

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

[Docket No. RBS-20-BUSINESS-0027]

RIN 0570-AA98

Rural Energy for America Program**AGENCY:** Rural Business-Cooperative Service, USDA.**ACTION:** Final rule; request for comment.

SUMMARY: The Rural Business-Cooperative Service (RBCS and/or Agency), a Rural Development agency of the United States Department of Agriculture (USDA), hereinafter referred to as the Agency, is publishing this final rule for the Rural Energy for America Program (REAP). The intent of this rule is to remove the provisions relating to guaranteed loans and to make other revisions to enhance program delivery and customer service for the REAP program. Program enhancements that support a greater distribution of funds as well as processing and servicing clarifications are also being incorporated into this update.

DATES:

Effective date: This final rule is effective July 26, 2021.

Comment date: Comments are due June 28, 2021.

ADDRESSES: You may submit comments, identified by docket number RBS-20-Business-0027 and Regulatory Information Number (RIN) number 0570-AA98 through <https://www.regulations.gov>.

Instructions: All submissions received must include the Agency name and docket number or RIN for this rulemaking. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Sami Zarour, Program Management Division, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250-3201; telephone (202) 720-9549; email: sami.zarour@usda.gov.

SUPPLEMENTARY INFORMATION:**I. Background**

Rural Development administers a multitude of programs, ranging from housing and community facilities to infrastructure and business

development. Its mission is to increase economic opportunity and improve the quality of life in rural communities by providing leadership, infrastructure, capital, and technical support that can support rural communities, helping them to prosper.

To achieve its mission, Rural Development provides financial support (including direct loans, grants, loan guarantees, and direct payments) and technical assistance to help enhance the quality of life and provide support for economic development in rural areas.

On July 14, 2020, at 85 FR 42494, the Agency promulgated 7 CFR part 5001, the OneRD guaranteed loan regulation, which combined four Agency guaranteed loan program regulations, including REAP, into one comprehensive guaranteed loan processing and servicing regulation. This final rule amends 7 CFR part 4280, subpart B accordingly to remove references to the guaranteed loan provisions of REAP; these references have become superfluous in light of the promulgation of 7 CFR part 5001. Furthermore, program modifications required by the Agriculture Improvement Act of 2018 (2018 Farm Bill), as well as provisions that have been previously published via funding opportunities in **Federal Register** publications, have been incorporated into this final rule to eliminate the need for annual notification and to enhance program delivery.

II. Summary of Changes to the Rule

This section presents the major changes to the existing REAP regulation.

A. General changes.

All guaranteed loan references were removed from Subpart B, of Part 4280, and it now contains appropriate language for the updated grant rule.

References were updated according to section modifications.

B. Definitions (§ 4280.103).

The definition section was revised to add new definitions to conform to 7 CFR part 5001 and to remove reference to 7 CFR part 4279.

C. Conflict of interest (§ 4280.106).

Conformed language in § 4280.106 (a) to the definition of conflict of interest found in 7 CFR part 5001 as applicable. Removes specific language from prior rule regarding award of project construction contracts and language regarding recipient retaining ownership in the applicant's project. Revisions will bring consistency to RBCS regarding conflict of interest determinations.

D. U.S. Department of Agriculture Departmental Regulations and laws that contain other compliance requirements (§ 4280.108). Clarified in paragraph

(c)(1) that compliance reviews apply only to programs where grantees extend federal assistance to ultimate beneficiaries and modified text in paragraph (c)(2) accordingly. Updated environmental regulation reference.

E. Ineligible applicants, borrowers, and owners (§ 4280.109). Renamed section "Ineligible applicants, grantees, and owners." Removed references to borrowers and inserted reference to grantees.

F. General applicant, application, and funding provisions (§ 4280.110).

Removed reference to guaranteed loan only applications and updated environmental regulation reference. Clarified that satisfactory progress in paragraph (a) may include a review of compliance with Agency reporting, and for the energy audits (EA) program and renewable energy development assistance (REDA) program it means at least 50 percent of previous EA/REDA awards expended at time Agency determines eligibility of new applications, as was previously clarified via annual program notices. Streamlined language on application and type of funding limits in paragraphs (c) and (d) and merged text into one new paragraph (c), clarifying that like RES or EEI updates to multiple facilities may be submitted as one application. Updated technical report language in paragraph (g) (including list of technologies that must submit a technical report) to conform to 7 CFR part 5001. Previous rule required a technical report for all technologies. Clarified grant extension language in paragraph (h). Re-lettered paragraphs accordingly.

G. Notifications (§ 4280.111).

Removed reference to lender notifications.

H. Applicant eligibility (§ 4280.112).

Clarified in paragraph (a) that applicant eligibility is determined by the Agency at the time of application, removed prospective owner language in paragraph (b) since this applied to the feasibility study program only which no longer exists, separated into two paragraphs the Unique Entity Identifier (UEI) ID number (e) and the System for Awards Management (SAM) (f) provisions since they are separate processes.

I. Project eligibility (§ 4280.113).

Revised introductory text to reference subsequent improvements and to include Agency caution to the applicant regarding compliance with environmental requirements, both provisions were previously included in this section of the rule and are being relocated to enhance readability. Added hydroelectric source size restriction previously found in definition to

paragraph (a) and removed examples as these will be provided in instruction. Revised RES residential language in paragraph (e) to clarify documentation required for a RES project where a residence is closely associated with an agricultural operation or rural small business. Applicant certification will no longer be accepted as an option for RES projects with residential ties, because a certification alone does not provide adequate documentation that 50% or greater of the energy to be generated will benefit the rural small business or agricultural producer operation. Added provision recognizing that recipients may use up to 10 percent of funds to construct, improve, or acquire broadband infrastructure related to the project financed, pursuant to 7 CFR 1980, Subpart M Special Authority to Enable Funding of Broadband and Smart Utility Facilities Across Select Rural Development programs.

J. Ineligible projects (§ 4280.114). Renamed section from former “RES and EEI grant funding” and created a list of ineligible projects as previous rule had ineligible projects scattered throughout various sections of the rule. Added farm labor housing and owner occupied bed and breakfast projects, because these are considered residential since long-term living accommodations are provided. Added projects where ineligible project costs equal or exceed 50 percent of the total project costs since these projects do not carry out the intent of the statute.

K. RES and EEI grant funding (§ 4280.115). Renamed section from former “Grant applications—general” and inserted text previously found in § 4280.114. Added fees as required by interconnection agreements and vendor/installer certification provision to EEI eligible project costs in paragraph (c). Added clarification to ineligible project costs that lease to own and capitalized leases are not eligible. Modified provisions to remove loan-only request language.

L. Grant applications—general (§ 4280.116). Renamed section from former “Determination of technical merit” and inserted text previously found in § 4280.115. Removed guaranteed loan reference and revised RES feasibility study requirement in paragraph (b) to be required based on the scope of the project or lack of other application documentation. Previously a feasibility study was required for all RES projects with total costs of \$200,000 or greater.

M. Determination of technical merit (§ 4280.117). Renamed section from former “Grant Applications for RES and EEI Projects with Total Project Costs of \$200,000 and Greater” and inserted text

previously found in § 4280.116. Conformed technical merit language to 7 CFR part 5001 language including reverting back to include a “pass with conditions” assignment and determination. Added language in paragraph (e) on further processing of applications after technical merit determination.

N. Grant applications for RES and EEI projects with total project costs of \$200,000 and greater (§ 4280.118). Renamed section from former “Grant Applications for RES and EEI Projects with Total Project Costs of Less than \$200,000, but More Than \$80,000”, and inserted text previously found in § 4280.117. Removed reference to Form RD 1940–20 which is no longer relevant and inserted reference to 7 CFR part 1970. Added reference to Form 4280–3C. In paragraph (b), conformed applicant eligibility certification language as presented in 7 CFR part 5001. Previously, all applicants were required to submit documentation to justify eligibility versus being able to certify. Required financial statements language also conforms to 7 CFR part 5001. Referenced conforming technical report language from 7 CFR part 5001 which identifies technologies which must submit technical reports, versus requiring for all applications.

O. Grant applications for RES and EEI projects with total project costs of Less than \$200,000, but more than \$80,000 (§ 4280.119). Renamed section from former “Grant Applications for RES and EEI Projects with Total Project Costs of \$80,000 or Less” and inserted text previously found in § 4280.118. Added reference to application Form RD 4280–3B. Removed reference to Form RD 1940–20 which is no longer relevant and inserted reference to 7 CFR part 1970. Conformed applicant eligibility certification language as presented in 7 CFR part 5001. Previously, all applicants were required to submit documentation to justify eligibility versus being able to certify. Removed requirement for applicants to submit self-score documentation. Referenced conforming technical report language from 7 CFR part 5001 which identifies technologies which must submit technical reports, versus requiring for all applications.

P. Grant applications for RES and EEI projects with total project costs of \$80,000 or less (§ 4280.120). Renamed section from former “Scoring RES and EEI Grant Applications” and inserted text previously found in § 4280.119. Removed reference to Form RD 1940–20 which is no longer relevant and inserted reference to 7 CFR part 1970. Added reference to application Form RD 4280–

3A. Conformed applicant eligibility certification language and technical merit language to language as presented in 7 CFR part 5001.

Q. Scoring RES and EEI grant applications (§ 4280.121). Renamed section from former “Selecting RES and EEI Grant Applications for Award” and inserted text previously found in § 4280.120. Recast and simplified language under energy generated, replaced or saved scoring criteria by removing equations and renumbering section accordingly. Added “or replaced” to (b)(1)(i) and clarified that energy for residential use is excluded. Clarified under (b)(2)(i)(A) that proposed energy use, such as that contributed to an expansion, is not considered in an energy replacement calculation. Clarified that retrofitting of an existing RES which increases the amount of energy generated, is scored as energy generation and will receive 10 points under this scoring criteria. Clarified that energy savings of less than 20 percent will receive no points under sub-criterion (b)(2).

Commitment of funds scoring criteria was reduced from a maximum of 20 points to 15. Recast language into two paragraphs, calculation and awarding of points, for clarity.

Inserted reference to 7 CFR part 5001 under previous grantees and borrowers scoring criteria to reference new REAP guaranteed loan regulation.

Added new “existing business” scoring criteria with maximum of 5 points, points sourced from reduction under commitment of funds criteria.

Updated criteria, as previously published in Notice of Solicitation of Applications (NOSAs), for “size of grant request,” which replaces the “size of business as compared to the Small Business Administration (SBA) size standard” criteria. Maximum points remain at 10 and therefore applications requesting \$250,000 or less for RES and \$125,000 or less for EEI projects, have total points possible of 100. All other applications have a maximum possible score of 90 points.

Amended State Director/Administrator priority point text to conform with 7 CFR part 5001 which includes adding the newly defined terms underserved community(ies) and veteran. Language clarifying unserved or under-served population as previously published in REAP NOSAs was added. Points for projects located in Federal disaster areas, as previously published via REAP NOSAs, were added as a separate criteria under State Director/Administrator priority points.

