

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

7 CFR Parts 1951 and 4284

RIN 0570-AA79

Value-Added Producer Grant Program

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food, Conservation, and Energy Act of 2008 (the Act), amends section 231 of the Agricultural Risk Protection Act of 2000, which established the Value-Added Producer Grant Program. This program will be administered by the Rural Business-Cooperative Service. Under the proposed program, grants will be made to help eligible producers of agricultural commodities enter into or expand value-added activities including the development of feasibility studies, business plans, and marketing strategies. The program will also provide working capital for expenses such as implementing an existing viable marketing strategy. The Agency proposes to implement the program to meet the goals and requirements of the Act.

The Agency is also proposing an amendment to existing regulations that would allow the delegation of the post-award servicing of the proposed program to USDA State Office personnel. Please note that this amendment would only affect the post-award servicing of the grant and would not affect the process for awarding grants, which would still occur at the National office.

DATES: Comments on the proposed rule must be received on or before June 28, 2010 to be assured of consideration. A 30-day comment period is provided for interested persons to comment on the regulatory provisions of this proposed rule. The Agency has determined that a 30-day comment period, rather than the traditional 60 day comment period, is

appropriate in order to provide a sufficient amount of time to comment while ensuring program performance during the current fiscal year. This action will also provide applicants more time to develop quality applications for the program with minimal disruptions in ongoing farming activities.

The comment period for the information collection under the Paperwork Reduction Act of 1995 continues through July 27, 2010.

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

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

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

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

FOR FURTHER INFORMATION CONTACT:

Andrew Jermolowicz USDA, Rural Development, Rural Business-Cooperative Service, Room 4016, South Agriculture Building, Stop 3250, 1400 Independence Avenue, SW., Washington, DC 20250-3250, Telephone: (202) 720-7558, E-mail CPGrants@wdc.usda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Authority

Section 231 of the Agriculture Risk Protection Act of 2000 (Pub. L. 106-224) as amended by section 6202 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246) (see 7 U.S.C. 1621 note) authorizes the establishment of the Value-Added Agricultural Product Market Development grants, also known as Value-Added Producer Grants. The Secretary of Agriculture has delegated

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the program's administration to USDA Rural Development Cooperative Programs.

B. Nature of the Program

This subpart contains the provisions and procedures by which the Agency will administer the Value-Added Producer Grant (VAPG) Program. The primary objective of this grant program is to help Independent Producers of Agricultural Commodities, Agriculture Producer Groups, Farmer and Rancher Cooperatives, and Majority-Controlled Producer-Based Business Ventures develop strategies to create marketing opportunities and to help develop Business Plans for viable marketing opportunities regarding production of bio-based products from agricultural commodities. As with all value-added efforts, generating new products, creating expanded marketing opportunities, and increasing producer income are the end goal.

Eligible applicants are independent agricultural producers, farmer and rancher cooperatives, agricultural producer groups, and majority-controlled producer-based business ventures.

Grant funds cannot be used for planning, repairing, rehabilitating, acquiring, or constructing a building or facility (including a processing facility). They also cannot be used to purchase, rent, or install fixed equipment.

This program requires matching funds equal to or greater than the amount of grant funds requested. The Act provides for both mandatory and discretionary funding for the program, as may be appropriated. During subsequent years, additional funding may be appropriated. The number of grants awarded will vary from year to year, based on availability of funds and the quality of applications. The maximum grant amount that may be awarded is \$500,000. However, the Agency may reduce that amount depending on the total funds appropriated for the program in a given fiscal year. This policy allows more grants to be awarded under reduced funding.

The Agency notes, pursuant to general Federal directives providing guidance on grant usage, that the 100 percent matching funds requirement described in the Agricultural Risk Protection Act of 2000 may include payment for the time of the applicant/producer or the applicant/producer's family members

only for the production of the business and marketing plans. Please contact the state office for further information.

II. Request for Public Comments on Specific Aspects of the Proposed Program

The Agency is interested in receiving comments on all aspects of the proposed rule. Areas in which the Agency is seeking specific comments are identified below. All comments should be submitted as indicated in the **ADDRESSES** section of this preamble.

a. *Medium-sized farm.* As proposed, medium-sized farm is defined as "A farm or ranch that has averaged between \$250,001 and \$700,000 in annual gross sales of agricultural products in the previous three years." The Agency is specifically requesting comment on whether it is more appropriate to use \$500,000 as the upper limit in this definition. Please be sure to provide rationale for your position.

b. *Branding activities.* The Agency is proposing to allow branding, packaging, or other product differentiation activities that are not more than 25 percent of the total project cost of a value-added project for products otherwise eligible in one of the five value-added methodologies specified in paragraphs (1)(i) through (v) of the definition of value-added agricultural product to be eligible. The Agency is seeking specific comment on the proposed 25 percent limit. If you believe a different limit is more appropriate, please identify your suggested limit and provide your rationale to support your suggestion.

III. Discussion of the Proposed Rule

The following paragraphs present a discussion of provisions of each section of the proposed rule in the order that they appear.

A. Purpose (§ 4284.901)

This section implements the value-added agricultural product market development grant program administered by the Rural Business-Cooperative Service whereby grants are made to enable producers to develop businesses that produce and market value-added agricultural products.

B. Definitions (§ 4284.902)

This section presents program specific definitions which are included to more clearly implement the program.

C. Review or Appeal Rights (§ 4284.903)

This section addresses how a person may seek a review of an Agency decision or file an appeal.

D. Exception Authority (§ 4284.904)

This section explains the Administrator's authority to make exceptions to regulatory requirements or provisions and specifically excludes permission to make exceptions for:

- Applicant eligibility
- Project eligibility

The Agency believes that applicant and project eligibility criteria must be maintained at all times in order to be consistent with statutory authority.

E. Nondiscrimination and Compliance With Other Federal Laws (§ 4284.905)

This section explains that applicants must comply with all applicable Federal laws. Additionally, this section explains how an applicant that believes it has been discriminated against as a result of applying for funds under this program can file a Civil Rights complaint with the USDA Office of Adjudication and Compliance.

F. State Laws, Local Laws, Regulatory Commission Regulations (§ 4284.906)

This section addresses how conflicts between this subpart and State or local laws, or regulatory commission regulations will be resolved.

G. Environmental Requirements (§ 4284.907)

This section addresses the relationship between grants awarded under this subpart and the environmental requirements of subpart G of 7 CFR part 1940.

H. Incorporation by Reference (§ 4284.908)

This section identifies the various regulations that are incorporated by reference in this subpart.

I. Forms, Regulations, and Instructions (§ 4284.909)

This section identifies how forms, regulations, instructions and other materials related to programs may be obtained.

J. Notifications (§ 4284.915)

This section describes the methods the Agency will use in making notifications regarding funding and programmatic changes.

K. Applicant Eligibility (§ 4284.920)

This section describes the requirements an applicant must meet to be eligible for a grant under this subpart, including, but not limited to, such areas as citizenship, legal authority, and multiple grants. An applicant must demonstrate that they meet all definition requirements for one of the following applicant types:

- An independent producer;
- An agricultural producer group;
- A farmer or rancher cooperative; or
- A majority-controlled producer-based business venture.

