

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: [www.ams.usda.gov/MarketingOrdersSmallBusinessGuide](http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide). Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because the industry would like the modified regulation to be in place prior to the 2014–15 production year, which begins September 1, 2014. This regulation would need to be in effect before the production year to allow handlers to install auto-sampling equipment prior to harvest. All written comments timely received will be considered before a final determination is made on this matter.

#### List of Subjects in 7 CFR Part 983

Marketing agreements and orders, Pistachios, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 983 is proposed to be amended as follows:

#### PART 983—PISTACHIOS GROWN IN CALIFORNIA, ARIZONA, AND NEW MEXICO

■ 1. The authority citation for 7 CFR part 983 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 983.150 is amended by revising paragraph (d)(1) to read as follows:

#### § 983.150 Aflatoxin regulations.

\* \* \* \* \*

(d) \* \* \*

(1) *Samples for testing.* Prior to testing, each handler shall cause a representative sample to be drawn from each lot (“lot samples”) of sufficient weight to comply with Tables 1 and 2 of this section.

(i) At premises with mechanical sampling equipment (auto-samplers) approved by the USDA Federal-State Inspection Service, samples shall be drawn by the handler in a manner acceptable to the Committee and the USDA Federal-State Inspection Service.

(ii) At premises without mechanical sampling equipment, sampling shall be conducted by or under the supervision of an inspector, or as approved under an alternative USDA-recognized inspection program.

\* \* \* \* \*

Dated: Feb. 28, 2014.

**Rex A. Barnes,**

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2014-05834 Filed 3-17-14; 8:45 am]

**BILLING CODE P**

#### DEPARTMENT OF AGRICULTURE

##### Rural Business-Cooperative Service

##### Rural Housing Service

##### Rural Utilities Service

##### Farm Service Agency

##### 7 CFR Part 1940

##### RIN 0570-AA30

#### Methodology and Formulas for Allocation of Loan and Grant Program Funds

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

**ACTION:** Proposed rule.

**SUMMARY:** The Rural Business-Cooperative Service (RBS) is proposing to amend its regulations found in 7 CFR part 1940, subpart L for allocating program funds to its State Offices. RBS is proposing to amend 7 CFR part 1940, subpart L to add three programs—the Rural Energy for America Program, the Value-Added Producer Grant program, and the Intermediary Relending Program. In addition, RBS is proposing revisions to its state allocation formulae for existing programs within 7 CFR part 1940, subpart L to account for changes in data reported by the U.S. Bureau of the Census’ decennial Census. RBS is also proposing to make various other changes including: revising the weight percentages associated with each of the allocation criteria; providing flexibility in determining when not to make state allocations for a program; restricting the use of the transition formula and changing the limitations on how much program funds can change when the transition formula is used; adding provisions for making state allocation for other RBS programs, including new ones; and providing consistency, where necessary, in the allocation of RBS program funds to State Offices.

**DATES:** Written comments must be received on or before May 19, 2014 to be assured of consideration.

**ADDRESSES:** Submit your comments on this rule by any of the following methods:

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

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

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

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

#### FOR FURTHER INFORMATION CONTACT:

Chad Parker, Deputy Administrator, Business Programs, Rural Business-Cooperative Service, U.S. Department of Agriculture, STOP 3220, 1400 Independence Avenue SW., Washington, DC 20250–3225; email: [chad.parker@wdc.usda.gov](mailto:chad.parker@wdc.usda.gov); telephone (202) 720–7558.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866, Classification

This rule has been determined to be not significant for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget.

#### Programs Affected

The Catalog of Federal Domestic Assistance Program numbers for the programs affected by this action are 10.352, Value-Added Producer Grant Program; 10.767, Intermediary Relending Program; 10.768, Business and Industry Guaranteed Loan Program; 10.769, Rural Business Enterprise Grant Program; 10.773, Rural Business Opportunity Grant Program, 10.868, Rural Energy for America Program.

#### Executive Order 12372, Intergovernmental Consultation

This action is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials.

#### Executive Order 12988, Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Agency has determined that this rule meets the applicable standards provided in section 3 of the Executive Order.

Additionally, (1) all state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to the rule; and (3) administrative appeal procedures, if any, must be exhausted before litigation against the Department or its agencies may be initiated, in accordance with the regulations of the National Appeals Division of USDA at 7 CFR part 11.