R. Selecting RES and EEI grant applications for award (§ 4280.122).

Renamed section from former “Awarding and Administering RES and EEI Grants” and inserted text previously found in § 4280.121. Added language in introductory paragraph to clarify state allocations of restricted and unrestricted funds, amended RES/EEI application deadline to March 31 as previously noted in annual NOSA, added language regarding pro-rating applications with tied scores, and amended maximum competitions to up to five within a Federal fiscal year, versus allowing for five consecutive competitions which may roll into the next fiscal year.

S. Awarding and administering RES and EEI grants (§ 4280.123). Renamed section from former “Servicing RES and EEI Grants” and inserted text previously found in § 4280.122. Clarified SAM Registration provisions and added a 6-month timeframe from obligation of funds for execution of the Financial Assistance Agreement to better manage grants.

T. Servicing RES and EEI grants (§ 4280.124). Renamed section from former “Construction Planning and Performing Development”, and inserted text previously found in § 4280.123. Removed transfer of obligation provisions as previously published in REAP NOSAs given transactions are not fully supported by the Agency’s data systems, e.g. Guarantee Loan System (GLS), PLAS, and CLSS. Each transaction requires multiple complex manual actions by numerous staff which is burdensome and inefficient given limited resources. Amended transfer of ownership provisions to clarify that financial assistance agreement must be executed prior to transfer.

Clarified minimum requirements for all grant fund reimbursement requests.

Clarified that fund disbursement in full is acceptable for grants with total project costs of \$200,000 or greater if project is completed in full, is operational, and has met or exceeded steady state operating levels. Clarified language regarding site visits.

Amended outcome project performance criteria to comply with REAP Office of Inspector General (OIG) audit closure requirements. Annual certification will be accepted if project was installed as presented in the application, and if project installation differed, actual outcomes must be reported to the Agency.

U. Construction planning and performing development (§ 4280.125). Renamed section from former “Compliance with §§ 4279–29 through 4279.99 of this chapter” and inserted text previously found in § 4280.124.

Clarified that the Agency may note exceptions to surety requirements to

avoid placing the burden of requesting an exception on the applicant who is not familiar with Agency surety provisions. Added provision to allow surety exception when the grantee agrees to reimbursement in full only after the system is operational, all costs are paid in full, and there is evidence of no liens.

Increased threshold for technical services required under paragraph (c) from \$400,000 to \$1,000,000.

Added language under paragraph (d) that removes Agency review and approval of final plans and specifications if the applicant agrees to a lump sum reimbursement of grant funds at the end of construction and 30 days of successful operation.

V. Combined Grant and Guaranteed Loan Funding Requirements (§ 4280.137). Renamed section from former “Application and Documentation”. Text formerly found in § 4280.165 was inserted in part, removing specific guaranteed loan language and instead referencing 7 CFR part 5001 requirements for the loan portion of a combination funding request.

W. Applicant eligibility (§ 4280.149). Sections 4280.144–4280.148 remain “Reserved”.

Begins the Energy Audit (EA) and Renewable Energy Development Assistance Grants (REDA) provisions. Renamed section from former “Reserved” and inserted text formerly found in § 4280.186. Clarified that the term “council” is to be defined as a Resource Conservation & Development (RC&D) council.

X. Project eligibility (§ 4280.150). Renamed section from former “Reserved” and inserted text formerly found in § 4280.187. Removed “or both” in introductory sentence to ensure understanding that each application must focus on either EA or REDA assistance. Referenced definition of energy audits to ensure quality of documents completed. Modified language for agricultural producers in non-rural areas to conform to language in 7 CFR part 5001.

Y. Ineligible Projects (§ 4280.151). Renamed section from former “Reserved” and inserted a list of projects which are not eligible for EA or REDA funding to include: Research related projects; feasibility studies of any nature; projects where funding is not targeted directly to assisting agriculture producers or rural small businesses; projects to develop computer software or programs; and projects where 50 percent or more of proposed grant funding will support ineligible project costs.

Z. Grant funding for EA and REDA (§ 4280.152). Renamed section from former “Servicing Guaranteed Loans” and inserted text formerly found in § 4280.188. Added to list of ineligible project costs, funding to train individuals to become qualified to perform EA or REDA assistance and payment or waiver of student tuition, given program desires experienced resource providers at time of application. Clarified in paragraph (d) that the 25 percent contribution from agricultural producers and rural small businesses does not count towards commitment of funds for scoring.

AA. EA and REDA grant applications—content (§ 4280.153). Renamed section from former “Reserved” and inserted text formerly found in § 4280.190. Clarified applicant’s experience under REDA to include renewable energy site assessments and renewable energy technical assistance provided directly to agriculture producers and rural small businesses. Removed reference to energy assessments under applicant’s EA experience given eligible project purpose references only energy audits.

BB. Evaluation of EA and REDA grant applications (§ 4280.154). Renamed section from former “Reserved” and inserted text formerly referenced in § 4280.191. Added language to clarify that only information submitted in the application would be used to evaluate EA and REDA proposals. Added reference to ineligible project provisions as found in § 4280.151 as this is also a part of the project eligibility evaluation. Updated reference to sections which were amended.

CC. Scoring EA and REDA grant applications (§ 4280.155). Renamed section from former “Reserved” and inserted text formerly found in § 4280.192. Rearranged order of scoring criteria to align with 7 CFR 5001.153, application content. Placed minimum score of 40 points to compete for EA/REDA funding, unless later altered via a **Federal Register** notification. This aligns with minimum score of the REAP guaranteed loan program and provides flexibility for states to build REAP capacity, yet not compete very low scoring applications over others that better align with program requirements. Clarified that in addition to applicant experience, contractor experience related to the same type of activity, would qualify under scoring criteria (d). Clarified in (b)(2) that the ultimate recipient list must include at least 50 percent of total number proposed to be served in order to receive an additional 10 points under this scoring criteria. Clarified in (e) that existing programs

and awards do not include those of contractors, and that awards are referring to recognition, not funding awards. Clarified in (f) the calculation for commitment of funds.

DD. Selecting EA and REDA grant applications for award (§ 4280.156). Renamed section from former “Reserved” and inserted text formerly found in § 4280.193. Added language regarding funds held at National Office for one nationwide competition and added to paragraph (a) a provision for a third application from each state if program is undersubscribed on eligible requests. Reference to the minimum score threshold was added to paragraph (b). Added option to redirect unused EA/REDA funds into the RES/EEI program in paragraph (c).

EE. Awarding and administering EA and REDA grants (§ 4280.158). Renamed section from former “Reserved”, inserted text formerly found in § 4280.195, and updated references.

FF. Servicing EA and REDA grants (§ 4280.159). Renamed section from former “Reserved”, inserted text formerly found in § 4280.196, and updated references.

GG. Reserved “ ” (§ 4280.165). Renamed section from former “Combined Grant and Guaranteed Loan Funding Requirements”.

HH. OMB control Number (§ 4280.166). Renamed section from former “Reserved” and inserted text formerly found in § 4280.200.

II. Former Sections (§§ 4280.186–4280.200). Sections are no longer utilized in this regulation. Text has been relocated to sections as noted above.

JJ. The following sections were removed in their entirety and are now reserved:

Guaranteed/Annual Renewal Fee (§ 4280.126).

Borrower Eligibility (§ 4280.127).

Project Eligibility (§ 4280.128).

Guaranteed Loan Funding (§ 4280.129).

Loan Processing (§ 4280.130).

Credit Quality (§ 4280.131).

Financial Statements (§ 4280.132).

Personal and Corporate Guarantees (§ 4280.134).

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

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

Selecting RES and EEI Guaranteed Loan-Only Applications for Award (§ 4280.139).

Reserved (§ 4280.140).

Changes in Borrower (§ 4280.141).

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

Requirements After Project Construction (§ 4280.143).

Combined Grant and Guaranteed Loan Funding Requirements. (§ 4280.165).

Appendix A to Subpart B of Part 4280—Technical Reports for Energy Efficiency Improvement (EEI) Projects. Updated regulatory references.

Appendix B to Subpart B of Part 4280—Technical Reports for Renewable Energy System (RES) Projects with Total Project Costs of Less Than \$200,000, but More Than \$80,000. Updated regulatory references.

Appendix C to Subpart B of Part 4280—Technical Reports for Renewable Energy System (RES) Projects with Total Project Costs of \$200,000 and Greater. Updated regulatory references and added language for biogas projects, renewable energy systems with storage components, and provisions for hybrid applications.

Appendix D to Subpart B of Part 4280—Feasibility Study Components. Added appendix which conforms to feasibility study component appendix found in 7 CFR 5001.

III. Executive Orders/Acts

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches to maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866. In accordance with Executive Order 12866, the Agency conducted a Regulatory Impact Analysis, outlining the costs and benefits of implementing this program in rural America. The complete analysis is available in Docket No. RBS–20–Business–0027. This analysis consists a statement of need for the final rule, a discussion of the current provisions for the Rural Energy for America Program (REAP) and how the final rule changes those provisions, and an analysis of the benefits and costs of the changes.

Much of the analysis is necessarily descriptive of the anticipated effects of this final rule. Benefits are described qualitatively, with some indication of the relative potential size. Most of the costs are quantified. Consequently, the analysis does not provide the exact magnitude of the resulting benefits and

costs. Despite this, the Agency expects this final rule will provide cost savings and net benefits compared to the current situation by improved program and Agency management.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Unfunded Mandates Reform Act

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

Environmental Impact Statement

This final rule has been reviewed in accordance with 7 CFR part 1970 (“Environmental Policies and Procedures”). The Agency has determined that (i) this action meets the criteria established in 7 CFR 1970.53(f); (ii) no extraordinary circumstances exist; and (iii) the action is not “connected” to other actions with potentially significant impacts, is not considered a “cumulative action” and is not precluded by 40 CFR 1506.1. Therefore, the Agency has determined that the action does not have a significant effect on the human environment, and therefore neither an Environmental Assessment nor an Environmental Impact Statement is required.

Executive Order 13132, Federalism

The policies contained in this final rule do not have a 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 rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–602) (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act (“APA”) or any other statute. The Administrative Procedures Act exempts from notice and comment requirements rules “relating to agency management or personnel or to public property, loans, grants, benefits,

or contracts” (5 U.S.C. 553(a)(2)), so therefore an analysis has not been prepared for this rule.