L. Ineligible Applicants (§ 4284.921)

This section describes those conditions under which an applicant will be considered ineligible to participate in this program.

M. Project Eligibility (§ 4284.922)

The eligibility requirements applicable to this subpart are described in this section. For a product to be eligible it must meet the definition of a value-added agricultural product. The applicant must also demonstrate that, as a result of the project, the customer base for the agricultural commodity or product is expanded, and that a greater portion of the revenue derived from the marketing or processing of the value-added product is available to the agricultural producer of the commodity or product.

Other aspects of project eligibility discussed in this section include, but are not limited to, availability of matching funds, submittal of various items such as work plans, budgets, feasibility studies, and business plans, and how applications that include branding and packaging will be handled.

N. Eligible Uses of Grant Funds (§ 4284.923)

The section identifies the eligible uses of grant and matching funds for both planning funds and working capital funds, and requires that grant and matching funds meet the same use restrictions, including being used to fund only the costs for approved purposes.

O. Ineligible Uses of Grant and Matching Funds (§ 4284.924)

This section describes those activities for which Agency funds under this subpart may not be used. Ineligible uses include expenses related to payment for preparation of the grant application and any activities prohibited by 7 CFR parts 3015 and 3019, 2 CFR part 230, and 48 CFR part 31. Expenses related to the production of any agricultural commodity or product, including seed, rootstock, labor for harvesting the crop, and delivery of the commodity to a processing facility are not eligible. Any costs of the project incurred prior to the date of grant approval, including legal or other expenses needed to incorporate or organize a business, are ineligible.

P. Funding Limitations (§ 4284.925)

This section describes the maximum grant fund amount that a grant recipient can receive (\$500,000) and several grant terms, including, but not limited to, the portion of total project eligible costs that grant funds can be used to pay (up to 50%) and the term of a grant (not to exceed 3 years).

Q. Preliminary Review (§ 4284.930)

This section encourages applicants to contact their State Office before they submit their applications.

R. Application Package (§ 4284.931)

The application forms, content, evaluation criteria, verifications and certifications required in the application package are detailed in this section.

S. Simplified Application (§ 4284.932)

This section addresses simplified applications, which are applicable to applicants requesting less than \$50,000.

T. Filing Instructions (§ 4284.933)

This section provides the instructions for filing an application with the Agency. Completed applications must be received on or before March 15 of each year to be considered for funding that fiscal year. Late and/or incomplete applications will not be considered. Included in this section is information on where to submit and the format required for submission.

U. Processing Applications (§ 4284.940)

This section explains the process by which the Agency will conduct an application review to determine if the application is complete and meets program requirements. After review, the Agency will notify applicants in writing of their findings. Applicants determined to be ineligible may revise and resubmit their applications to the Agency on or before the application deadline.

V. Application Withdrawal (§ 4284.941)

This section describes the process whereby an applicant must notify the Agency in writing of its intention to withdraw its application for assistance.

W. Scoring Applications (§ 4284.942)

This section describes the process and criteria the Agency will use to score applications. The Agency will only score applications for which it has determined that the applicant and project are eligible and that the application is complete and sufficiently responsive to program requirements. Each such application the Agency receives on or before the application deadline in a fiscal year will be scored in the fiscal year in which it was

received. Applications will be scored based on the information provided and/or referenced in the scoring section of the application at the time the applicant submits the application to the Agency. The maximum number of points that may be awarded to an application is 100, based on the criteria specified in this section.

X. Award Process (§ 4284.950)

This section describes the process by which the Agency will select applications for funding. Funding will be based on the score an application has received compared to the scores of other applications. Higher scoring applications will receive first consideration for funding. The Agency will notify in writing applicants whose applications have been selected for funding as well as inform those who did not receive funding, including a brief explanation as to why.

Y. Grant Agreement (§ 4284.951)

This section describes the conditions under which the grant will be made to the applicant. Each grantee will be required to meet all terms and conditions of the award within 90 days of receiving the Letter of Conditions, unless otherwise specified by the Agency at the time of the award.

Z. Monitoring and Reporting Program Performance (§ 4284.960)

The required monitoring and reporting activities are described in this section. Requirements include semiannual performance reports which must be submitted to the Agency within 30 days following March 31 and September 30. Failure to submit timely performance reports may result in the Agency withholding grant funds.

AA. Grant Servicing (§ 4284.961)

This section states that all grants awarded under this subpart will be serviced pursuant to 7 CFR part 1951, subparts E and O, and in Departmental Regulations. Note that as a separate action being proposed today, the Agency is proposing an amendment to § 1951.215 of subpart E. Paragraph (b)(2) in that section currently states that “All other grants will be serviced in accordance with the Grant Agreement and this subpart. Prior approval of the Administrator is required except for actions covered in the preceding paragraph.” The Agency is proposing to amend this paragraph by deleting the second sentence. This proposed amendment would facilitate the delegation of the servicing of the proposed program, and other grant programs that use part 1951 as their

servicing regulation, to USDA State Office personnel. As noted earlier, the awarding of grants will occur at the National office.

BB. Transfer of Obligations (§ 4284.962)

This section explains those circumstances under which an obligation of funds established for an applicant may be transferred to a different (substituted) applicant.

CC. Grant Close out and Related Activities (§ 4284.963)

This section addresses the requirements for conducting grant close out and other related activities.

IV. Administrative Requirements**A. Executive Order 12866**

This proposed rule has been reviewed under Executive Order (EO) 12866 and has been determined not significant by the Office of Management and Budget. The EO defines a “significant regulatory action” as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this EO.

The Agency conducted a cost-benefit analysis to fulfill the requirements of Executive Order 12866. The Agency has identified potential benefits to prospective program participants and the Agency that are associated with improving the availability of funds to help producers (farmers) expand their customer base for the products or commodities that they produce. This results in a greater portion of the revenues derived from the value-added activity being made available to the producer of the product. These benefits are important to the success of individual producers, farmer or rancher cooperatives, agriculture producer groups, and majority-controlled producer based business ventures.

B. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of

their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, Rural Development must prepare, to the extent practicable, a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. With certain exceptions, section 205 of UMRA requires Rural Development to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

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

C. Environmental Impact Statement

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

D. Executive Order 12988, Civil Justice Reform

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. Except where specified, all State and local laws and regulations that are in direct conflict with this rule will be preempted. Federal funds carry Federal requirements. No person is required to apply for funding under this program, but if they do apply and are selected for funding, they must comply with the requirements applicable to the Federal program funds. This rule is not retroactive. It will not affect agreements entered into prior to the effective date of the rule. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

E. 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 the proposed rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–602) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute. If an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, this analysis is not required. Small entities include small businesses, small organizations, and small governmental jurisdictions.

In compliance with the RFA, Rural Development has determined that this action will not have a significant economic impact on a substantial number of small entities for the reasons discussed below. While, the majority of producers of agricultural commodities expected to participate in this Program will be small businesses, the average cost to participants is estimated to be approximately 20 percent of the total mandatory funding available to the program in fiscal years 2009 through 2012. Further, this regulation only affects producers that choose to participate in the program. Lastly, small entity applicants will not be affected to a greater extent than large entity applicants.