### 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.

### Unfunded Mandates Reform Act

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) 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 Unfunded Mandates Reform Act of 1995.

### Regulatory Flexibility Act

Under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Agency certifies that this rule will not have a significant economic impact on a substantial number of small entities because the action will not affect a significant number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601). RBS made this determination based on the fact that this action only impacts internal Agency procedures for determining how much of available program funds are allocated to each state. Small entities will not be impacted to a greater extent than large entities.

### Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this proposed rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with states is not required.

### 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 Indian tribes. Thus, this proposed rule is not subject to the requirements of Executive Order 13175. If interested, please direct Tribal Consultation inquiries and comments to Rural Development's Native American Coordinator at [aian@wdc.usda.gov](mailto:aian@wdc.usda.gov) or (720) 544-2911.

### Paperwork Reduction Act

There are no reporting and recordkeeping requirements associated with this proposed rule.

### E-Government Act Compliance

Rural Development is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies, to provide increased opportunities for citizens to access Government information and services electronically.

### Background

RBS proposes to amend its regulations for allocating program funds among its State Offices. This action is necessary to provide a regulatory basis for allocating funds for the Rural Energy for America Program, the Value-Added Producer Grant program, and the Intermediary Relending Program. In addition, because of changes to the reporting of data by the Census Bureau, RBS needs to use an alternative data source for unemployment rates. Other changes are being proposed to:

- Allow RBS to not allocate funds to states if RBS determines that it is in the Federal Government's best financial interests not to make state allocations;
- adjust the application of the transition allocation formula;
- address making state allocations for RBS programs that are not specifically identified in 7 CFR part 1940, subpart L;
- provide consistency among RBS programs; and
- remove unnecessary text.

### Discussion of Changes

#### A. Addition of New Programs

As discussed below, RBS is proposing to add three new programs to 7 CFR part

1940, subpart L. The inclusion of a specific program within 7 CFR part 1940, subpart L does not mean that RBS is bound to make state allocations for that program each fiscal year. The current rule allows, and the proposed rule continues to allow, RBS to not make state allocations for a particular program in any fiscal year when funds allocated to a program are insufficient. Thus, for example, including the Value-Added Producer Grant program does not mean that RBS will allocate program funds to the States each fiscal year.

1. *Rural Energy for America Program (REAP)*. RBS is proposing to add a new section to 7 CFR part 1940, subpart L, to address allocating REAP funds for renewable energy system projects and energy efficiency improvement projects to its State Offices. (Note: This proposed addition does not apply to renewable energy system feasibility study grants, the energy audit grants, or the renewable energy development assistance grants.) The proposed sections are essentially identical to those currently included for the other RBS programs (i.e., Business and Industry Guaranteed Loans, Rural Business Enterprise Grants, and Rural Business Opportunity Grants). The key consideration for REAP is the criteria to use in the formula for making state allocations.

RBS determined that the first two criteria used for the other RBS programs are also appropriate for REAP. These two criteria are:

- State's percentage of national rural population
- State's percentage of national rural population with incomes below the poverty level

The third criterion currently used is the State's percentage of national nonmetropolitan unemployment. This criterion is appropriate for programs where job creation is a primary goal. Projects funded under REAP, however, are designed primarily to help agricultural producers and rural small businesses lower their energy costs either through the implementation of energy efficiency improvements or the purchase of renewable energy systems. While job creation is important to all of its programs, RBS has determined that a more appropriate criterion for REAP would be associated with energy, especially those areas of the country facing high energy costs.

For the reasons stated above, RBS is proposing to use data published by the Energy Information Administration. These data include estimate of energy production, consumption, prices, and expenditures broken down by energy source and sector. The multi-

dimensional completeness of the data allows users to make comparisons across states, energy sources, sectors, and time. The data include primary energy of coal, natural gas and petroleum, biomass, and retail electricity. The value for these energy sources are reported in dollars per British thermal unit (Btu). The value provides a total energy cost on a state-wide basis.

Lastly, RBS is proposing the following weight factors for these three criteria, which in part reflect the Agency's priority on addressing persistent poverty in rural America:

- 25 percent for rural population;
- 50 percent for poverty; and
- 25 percent for energy costs.