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

The Rural Energy for America Program helps offset the costs associated with renewable energy systems and energy efficiency improvements. Renewable energy systems can be installed for direct use to replace existing fossil fuel use where the behind-the-meter applications only affect on-site use and have no negative impact on the energy supply or distribution systems. Renewable energy systems can also be installed for distributed energy systems to help ensure a reliable source of energy in the event of natural disasters. Projects which produce energy for sale, or net-meter energy, are typically interconnected to existing energy distribution systems. These projects are required to meet all federal and state regulatory provisions as set by local utilities, state statutes and federal regulations, thus ensuring no adverse impacts to energy supply or distribution systems. For large REAP projects, applicants often incur the cost for generation and transmission studies to ensure no adverse impacts to energy supply or distribution systems. The additional infrastructure becomes a benefit to the utility or other parties interested in developing their own renewable energy projects. Energy efficiency improvement projects reduce the consumption of fossil fuel based energy and assist many utilities with management of their demand loads. It is for these reasons that the REAP program is not likely to have an adverse impact to the energy supply or distribution systems. Accordingly, this action is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Moreover, the action has not otherwise been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

Executive Order 12372, Intergovernmental Review of Federal Programs

This final rule is excluded from the scope of Executive Order 12372 (Intergovernmental Consultation), which may require a consultation with State and local officials. See the final rule related notice entitled, “Department Programs and Activities Excluded from Executive Order 12372” (50 FR 47034).

Executive Order 13175, Consultation and Coordination With Indian Tribes

This executive order imposes requirements on RBS in the development of regulatory policies that have tribal implications or preempt tribal laws. RBS has determined that the 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 rule is not subject to the requirements of Executive Order 13175. If tribal leaders are interested in consulting with RBS on this rule, they are encouraged to contact USDA’s Office of Tribal Relations or the Agency’s Native American Coordinator at: AIAN@usda.gov to request such a consultation.

Catalog of Federal Domestic Assistance

REAP is listed in the Catalog of Federal Domestic Assistance (CFDA) under Number 10.868.

All active CFDA programs and the CFDA Catalog can be found at the following website: <https://beta.sam.gov/>. The website also contains a PDF file version of the Catalog that, when printed, has the same layout as the printed document that the Government Publishing Office (GPO) provides. GPO prints and sells the CFDA to interested buyers. For information about purchasing the Catalog of Federal Domestic Assistance from GPO, call the Superintendent of Documents at 202–512–1800 or toll free at 866–512–1800, or access GPO’s online bookstore.

Paperwork Reduction and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Agency invites comments on this information collection, which has been submitted for approval from the Office of Management and Budget (OMB) under OMB Control Number 0570–0067.

Written comments and recommendations for the proposed information collection should be sent within 60 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 60-day Review—Open for Public Comments” or by using the search function.

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the

Agency’s estimate of burden including the validity of the methodology and assumption 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 on other forms of information technology.

Title: 7 CFR 4280, Rural Energy for America Program.

OMB Control Number: 0570–0067.

Abstract: The Rural Energy for America Program, which supersedes the Renewable Energy Systems and Energy Efficiency Improvements Program under Title IX, Section 9006 of the Farm Security and Rural Investment Act of 2002, is designed to help agricultural producers and rural small business reduce energy cost and consumption, develop new income streams, and help meet the nation’s critical energy needs by requiring the Secretary of Agriculture to provide grants and/or guaranteed loans for several types of projects as follows:

- Grants and grants and loan guarantees (combined funding) to agricultural producers and rural small businesses to purchase renewable energy systems and make energy efficiency improvements.
- Grants to eligible entities to provide energy audits and renewable energy development assistance to enable agricultural producers and rural small businesses to become more energy efficient and to use renewable energy technologies and resources. Entities eligible to receive grants under this program are State, tribal and local governments; land-grant colleges and universities or other institutions of higher learning; rural electric cooperatives; public power entities; Resource Conservation and Development Councils and instrumentalities of local, state, and federal governments. These grant funds may be used to conduct and promote energy audits; provide recommendations and information on how to improve the energy efficiency of the operations of the agricultural producers and rural small businesses; and provide recommendations and information on how to use renewable energy technologies and resources in the operations. No more than five (5) percent of the grant can be used for administrative purposes. Agricultural producers and rural small businesses for which a grantee is conducting an energy audit must pay at least 25 percent of the cost of the energy audit.

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

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2.10 hours per response.

Respondents: Rural developers, farmers and ranchers, rural businesses, public bodies, local governments, lenders.

Estimated Number of Respondents: 1,434.

Estimated Number of Responses per Respondent: 28.28.

Estimated Number of Responses: 40,560.

Estimated Total Annual Burden (hours) on Respondents: 85,178.00.

Copies of this information collection may be obtained from Thomas P. Dickson, Regulatory Division Team 2, Rural Development Innovation Center, U.S. Department of Agriculture, 1400 Independence Ave. SW, Washington, DC 20250; telephone, 202-690-4492; email, thomas.dickson@usda.gov.

All responses to this information collection and recordkeeping notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

E-Government Act Compliance

Rural Development is committed to complying with the E-Government Act of 2002, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

List of Subjects in 7 CFR Part 4280

Business and industry, Energy, Grant programs—business, Loan programs—business, Rural areas.

For the reasons set forth in the preamble, under the authority at 5 U.S.C. 301, 7 U.S.C 8107, Chapter XLII of Title 7 of the Code of Federal Regulations is amended as follows:

PART 4280—LOAN AND GRANTS

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

Authority: 5 U.S.C. 301; 7 U.S.C. 8107.

■ 2. Revise subpart B to read as follows:

Subpart B—Rural Energy for America Program General

Sec.

- 4280.101 Purpose.
- 4280.102 Organization of subpart.
- 4280.103 Definitions.
- 4280.104 Exception authority.
- 4280.105 Review or appeal rights.
- 4280.106 Conflict of interest.

- 4280.107 [Reserved]
- 4280.108 U.S. Department of Agriculture departmental regulations and laws that contain other compliance requirements.
- 4280.109 Ineligible applicants, grantees, and owners.
- 4280.110 General applicant, application, and funding provisions.
- 4280.111 Notifications.

Renewable Energy System and Energy Efficiency Improvement Grants

- 4280.112 Applicant eligibility.
- 4280.113 Project eligibility.
- 4280.114 Ineligible projects.
- 4280.115 RES and EEI grant funding.
- 4280.116 Grant applications—general.
- 4280.117 Determination of technical merit.
- 4280.118 Grant applications for RES and EEI projects with total project costs \$200,000 and greater.
- 4280.119 Grant applications for RES and EEI projects with total project costs of less than \$200,000, but more than \$80,000.
- 4280.120 Grant applications for RES and EEI projects with total project costs of \$80,000 or less.
- 4280.121 Scoring RES and EEI grant applications.
- 4280.122 Selecting RES and EEI grant applications for award.
- 4280.123 Awarding and administering RES and EEI grants.
- 4280.124 Servicing RES and EEI grants.
- 4280.125 Construction planning and performing development.
- 4280.126–4280.136 [Reserved]

Combined Funding for Renewable Energy Systems and Energy Efficiency Improvements

- 4280.137 Combined grant and guaranteed loan funding requirements.
- 4280.138–4280.148 [Reserved]

Energy Audit and Renewable Energy Development Assistance Grants

- 4280.149 Applicant eligibility.
 - 4280.150 Project eligibility.
 - 4280.151 Ineligible projects.
 - 4280.152 Grant funding for EA and REDA.
 - 4280.153 EA and REDA grant applications—content.
 - 4280.154 Evaluation of EA and REDA grant applications.
 - 4280.155 Scoring EA and REDA grant applications.
 - 4280.156 Selecting EA and REDA grant applications for award.
 - 4280.157 [Reserved]
 - 4280.158 Awarding and administering EA and REDA grants.
 - 4280.159 Servicing EA and REDA grants.
 - 4280.160–4280.165 [Reserved]
 - 4280.166 OMB control number.
- Appendix A to Subpart B of Part 4280—
Technical Reports for Energy Efficiency Improvement (EEI) Projects
- Appendix B to Subpart B of Part 4280—
Technical Reports for Renewable Energy System (RES) Projects With Total Project Costs of Less Than \$200,000, but More Than \$80,000
- Appendix C to Subpart B of Part 4280—
Technical Reports for Renewable Energy

System (RES) Projects With Total Project Costs of \$200,000 and Greater
Appendix D to Subpart B of Part 4280—
Contents of Feasibility Study

Subpart B—Rural Energy for America Program General

§ 4280.101 Purpose.

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

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

(b) Grants to assist agricultural producers and rural small businesses by conducting Energy Audits (EA) and providing recommendations and information on Renewable Energy Development Assistance (REDA); and

(c) Grants or guaranteed loans, or a combination grant and guaranteed loan to an applicant or borrower pursuant to 7 CFR 1980, Subpart M Special Authority to Enable Funding of Broadband and Smart Utility Facilities Across Select Rural Development Programs. A Borrower or applicant receiving funding as referenced in paragraphs (a) or (b) of this section is permitted to use up to 10 percent of the amount provided under this subpart to construct, improve, or acquire broadband infrastructure related to the project financed, subject to the requirements of 7 CFR 1980, Subpart M.

§ 4280.102 Organization of subpart.

(a) Sections 4280.103 through 4280.111 discuss definitions; exception authority; review or appeal rights; conflict of interest; USDA Departmental Regulations; other applicable laws; ineligible applicants, grantees, and owners; general applicant, application, and funding provisions; and notifications, which are applicable to all of the funding programs under this subpart.

(b) Sections 4280.112 through 4280.125 discuss the requirements specific to RES and EEI grants. Sections 4280.112 and 4280.113 discuss, respectively, applicant and project eligibility. Section 4280.114 addresses ineligible projects. Section 4280.115 addresses funding provisions for these grants. Sections 4280.116 through 4280.120 address grant application content, technical merit determination, and required documentation. Sections 4280.121 through 4280.124 address the scoring, selection, awarding and administering, and servicing of these grant applications. Section 4280.125

addresses construction planning and development.

(c) Section 4280.137 presents the process by which the Agency will make combined loan guarantee and grant funding available for RES and EEI projects.

(d) Sections 4280.149 through 4280.159 present the process by which the Agency will make EA and REDA grant funding available. These sections cover applicant and project eligibility, grant funding, application content, evaluation, scoring, selection, awarding and administering, and servicing.

(e) Appendices A through C cover technical report requirements. Appendix A applies to EEI projects; Appendix B applies to RES projects with Total Project Costs of Less Than \$200,000, but more than \$80,000; and Appendix C applies to RES projects with Total Project Costs \$200,000 and Greater. Appendices A and B do not apply to RES and EEI projects with Total Project Costs of \$80,000 or less, respectively. Instead, technical report requirements for these projects are found in § 4280.120.

(f) Appendix D covers contents of feasibility study.

§ 4280.103 Definitions.

The following definitions are applicable to the capitalized terms used in this part.

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

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

Agricultural producer. A person, including non-profits, directly engaged in the production of agricultural products through labor management and operations, including the cultivating, growing, and harvesting of plants and crops (including farming); breeding, raising, feeding, or housing of livestock (including ranching); forestry products; hydroponics; nursery stock; or aquaculture, whereby 50 percent or greater of their gross income is derived from the operations. The percentage is calculated as the average of gross agricultural operations income of the concern divided by the gross total income of the concern for the five most recent years. If the concern has been in

operation for less than 60 months, use average gross agricultural operations income and gross total income for as long as the concern has been in operation.

Anaerobic digester. A Renewable Energy System that uses animal waste or other renewable biomass and may include other organic substrates to produce digestate and biogas that may be sold in a gaseous or compressed liquid state or used to produce thermal or electrical energy.