G. Executive Order 12372, Intergovernmental Review of Federal Programs

This program is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. Intergovernmental consultation will occur for the assistance to producers of agricultural commodities in accordance with the process and procedures outlined in 7 CFR part 3015, subpart V.

Rural Development will conduct intergovernmental consultation using RD Instruction 1940-J, “Intergovernmental Review of Rural Development Programs and Activities,” available in any Rural Development office, on the Internet at <http://www.rurdev.usda.gov/regs>, and in 7 CFR part 3015, subpart V. Note that not all States have chosen to participate in the intergovernmental review process. A list of participating States is available at the following Web site: <http://>

www.whitehouse.gov/omb/grants/spoc.html.

H. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This executive order imposes requirements on Rural Development in the development of regulatory policies that have tribal implications or preempt tribal laws. Rural Development has determined that the proposed rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and the Indian tribes. Thus, the proposed rule is not subject to the requirements of Executive Order 13175.

I. Programs Affected

Catalog of Federal Domestic Assistance (CFDA) Number: This program is listed in the Catalog of Federal Domestic Assistance under Number 10.352.

J. Paperwork Reduction Act

The collection of information requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for clearance. In accordance with the Paperwork Reduction Act of 1995, USDA Rural Development will seek standard OMB approval of the reporting requirements contained in this proposed rule and hereby opens a 60-day public comment period.

Title: Value-Added Producer Grant Program.

Type of Request: New Collection.

Abstract: The collection of information is vital to Rural Development to make decisions regarding the eligibility of grant recipients in order to ensure compliance with the regulations and to ensure that the funds obtained from the Government are being used for the purposes for which they were awarded. Entities seeking funding under this program will have to submit applications that include information on the entity’s eligibility, information on each of the evaluation criteria, certification of matching funds, verification of cost-share matching funds, business plan, and feasibility study. This information will be used to determine applicant eligibility and to ensure that funds are used for authorized purposes.

Once an entity has been approved and their application accepted for funding, the entity would be required to sign a Letter of Conditions and a grant agreement. The grant agreement outlines

the approved use of funds and actions, as well as the restrictions and applicable laws and regulations that apply to the award. Grantees must maintain a financial system and, in accordance with Departmental regulations, property and procurement standards. Grantees must submit semi-annual financial performance reports that include a comparison of accomplishments with the objectives stated in the application and a final performance report. Finally, grantees must provide copies of supporting documentation and/or project deliverables for completed tasks (e.g., feasibility studies, business plans, marketing plans, success stories, best practices).

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

Estimate of Burden: Public reporting for this collection of information is estimated to average 34.1 hours per response.

Respondents: Producers of agricultural commodities.

Estimated Number of Respondents: 535.

Estimated Number of Responses per Respondent: 3.3.

Estimated Number of Responses: 1,783.

Estimated Total Annual Burden (hours) on Respondents: 60,724.

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

Comments

Comments are invited regarding: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of Rural Development, including whether the information will have practical utility; (b) the accuracy of Rural Development's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, Stop 0742, 1400 Independence Ave., SW., Washington, DC 20250-0742. All responses to this proposed rule will be

summarized and included in the request for OMB approval. All comments will also become a matter of public record.

K. E-Government Act Compliance

USDA is committed to complying with the E-Government Act of 2002 (Pub. L. 107-347, December 17, 2002), to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to government information and services, and for other purposes.

List of Subjects in 7 CFR Parts 1951 and 4284

Agricultural commodities, agricultural products, grant programs, rural areas, rural development, value-added activities.

For the reasons set forth in the preamble, parts 1951 and 4284 of title 7 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for part 1951 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932
Note; 7 U.S.C. 1989; 31 U.S.C. 3716; 42 U.S.C. 1480.

Subpart E—Servicing of Community and Direct Business Programs Loans and Grants

2. Section 1951.215 is amended by revising paragraph (b)(2) to read as follows:

§ 1951.215 Grants.

* * * * *

(b) * * *

(2) All other grants will be serviced in accordance with the Grant Agreement and this subpart.

PART 4284—GRANTS

3. The authority citation for part 4284 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989

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

Subpart J—Value-Added Producer Grant Program

Section A—General

Sec.

4284.901 Purpose.

4284.902 Definitions.

4284.903 Review or appeal rights.

4284.904 Exception authority.

4284.905 Nondiscrimination and compliance with other Federal laws.

4284.906 State laws, local laws, regulatory commission regulations.

4284.907 Environmental requirements.

4284.908 Incorporation by reference.
4284.909 Forms, regulations, and instructions.
4284.910—4284.914 [Reserved]

Section B—Funding and Programmatic Change Notifications

4284.915 Notifications.
4284.916—4284.919 [Reserved]

Section C—Eligibility

4284.920 Applicant eligibility.
4284.921 Ineligible applicants.
4284.922 Project eligibility.
4284.923 Eligible uses of grant funds.
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4284.925 Funding limitations.
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Section D—Applying for a Grant

4284.930 Preliminary review.
4284.931 Applications.
4284.932 Simplified applications.
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Section E—Processing and Scoring Applications

4284.940 Processing applications.
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4284.942 Scoring applications.
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Section F—Grant Awards and Agreement

4284.950 Award process.
4284.951 Grant agreement.
4284.952—4284.959 [Reserved]

Section G—Post Award Activities and Requirements

4284.960 Monitoring and reporting program performance.
4284.961 Grant servicing.
4284.962 Transfer of obligations.
4284.963 Grant close out and related activities.
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Section A—General

§ 4284.901 Purpose.

This subpart implements the value-added agricultural product market development grant program (Value-Added Producer Grants) administered by the Rural Business-Cooperative Service whereby grants are made to enable producers to develop businesses that produce and market value-added agricultural products.

§ 4284.902 Definitions.

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

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

Agricultural commodity. An unprocessed product of farms, ranches, nurseries, and forests and natural and man-made bodies of water to which the producer has legal access. Agricultural commodities include any product

cultivated, raised, or harvested by the producer. Agricultural commodities do not include horses or other animals raised or sold as pets, such as cats, dogs, and ferrets.

Agricultural producer. An individual or entity directly engaged in the production of an agricultural commodity that is the subject of the value-added project.

Agricultural producer group. A membership organization that represents independent producers and whose mission includes working on behalf of independent producers and the majority of whose membership and board of directors is comprised of independent producers.

Agricultural product. Plant and animal products and their by-products to include crops (including farming); livestock (including ranching); forestry products; hydroponics; nursery stock; aquaculture; and fish and seafood products.

Anticipated award date. A date when the Agency expects to announce applications selected to receive grant funding.

Beginning farmer or rancher. This term has the meaning given it in section 343(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1991(a)) and is an entity in which none of the individual owners have operated a farm or a ranch for more than 10 years. For the purposes of this subpart, a Beginning Farmer or Rancher must currently own and produce the agricultural commodity to which value will be added.

Business plan. A formal statement of a set of business goals, the reasons why they are believed attainable, and the plan for reaching those goals, including pro forma financial statements appropriate to the term and scope of the project and sufficient to evidence the viability of the venture. It may also contain background information about the organization or team attempting to reach those goals.

Conflict of interest. A situation in which a person or entity has competing professional or personal interests that make it difficult for the person or business to act impartially. An example is a grant recipient or an employee of a recipient that conducts or significantly participates in conducting a feasibility study for the recipient.