**2. Value-Added Producer Grant (VAPG) Program.** RBS is proposing to add a new section to 7 CFR part 1940, subpart L, to address allocating the VAPG general funds to its State Offices. This allocation of VAPG general funds to State Offices does not include allocation of VAPG set-aside funds to State Offices. The proposed sections are essentially identical to those currently included for the other RBS programs (i.e., Business and Industry Guaranteed Loans, Rural Business Enterprise Grants, and Rural Business Opportunity Grants). The key consideration for VAPG is the criteria to use in the formula for making state allocations.

The focus of VAPG is to provide producers with funds to add value to their products. RBS determined that two of the three criteria used for the other RBS programs are also appropriate for VAPG. These two criteria are:

- State's percentage of national rural population
- State's percentage of national rural population with incomes below the poverty level

The third criterion currently used is the State's percentage of national nonmetropolitan unemployment. This criterion is appropriate for programs where job creation is a primary goal. While job creation is important to all of its programs, RBS has determined that a more appropriate criterion for VAPG would be associated with the state's percentage of farms.

For the reasons stated above, RBS is proposing to use data published by the U.S. Department of Agriculture (USDA). The data provides a detailed picture of U.S. farms and ranches and the people who operate them. It is the only source of uniform, comprehensive agriculture data for every state and county in the United States. The USDA data provides the most accurate number of farms within a state.

Lastly, RBS is proposing the following weight factors for these three criteria, which in part reflect the Agency's priority on addressing persistent poverty in rural America:

- 25 percent for rural population;
- 50 percent for poverty; and
- 25 percent for number of farms.

**3. Intermediary Relending Program (IRP).** The goals of the IRP are essentially the same as for the Business and Industry (B&I) Guaranteed Loan program, Rural Business Enterprise Grant (RBEG) program, and Rural Business Opportunity Grant (RBOG) program. Therefore, RBS is proposing to allocate IRP funds to the states using the same criteria and formula used for these three other RBS programs.

#### B. Data Sources for Weighting Criteria

RBS has implemented the existing formulae using data provided by the U.S. Census Bureau. Beginning with the 2010 decennial Census, income/poverty data and unemployment data are no longer included in the decennial Census. Because of this change, RBS needs to update and clarify the data sources for the current criteria.

**1. State's percentage of national rural population (rural population).** RBS is proposing to clearly identify that the data source for this criterion is the U.S. Bureau of Census' decennial Census, which RBS has been using.

**2. State's percentage of national rural population with incomes below the poverty level (poverty).** After examining several alternative data sources, RBS determined that income data published by the Bureau of the Census in the American Community Survey (ACS), as found in the 5-year survey component of the ACS, provides the best source of data for estimates of state-level income and poverty data, even though such are no longer being published in the decennial Census. RBS is also aware that the ACS may at some point in the future be replaced or discontinued. For these reasons, RBS is proposing to use "the most recent 5-year survey of the American Community Survey (ACS) or other Census Bureau data if needed" to indicate the source of the data to be used.

**3. State's percentage of national nonmetropolitan unemployment (unemployment).** RBS also examined several alternative data sources for unemployment data and determined that unemployment data published by the Bureau of Labor Statistics provides the best source of data for estimates of state-level unemployment rates and for unemployment rates in rural or non-metropolitan areas. Therefore, RBS is proposing to use the "most recent

Bureau of Labor Statistics data" as the data source for unemployment.

#### C. Criteria weight factors

Currently, the criteria used to make state allocations are assigned the following weight factors to the three "traditional" criteria of rural population, rural poverty, and rural unemployment:

- 50 percent for rural population;
- 25 percent for poverty; and
- 25 percent for unemployment.

While these weight factors have well served the Agency's priorities in the past, RBS is proposing to revise the basic weight factors for the "traditional" three criteria to reflect a greater emphasis of the Agency's priority to address persistent poverty in rural America. Specifically, RBS is proposing the following new weight factors:

- 25 percent for rural population;
- 50 percent for poverty; and
- 25 percent for unemployment.

The proposed changes would reduce the rural population weight factor from 50 to 25 percent and increase the poverty weight factor from 25 to 50 percent. The Agency is not proposing any change to the unemployment weight factor.

As noted earlier, RBS is proposing this same distribution of weight factors for the REAP and VAPG programs, with 50 percent factor for poverty and 25 percent factors for the other two weighting criteria for those two programs.