Applicant. (1) Except for EA and REDA grants, the agricultural producer or rural small business that is seeking a grant, or a combination of a grant and guaranteed loan, under this subpart.

(2) For EA and REDA grants, a unit of State, Tribal, or local government; a land-grant college or university or other institution of higher education; a rural electric cooperative; a public power entity; council; or an Instrumentality of a State, Tribal, or local government that is seeking an EA or REDA grant under this subpart.

Bioenergy project. A RES that produces fuel, biogas, thermal energy, or electric power from a renewable biomass source only.

Biofuel. A fuel derived from renewable biomass.

Biogas. Gaseous fuel (including landfill and sewage waste treatment gas) derived from the degradation and decomposition of renewable biomass.

Byproduct. An incidental or secondary product, regardless of whether it has a readily identifiable commercial use or value, generated under normal operations of the proposed project that can be reasonably measured and monitored.

Commercially available. A system that meets the requirements of either paragraph (1) or (2) of this definition.

(1) A domestic or foreign system that:

(i) Has both a proven and reliable operating history and proven performance data for at least 1 year specific to the use and operation to the proposed application;

(ii) Is based on established design and installation procedures and practices and is replicable;

(iii) Has professional service providers, trades, large construction equipment providers, and laborers who are familiar with installation procedures and practices;

(iv) Has proprietary and balance of system equipment and spare parts that are readily available;

(v) Has service that is readily available to properly maintain and operate the system; and

(vi) Has an existing established warranty that is valid in the United States for major parts and labor; or

(2) A domestic or foreign system that has been certified by a recognized industry organization whose certification standards are acceptable to the Agency.

Complete application. An application that contains all parts necessary for the Agency to determine applicant and project eligibility, the financial feasibility and technical merit of the project, and contains sufficient information to determine a priority score for the application, if applicable.

Costs incurred. A cost will be considered incurred when payment for costs associated with the project have been issued. If payment was in the form of a check, the date of the check will be considered the date the cost was incurred. If payment was in the form of an electronic payment, the date that the payment was issued from the grantee/producer/borrower account will be considered the date the cost was incurred.

Council. As defined, under the Resource Conservation and Development Program, at 16 U.S.C. 3451.

Departmental regulations. The regulations of the Agency's Office of Chief Financial Officer (or successor office) as codified in 2 CFR chapter IV.

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

Eligible project costs. Those expenses approved by the Agency for the project as eligible uses of funds.

Energy assessment. An Agency-approved report assessing energy use, cost, and efficiency by analyzing energy bills and surveying the target building and/or equipment sufficiently to provide an Agency-approved energy assessment.

(1) If the project's total project cost is greater than \$80,000, the energy assessment must be conducted by either an energy auditor or an energy assessor or an individual supervised by either an energy assessor or energy auditor. The final energy assessment must be validated and signed by the energy assessor or energy auditor who conducted the energy assessment or by the supervising energy assessor or energy auditor of the individual who conducted the assessment, as applicable.

(2) If the project's total project cost is \$80,000 or less, the energy assessment may be conducted in accordance with paragraph (1) of this definition or by an individual or entity that has at least 3 years of experience and completed at least five energy assessments or energy audits on similar type projects.

Energy assessor. A qualified consultant who has at least 3 years of experience and completed at least five energy assessments or energy audits on similar type projects and who adheres to generally recognized engineering principles and practices.

Energy audit. A comprehensive report that meets an Agency-approved standard prepared by an energy auditor or an individual supervised by an energy auditor that documents current energy usage; recommended potential improvements (typically called energy conservation measures) and their costs; energy savings from these improvements; dollars saved per year; and simple payback. The methodology of the energy audit must meet professional and industry standards. The final energy audit must be validated and signed off by the energy auditor who conducted the audit or by the supervising energy auditor of the individual who conducted the audit, as applicable.

Energy auditor. A qualified consultant that meets one of the following criteria:

- (1) A certified energy auditor certified by the Association of Energy Engineers;
- (2) A certified energy manager certified by the Association of Energy Engineers;
- (3) A licensed professional engineer in the State in which the audit is conducted with at least 1-year experience and who has completed at least two similar type energy audits; or
- (4) An individual with a 4-year engineering or architectural degree with at least 3 years of experience and who has completed at least five similar type energy audits.

Energy efficiency improvement (EEI). Improvements to or replacement of an existing building or systems and/or equipment, owned by the applicant, that reduces energy consumption on an annual basis.

Existing business. A business that has been in operation for at least 1 full year. The following will be treated as existing businesses provided there is not a significant change in operations of the existing business: Mergers by an existing business with a new or existing business, a change in the business name, or a new business and an existing business applying as co-applicants.

Feasibility study. A report including an opinion or finding conducted by an

independent qualified consultant(s) evaluating the economic, market, technical, financial, and management feasibility of a proposed project or operation in terms of its expectation for success as outlined in Appendix D of this Subpart.

Federal fiscal year. The 12-month period beginning October 1 of each year and ending on September 30 of the following year; it is designated by the calendar year in which it ends.

Financial Assistance Agreement (Form RD 4280-2, Rural Business-Cooperative Service Financial Assistance Agreement). An agreement between the Agency and the grantee setting forth the provisions under which the grant will be administered.

Financial feasibility. The ability of a project to achieve sufficient income, credit, and cash flow to financially sustain a project over the long term and meet all debt obligations.

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

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

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

Hydroelectric source. A RES producing electricity using various types of moving water including, but not limited to, diverted run-of-river water, in-stream run-of-river water, and in-conduit water.

Hydrogen project. A system that produces hydrogen derived from a renewable biomass or water using wind, solar, ocean (including tidal, wave, current, and thermal) geothermal or hydroelectric sources as an energy transport medium in the production of mechanical or electric power or thermal energy.

Immediate family(ies). Individuals who live in the same household or who are closely related by blood, marriage, or adoption, such as a spouse, domestic partner, parent, child, sibling, aunt, uncle, grandparent, grandchild, niece, nephew, or first cousin.

Inspector. A qualified consultant who has at least 3 years of experience and has completed at least five inspections on similar type projects.

Institution of Higher Education. As defined in 20 U.S.C. 1002(a).

Instrumentality. An organization recognized, established, and controlled by a State, Tribal, or local government, for a public purpose or to carry out special purposes.

Interconnection agreement. A contract containing the terms and conditions governing the interconnection and parallel operation of the grantee's electric generation equipment and the utility's electric power system or a grantee's biogas production system and gas pipeline.

Matching funds. Those project funds required by 7 U.S.C. 8107 to be made available by the applicant in order to be eligible to receive the grant, or combined grant and guaranteed loan. Funds provided by the applicant in excess of matching funds are not matching funds. Unless authorized by statute, other Federal grant funds cannot be used to meet a matching funds requirement.

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

Passive investor. An equity investor that does not actively participate in management and operation decisions of the applicant or any affiliate of the applicant as evidenced by a contractual agreement.

Person. An individual or entity organized under the laws of a State or a Tribe.

Power purchase agreement. The terms and conditions governing the sale and transportation of power produced by the applicant to another party.

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

Qualified Consultant(s). An independent third-party person possessing the knowledge, expertise, and experience to perform the specific task required.

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

Refurbished. Refers to a piece of equipment or RES that has been brought into a commercial facility, thoroughly inspected, and worn parts replaced and has a warranty that is approved by the Agency or its designee.

Renewable biomass. (1) Materials, pre-commercial thinnings, or invasive

species from National Forest System land or public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)) that:

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

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

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

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

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

(ii) Waste material including crop residue; other vegetative waste material (including wood waste and wood residues); animal waste and byproducts (including fats, oils, greases, and manure); and food waste and yard waste.

Renewable energy. Energy derived from:

(1) A wind, solar, renewable biomass, ocean (including tidal, wave, current, and thermal), geothermal or hydroelectric Source; or

(2) Hydrogen derived from renewable biomass or water using an energy source described in paragraph (1).

Renewable energy development assistance (REDA). Assistance provided by eligible grantees to agricultural producers and rural small businesses including education, applicability, and implementation of renewable energy technologies and resources. The REDA may consist of renewable energy site assessments or renewable energy technical assistance.

Renewable energy site assessment. A report provided to an agricultural producer or rural small business providing information regarding and recommendations for the use of commercially available renewable energy technologies in its operation. The report must be prepared by a qualified consultant and must contain

the information specified in Sections A through C of Appendix B.

Renewable Energy System (RES). A system that produces usable energy from a renewable energy source and may include:

(1) Distribution components necessary to move energy produced by such system to initial point of sale; and

(2) other components and ancillary infrastructure of such system, such as a storage system; however, such system may not include a mechanism for dispensing energy at retail.

Renewable energy technical assistance. Assistance provided to agricultural producers and rural small businesses on how to use renewable energy technologies and resources in their operations.

Retrofitting. A modification to an existing building or installed equipment that incorporates a function or feature(s) not included in the original design when built or for the replacement of existing components with components that improve the original design and does not impact original warranty if the warranty is still in existence.

Rural and rural area. Any area of a State not in a city or town that has a population of more than 50,000 inhabitants, and which excludes certain populations pursuant to 7 U.S.C. 1991(a)(13)(H), according to the latest decennial census of the United States and not in the urbanized area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants. In making this determination, the Agency will use the latest decennial census of the United States. The following exclusions apply:

(1) Any area in the urbanized area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants that has been determined to be “rural in character” as follows:

(i) The determination that an area is “rural in character” will be made by the Under Secretary of Rural Development. The process to request a determination under this provision is outlined in paragraph (1)(ii) of this definition. The determination that an area is “rural in character” under this definition will apply to areas that are within:

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

(B) An urbanized area contiguous and adjacent to a city or town of greater than

50,000 inhabitants that is within ¼ mile of a rural area.

(ii) Units of local government may petition the Under Secretary of Rural Development for a “rural in character” designation by submitting a petition to the appropriate Rural Development State Director for recommendation to the Administrator on behalf of the Under Secretary. The petition shall document how the area meets the requirements of paragraph (1)(i)(A) or (B) of this definition and discuss why the petitioner believes the area is “rural in character,” including, but not limited to, the area’s population density, demographics, and topography and how the local economy is tied to a rural economic base. Upon receiving a petition, the Under Secretary will consult with the applicable Governor or leader in a similar position and request comments to be submitted within 5 business days, unless such comments were submitted with the petition. The Under Secretary will release to the public a notice of a petition filed by a unit of local government not later than 30 days after receipt of the petition by way of publication in a local newspaper and posting on the Agency’s website at <https://www.rd.usda.gov>, and the Under Secretary will make a determination not less than 15 days, but no more than 60 days, after the release of the notice. Upon a negative determination, the Under Secretary will provide to the petitioner an opportunity to appeal a determination to the Under Secretary, and the petitioner will have 10 business days to appeal the determination and provide further information for consideration. The Under Secretary will make a determination of the appeal in not less than 15 days, but no more than 30 days.