Day. Calendar day, unless otherwise stated.

Departmental regulations. The regulations of the Department of Agriculture's Office of Chief Financial Officer (or successor office) as codified in 7 CFR parts 3000 through 3099, including, but not necessarily limited

to, 7 CFR parts 3015 through 3019, 7 CFR part 3021, and 7 CFR part 3052, and successor regulations to these parts.

Emerging market. A new or developing product that is new to the applicant or the applicant's product.

Family Farm. The term has the meaning given it in section 761.2 of title 7, Code of Federal Regulations (as in effect on December 30, 2007), in effect that, a Family Farm produces agricultural commodities for sale in sufficient quantity to be recognized as a farm and not a rural residence, owners are primarily responsible for daily physical labor and management, hired help only supplements family labor, and owners are related by blood or marriage or are immediate family.

Farm or ranch. Any place from which \$1,000 or more of agricultural products were raised and sold or would have been raised and sold during the previous year, but for an event beyond the control of the farmer or rancher.

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

Feasibility study. An analysis by a qualified consultant of the economic, market, technical, financial, and management capabilities of a proposed project or business in terms of the project's expectation for success.

Financial feasibility. The ability of a project or business to achieve the income, credit, and cash flows to financially sustain a venture over the long term.

Fiscal year. The Federal government's fiscal year.

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

Independent producers.

(1) Individual agricultural producers or entities that are solely owned or controlled by agricultural producers. Independent producers must produce and own a majority of the agricultural commodity to which value is being added and that is the subject of the project proposal. Independent producers must maintain ownership of the agricultural commodity or product from its raw state through the production of the value-added product. Producers who produce the agricultural commodity under contract for another entity, but do not own the product produced are not considered independent producers. Entities that

contract out the production of an agricultural commodity are not considered independent producers.

(2) A steering committee composed of specifically identified agricultural producers in the process of organizing an eligible entity to operate a value-added venture that will be owned or controlled by those specifically identified agricultural producers supplying the agricultural product to the market. The steering committee must have formed the eligible entity by the time of award.

Local or regional supply network. An interconnected group of entities through which agricultural based products move from production through consumption in a local or regional area of the United States. Examples of participants in a supply network may include agricultural producers, processors, distributors, wholesalers, retailers, consumers, and entities that organize or provide technical assistance for development of such networks.

Locally-produced agricultural food product. Any agricultural food product that is raised, produced, and distributed in:

(1) The locality or region in which the final product is marketed, so that the total distance that the product is transported is less than 400 miles from the origin of the product; or

(2) The State in which the product is produced.

Majority-controlled producer-based business venture. An entity (except farmer or rancher cooperatives) in which more than 50 percent of the financial ownership and voting control is held by independent producers.

Marketing plan. A plan for the project conducted by a qualified consultant that identifies a market window, potential buyers, a description of the distribution system and possible promotional campaigns.

Matching funds. A cost-sharing contribution to the project via confirmed cash or funding commitments from eligible sources without a conflict of interest, that are used for eligible project purposes during the grant period. Eligible matching funds include confirmed applicant cash, loan or line of credit, non-Federal grant sources (unless otherwise provided by law), and third-party cash or eligible third-party in-kind contributions. Matching funds must be at least equal to the grant amount, and combined grant and matching funds must equal 100 percent of the total project costs. All eligible cash and third-party in-kind matching funds contributions must be spent on eligible expenses during the grant period, and are subject to the same

use restrictions as grant funds. Matching funds must be spent at a rate equal to or greater than the rate at which grant funds are expended, and if matching funds are proposed in an amount exceeding the grant amount, those matching funds must be spent at a proportional rate equaling the match-to-grant ratio identified in the budget. Expected program income may not be used to fulfill the matching funds requirement at time of application. Further, funds used for an ineligible purpose, contributions donated outside the proposed grant period, and in-kind contributions that are invalid, over-valued or include potential for a conflict of interest are not acceptable matching funds. All matching funds must be verified by authentic documentation from the source as part of the application.

Medium-sized farm. A farm or ranch that has averaged between \$250,001 and \$700,000 in annual gross sales of agricultural products in the previous three years.

Mid-tier value chain. Local and regional supply networks that link independent producers with businesses and cooperatives that market value-added agricultural products in a manner that:

(1) Targets and strengthens the profitability and competitiveness of small and medium-sized farms and ranches that are structured as a family farm; and

(2) Obtains agreement from an eligible agricultural producer group, farmer or rancher cooperative, or majority-controlled producer-based business venture that is engaged in the value chain on a marketing strategy.

(3) For mid-tier value chain projects the Agency recognizes that, in a supply chain network, a variety of raw agricultural commodity and value-added product ownership and transfer arrangements may be necessary. Consequently, applicant ownership of the raw agricultural commodity and value-added product from raw through value-added is not necessarily required, as long as the mid-tier value chain proposal can demonstrate an increase in customer base and an increase in revenue returns to the applicant producers supplying the majority of the raw agricultural commodity for the project.

Planning grant. A grant to facilitate the development of a defined program of economic planning activities to determine the viability of a potential value-added venture, and specifically for the purpose of paying for a qualified (third-party) consultant to conduct and develop a feasibility study, business

plan, and/or marketing plan associated with the processing and/or marketing of a value-added agricultural product.

Product segregation. Separating an agricultural commodity or product on the same farm from other varieties of the same commodity or product on the same farm during production and harvesting, with assurance of continued separation from similar products during processing and marketing in a manner that results in the enhancement of the value of the separated commodity or product.

Pro forma financial statement. A financial statement that projects the future financial position of a company. The statement is part of the business plan and includes an explanation of all assumptions, such as input prices, finished product prices, and other economic factors used to generate the financial statements. The statement must include projections in the form of cash flow statements, income statements, and balance sheets.

Project. All activities to be funded by grant and matching funds.

Qualified consultant. An independent, third-party possessing the knowledge, expertise, and experience to perform the specific task required in an efficient, effective, and authoritative manner.

Rural Development. A mission area of the Under Secretary for Rural Development within the U.S. Department of Agriculture (USDA), which includes Rural Housing Service, Rural Utilities Service, and Rural Business-Cooperative Service and their successors.

Rural or rural area. Any area of a State not in a city or town that has a population of more than 50,000 inhabitants, according to the latest decennial census of the United States, and the contiguous and adjacent urbanized area, and any area that has been determined to be "rural in character" by the Under Secretary for Rural Development, or as otherwise identified in this definition. In determining which census blocks in an urbanized area are not in a rural area, the Agency will exclude any cluster of census blocks that would otherwise be considered not in a Rural Area only because the cluster is adjacent to not more than two census blocks that are otherwise considered not in a rural area under this definition.

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

(2) For the Commonwealth of Puerto Rico, the island is considered rural and eligible for Business Programs assistance, except for the San Juan Census Designated Place (CDP) and any other CDP with greater than 50,000 inhabitants. CDPs with greater than 50,000 inhabitants, other than the San Juan CDP, may be determined to be eligible if they are "not urban in character." Any such requests must be forwarded to the National Office, Business and Industry Division, with supporting documentation as to why the area is "not urban in character" for review, analysis, and decision by the Rural Development Under Secretary.