#### D. Not Making State Allocations

The current regulations allow RBS to not allocate a program's funding to the states when funding in a particular fiscal year is insufficient. RBS is proposing to add a second condition such that RBS may elect not to allocate a program's funds to States in a particular fiscal year if RBS determines that it is in the Federal Government's best financial interests not to make state allocations. RBS is proposing this new condition to provide administrative flexibility and to account for time and availability of RBS resources.

#### E. Transition Formula

The purpose of the transition formula is to reduce the impact of a large change to any one state's allocation when new decennial Census data are used. Under the proposed rule, except for rural population (which would still be changed every 10 years based on the decennial Census), the state allocation formulae would be rerun every year reflecting new yearly data for the other two criteria. As a result, RBS does not expect a large change to any one state's

allocation as a result of applying the formulae each year. Therefore, RBS is proposing that the transition formula would not be used except in instances when RBS revises the weight factors for a program's criteria. RBS notes that, under the current regulation found in the Code of Federal Regulations, the transition formula only applies to the RBEG program; it does not apply to the B&I Guaranteed Loan program and the RBOG program.

RBS is also proposing revising the amount by which a state's funding can change when the transition formula is applied. Currently, the regulation limits the amount a state's funding can change to either plus or minus 15 percent over the previous year's allocation amount. RBS is proposing to make two changes to when the transition formula is applied.

1. RBS is proposing to eliminate the restriction on how much a state's allocation can increase over the previous year's allocation. Currently, when the allocation formula is applied, a state's allocation cannot increase more than 15 percent over its previous year's allocation for that program. RBS has decided that, if a state's condition has changed significantly enough as to warrant an increase in allocation, then there should be no limit on how much of an increase that state can receive.

2. RBS is proposing to keep a restriction on how much a state's allocation can decrease from one year to the next, but to limit the decrease to 10 percent. This allows a "softer" landing for those states receiving a reduction in allocation.

#### F. Other Existing RBS Programs and Newly Authorized Programs

As proposed, the revised 7 CFR part 1490, subpart L addresses six RBS programs for which RBS intends to make state allocations of each programs' funds. There are other existing RBS programs that are administered at the National Office level, but for which RBS does not intend, at this time, to make state allocations. However, it is possible that RBS may decide in the future to make state allocations for an existing program not currently included in 7 CFR 1490, subpart L. In addition, as new legislation is passed, RBS may be required to develop new programs, as occurred with the passage of the 2008 Farm Bill. For such newly authorized programs, RBS may determine that allocating the program's funds to the states is appropriate.

RBS is proposing to add a new section to address these situations. As proposed, RBS will first determine whether or not one of the three formulae

in proposed § 1940.588, § 1940.589, or § 1940.590 is appropriate for the program.

1. If RBS determines that one of the three formulae in these section matches, or closely matches, the purposes of the "new" program, RBS will publish a **Federal Register** notice informing the public as to which formula RBS will use for making state allocations for the program.

2. If RBS determines that none of the three state allocation procedures is appropriate for the "new" program, RBS will identify and publish a preliminary allocation formula via the **Federal Register**. RBS will then use that preliminary formula to begin making immediate state allocation. RBS will then identify a new allocation formula and associated administrative requirements for incorporation into 7 CFR 1940, subpart L via a proposed rule published in the **Federal Register** for public comment. Until the new allocation formula is finalized, the Agency will continue to use the preliminary allocation formula.

#### G. Miscellaneous

RBS is also proposing to make the changes to consolidate similar programs, create consistency between the programs, and remove text that is administrative in nature.

1. *Consolidation.* RBS is proposing to consolidate the B&I Guaranteed Loan program, the RBEG program, and the RBOG program into one section, because they use the same criteria for making state allocations. The IRP will also be included in this same section.

2. *Base allocations.* RBS is proposing to include the following in the provisions for base allocations: "Jurisdictions receiving administrative allocations do not receive base allocations." The current provisions for RBEG and RBOG do not contain this text, but it is applicable to both programs.

3. *Administrative allocations.* RBS is proposing to include the following in the provisions for administrative allocations: "Jurisdictions receiving formula allocations do not receive administrative allocations." The current provisions for RBEG do not contain this text, but it is applicable to the program. In addition, the administrative allocations provisions would now apply to the RBOG program.

