.

(e) *Alterations of loan instruments.* The lender must not alter or approve any alterations of any loan instrument without the prior written approval of the Agency.

(f) *Loan transfer and assumption.* When a loan is transferred and assumed, the procedures described in paragraphs (f)(1) through (11) of this section must be followed.

(1) *Documentation of request.* All transfers and assumptions must be approved in writing by the Agency and must be to eligible borrowers in accordance with § 4280.121. 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.

(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 § 4280.125. 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) *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.

(4) *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.

(5) *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.

(6) *Credit quality.* The lender must make a complete credit analysis which is subject to Agency review and approval.

(7) *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.

(i) The assumption will be done on the lender's assumption agreement and will contain the Agency case number of the transferor and transferee. The lender must provide the Agency with a copy of the transfer and assumption agreement. The lender must ensure that the transfer and assumption is noted on the original Loan Note Guarantee.

(ii) A new Loan Agreement, consistent in principle with the original Loan Agreement, must be executed to establish the terms and conditions of the loan being assumed. An assumption agreement can be used to establish the loan covenants.

(iii) The lender must provide to the Agency a written certification that the transfer and assumption is valid, enforceable, and complies with all Agency regulations.

(8) *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, using Form RD 449-30, "Loan Note Guaranteed Loss Report," 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 § 4280.137(c). 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 must be included in the calculations.

(9) *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.

(10) *Payment requests.* Requests for a loan guarantee to provide equity for a transfer and assumption must be considered as a new loan under this subpart.

(11) *Cash down payment.* When the transferee will be making a cash down payment as part of the transfer and assumption:

(i) The lender must have an appropriate appraiser, acceptable to both the transferee and transferor and currently authorized to perform appraisals to determine the value of the collateral securing the loan. The Agency will not pay the appraisal fee or any other costs.

(ii) 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.

(iii) Cash down payments may be paid directly to the transferor provided:

(A) 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;

(B) 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;

(C) 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

(D) 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.

**§ 4280.153 Substitution of lender.**

After the issuance of a Loan Note Guarantee, the lender must 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 § 4280.130;
  - (ii) Is able to service the loan in accordance with the original loan documents; and
  - (iii) Agrees in writing to acquire and must 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.

**§ 4280.154 Default by borrower.**

(a) The lender must notify the Agency, in writing, when a borrower is 30 days past due on a payment or is otherwise in default of the Loan Agreement. Form RD 1980-44, "Guaranteed Loan Borrower Default Status" must be used and the lender must continue to submit this form bi-monthly until such time as the loan is no longer in default. If a monetary default exceeds 60 days, the lender must 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 temporary 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 § 4280.152(f);
- (v) Reorganization;
- (vi) Liquidation;
- (vii) Subsequent loan guarantees; and
- (viii) Changes in interest rates with the Agency's, the lender's, and the 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 loan terms, whichever is less.

**§ 4280.155 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.

**§ 4280.156 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 of the loan may be considered by the lender. 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 § 4280.137.

(a) *Decision to liquidate.* A decision to liquidate must be made when it is determined that the default cannot be cured through actions contained in § 4280.154 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 § 4280.154;

(2) It has been determined that delaying liquidation will jeopardize full recovery on the loan; and

(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.

(c) *Submission of liquidation plan.* The lender must, 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) A voluntary conveyance, if one is considered, including the proposed amount to be credited to the guaranteed debt;

(12) Legal opinions, if needed; and

(13) If the outstanding balance of principal and accrued interest is less than \$100,000, 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 \$100,000 or more, the lender will obtain an independent appraisal report meeting the requirements of § 4280.141 on all collateral securing the loan that 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. Both the estimate and the appraisal must 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 must 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 must 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 must 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 must account for funds during the period of liquidation and must 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 must transmit to the Agency its pro rata share of any payments received from the borrower, liquidation payments, or payments of other proceeds, using Form RD 1980-43, "Lender's Guaranteed Loan Payment to USDA."

(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 an environmental review by the Agency. 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 must take action to maximize recovery from all collateral, including personal and corporate guarantees. The lender must 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.

**§ 4280.157 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 that may be liable.

(a) *Report of loss form.* 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 § 4280.156(g), an estimated loss claim based on liquidation appraisal value may be prepared and submitted by the lender.

(1) The estimated loss payment must 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 § 4280.152(f).

(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 must 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 Loan Note Guarantee Report of Loss.

(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 § 4280.156(k) 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 must 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 must be supported by documentation as to how the amount was accrued. If the interest rate was a variable rate, the lender must 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 must be deducted from the proceeds of the disposition of 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 RD 449-30, "Loan Note Guaranteed Report of Loss," and proceeds 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 must 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.