(iii) Rural Development State Directors may also initiate a request to the Under Secretary to determine if an area is “rural in character.” A written recommendation should be sent to the Administrator, on behalf of the Under Secretary, that documents how the area meets the statutory requirements of paragraph (1)(i)(B) of this definition and discusses why the State Director believes the area is “rural in character,” including, but not limited to, the area’s population density, demographics, topography, and how the local economy is tied to a rural economic base. Upon receipt of such a request, the Administrator will review the request for compliance with the “rural in character” provisions and make a recommendation to the Under Secretary. Provided a favorable determination is made, the Under Secretary will consult with the applicable Governor or leader

in a similar position and request comments within 10 business days, unless the comments were submitted with the request. A public notice will be published by the State Office in accordance with paragraph (1)(ii) of this definition. There is no appeal process for requests made on the initiative of the State Director.

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

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

(4) For the State of Hawaii, all areas within the State are considered rural and eligible except for the Honolulu CDP within the County of Honolulu and any other CDP with greater than 50,000 inhabitants. Areas within CDPs with greater than 50,000 inhabitants, other than the Honolulu CDP, may be determined to be rural if they are "not urban in character."

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

Rural small business. A small business that is located in a rural area or that can demonstrate the proposed project for which assistance is being applied for under this part is located in a rural area.

Simple payback. The estimated simple payback of a project funded under this part as calculated using paragraphs (1) or (2), as applicable, of this definition.

(1) EEI projects simple payback = (total project costs) ÷ (dollar value of energy saved).

(i) Energy saved will be determined by subtracting the projected energy (determined by the method in paragraph (1)(i)(B) of this definition) to be consumed from the historical energy consumed (determined by the method in paragraph (1)(i)(A) of this definition), and converting the result to a monetary

value using a constant value or price of energy (determined by the method in paragraph (1)(i)(C) of this definition).

(A) Actual energy used in the original building and/or equipment, as applicable, prior to the EEI project, must be based on the actual average annual total energy used in British thermal units (BTU) over the most recent 12, 24, 36, 48, or 60 consecutive months of operation. Attach utility bills to document applicant entity's historical energy consumption quantity.

(B) Projected energy use if the proposed EEI project had been in place for the original building and/or equipment, as applicable, for the same time period used to determine that actual energy use under paragraph (1)(i)(A) of this definition.

(C) Value or price of energy must be the actual average price paid over the same time period used to calculate the actual energy used under paragraph (1)(i)(A) of this definition. When calculating the actual average price of energy, only include energy charges directly reduced by the unit of energy being replaced or saved. Attach utility bills to document applicant entity's average price of energy.

(ii) The EEI projects simple payback calculation does not allow applicants to monetize EEI benefits other than the dollar amount of the energy savings the agricultural producer or rural small business realizes as a result of the improvement.

(2) RES projects simple payback = (total project costs) ÷ (dollar value of energy units replaced, credited, sold, or used and fair market value of byproducts as applicable in a typical year).

(i) Value of energy replaced will be calculated based on the applicant entity's historical energy consumption with actual average price paid for the energy replaced, following the methodology outlined in paragraph (1)(i) of this definition. Attach utility bills to document applicant entity's historical energy consumption quantity and actual average price of energy.

(ii) Value of energy credited or sold will be calculated based on the amount of energy units to be credited or sold at the proposed rate per unit, as documented in utility net metering or crediting policies and/or a power purchase agreement. Attach utility net metering or crediting policies and/or a power purchase agreement to document energy quantity and proposed rate for energy credited or sold.

(iii) If proposed energy will be used in a new facility, value of energy used will be calculated based on the amount of energy units to be used at the

documented price per unit of conventional fuel alternative. Attach documentation of market price per unit of conventional fuel alternative.

(iv) Value of byproducts produced by and used in the project or related enterprises should be documented at the fair market value to be received for the byproducts in a typical year. Attach documentation of market value price to be received for byproducts and documentation to support byproduct sales or direct use.

(v) The RES projects simple payback calculation does not include any one-time benefits such as but not limited to construction and investment-related benefits, nor credits which do not provide annual income to the project, such as tax credits.

Small business means,

(1) An entity or utility, as applicable, as further defined in subparagraphs (i) through (iv) and paragraph (2) of this definition. With the exception of the entities identified in this paragraph, all other non-profit entities are not small businesses for the purposes of REAP program eligibility:

(i) A private for-profit entity, including a sole proprietorship, partnership, or corporation;

(ii) A cooperative (including a cooperative qualified under section 501(c)(12) of the Internal Revenue Code);

(iii) An electric utility (including a Tribal or governmental electric utility) that provides service to rural consumers and operates independent of direct government control; or

(iv) A Tribal corporation or other Tribal business entities that are chartered under Section 17 of the Indian Reorganization Act (25 U.S.C. 477) or have similar structures and relationships with their Tribal governments and are acceptable to the Agency. The Agency will determine the small business status of such Tribal entity without regard to the resources of the Tribal government; and

(2) An entity that meets Small Business Administration size standards in accordance with 13 CFR part 121 and criteria of § 121.301 as applicable to financial assistance programs, including (i) or (ii) below. The size of the concern alone and the size of the concern combined with other entity(ies) it controls or entity(ies) it is controlled by, must not exceed the size standard thresholds designated for the industry in which the concern alone or the concern and its controlling entity(ies), whichever is higher, is primarily engaged.

(i) The concern's tangible net worth is not in excess of \$15 million and average

net income (excluding carry-over losses) for the preceding two completed fiscal years is not in excess of \$5.0 million; or

(ii) The size of the concern does not exceed the Small Business Administration (SBA) size standard thresholds designated for the industry in which it is primarily engaged, as measured by number of employees or annual receipts. Industry size standard designations to be utilized are listed in the Small Business Administration's (SBA) table of size standards found in 13 CFR part 121.201. Number of employees and annual receipts are calculated as follows:

(A) Number of employees is calculated as the average number of all individuals employed by a concern on a full-time, part-time, or other basis, based upon numbers of employees for each of the pay periods for the preceding completed 12 calendar months. If a concern has not been in business for 12 months, the average number of employees is used for each of the pay periods during which it has been in business.

(B) Annual receipts are calculated as average total income plus cost of goods sold for the five most recent years. If a concern has been in operation for less than 60 months, average annual receipts for as long as the concern has been in operation are used.

Smart Utility. The use of broadband facilities and equipment that is only available internally by a recipient during the economic life of the assets financed by an Agency loan, grant, or loan guarantee.

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

Steady state operating level means that there is an adequate and consistent supply of the applicable renewable energy resource(s) for the project, both on a short-term (current) and long-term basis, and the renewable energy system and process(es) are operating at projected capacity, consistently yielding an adequate quantity and quality of renewable energy.

Total eligible project costs. The sum of all eligible project costs.

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

Underserved community(ies). Communities (including urban or rural communities and Indian tribal communities) that have limited access

to affordable, healthy foods, including fresh fruits and vegetables, in grocery retail stores or farmer-to-consumer direct markets and that have either a high rate of hunger or food insecurity or a high poverty rate as reflected in the most recent decennial census or other Agency-approved census.

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

Useful life means estimated durations of utility placed on a variety of assets, including buildings, machinery, equipment, vehicles, electronics, and furniture. Useful life estimations terminate at the point when assets are expected to become obsolete, require major repairs, or cease to deliver economical results.

Veteran. A veteran is a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable as defined in title 38 U.S.C. 101(2).

§ 4280.104 Exception authority.

The Administrator may, on a case-by-case basis, grant an exception to any requirement or provision of this subpart provided that such an exception is in the best financial interests of the Federal Government. Exercise of this authority cannot be in conflict with applicable law.

§ 4280.105 Review or appeal rights.

Agency Applicants or grantees may have appeal or review rights for Agency decisions made under this part. Agency decisions that are adverse to the individual participant are appealable, while matters of general applicability are not subject to appeal; however, such decisions are reviewable for appealability by the National Appeals Division (NAD). All appeals will be conducted by NAD and will be handled in accordance with 7 CFR part 11. The applicant or grantee can appeal any Agency decision that directly and adversely affects them.

§ 4280.106 Conflict of interest.

(a) *General.* No conflict of interest or appearance of conflict of interest will be allowed. Conflict of interest means a situation in which a person has personal, professional, or financial interests that prevent, or appears to prevent the person from acting impartially. For purposes of this subpart, conflict of interest includes, but is not limited to, distribution or payment of grant, guaranteed loan funds, and matching funds to a beneficiary or immediate family member of the applicant.

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

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

§ 4280.107 [Reserved]

§ 4280.108 U.S. Department of Agriculture departmental regulations and laws that contain other compliance requirements.

(a) *Departmental regulations.* All projects funded under this subpart are subject to the provisions of the Departmental regulations, as applicable, which are incorporated by reference herein.

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

(c) *Civil rights compliance.* Recipients of grants must comply with the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.*, Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794. This includes collection and maintenance of data on the race, sex, and national origin of the recipient's membership/ownership and employees. These data must be available to conduct compliance reviews in accordance with 7 CFR 1901.204.

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

(2) When compliance reviews are applicable to the grant, one subsequent compliance review following project completion is required. This will occur after the last disbursement of grant funds has been made.

(d) *Environmental analysis.* Actions taken under this subpart must comply with 7 CFR part 1970. Prospective applicants are advised to contact the Agency to determine environmental requirements as soon as practicable after they decide to pursue any form of financial assistance directly or indirectly available through the Agency.

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

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

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

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

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

§ 4280.109 Ineligible applicants, grantees, and owners.

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

(a) If an applicant, grantee, or owner has an outstanding judgment obtained by the U.S. in a Federal Court (other than in the United States Tax Court), is delinquent in the payment of Federal income taxes, or is delinquent on a Federal debt, the applicant, grantee, or owner is not eligible to receive a grant or combined grant and guaranteed loan until the judgment is paid in full or otherwise satisfied or the delinquency is resolved.

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

§ 4280.110 General applicant, application, and funding provisions.

(a) *Satisfactory progress.* An applicant that has received one or more grants

and/or guaranteed loans under this program must make satisfactory progress, as determined by the Agency, toward completion of any previously funded projects before the applicant will be considered for subsequent funding. This may include a review of the applicant compliance with Agency reporting requirements. Satisfactory progress for EA and REDA grants is defined as at least 50 percent of previous EA or REDA awards expended at the time the Agency makes its eligibility determination.

(b) *Application submittal.* Applications must be submitted in accordance with the provisions of this subpart unless otherwise specified in a **Federal Register** notice. Grant applications and combined grant and guaranteed loan applications for financial assistance under this subpart may be submitted at any time.

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

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

(c) *Application limits.* An applicant applying for a grant or a combined grant and guaranteed loan is limited to competing one RES application and one EEI application under this subpart in any one Federal fiscal year. An applicant that proposes to install the same EEI or RES (including hybrid) across multiple facilities can be considered one project and be submitted in one application.