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

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

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

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

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

Small farm. A farm or ranch that has averaged \$250,000 or less in annual gross sales of agricultural products in the previous three years.

Socially disadvantaged farmer or rancher. This term has the meaning given it in section 355(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2003(e)). A farmer or rancher who is a member of a "socially disadvantaged group." In this definition, the term farmer or rancher means a person that is engaged in farming or ranching or an entity solely owned by individuals who are engaged in farming or ranching. A socially disadvantaged group means a group whose members have been subjected to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities. In the event that there are multiple farmer or rancher owners of the applicant organization, the Agency requires that at least 51 percent of the ownership be held by

members of a socially disadvantaged group.

State. Any of the 50 States of the United States, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

State director. The term “State Director” means, with respect to a State, the Director of the Rural Development State Office.

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

Total project cost. The sum of all grant and matching funds in the project budget that reflects the eligible project tasks associated with the work plan.

Value-added agricultural product. Any agricultural commodity or product that meets the requirements specified in paragraphs (1) and (2) of this definition.

(1) The agricultural commodity or product must meet one of the following five value-added methodologies:

(i) Has undergone a change in physical state;

(ii) Was produced in a manner that enhances the value of the agricultural commodity or product;

(iii) Is physically segregated in a manner that results in the enhancement of the value of the agricultural commodity or product;

(iv) Is a source of farm- or ranch-based renewable energy, including E-85 fuel; or

(v) Is aggregated and marketed as a locally-produced agricultural food product.

(2) As a result of the change in physical state or the manner in which the agricultural commodity or product was produced, marketed, or segregated:

(i) The customer base for the agricultural commodity or product is expanded and

(ii) A greater portion of the revenue derived from the marketing, processing, or physical segregation of the agricultural commodity or product is available to the producer of the commodity or product.

Venture. The business, including the project and other related activities.

Working capital grant. A grant to provide funds to operate a value-added project, specifically to pay the eligible project expenses related to the processing and/or marketing of the value-added product that are eligible uses of grant funds.

§ 4284.903 Review or appeal rights.

A person may seek a review of an Agency decision under this subpart

from the appropriate Agency official that oversees the program in question or appeal to the National Appeals Division in accordance with 7 CFR part 11.

§ 4284.904 Exception authority.

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

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

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

§ 4284.905 Nondiscrimination and compliance with other Federal laws.

(a) **Other Federal laws.** Applicants must comply with other applicable Federal laws, including the Equal Employment Opportunities Act of 1972, the Americans with Disabilities Act, the Equal Credit Opportunity Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and 7 CFR part 1901-E.

(b) **Nondiscrimination.** The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). Any applicant that believes it has been discriminated against as a result of applying for funds under this program should contact:

USDA, Director, Office of Adjudication and Compliance, 1400 Independence Avenue, SW., Washington, DC 20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD) for information and instructions regarding the filing of a Civil Rights complaint. USDA is an equal opportunity provider, employer, and lender.

(c) **Civil rights compliance.** Recipients of grants must comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973. This includes collection and maintenance of data on the basis of race, sex and national origin of the recipient's membership/ownership and employees. These data must be available to conduct compliance reviews in accordance with 7 CFR part 1901, subpart E. For grants initial compliance review will be conducted after Form RD 400-4, “Assurance Agreement,” is signed and one subsequent compliance review after the last disbursement of grant funds have been made, and the facility or programs been in full operations for 90 days.

(d) **Executive Order 12898.** When a project is proposed and financial assistance is requested, the Agency will conduct a Civil Rights Impact Analysis (CRIA) with regards to environmental justice. The CRIA must be conducted and the analysis documented utilizing Form RD 2006-38, “Civil Right Impact Analysis Certification.” This certification must be done prior to grant approval, obligation of funds, or other commitments of Agency resources, including issuance of a Letter of Conditions, whichever occurs first.

§ 4284.906 State laws, local laws, regulatory commission regulations.

If there are conflicts between this subpart and State or local laws or regulatory commission regulations, the provisions of this subpart will control.

§ 4284.907 Environmental requirements.

All grants awarded under this subpart are subject to the environmental requirements in subpart G of 7 CFR part 1940 or successor regulations. Applications for planning grants are generally excluded from the environmental review process by § 1940.333 of this title. Applicants for working capital grants must submit Form 1940-22, Categorical Exclusion Checklist.

§ 4284.908 Incorporation by reference.

(a) **Departmental regulations.** Unless specifically stated, this subpart incorporates by reference the regulations of the Department of Agriculture's Office of Chief Financial Officer (or successor office) as codified in 7 CFR parts 3000 through 3099, including, but not necessarily limited to, 7 CFR parts 3015 through 3019, 7 CFR part 3021, and 7 CFR part 3052, and successor regulations to these parts.

(b) **Cost principles.** This subpart incorporates by reference the cost

principles found in 2 CFR part 230 and in 48 CFR part 31.2.

(c) *Definitions.* If a term is defined differently in the Departmental Regulations, 2 CFR 230, or 48 CFR 31.2 and in this subpart, such term shall have the meaning as found in this subpart.

§ 4284.909 Forms, regulations, and instructions.

Copies of all forms, regulations, instructions, and other materials related to the program referenced in this subpart may be obtained through the Agency.

§ 4284.910–4284.914 [Reserved]

Section B—Funding and Programmatic Change Notifications

§ 4284.915 Notifications.

In implementing this subpart, the Agency will issue notifications addressing funding and programmatic changes, as specified in paragraphs (a) and (b) of this section, respectively. The methods that the Agency will use in making these notifications is specified in paragraph (c) of this section, and the timing of these notifications is specified in paragraph (d) of this section.

(a) *Funding and simplified applications.* The Agency will issue notifications concerning:

(1) The funding level and the minimum and maximum grant amount and any additional funding information as determined by the Agency; and

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

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

(1) The set of Administrator priority categories or their point allocation, if the provisions specified in § 4284.942(b)(6) are not to be used for awarding Administrator points. Administrator priorities that the program may consider are:

(i) Unserved or underserved areas.
(ii) Geographic diversity.

(iii) Emergency conditions.

(iv) To more effectively accomplish the mission area's plans, goals, and objectives.

(v) Public health and safety.

(2) Additional reports that are generally applicable across projects within a program associated with the monitoring of and reporting on project performance.

(3) Any information specified in § 4284.933.

(4) Preliminary review information.

(c) *Notification methods.* The Agency will issue the information specified in paragraphs (a) and (b) in one or more **Federal Register** notices. In addition, all information will be available at any Rural Development office.

(d) *Timing.* The Agency will make the information specified in paragraphs (a) and (b) of this section available as specified in paragraphs (d)(1) through (3) of this section.

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

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

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

§ 4284.916–4284.919 [Reserved]

Section C—Eligibility

§ 4284.920 Applicant eligibility.

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

(a) *Type of applicant.* The applicant must demonstrate that they meet all definition requirements for one of the following applicant types:

- (1) An independent producer;
- (2) An agricultural producer group;
- (3) A farmer or rancher cooperative; or
- (4) A majority-controlled producer-based business venture.