4. *Reserve.* RBS is proposing to remove the following text from the provisions that affect the B&I Guaranteed Loan program because it is unnecessary for and unrelated to the implementation of the allocation: "States may request reserve funds from

the B&I reserve when all of the state allocation has been obligated or will be obligated to the project for which the request is made."

5. *Pooling of funds.* RBS is proposing to revise these provisions to point to the general provisions for pooling and removing all other text, which was not necessary. The changes are not substantive.

6. *Availability of the allocation.* RBS is proposing to remove the following text from the B&I Guaranteed Loan program provisions because it is unnecessary for and unrelated to the implementation of the allocation: "There is a 6-day waiting period from the time project funds are reserved to the time they are obligated."

RBS is proposing to remove the following text from the RBEG program provisions because it is only explanatory in nature and is unnecessary in determining how allocations are made: "The allocation of funds is made available for States to obligate on an annual basis although the Office of Management and Budget apportions funds to the Agency on a quarterly basis."

#### List of Subjects in 7 CFR Part 1940

Administrative practice and procedure, Agriculture, Allocations, Grant programs—Housing and community development, Loan programs—Agriculture, Rural areas.

For the reasons set forth in the preamble, we propose to amend chapter XVIII, title 7, of the Code of Federal Regulations as follows:

#### CHAPTER XVIII—RURAL HOUSING, RURAL BUSINESS-COOPERATIVE SERVICE, RURAL UTILITIES SERVICE, AND FARM SERVICE AGENCY, DEPARTMENT OF AGRICULTURE

#### PART 1940—GENERAL

■ 1. The authority citation for part 1940 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

#### Subpart L—Methodology and Formulas for Allocation of Loan and Grant Program Funds

■ 2. The Table of Contents is amended to read as follows:

Sec.

\* \* \* \* \*

1940.588 Business and Industry Guaranteed and Direct Loans, Rural Business Enterprise Grants, Rural Business Opportunity Grants, and Intermediary Relending Program.

1940.589 Rural Energy for America Program.

1940.590 Value-Added Producer Grant Program.

1940.593 Other Rural Business-Cooperative Service Programs.

\* \* \* \* \*

■ 3. Section 1940.588 is revised to read as follows:

**§ 1940.588 Business and Industry Guaranteed and Direct Loans, Rural Business Enterprise Grants, Rural Business Opportunity Grants, and Intermediary Relending Program.**

The Agency will allocate funds to the States each Federal fiscal year for the programs identified in this section using the procedures specified in paragraph (a) of this section. If the Agency determines that it will not allocate funds to the States for a program identified in this section in a particular Federal fiscal year, the Agency will announce this decision in a notice published in the **Federal Register**. The conditions under which the Agency will not allocate a program's funds to the States are identified in paragraph (b) of this section.

(a) *Procedures for allocating funds to the States.* Each Federal fiscal year, the Agency will use the amount available to the program and the procedures identified in paragraphs (a)(2) through (a)(10) of this section to determine the amount of program funds to allocate to each of the States. The Agency will make the allocation calculation each Federal fiscal year.

(1) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(2) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart.

(i) The criteria used in the basic formula are:

(A) State's percentage of national rural population.

(B) State's percentage of national rural population with incomes below the poverty level.

(C) State's percentage of national nonmetropolitan unemployment.

(ii) The data sources for each of the criteria identified in paragraph (a) of this section are:

(A) For the criterion specified in paragraph (a)(2)(i)(A), the most recent decennial Census data.

(B) For the criterion specified in paragraph (a)(2)(i)(B), the most recent 5-year survey of the American Community Survey (ACS) or other Census Bureau data if needed.

(C) For the criterion specified in paragraph (a)(2)(i)(C), the most recent Bureau of Labor Statistics data.

(iii) Each criterion is assigned a specific weight factor according to its relevance in determining need. The

percentage representing each criterion is multiplied by the weight factor and summed to arrive at State Factor (SF). The SF cannot exceed 0.05. The Agency may elect to use different weight factors than those identified in this paragraph by publishing a timely notice in the **Federal Register**.

$$SF = (\text{criterion (a)(2)(i)(A)} \times 25\text{ percent}) + (\text{criterion (a)(2)(i)(B)} \times 50\text{ percent}) + (\text{criterion (a)(2)(i)(C)} \times 25\text{ percent})$$

(iv) The Agency will recalculate, as necessary, each criterion specified in paragraph (a)(2)(i) of this section each year. In making these recalculations, the Agency will use the most recent data available to the Agency as of October 1 of the fiscal year for which the Agency is making state allocations. Each criterion's value determined at the beginning of a fiscal year for a program will be used for that entire fiscal year, regardless of when that fiscal year's funding becomes available for the program.