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

(e) *Incomplete applications.* Applicants must submit complete applications in order to be considered for funding. If an application is incomplete, the Agency will identify those parts of the application that are incomplete and provide a written explanation to the applicant for possible future resubmission. Upon receipt of a complete application by the appropriate

Agency office, the Agency will complete its evaluation and will compete the application in accordance with the procedures specified in §§ 4280.122 or 4280.156 as applicable.

(f) *Application withdrawal.* During the period between the submission of an application and the execution of award documents for an application selected for funding, the applicant must notify the Agency, in writing, if the project is no longer viable or the applicant no longer is requesting financial assistance for the project. When the applicant notifies the Agency, the selection will be rescinded and/or the application withdrawn.

(g) *Technical report.* The following technologies: Hydrogen, ocean energy, geothermal electric generation, anaerobic digesters and biogas, biomass, hybrid applications, RES with storage components, and EEI or technologies as amended via **Federal Register** notification or posted on the Agency's website, must provide a technical report as specified in §§ 4280.118(d) 4280.119(b)(4), and 4280.120(b)(3) and 4280.120(b)(4), and must comply with the provisions specified in paragraphs (g)(1) through (3), as applicable, of this section:

(1) *Technical report format and detail.* The information in the technical report must follow the format specified in § 4280.120(b)(3), § 4280.120(b)(4), and Appendices A through C of this subpart, as applicable. Supporting information may be submitted in other formats. Design drawings and process flowcharts are encouraged as exhibits. In addition, information must be provided, in sufficient detail, to:

(i) Allow the Agency to determine the technical merit of the applicant's project under § 4280.117;

(ii) Allow the calculation of simple payback as defined in § 4280.103;

(iii) For RES Projects, enable the calculation of the percentage of historical use of energy compared to the amount of renewable energy that will be generated once the project is operating at its steady state operating level. If the project is closely associated with a residence, demonstration must be made that 50 percent or more of the projected renewable energy will benefit the agricultural operation or rural small business; and

(iv) Demonstrate that the RES or EEI will operate or perform over the project's useful life in a reliable, safe, and a cost-effective manner, which may include but is not limited to addressing project design, installation, operation, maintenance, and warranties.

(2) *Technical report modifications.* If a technical report is prepared prior to

the applicant's selection of a final design, equipment vendor, or contractor, or other significant decision, it may be modified and resubmitted to the Agency, provided that the overall scope of the project is not materially changed as determined by the Agency. Changes in the technical report may require additional environmental documentation in accordance with 7 CFR part 1970.

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

(h) *Time limit on use of grant funds.* Except as provided in paragraph (h)(1) of this section, grant funds not expended within 2 years from the date the Financial Assistance Agreement was signed by the Agency will be returned to the Agency.

(1) *Time extensions.* The Agency may extend the 2-year time limit for a period not to exceed 24 months if the Agency determines, at its sole discretion, that the grantee is unable to complete the project for reasons beyond the grantee's control. Grantees must submit a request for the no-cost extension no later than 30 days before the two-year anniversary of executing the Financial Assistance Agreement. This request must describe the extenuating circumstances that were beyond their control to complete the project for which the grant was awarded, and why an approval is in the government's best interest.

(2) *Return of funds to the Agency.* Funds remaining after grant closeout that exceed the amount the grantee is entitled to receive under the Financial Assistance Agreement will be returned to the Agency.

§ 4280.111 Notifications.

(a) *Eligibility.* If an applicant and/or their application are determined by the Agency to be eligible for participation, the Agency will notify the applicant or lender in writing of the eligibility determination.

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

(c) *Funding determinations.* Each applicant and/or lender, as applicable, will be notified of the Agency's decision on their application. If unfunded in a competition, the application will compete in the next available competition and will continue competing until either awarded or the

application has competed in the maximum number of competitions in a fiscal year. The Agency will then issue an adverse funding determination for the unsuccessful application. If the Agency's decision is not to fund an application, the Agency will include in the notification any applicable appeal or review rights.

Renewable Energy System and Energy Efficiency Improvement Grants

§ 4280.112 Applicant eligibility.

To receive a RES or EEI grant under this subpart, an applicant must meet the requirements specified in paragraphs (a) through (g) of this section.

(a) *Type of applicant.* The applicant must be an agricultural producer or rural small business at the time of application.

(b) *Ownership and control.* The applicant must at the time of application and, if an award is made, for the useful life of the project as described in the Financial Assistance Agreement:

(1) Own the project; and

(2) Own or control the site for the project. If the grantee does not maintain ownership of the project and ownership or control of the site, then grant funds may be recovered from the grantee by the Agency in accordance with Departmental Regulations.

(c) *End Users.* If the controlling interest in the applicant entity is otherwise eligible and a legal transaction between two parties for the sale of energy in an open market is being proposed, the Agency will not consider the energy end-users as part of the analysis of the eligibility of the applicant. If the proposed end-user would be an ineligible applicant, such as an entity which is residential in nature or a non-profit entity, and the REAP applicant entity is a newly formed special-purpose entity with substantially the same ownership as the sole proposed end-user, then the REAP applicant entity is not eligible.

(d) *Revenues and expenses.* The applicant must have available at the time of application satisfactory sources of revenue in an amount sufficient to provide for the operation, management, maintenance, and any debt service of the project for the useful life of the project. In addition, the applicant must control the revenues and expenses of the project, including its operation and maintenance. Notwithstanding the provisions of this paragraph, the applicant may employ a qualified consultant under contract to manage revenues and expenses of the project and its operation and/or maintenance.

(e) *Legal authority and responsibility.* Each applicant must have the legal

authority necessary to apply for and carry out the purpose of the grant.

(f) *Unique Entity Identifier (UEI).* All applicants must register for a UEI as part of the registration process. Generally, the UEI number is included on Standard Form-424, "Application for Federal Assistance."

(g) *System for Awards Management (SAM).* Unless exempt under 2 CFR 25.110, the applicant must:

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

(2) Maintain an active SAM registration with current information at all times while an application is pending and until final fund disbursement has been made.

§ 4280.113 Project eligibility.

For a project to be eligible to receive a RES or EEI grant under this subpart, the proposed project must meet each of the requirements specified in paragraphs (a) through (e) of this section. Subsequent EEI projects must meet the requirements specified in paragraph (a)(5)(ii) of this section. The applicant is cautioned against taking any actions or incurring any obligations prior to the Agency completing the environmental review that would either limit the range of alternatives to be considered or that would have an adverse effect on the environment, such as the initiation of construction. If the applicant takes any such actions or incurs any such obligations, it could result in project ineligibility.

(a) The project must be for:

(1) The purchase of a new RES;

(2) The purchase of a refurbished RES;

(3) The retrofitting of an existing RES;

(4) For the purposes of this subpart, only those hydroelectric sources with a rated power of 30 megawatts or less are eligible, or

(5) Making an EEI that will allow less energy to be used on an annual basis than the original building and/or equipment being improved or replaced as provided in a vendor/installer certification or as demonstrated in an energy assessment or energy audit as applicable.

(i) *Types of improvements.* Eligible EEI include, but are not limited to:

(A) Efficiency improvements to existing RES; and

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

(ii) *Subsequent EEI projects.* A proposed EEI project that replaces an

EEl project previously funded under this subpart may or may not be eligible for funding.

(A) If the proposed EEl project would replace the same specific EEl equipment that had previously received funds under this subpart prior to the end of the useful life, as specified in the Financial Assistance Agreement, then the proposed improvement project, even if it is more energy efficient than the previously funded improvement, is ineligible.

(B) If the proposed EEl project would replace the same specific EEl equipment that had previously received funds under this subpart at or after the end of the useful life, as specified in the Financial Assistance Agreement, then the proposed improvement is eligible for funding under this subpart provided the EEl is more energy efficient than the previously funded improvement. If the proposed EEl is not more energy efficient than the previously funded improvement, then it is not eligible for funding under this subpart.

(b) The project must utilize commercially available technology;

(c) The project must have technical merit, as determined using the procedures specified in § 4280.117; and

(d) The project must be located in a rural area in a State if the type of applicant is a rural small business, or in a rural or non-rural area in a State if the type of applicant is an agricultural producer and the application supports the production, processing, vertical integration, or marketing of agricultural products. If the agricultural producer's operation is in a non-rural area, then the application can only be for RES or EEl components of the business operation that are directly related to and their use and purpose is limited to the agricultural production operation, such as vertically integrated operations, and are part of and co-located with the agricultural production operation.

(e) For a RES project, where a residence is closely associated with and shares an energy metering device with an agricultural operation or rural small business to be served by the RES project, 50 percent or more of the energy to be generated by the RES project must be used by the agricultural operation or rural small business. This also includes projects which will virtually net meter or credit energy to be generated by the RES project to a residence off-site from the project and owned by the applicant. The application must contain sufficient documentation to evaluate this provision which may include using either of the methods identified in paragraphs (e)(1) through (2) of this section.

(1) Provide a renewable energy site assessment or other documentation including calculations that demonstrate, based on historical energy use, that 50 percent or more of the energy to be produced by the RES project will be used in the agricultural operation or rural small business. This includes documentation on historical residential energy use. The Agency may request additional data to determine residential versus business or agricultural operation usage. The actual percentage of energy determined to benefit the rural small business or agricultural operation will be used to determine eligible project costs; or

(2) The applicant may install, or elect to conditionalize funding upon the installation of, a device (such as a second meter) that restricts 100 percent of the energy generated by the RES project to be used only by the agricultural operation or rural small business.

(f) An applicant is permitted to use up to 10 percent of the amount provided under this subpart to construct, improve, or acquire broadband infrastructure, subject to the requirements of 7 CFR 1980, Subpart M, Special Authority to Enable Funding of Broadband and Smart Utility Facilities Across Select Rural Development Programs.

§ 4280.114 Ineligible projects.

The Agency will not award funding under this part for any projects identified in this section, unless otherwise noted.

(a) Research and development projects and projects that involve technology that is not commercially available;

(b) Business operations that derive more than 10 percent of annual gross revenue from gambling activity. Gambling activities include any lease income from space or machines used for gambling activities. State or Tribal-authorized lottery proceeds, as approved by the Agency, conducted for the purpose of raising funds for the approved project are excluded;

(c) Business operations deriving income from activities of a sexual nature or illegal activities;

(d) Residential RES or EEl projects, including farm labor housing, apartment complexes, and owner-occupied bed and breakfasts, except for-profit nursing homes and assisted living facilities that provide full-time medical care for residents, and for-profit hotels that provide short-term housing;

(e) Racetracks or facilities for conducting either professional or amateur races of animals, or by

professional or amateur drivers or jockeys, or any other type of racing;

(f) RES projects that co-fire with fossil fuels, natural gas or petroleum-based products or materials such as coal and other non-renewable fuels, oils, and chemicals, and tires or plastic;

(g) Projects where 50 percent or more of the costs are ineligible or where project costs as defined in the application do not meet the definition of a renewable energy system or energy efficiency improvement, including projects submitted for labor costs only. Project costs associated with an EEl that are not clearly identified in the energy assessment or audit will be considered ineligible costs; and

(h) Projects proposing two or more different types of RES technologies that are not incorporated into a unified system and projects proposing two or more different types of RES technologies at two or more locations.