(b) *Emerging market.* An applicant that is an agricultural producer group, a farmer or rancher cooperative, or a majority-controlled producer-based business venture must demonstrate that they are entering into an emerging market as a result of the proposed project.

(c) *Citizenship.*

(1) Individual applicants must demonstrate that they:

(i) Are citizens or nationals of the United States (U.S.), the Republic of Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, or American Samoa, or

(ii) Reside in the U.S. after legal admittance for permanent residence.

(2) Entities other than individuals must demonstrate that they are at least 51 percent owned by individuals who are either citizens as identified under paragraph (c)(1)(i) of this section or legally admitted permanent residents

residing in the U.S. This paragraph is not applicable if the entity is owned solely by members of one immediate family. In such instance, if at least one of the immediate family members is a citizen or national, as defined in paragraph (c)(1) of this section, then the entity is eligible.

(d) *Legal authority and responsibility.* Each applicant must demonstrate that they have, or can obtain, the legal authority necessary to carry out the purpose of the grant.

(e) *Multiple grant eligibility.* An applicant may submit only one application in response to this notice, and must direct that it compete in either the general funds competition or in one of the reserved funds competitions. Separate entities with identical or greater than 75 percent common ownership may only submit one application for one entity per year. Applicants who have already received a planning grant for the proposed project cannot receive another planning grant for the same project. Applicants who have already received a working capital grant for the proposed project cannot receive any additional grants for that project.

(f) *Active VAPG grant.* If an applicant has an active value-added grant at the time of a subsequent application, the current grant must be closed out within 90 days of the annual NOFA.

§ 4284.921 Ineligible applicants.

(a) Consistent with the Departmental regulations, an applicant is ineligible if the applicant is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, “Debarment and Suspension.”

(b) An applicant will be considered ineligible for a grant due to an outstanding judgment obtained by the U.S. in a Federal Court (other than U.S. Tax Court), is delinquent on the payment of Federal income taxes, or is delinquent on Federal debt.

§ 4284.922 Project eligibility.

To be eligible for a VAPG grant, the application must demonstrate that the project meets the requirements specified in paragraphs (a) through (d) of this section, as applicable.

(a) *Product eligibility.* Each product that is the subject of the proposed project must meet the definition of a value-added agricultural product, including a demonstration that:

(1) The value-added product results from one of the value-added methodologies identified in paragraphs

(1)(i) through (v) of the definition of value-added agricultural product;

(2) As a result of the project, the customer base for the agricultural commodity or product is expanded; and

(3) As a result of the project, a greater portion of the revenue derived from the marketing or processing of the value-added product is available to the agricultural producer of the commodity or product.

(b) Purpose eligibility.

(1) The grant funds requested must not exceed the amount specified annually for planning and working capital grant requests.

(2) The matching funds required for the project budget must be available during the project period and verified in the application.

(3) The proposed project must be limited to eligible planning or working capital activities as defined at § 4284.923, as applicable, with eligible tasks directly related to the processing and/or marketing of the subject value-added product.

(4) The project work plan and budget must:

(i) Present a detailed breakdown of all estimated costs associated with the eligible planning or working capital activities related to the processing and/or marketing of the value-added product and allocate those costs among the listed tasks;

(ii) Identify the sources and uses of grant and matching funds for all tasks specified in the budget; and

(iii) Present a project budget period of not longer than 36 months, scaled to complexity, and concluding not later than 3 years after the proposed start date.

(5) Working capital applications must include a feasibility study and business plan completed specifically for the proposed value-added project by a qualified consultant. The Agency must concur in the acceptability or adequacy of the feasibility study and business plan for eligibility purposes.

(6) If the applicant is an agricultural producer group, a farmer or rancher cooperative, or a majority-controlled producer-based business venture, the applicant must demonstrate that it is entering an emerging market.

(7) All applicants for working capital must either be currently marketing each value-added agricultural product that is the subject of the grant application, or be ready to implement the working capital activities in accord with the budget and work plan timeline proposed.

(c) *Branding activities.* Applications that propose only branding, packaging, or other similar means of product

differentiation are not eligible under this subpart. However, applications that propose branding, packaging, or other product differentiation activities that are no more than 25 percent of total project costs of a value-added project for products otherwise eligible in one of the five value-added methodologies specified in paragraphs (1)(i) through (v) of the definition of value-added agricultural product are eligible.

(d) *Reserved funds eligibility.* In addition to the requirements specified in paragraphs (a) through (c) of this section, the requirements specified in paragraphs (d)(1) and (2) of this section must be met, as applicable. All eligible, but unfunded reserved funds applications will be eligible to compete for general funds in that same fiscal year, as funding levels permit.

(1) If the applicant is applying for beginning farmer or rancher, or socially-disadvantaged farmer or rancher reserved funds, the applicant must provide documentation demonstrating that the applicant meets one of these definitions.

(2) If the applicant is applying for mid-tier value chain reserved funds, the application must:

(i) Demonstrate that the project proposes development of a local or regional supply network of an interconnected group of entities through which agricultural products move from production through consumption in a local or regional area of the United States, including a description of the network, its component members, and its purpose;

(ii) Describe at least two alliances, linkages or partnerships within the value chain that link independent producers with businesses and cooperatives that market value-added agricultural products in a manner that benefits small or medium-sized farms and ranches that are structured as a family farm, including the names of the parties and the nature of their collaboration;

(iii) Demonstrate how the project, due to the manner in which the value-added product is marketed, will increase the profitability and competitiveness of at least two eligible small or medium-sized farms or ranches that are structured as a family farm;

(iv) Document that the eligible agricultural producer group/cooperative/majority-controlled producer-based business venture applicant organization has obtained at least one agreement with another member of the supply network that is engaged in the value chain on a marketing strategy; or that the eligible independent producer applicant has

obtained at least one agreement from an eligible agricultural producer group/cooperative/majority-controlled producer-based business venture engaged in the value-chain on a marketing strategy;

(v) Demonstrate that the applicant organization currently owns and produces more than 50 percent of the raw agricultural commodity that will be used for the value-added product that is the subject of the proposal; and

(vi) Demonstrate that the project will result in an increase in customer base and an increase in revenue returns to the applicant producers supplying the majority of the raw agricultural commodity for the project.

§ 4284.923 Eligible uses of grant and matching funds.

Grant and cost-share matching funds have the same use restrictions and must be used to fund only the costs for approved purposes as defined in paragraphs (a) and (b) of this section.

(a) Planning funds may be used to pay for a qualified consultant to conduct and develop a feasibility study, business plan, and/or marketing plan associated with the processing and/or marketing of a value-added agricultural product. Planning funds may not be used for applicant participation in feasibility studies. In-kind contribution of matching funds to cover applicant participation in development of business plans and/or marketing plans is allowed to the extent that the value of such work can be appropriately valued. Funds may not be used to evaluate the agricultural production of the commodity itself, other than to determine the project's input costs related to the feasibility of processing and marketing the value-added product.

(b) Working capital funds may be used to pay the project's operational costs directly related to the processing and/or marketing of the value-added product. Examples of eligible working capital expenses include designing or purchasing a financial accounting system for the project, paying salaries of employees without ownership interest to process and/or market and deliver the value-added product to consumers, paying for inventory supply costs necessary to produce the value-added product from the agricultural commodity or product, and paying for a marketing campaign for the value-added product.