(3) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(4) *Transition formula.* The transition provisions specified in § 1940.552(d) of this subpart apply to the programs identified in this section except as follows:

(i) The transition formula will be used only when the weight factors identified in paragraph (a)(2)(iii) of this section are modified; and

(ii) When the transition formula is used, there will be no upper limitation on the amount that a State's allocation can increase over its previous year's allocation and the maximum percentage that funding will be allowed to decrease for a State will be 10 percent from its previous year's allocation.

(5) *Base allocations.* See § 1940.552(e) of this subpart. Jurisdictions receiving administrative allocations do not receive base allocations.

(6) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions receiving formula allocations do not receive initial administrative allocations.

(7) *Reserve.* See § 1940.552(g) of this subpart.

(8) *Pooling of funds.* See § 1940.552(h) of this subpart.

(9) *Availability of allocation.* See § 1940.552(i) of this subpart.

(10) *Suballocation by the State Director.* Suballocation by the State Director is authorized for each program covered by this section.

(b) *Conditions for not allocating program funds to the States.* The Agency may elect to not allocate program funds to the States whenever one of the conditions identified in

paragraphs (b)(1) or (b)(2) of this section occurs.

(1) Funds allocated in a fiscal year to a program identified in this section are insufficient, as provided for in § 1940.552(a) of this subpart.

(2) The Agency determines that it is in the best financial interest of the Federal Government not to make a State allocation for any program identified in this section and that the exercise of this determination is not in conflict with applicable law.

■ 4. Section 1940.589 is revised to read as follows:

**§ 1940.589 Rural Energy for America Program.**

The Agency will allocate funds to the States each Federal fiscal year for renewable energy system and energy efficiency improvement projects under the Rural Energy for America Program (REAP) using the procedures specified in paragraph (a) of this section. If the Agency determines that it will not allocate funds to the States for REAP in a particular Federal fiscal year, the Agency will announce this decision in a notice published in the **Federal Register**. The conditions under which the Agency will not allocate the program's funds to the States are identified in paragraph (b) of this section.

(a) *Procedures for allocating funds to the States.* Each Federal fiscal year, the Agency will use the amount available to the program and the procedures identified in paragraphs (a)(2) through (a)(10) of this section to determine the amount of program funds to allocate to each of the States. The Agency will make this calculation each Federal fiscal year.

(1) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(2) *Basic formula criteria, data source, and weight.* See § 1940.552(b) of this subpart.

(i) The criteria used in the basic formula are:

(A) State's percentage of national rural population.

(B) State's percentage of national rural population with incomes below the poverty level.

(C) State's percentage of energy cost.

(ii) The data sources for each of the criteria identified in paragraph (a)(2)(i) of this section are:

(A) For the criterion specified in paragraph (a)(2)(i)(A), the most recent decennial Census data.

(B) For the criterion specified in paragraph (a)(2)(i)(B), the most recent 5-year survey of the American Community Survey (ACS) or other Census Bureau data if needed.

(C) For the criterion specified in paragraph (a)(2)(i)(C), the most recent U.S. Energy Information Administration data.

(iii) Each criterion is assigned a specific weight factor according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at State Factor (SF). The SF cannot exceed 0.05. The Agency may elect to use different weight factors than those identified in this paragraph by publishing a timely notice in the **Federal Register**.

$$\begin{aligned} \text{SF} = & (\text{criterion (a)(2)(i)(A)} \times 25 \text{ percent}) \\ & + (\text{criterion (a)(2)(i)(B)} \times 50 \text{ percent}) \\ & + (\text{criterion (a)(2)(i)(C)} \times 25 \text{ percent}) \end{aligned}$$

(iv) The Agency will recalculate, as necessary, each criterion specified in paragraph (a)(2)(i) of this section each year. In making these recalculations, the Agency will use the most recent data available to the Agency as of October 1 of the fiscal year for which the Agency is making state allocations. Each criterion's value determined at the beginning of a fiscal year for a program will be used for that entire fiscal year, regardless of when that fiscal year's funding becomes available for the program.