**§ 4280.158 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 must be pro rated between the Agency and the lender based on the original percentage of guarantee.

**§ 4280.159 Bankruptcy.**

The lender must protect 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 must file a proof of claim where necessary and all the necessary papers and pleadings concerning the case;

(2) The lender must attend and, where necessary, participate in meetings of the creditors and all court proceedings;

(3) When permitted by the Bankruptcy Code, the lender must request modification of any plan of reorganization whenever it appears that additional recoveries are likely;

(4) The Agency must be kept informed on a regular basis in writing of all aspects of the proceedings; and

(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 Title 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 must 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 then reorganization plan.

(ii) The lender must use the Loan Note of Guarantee Report of Loss 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 must complete and forward Form RD 1980-44, "Guaranteed Loan Borrower Default Status," to the Agency.

(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 in writing.

(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 must 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 must 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.* The lender must follow the procedures described in paragraphs (c)(1) and (2) of this section for handling 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 generally 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 Chapter 11, reasonable and customary liquidation expenses may be deducted from proceeds of collateral as provided in Form 4279-4, "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.

#### **§ 4280.160 Termination of guarantee.**

A guarantee under this part will terminate automatically when any of the circumstances specified in paragraphs (a) through (c) of this section occurs.

(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.

#### **Direct Loans**

##### **§ 4280.161 Direct loan process.**

(a) The Agency will determine each year whether or not direct loan funds are available. For each year in which direct loan funds are available, the Agency will publish a Notice of Funds Availability (NOFA) in the **Federal Register**.

(b) In each direct loan NOFA, the Agency will identify the following:

(1) the amount of funds available for direct loans;

(2) applicant and project eligibility criteria;

(3) minimum and maximum loan amounts;

(4) interest rates;

(5) terms of loan;

(6) application and documentation requirements;

(7) evaluation of applications;

(8) actions required of the applicant/borrower (e.g., appraisals, land and property acquisition);

(9) insurance requirements;

(10) laws that contain other

compliance requirements;

(11) construction planning and performing development;

(12) requirements after project construction;

(13) letter of conditions, loan agreement, and loan closing process;

(14) processing and servicing of direct loans by the Agency; and

(15) any applicable definitions.

**§ 4280.162—4280.192 [Reserved]****Combined Funding****§ 4280.193 Combined funding.**

This section identifies the requirements for a project for which an applicant is seeking a combined grant and guaranteed loan.

(a) *Eligibility.* Applicants must meet the applicability requirements specified in §§ 4280.107 and 4280.121. Projects must meet the applicability requirements specified in §§ 4280.108 and 4280.122.

(b) *Funding.* Funding provided under this section is subject to the limits described in paragraphs (b)(1) and (2) of this section.

(1) The amount of any combined grant and guaranteed loan must not exceed 50 percent of 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 §§ 4280.109(a) and 4280.123(a). The applicant must provide the remaining total funds needed to complete the project.

(2) Third-party, in-kind contributions will be limited to 10 percent of the matching fund requirement of the grantee/borrower.

(c) *Application and documentation.* When applying for a combined funding request, the applicant must submit applications as specified in paragraph (c)(1) of this section and documentation as specified in paragraph (c)(2) of this section.

(1) Separate applications for both types of assistance (grant and guaranteed loan) are required. Each application must meet the requirements specified in §§ 4280.111 and 4280.128. The separate applications must be submitted simultaneously.

(2) The documentation required for grants and guaranteed loans, as specified in §§ 4280.111 and 4280.128, respectively, must be submitted, as applicable, with the applications specified in paragraph (c) of this section. The applicant must submit at least one set of documentation.

(d) *Evaluation of combined funding requests.* The Agency will evaluate each application according to applicable procedures specified in §§ 4280.112 and 4280.129.

(e) *Interest rates and terms of loan.* The interest rate and terms of loan for the loan portion of the combined funding request will be determined based on the procedures specified in

§§ 4280.124 and 4280.125 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, the processing and servicing requirements, as applicable and as described in paragraphs (f)(1) and (2) of this section.

(1) All other provisions of Section A of this subpart shall apply to the grant portion of the combined funding request.

(2) All other provisions of Section B of this subpart shall apply to the guaranteed loan portion of the combined funding request.

**§§ 4280.194—4280.199 [Reserved]****§ 4280.200 OMB control number. [Reserved]**

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**Gilbert G. Gonzalez, Jr.,**

*Acting Under Secretary.*

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