§ 4284.924 Ineligible uses of grant and matching funds.

Grant funds awarded under this subpart may not be used to:

- (a) Plan, repair, rehabilitate, acquire, or construct a building or facility (including a processing facility);
- (b) Purchase, lease purchase, or install fixed equipment, including processing equipment;
- (c) Purchase or repair vehicles, including boats;
- (d) Pay for the preparation of the grant application;
- (e) Pay expenses not directly related to the funded project;
- (f) Fund research and development;
- (g) Fund political or lobbying activities;
- (h) Fund any activities prohibited by 7 CFR parts 3015 and 3019, 2 CFR part 230, and 48 CFR part 31.2.
- (i) Fund architectural or engineering design work;
- (j) Fund expenses related to the production of any agricultural commodity or product, including seed, rootstock, labor for harvesting the crop, and delivery of the commodity to a processing facility;
- (k) Conduct activities on behalf of anyone other than a specifically identified independent producer or group of independent producers. The Agency considers conducting industry-level feasibility studies or business plans, that are also known as feasibility study templates or guides or business plan templates or guides, to be ineligible because the assistance is not provided to a specific group of Independent Producers;
- (l) Duplicate current services or replace or substitute support previously provided;
- (m) Pay any costs of the project incurred prior to the date of grant approval, including legal or other expenses needed to incorporate or organize a business;
- (n) Pay for assistance to any business that does not meet the requirements of § 4284.920(c);
- (o) Pay any judgment or debt owed to the United States;
- (p) Pay for any goods or services provided by a person or entity that has a conflict of interest or an appearance of a conflict of interest. Also, note that in-kind matching funds may not be provided by a person or entity that has a conflict of interest or an appearance of a conflict of interest;
- (q) Purchase land; or
- (r) Pay for costs associated with illegal activities.

§ 4284.925 Funding limitations.

- (a) Grant funds may be used to pay up to 50 percent of the total eligible project costs, subject to the limitations established for maximum total grant amount.

- (b) The maximum total grant amount provided to a grantee in any one year shall not exceed the amount announced in an annual notice issued pursuant to § 4284.915, but in no event may the total amount of grant funds provided to a grant recipient exceed \$500,000.
 - (c) A grant under this subsection shall have a term that does not exceed 3 years. Grant project periods should be scaled to the complexity of the objectives for the project. The Agency may extend the term of the grant period, not to exceed the 3-year maximum.
 - (d) The aggregate amount of awards to majority controlled producer-based businesses may not exceed 10 percent of the total funds obligated under this subpart during any fiscal year.
 - (e) Not more than 5 percent of funds appropriated each year may be used to fund the Agricultural Marketing Resource Center, to support electronic capabilities to provide information regarding research, business, legal, financial, or logistical assistance to independent producers and processors.
 - (f) Each fiscal year, the following amounts of reserved funds will be made available:
 - (1) 10 percent to fund projects that benefit beginning farmers or ranchers, or socially-disadvantaged farmers or ranchers; and
 - (2) 10 percent to fund projects that propose development of mid-tier value chains.
 - (3) Funds not obligated by June 30 of each fiscal year shall be available to the general fund for the program.
- § 4284.926–4284.929 [Reserved]**
- Section D—Applying for a Grant**
- § 4284.930 Preliminary review.**
- The Agency encourages applicants to contact their State Office well in advance of the application submission deadline, to ask questions and to discuss project eligibility potential. At its option, the Agency may establish a preliminary review deadline so that it may informally assess the eligibility of the application and its completeness. The result of the preliminary review is not binding on the Agency. To implement this section, the Agency will issue a notification addressing this issue in accordance with § 4284.915.
- § 4284.931 Application package.**
- All applicants are required to submit an application package that is comprised of the elements in this section.
- (a) *Application forms.* The following application forms (or their successor forms) must be completed when applying for a grant under this subpart.
- (1) Form SF-424, “Application for Federal Assistance.”
 - (2) Form SF-424A, “Budget Information-Non-Construction Programs.”
 - (3) Form SF-424B, “Assurances—Non-Construction Programs.”
 - (4) Form RD 400-4, “Assurance Agreement.”
 - (5) Form RD 400-1, “Equal Opportunity Agreement.”
 - (6) All applicants are required to have a DUNS number (including individuals and sole proprietorships).
 - (b) *Application content.* The following content items must be completed when applying for a grant under this subpart:
 - (1) *Eligibility discussion.* Using the format prescribed by the application package, the applicant must describe in detail how the:
 - (i) Applicant (§§ 4284.920 and 921) and project eligibility (§ 4284.922) requirements are met;
 - (ii) Eligible use of grant and matching funds (§§ 4284.923 and 924) requirements are met; and
 - (iii) Funding limitation (§ 4284.925) requirements are met.
 - (2) *Evaluation criteria.* Using the format prescribed by the application package, the applicant must address each evaluation criterion identified below.
 - (i) *Performance evaluation criteria.* Applicants for planning grants must suggest at least one criterion by which their performance under a grant could be evaluated. Applicants for working capital grants must identify the projected increase in customer base, revenue accruing to independent producers, and number of jobs attributed to the project. Working capital projects with significant renewable energy components must also identify the projected increase in capacity per unit of measure annually attributed to the project. Performance criteria will be incorporated into the applicant’s semi-annual and final reporting requirements if selected for award.
 - (ii) *Proposal evaluation criteria.* Applicants must address each proposal evaluation criterion identified in § 4284.942 in narrative form, in the application package.
 - (3) *Certification of matching funds.* Using the format prescribed by the application package, applicants must certify that:
 - (i) Cost-share matching funds will be spent in advance of grant funding, such that for every dollar of grant funds disbursed, not less than an equal amount of matching funds will have

been expended prior to submitting the request for reimbursement; and

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

(4) *Verification of cost-share matching funds.* Using the format prescribed by the application package, the applicant must provide authentic documentation from the source to confirm the eligibility and availability of both cash and in-kind contributions that meet the following requirements:

(i) Matching funds are subject to the same use restrictions as grant funds, and must be spent on eligible project expenses during the grant project period.

(ii) Matching funds must be from eligible sources without a conflict of interest and without the appearance of a conflict of interest.

(iii) Matching funds must be at least equal to the amount of grant funds requested, and combined grant and matching funds must equal 100 percent of the total eligible project costs.

(iv) Unless provided by other authorizing legislation, other Federal grant funds cannot be used as matching funds.

(v) Matching funds must be provided in the form of confirmed applicant cash, loan, or line of credit; or confirmed third-party cash or eligible third-party in-kind contribution.

(vi) Examples of ineligible matching funds include funds used for an ineligible purpose, contributions donated outside the proposed grant period, third-party in-kind contributions that are over-valued, expected program income at time of application, or instances where the potential for a conflict of interest exists, including applicant in-kind contributions in § 4284.923(a).

(5) *Business plan.* As part of the application package, applicants for working capital grants must provide a copy of the business plan that was completed for the proposed project. The Agency must concur in the acceptability or adequacy of the business plan.

(6) *Feasibility study.* As part of the application package, applicants for working capital grants must provide a copy of the third-party feasibility study that was completed for the proposed project. The Agency must concur in the acceptability or adequacy of the feasibility study.