§ 4280.115 RES and EEl grant funding.

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

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

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

(3) *Maximum grant assistance.* Unless otherwise specified in a **Federal Register** notice, the maximum amount of grant assistance to one person or entity under this subpart will not exceed \$750,000 per Federal fiscal year.

(b) *Matching funds and other funds.* The applicant is responsible for securing the remainder of the total project costs not covered by grant funds.

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

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

(c) *Eligible Project Costs.* Eligible project costs are only those costs incurred after a complete application has been received by the Agency and are associated with the items identified in paragraphs (c)(1) through (6) of this section. Each item identified in paragraphs (c)(1) through (6) of this section is only an eligible project cost if it is directly related to and its use and purpose is limited to the RES or EEI.

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

(2) Construction, retrofitting, replacement, and improvements.

(3) EEI identified by vendor/installer certification or in the applicable energy assessment or energy audit.

(4) Fees for construction permits and licenses and fees required by an interconnection agreement.

(5) Professional service fees related to the project for qualified consultants, contractors, installers, and other third-party services.

(6) For an eligible RES in which a residence is closely associated with the rural small business or agricultural operation the installation of a second meter to separate the residence from the portion of the project that benefits the rural small business or agricultural operation, as applicable.

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

(1) Costs for agricultural tillage equipment, used equipment, and vehicles;

(2) Construction or equipment costs that would be incurred regardless of the installation of a RES or EEI.

(3) Lease payments, including lease to own or capitalized leases;

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

(5) Funds used for political or lobbying activities; and

(6) Funds used to pay off any Federal direct or guaranteed loans or other Federal debts.

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

(1) The type of RES to be purchased;

(2) The estimated quantity of energy to be generated by the RES;

(3) The expected environmental benefits of the RES;

(4) The quantity of energy savings expected to be derived from the activity, as certified by the vendor/installer as applicable, or demonstrated by an energy audit or energy assessment;

(5) The estimated period of time for the energy savings generated by the

activity to equal the cost of the activity; and

(6) The expected energy efficiency of the RES.

§ 4280.116 Grant applications—general.

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

(b) *Application content.* Applications for RES projects or EEI projects must contain the information specified in § 4280.118 unless the requirements of either § 4280.119(a) or § 4280.120(a) are met. If the requirements of § 4280.119(a) are met, the application may contain the information specified in § 4280.119(b). If the requirements of § 4280.120(a) are met, the application may contain the information specified in § 4280.120(b). For RES Projects only, the Agency may require a feasibility study based on the scope of the project to the applicant's overall operations, including new facilities with significant impacts on an existing operation, or when the application information or technical report does not provide sufficient documentation and analysis of the project's engineering, technical, financial, or market feasibility, or the economic viability of the project including any feedstock or off-take agreements, that are needed to evaluate whether a project will be successful. The elements of an acceptable feasibility study may vary by project scope and should be prepared by a qualified and independent third party.

(c) *Evaluation of applications.* The Agency will evaluate each RES and EEI grant application and make a determination as to whether the application meets the criteria specified in paragraphs (c)(1) through (4).

(1) The application is complete, as defined in § 4280.103;

(2) The Applicant is eligible according to § 4280.112;

(3) The project is eligible according to § 4280.113; and

(4) The proposed project has technical merit as determined under § 4280.117.

§ 4280.117 Determination of technical merit.

The Agency will determine the technical merit of all proposed projects for which complete applications are submitted under §§ 4280.118, 4280.119, and 4280.120 under this subpart using the procedures specified in this section. Only projects that have been determined by the Agency to have technical merit are eligible for funding under this subpart.

(a) *General.* The Agency will use the information provided in the applicant's

application and/or technical report to determine whether or not the project has technical merit. In making this determination, the Agency may engage the services of other Government agencies or other recognized industry experts in the applicable technology field, at its discretion, to evaluate and rate the technical report. The technical report can also be provided in the technical feasibility section of the feasibility study, when required, instead of completing a separate technical report.

(b) *Technical report areas.* The areas that the Agency will evaluate in the technical reports when making the technical merit determination are specified in paragraphs (b)(1) through (5) of this section.

(1) *EEI whose total project costs are \$80,000 or less.* The following areas will be evaluated in making the technical merit determination:

(i) Project description;

(ii) Qualifications of EEI provider(s); and

(iii) Vendor/Installer certification, energy assessment, or energy audit.

(2) *RES whose total project costs are \$80,000 or less.* The following areas will be evaluated in making the technical merit determination:

(i) Project description;

(ii) Resource assessment;

(iii) Project economic assessment; and

(iv) Qualifications of key service providers.

(3) *EEI whose total project costs are greater than \$80,000.* The following areas will be evaluated in making the technical merit determination:

(i) Project information;

(ii) Energy assessment or energy audit; and

(iii) Qualifications of the contractor or installers.

(4) *RES whose total project costs are less than \$200,000, but more than \$80,000.* The following areas will be evaluated in making the technical merit determination:

(i) Project description;

(ii) Resource assessment;

(iii) Project economic assessment;

(iv) Project construction and

equipment; and

(v) Qualifications of key service providers.

(5) *RES whose total project costs are \$200,000 and greater.* The following areas will be evaluated in making the technical merit determination:

(i) Qualifications of the project team;

(ii) Agreements and permits;

(iii) Resource assessment;

(iv) Design and engineering;

(v) Project development;

(vi) Equipment procurement and

installation; and

(vii) Operations and maintenance.

(c) *Pass/Pass with conditions/fail assignments.* The Agency will assign each area of the technical report, as specified in paragraph (b) of this section, a “pass,” “pass with conditions,” or “fail.” An area will receive a “pass” if the information provided for the area has no weaknesses and meets or exceeds any requirements specified for the area. An area will receive a “pass with conditions” if the information provided for the area has minor weaknesses which could be conditionalized and reasonably resolved by the applicant. Otherwise, if the information provided for the area is conclusively deemed to be a major weakness or if the area has not been addressed by the applicant, the area will receive a “fail.”

(d) *Determination.* The Agency will compile the results for each area of the technical report to determine if the project has technical merit.

(1) A project whose technical report receives a “pass” in each of the applicable technical report areas will be considered to have “technical merit.”

(2) A project whose technical report receives a “pass with conditions” in one or more the applicable areas will be considered to have “conditional technical merit.”

(3) A project whose technical report receives a “fail” in any one technical report area will be considered to be without technical merit.

(e) *Further processing of applications.* A project that is determined to have “technical merit” or “conditional technical merit” is eligible for further consideration for funding. Projects with “conditional technical merit” would be subject to funding conditions that would need to be met to ensure full technical merit prior to completion of the project. A project that is determined to be “without technical merit” is considered to be an incomplete application and therefore is not eligible to compete for funding.

§ 4280.118 Grant applications for RES and EEI projects with total project costs of \$200,000 and greater.

Grant applications for RES and EEI projects with total project costs of \$200,000 and greater must provide the information specified in paragraphs (a) through (c) of this section, as applicable. Each applicant is encouraged, but is not required, to self-score the project using the evaluation criteria in § 4280.121.

(a) *Forms and certifications.* Each application must contain the forms and certifications specified in paragraphs (a)(1) through (10), as applicable, of this

section, except paragraph (a)(5) is optional.

(1) Form RD 4280–3C, “Application for Renewable Energy Systems and Energy Efficiency Improvement Projects Total Project Costs of \$200,000 or Greater”.

(2) Form SF–424, “Application for Federal Assistance.”

(3) Form SF–424C, “Budget Information—Construction Programs.”

(4) Form SF–424D, “Assurances—Construction Programs.”

(5) Identify the ethnicity, race, and gender of the applicant. Identify if the borrower is a veteran. This information is optional and is not required for a complete application but may be used by the Agency to award priority points.

(6) Environmental documentation in accordance with 7 CFR part 1970. The applicant should contact the Agency to determine what documentation is required to be provided.

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

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

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

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

(b) *Applicant information.* Provide information specified in paragraphs (b)(1) through (4) of this section to allow the Agency to determine the eligibility of the applicant.

(1) *Type of applicant.* Eligible applicants must meet the definition of agricultural producer or rural small business as defined in § 4280.103. Agricultural producers seeking funding for a RES or EEI project may apply as either a rural small business or as an agricultural producer, provided they meet the applicable eligibility requirements. The applicant must provide the primary North American Industry Classification System (NAICS)

code applicable to the applicant’s business concern and certify on the Agency approved application form that they meet the definition of agricultural producer or rural small business. The Agency reserves the right to request supporting documentation to verify applicant eligibility.

(2) *Applicant description.* Describe the ownership of the applicant, including the information specified in paragraphs (b)(2)(i) and (ii) of this section as applicable. Include a description of the applicant’s farm/ranch/business operation, including how long the applicant has been in operation.

(i) Describe how the applicant meets the ownership and control requirements as identified in § 4280.112(b).

(ii) For each entity(ies) it controls or entity(ies) it is controlled by, provide a list of the individual owners with their contact information. Describe the relationship between the applicant and the other entity(ies), including percent ownership and control, management, passive investor ownership, and as applicable products exchanged. Organizational charts to demonstrate structure should be submitted when applicable.

(3) *Financial information.* Financial information is required on the total operation of the applicant and all entity(ies) it controls or entity(ies) that control the applicant.

(i) All financial information (e.g., financial statements, balance sheets, financial projections, income statements) must be submitted in accordance with accounting practices acceptable to the Agency. Such practices can include, but are not limited to, Generally Accepted Accounting Principles (GAAP) and the industry’s standard accounting practice.

(ii) For sole proprietorships and other situations where business assets are held personally, financial statements must be prepared using only the assets and liabilities directly attributable to the business. Assets, plus any improvements must be valued at the lower of cost or market value.

(iii) The Agency may request additional financial statements, financial models, cash flow information, updated financial statements, and other related financial information to determine the financial feasibility of a Project. Required financial statements:

(A) *Historical financial statements.* Provide Agency-acceptable historical balance sheets and income statements the lesser of the last 3 fiscal years or all years of operation.

(B) *Current balance sheet and income statement.* Provide a current Agency-

acceptable balance sheet and year-to-date income statement dated within 90 days of submission of the complete application.

(C) *Pro forma financial statements.* Provide balance sheets, income statements, and cash flow statements or financial model starting from the current financial statements through a minimum of 2 years of the project performing at full operational capacity or stable operations. Financial projections must be supported by a list of assumptions showing the basis for the projections.

(4) *Previous grants and loans.* State whether the applicant has received and accepted any grants or guaranteed loan commitments under this subpart or any guaranteed loans under 7 CFR 5001. If the applicant has, identify each such grant award or guaranteed loan commitment and describe the progress the applicant has made on each project for which the grant or loan was received, including projected schedules and actual completion dates.

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

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

(2) A description of the process that will be used to conduct all procurement transactions to demonstrate compliance with § 4280.125(a)(1).