(3) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(4) *Transition formula.* The transition provisions specified in § 1940.552(d) of this subpart apply to the program(s) identified in this section except as follows:

(i) The transition formula will be used only when the weight factors identified in paragraph (a)(2)(iii) of this section are modified; and

(ii) When the transition formula is used, there will be no upper limitation on the amount that a State's allocation can increase over its previous year's allocation and the maximum percentage that funding will be allowed to decrease for a State will be 10 percent from its previous year's allocation.

(5) *Base allocations.* See § 1940.552(e) of this subpart. Jurisdictions receiving administrative allocations do not receive base allocations.

(6) *Administrative allocations.* See § 1940.552(f) of this subpart.

Jurisdictions receiving formula allocations do not receive initial administrative allocations.

(7) *Reserve.* See § 1940.552(g) of this subpart.

(8) *Pooling of funds.* See § 1940.552(h) of this subpart.

(9) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(10) *Suballocation by the State Director.* Suballocation by the State Director is authorized for this program.

(b) *Conditions for not allocating program funds to the States.* The Agency may elect to not allocate REAP program funds to the States whenever one of the conditions identified in paragraphs (b)(1) or (b)(2) of this section occurs.

(1) Funds allocated in a fiscal year to REAP are insufficient, as provided for in § 1940.552(a) of this subpart.

(2) The Agency determines that it is in the best financial interest of the Federal Government not to make a State allocation for REAP and that the exercise of this determination is not in conflict with applicable law.

■ 5. Section 1940.590 is added to read as follows:

#### **§ 1940.590 Value-Added Producer Grant Program.**

The Agency will allocate the general funds to the States each Federal fiscal year for the Value-Added Producer Grant (VAPG) program using the procedures specified in paragraph (a) of this section. If the Agency determines that it will not allocate funds to the States for the VAPG program in a particular Federal fiscal year, the Agency will announce this decision in a notice published in the **Federal Register**. The conditions under which the Agency will not allocate the program's funds to the States are identified in paragraph (b) of this section.

(a) *Procedures for allocating funds to the States.* Each Federal fiscal year, the Agency will use the amount available to the program and the procedures identified in paragraphs (a)(2) through (a)(10) of this section to determine the amount of program funds to allocate to each of the States. The Agency will make this calculation each Federal fiscal year.

(1) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(2) *Basic formula criteria, data source, and weight.* See § 1940.552(b) of this subpart.

(i) The criteria used in the basic formula are:

(A) State's percentage of national rural population.

(B) State's percentage of national rural population with incomes below the poverty level.

(C) State's percentage of total farms.

(ii) The data sources for each of the criteria identified in paragraph (a)(2)(i) of this section are:

(A) For the criterion specified in paragraph (a)(2)(i)(A), the most recent decennial Census data.

(B) For the criterion specified in paragraph (a)(2)(i)(B), the most recent 5-year survey of the American Community

Survey (ACS) or other Census Bureau data if needed.

(C) For the criterion specified in paragraph (a)(2)(i)(C), the most recent U.S. Department of Agriculture data.

(iii) Each criterion is assigned a specific weight factor according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at State Factor (SF). The SF cannot exceed 0.05. The Agency may elect to use different weight factors than those identified in this paragraph by publishing a timely notice in the **Federal Register**.

$$\begin{aligned} \text{SF} = & (\text{criterion (a)(2)(i)(A)} \times 25 \text{ percent}) \\ & + (\text{criterion (a)(2)(i)(B)} \times 50 \text{ percent}) \\ & + (\text{criterion (a)(2)(i)(C)} \times 25 \text{ percent}) \end{aligned}$$

(iv) The Agency will recalculate, as necessary, each criterion specified in paragraph (a)(2)(i) of this section each year. In making these recalculations, the Agency will use the most recent data available to the Agency as of October 1 of the fiscal year for which the Agency is making state allocations. Each criterion's value determined at the beginning of a fiscal year for a program will be used for that entire fiscal year, regardless of when that fiscal year's funding becomes available for the program.

(3) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(4) *Transition formula.* The transition provisions specified in § 1940.552(d) of this subpart apply to the program(s) identified in this section except as follows:

(i) The transition formula will be used only when the weight factors identified in paragraph (a)(2)(iii) of this section are modified; and

(ii) When the transition formula is used, there will be no upper limitation on the amount that a State's allocation can increase over its previous year's allocation and the maximum percentage that funding will be allowed to decrease for a State will be 10 percent from its previous year's allocation.