§ 4284.932 Simplified application.

Applicants requesting less than \$50,000 will be allowed to submit a

simplified application, the contents of which will be announced in an annual notice issued pursuant to § 4284.915.

§ 4284.933 Filing instructions.

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

(a) *When to submit.* Complete applications must be received by the Agency on or before March 15 of each year to be considered for funding for that fiscal year. Applications received by the Agency after March 15 will not be considered.

(b) Incomplete applications.

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

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

(d) *Format.* Applications may be submitted as hard copy, or electronically via grants.gov. If submitted as hard copy, only one original copy should be submitted.

(e) *Other forms and instructions.* Upon request, the Agency will make available to the public the necessary forms and instructions for filing applications. These forms and instructions may be obtained from any State Office of Rural Development, or the Agency's Value-Added Producer Grant program Web site—<http://www.rurdev.usda.gov/rbs/coops/vadg.htm>.

§§ 4284.934–4284.939 [Reserved]

Section E—Processing and Scoring Applications

§ 4284.940 Processing applications.

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

(b) *Notifications.* After the review in paragraph (a) of this section has been conducted, the Agency will notify the applicant in writing of the Agency's findings. If the Agency has determined that either the applicant or project is ineligible or that the application is not complete to allow evaluation of the application or sufficiently responsive to

program requirements, it will include in the notification the reason(s) for its determination(s).

(c) Resubmittal by applicants.

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

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

§ 4284.941 Application withdrawal.

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

§ 4284.942 Proposal evaluation criteria and scoring applications.

(a) *General.* The Agency will only score applications for which it has determined that the applicant and project are eligible, the application is complete and sufficiently responsive to program requirements, and the project is likely feasible. Any applicant whose application will not be reviewed because the Agency has determined it fails to meet the preceding criteria will be notified of appeal rights pursuant to § 4284.903. Each such application the Agency receives on or before the application deadline in a fiscal year will be scored in the fiscal year in which it was received. Each application will be scored based on the information provided and/or referenced in the scoring section of the application at the time the applicant submits the application to the Agency.

(b) *Scoring applications.* The maximum number of points that will be awarded to an application is 100, plus an additional 10 points if the project is located in a rural area. The criteria specified in paragraphs (b)(1) through (7) of this section will be used to score each application. The Agency will specify how points are awarded for each

criterion in a Notice published each fiscal year.

(1) Nature of the proposed project (maximum 25 points).

(2) Personnel qualifications (maximum 20 points).

(3) Commitments and support (maximum 10 points).

(4) Work plan/budget (maximum 20 points).

(5) Type of applicant (maximum 15 points).

(6) Administrator priority categories and points (maximum 10 points).

(7) Rural or rural area location (10 points may be awarded).

§ 4284.943–4284.949 [Reserved]

Section F—Grant Awards and Agreement

§ 4284.950 Award process.

(a) *Selection of applications for funding and for potential funding.* The Agency will select and rank applications for funding based on the score an application has received in response to the proposal evaluation criteria, compared to the scores of other value-added applications received in the same fiscal year. Higher scoring applications will receive first consideration for funding. The Agency will notify applicants, in writing, whether or not they have been selected for funding. For those applicants not selected for funding, the Agency will provide a brief explanation for why they were not selected.

(b) *Ranked applications not funded.* A ranked application that is not funded in the fiscal year in which it was submitted will not be carried forward into the next fiscal year. The Agency will notify the applicant in writing.

(c) *Intergovernmental review.* If State or local governments raise objections to a proposed project under the intergovernmental review process that are not resolved within 90 days of the Agency's award announcement date, the Agency will rescind the award and will provide the applicant with a written notice to that effect. The Agency, in its sole discretion, may extend the 90-day period if it appears resolution is imminent.

§ 4284.951 Grant agreement.

(a) *Letter of conditions.* When a grant is obligated subject to conditions established by the Agency, the Agency will notify, in writing, each applicant whose application has been selected for funding using a Letter of Conditions, which defines the conditions under which the grant will be made. If the applicant agrees with the conditions, the applicant must complete, sign, and

return the Agency's "Letter of Intent to Meet Conditions." If the applicant believes that certain conditions cannot be met, the applicant may propose alternate conditions to the Agency. The Agency must concur with any proposed changes to the Letter of Conditions by the applicant before the application will be further processed. If the Agency agrees to any proposed changes, the Agency will issue a revised or amended Letter of Conditions that defines the final conditions under which the grant will be made.

(b) *Grant agreement and conditions.* Each grantee will be required to meet all terms and conditions of the award within 90 days of receiving a Letter of Conditions unless otherwise specified by the Agency at the time of award. Each grantee will also be required to sign a grant agreement that outlines the approved use of funds and actions under the award, as well as the restrictions and applicable laws and regulations that pertain to the award.

(c) *Grant disbursements.* Grant disbursement will be made in accordance with the Letter of Conditions, and/or the grant agreement, as applicable. Adequate supporting documentation is required for all disbursements.

§ 4284.952–4284.959 [Reserved]

Section G—Post Award Activities and Requirements

§ 4284.960 Monitoring and reporting program performance.

The requirements specified in this section shall apply to grants made under this subpart.

(a) Grantees are responsible to expend funds only for eligible purposes and will be monitored by Agency staff for compliance. Grantees must maintain a financial management system, and property and procurement standards in accordance with Departmental Regulations.

(b) Grantees must submit prescribed narrative and financial performance reports that include a comparison of accomplishments with the objectives stated in the application. The Agency will prescribe both the narrative and financial report formats in the grant agreement.

(1) Semi-annual performance reports shall be submitted within 30 days following March 31 and September 30 each fiscal year. A final performance report shall be submitted to the Agency within 90 days of project completion. Failure to submit a performance report within the specified timeframes may result in the Agency withholding grant funds.

(2) Additional reports shall be submitted as specified in the grant agreement or Letter of Conditions, or as otherwise provided in a notification issued under § 4284.915.

(3) Copies of supporting documentation and/or project deliverables for completed tasks must be provided to the Agency in a timely manner in accord with the development or completion of materials and in conjunction with the budget and project timeline. Examples include, but are not limited to, a feasibility study, marketing plan, business plan, success story, or best practice.

(4) The Agency may request any additional project and/or performance data for the project for which grant funds have been received.

§ 4284.961 Grant servicing.

All grants awarded under this subpart shall be serviced in accordance with 7 CFR part 1951, subparts E and O, and the Departmental Regulations.

§ 4284.962 Transfer of obligations.

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

(a) The substituted applicant:

(1) Is eligible;

(2) Has a close and genuine relationship with the original applicant; and

(3) Has the authority to receive the assistance approved for the original applicant; and

(b) The need, purpose(s), and scope of the project for which the Agency funds will be used remain substantially unchanged.

§ 4284.963 Grant close out and related activities.

In addition to the requirements specified in the Departmental regulations, failure to submit satisfactory reports on time under the provisions of § 4284.970(b) may result in the suspension or termination of a grant.

§ 4284.964–4284.999 [Reserved]

Dated: May 21, 2010.

Pandor H. Hadji,

Acting Administrator, Rural Business-Cooperative Service.

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