(5) *Base allocations.* See § 1940.552(e) of this subpart. Jurisdictions receiving administrative allocations do not receive base allocations.

(6) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions receiving formula allocations do not receive initial administrative allocations.

(7) *Reserve.* See § 1940.552(g) of this subpart.

(8) *Pooling of funds.* See § 1940.552(h) of this subpart.

(9) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(10) *Suballocation by the State Director.* Suballocation by the State Director is authorized for this program.

(b) *Conditions for not allocating program funds to the States.* The Agency may elect to not allocate VAPG program funds to the States whenever one of the conditions identified in paragraphs (b)(1) or (b)(2) of this section occurs.

(1) Funds allocated in a fiscal year to VAPG are insufficient, as provided for in § 1940.552(a) of this subpart.

(2) The Agency determines that it is in the best financial interest of the Federal Government not to make a State allocation for VAPG and that the exercise of this determination is not in conflict with applicable law.

■ 6. Section 1940.593 is revised to read as follows:

**§ 1940.593 Other Rural Business-Cooperative Service Programs.**

If the Agency determines that it is in the best interest of the Federal government to allocate funds to States for existing RBS programs other than those identified in §§ 1940.588 through 1940.590 of this subpart and for programs new to RBS (e.g., through new legislation), the Agency will use the process identified in paragraph (a) or (b) of this section.

(a) If the Agency determines that one of the State allocation procedures in § 1940.588, § 1940.589, or § 1940.590 is appropriate for the program, the Agency will publish a **Federal Register** notice identifying the program and which State allocation procedure will be used for the program.

(b) If the Agency determines that none of the procedures specified in § 1940.588, § 1940.589, or § 1940.590 is appropriate for the program, the Agency will implement the following steps:

(1) The Agency will either develop a preliminary state allocation formula and administrative procedures specific to the requirements of the new program or use whichever of the three procedures in § 1940.588, § 1940.589, or § 1940.590 the Agency determines most closely matches the purpose of the program. The Agency will publish in the **Federal Register** the state allocation formula and administrative procedures that it will use initially for the new program.

(2) The Agency will develop a state allocation formula and administrative provisions specific to the new program and publish them as a proposed rule change to this part in the **Federal Register** for public comment.

(3) Until the program's state allocation formula and administrative requirements are finalized, the Agency will use the preliminary state allocation

formula established under paragraph (b)(1) of this section to make state allocations and administer the new program.

Dated: March 4, 2014.

**Doug O'Brien,**

*Deputy Under Secretary, Rural Development.*

Dated: February 27, 2014.

**Michael Scuse,**

*Under Secretary, Farm and Foreign Agricultural Services.*

[FR Doc. 2014-05491 Filed 3-17-14; 8:45 am]

**BILLING CODE 3410-XY-P**

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**I. Background**

The Energy Independence and Security Act of 2007 (EISA 2007; Pub. L. 110-140) was enacted on December 19, 2007. Among the requirements of subtitle B (Lighting Energy Efficiency) of title III of EISA 2007 were provisions directing DOE to collect, analyze, and monitor unit sales of five lamp types (*i.e.*, rough service lamps, vibration service lamps, 3-way incandescent lamps, 2,601-3,300 lumen general service incandescent lamps, and shatter-resistant lamps) that are currently exempt from energy conservation standards. As the actual sales do not exceed the forecasted estimate by 100 percent for any lamp type (*i.e.*, the threshold triggering a rulemaking for an energy conservation standard for that lamp type has not been exceeded), DOE has determined that no regulatory action is necessary at this time. However, DOE will continue to track sales data for these exempted lamps. Relating to this activity, DOE has prepared, and is making available on its Web site, a spreadsheet showing the comparisons of anticipated versus actual sales, as well as the model used to generate the original sales estimates. The spreadsheet is available online: [http://www1.eere.energy.gov/buildings/appliance\\_standards/product.aspx/productid/63](http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/63).

**DATES:** As of March 18, 2014, the DOE has determined that no regulatory action is necessary at this time.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lucy deButts, U.S. Department of

(42 U.S.C. 6295(l)(4)(B)) Section 321(a)(3)(B) of EISA 2007 also amends section 325(l) of EPCA by adding paragraph (4)(C), which, in relevant