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

(4) Identify the amount of funds and the source(s) the applicant is proposing to use for the project. Provide written commitments for funds at the time the application is submitted to receive points under this scoring criterion.

(i) If financial resources come from the applicant, documentation may include bank statements that demonstrates availability of funds.

(ii) If a third party is providing financial assistance, the applicant must submit a commitment letter signed by an authorized official of the third party. The letter must be specific to the project and must identify the dollar amount and any applicable rates and terms. If the third-party commitment is a loan, the commitment must be firm; a letter-of-

intent or pre-qualification letter subject to underwriting requirements or contingencies are not acceptable. An acceptable condition may be based on the receipt of the REAP grant or an appraisal.

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

(e) *Construction planning and performing development.* Each application submitted must be in accordance with § 4280.125 for planning, designing, bidding, contracting, and constructing RES and EEI projects as applicable.

§ 4280.119 Grant applications for RES and EEI projects with total project costs of less than \$200,000, but more than \$80,000.

Grant applications for RES and EEI projects with total project costs of less than \$200,000, but more than \$80,000, may provide the information specified in this section or, if the applicant elects to do so, the information specified in § 4280.118. In order to submit an application under this section, the criteria specified in paragraph (a) of this section must be met. The content for applications submitted under this section is specified in paragraph (b) of this section. Unless otherwise specified in this subpart, the construction planning and performing development procedures and the payment process that will be used for awards for applications submitted under this section are specified in paragraphs (c) and (d), respectively, of this section.

(a) *Criteria for submitting applications for projects with total project costs of less than \$200,000, but more than \$80,000.* In order to submit an application under this section, each of the conditions specified in paragraphs (a)(1) through (7) of this section must be met.

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

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

(3) Total project costs must be less than \$200,000, but more than \$80,000.

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

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

(6) The applicant agrees not to request reimbursement from funds obligated

under this program until after project completion and is operating in accordance with the information provided in the application for the project.

(7) The applicant must maintain insurance as required under § 4280.123(b), except business interruption insurance is not required.

(b) *Application content.* Applications submitted under this section must contain the information specified in paragraphs (b)(1) through (4) of this section. Each applicant is encouraged, but is not required, to self-score the project using the evaluation criteria in § 4280.121.

(1) *Forms and certifications.* The application must contain the items identified in § 4280.118(a), except that Form RD 4280-3B, "Application for Renewable Energy Systems and Energy Efficiency Improvement Projects Total Project Costs of Less than \$200,000, But More Than \$80,000" may be used instead of the form noted in § 4280.118(a)(1). In addition, the applicant must submit a certification that the applicant meets each of the criteria for submitting an application under this section as specified in paragraph (a) of this section.

(2) *Applicant information.* The application must contain the items identified in § 4280.118(b), except that the information specified in § 4280.118(b)(3) is not required. The Agency reserves the right to request supporting documentation to verify applicant eligibility.

(3) *Project information.* The application must contain the items identified in § 4280.118(c).

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

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

(1) *General.* Paragraphs (a)(1), (2), and (4) of § 4280.125 apply.

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

procedure, and Agency review and approval is not required.

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

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

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

(d) *Payment process for applications for RES and EEI projects with total project costs of less than \$200,000, but more than \$80,000.*

(1) Upon completion of the project, the grantee must submit to the Agency a copy of the contractor’s certification of final completion for the project and a statement that the grantee accepts the work completed. At its discretion, the Agency may require the applicant to have an inspector certify that the project is constructed and installed correctly.

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

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

§ 4280.120 Grant applications for RES and EEI projects with total project costs of \$80,000 or less.

Grant applications for RES and EEI projects with total project costs of \$80,000 or less must provide the information specified in this section or, if the applicant elects to do so, the information specified in either §§ 4280.118 or 4280.119. In order to submit an application under this section, the criteria specified in paragraph (a) of this section must be met. The content for applications submitted under this section is specified in paragraph (b) of this section. Unless otherwise specified in this subpart, the construction planning and performing development procedures and the

payment process that will be used for awards for applications submitted under this section are specified in paragraphs (c) and (d), respectively, of this section.

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

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

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

(3) Total project costs must be \$80,000 or less.

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

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

(6) The applicant agrees not to request reimbursement from funds obligated under this program until after the project has been completed and is operating in accordance with the information provided in the application for the project.

(7) The applicant must maintain insurance as required under § 4280.123(b), except business interruption insurance is not required.

(b) *Application content.* Applications submitted under this section must contain the information specified in paragraphs (b)(1) through (4), as applicable. Each applicant is encouraged, but is not required, to self-score the project using the evaluation criteria in § 4280.121.

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

(i) Form RD 4280–3A, “Application for Renewable Energy Systems and Energy Efficiency Improvement Projects Total Project Costs of \$80,000 or Less”.

(ii) Form SF–424, “Application for Federal Assistance”.

(iii) Form SF–424C, “Budget Information for Construction Programs”.

(iv) Form SF–424D, “Assurances for Construction Programs”.

(v) Identify the ethnicity, race, and gender of the applicant. Identify if the borrower is a veteran. This information is optional and is not required for a complete application but may be used by the Agency to award priority points.

(vi) Environmental documentation in accordance with 7 CFR part 1970. The applicant should contact the Agency to determine what documentation is required to be provided.

(vii) Certification by the applicant that:

(A) The applicant meets each of the applicant eligibility criteria found in § 4280.112. The Agency reserves the right to request supporting documentation to verify applicant eligibility;

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

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

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

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

(F) The applicant meets the criteria for submitting an application for projects with total project costs of \$80,000 or less;

(G) The applicant will abide by the open and free competition requirements in compliance with § 4280.125(a)(1); and

(H) For bioenergy projects, any and all woody biomass feedstock from National Forest System land or public lands cannot be otherwise used as a higher value wood-based product.

(viii) State whether the applicant has received any grants and/or guaranteed loans under this subpart, or any guaranteed loans under 7 CFR part 5001. If the applicant has, identify each such grant and/or loan and describe the progress the applicant has made on each project for which the grant and/or loan was received, including projected schedules and actual completion dates.

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

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

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

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

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

(iii) Indicate if the proposed project will have a positive effect on resource conservation (e.g., water, soil, forest), public health (e.g., potable water, air quality), and the environment (e.g., compliance with the EPA's renewable fuel standard(s), greenhouse gases, emissions, particulate matter); and

(iv) Identify the amount of matching funds and other funds and the source(s) the applicant is proposing to use for the project. In order to receive points under this scoring criterion, written commitments for funds (e.g., a Letter of commitment, bank statement) must be submitted when the application is submitted.

(A) If financial resources come from the applicant, documentation may include a bank statement that demonstrates availability of funds.

(B) If a third party is providing financial assistance, the applicant must submit a commitment letter signed by an authorized official of the third party. The letter must be specific to the project, identify the dollar amount and any applicable rates and terms. If the third-party commitment is a loan, the commitment must be firm, a letter-of-intent or pre-qualification letter, subject to underwriting requirements or contingencies are not acceptable. An acceptable condition may be based on the receipt of the REAP grant or an appraisal.

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

(i) *Project description.* Provide a description of the proposed EEI, including its intended purpose and a vendor/installer certification that the EEI project meets the requirements for being commercially available.

(ii) *Qualifications of EEI provider(s).* Provide a certification by the vendor/installer that:

(A) They are qualified to complete the project as intended, including the number of years of experience with the proposed EEI technology. Any contractor or installer with less than 2 years of experience may be required to provide additional information in order for the Agency to determine if they are a qualified installer/contractor.

(B) The EEI system will operate and perform over the project's useful life in a reliable and cost-effective manner; and

(iii) *Energy assessment.* Provide a copy of the energy assessment (or energy audit) performed for the project as required under Section C of Appendix A to this subpart and the qualifications of the person which completed the energy assessment.

(iv) *Simple payback.* Provide an estimate of simple payback, including all calculations, documentation, and any assumptions.

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

(i) *Project description.* Provide a description of the project, including its intended purpose and a vendor/installer certification that the RES project meets the requirements for being commercially available. Appendix B contains instructions for how a project is to be constructed and installed. Identify the project's location and describe the project site.

(ii) *Resource assessment.* Provide vendor/installer certified projections on energy to be replaced and/or generated once the proposed system is operating at its steady state operating level, including the quality and availability of the renewable resource to the project. If there is a residence closely associated with the RES project, include the historical amount of energy used by the residence and the historical amount of energy used by the agricultural operation or rural small business, as applicable, to satisfactorily demonstrate 50% or more of proposed generation will benefit the agricultural operation or rural small business;

(iii) *Project economic assessment.* Describe the projected financial performance of the proposed project. The description must address total project costs, revenues accrued from the sale or crediting of energy, quantity and value of energy offset, and revenue from byproducts. Include applicable investment and other production incentives and indicate if they are a one time or reoccurring incentive. Provide an estimate of simple payback, including all calculations, documentation, and any assumptions; and

(iv) *Qualifications of key service providers.* Provide a certification by the vendor/installer that:

(A) They are qualified to complete the project as intended, including the number of similar systems installed previously and any professional

credentials, licenses, and relevant experience. If specific numbers are not available for similar systems, you may submit an estimation of the number of similar systems; and

(B) The RES system will operate and perform over the project's useful life in a reliable and cost-effective manner.

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

(1) *General.* Paragraphs (a)(1), (2), and (4) of § 4280.125 apply.

(2) *Small acquisition and construction procedures.* Small acquisition and construction procedures are those relatively simple and informal procurement methods that are sound and appropriate for a procurement of services, equipment and construction of a RES or EEI project with a total project cost of not more than \$80,000. The applicant is solely responsible for the execution of all contracts under this procedure, and Agency review and approval is not required.

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

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

(ii) Form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion lower Tier Covered Transactions" for contracts exceeding \$25,000.

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

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

incorporated into the Letter of Conditions.

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

§ 4280.121 Scoring RES and EEI grant applications.

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

(a) *Environmental benefits.* A maximum of 5 points will be awarded for this criterion based on whether the applicant has indicated in the application that the proposed project will have a positive effect on resource conservation (e.g., water, soil, forest), public health (e.g., potable water, air quality), and the environment (e.g., compliance with EPA's renewable fuel standard(s), greenhouse gases, emissions, particulate matter). If the project will have a positive impact on:

(1) Any one of the three impact areas, 1 point will be awarded.

(2) Any two of the three impact areas, 3 points will be awarded.

(3) All three impact areas, 5 points will be awarded.

(b) *Energy generated, replaced, or saved.* A maximum of 25 points will be awarded for this criterion. Applications for RES and EEI projects are eligible for points under both paragraphs (b)(1) and (2) of this section.

(1) *Quantity of energy generated or saved per REAP grant dollar requested.* A maximum of 10 points will be awarded for this sub-criterion. For RES and EEI projects, points will be awarded for either the amount of renewable energy generation per grant dollar requested, which includes those projects that are replacing energy usage with a renewable source; or the actual annual average energy savings over the most recent 12, 24, 36, 48, or 60 consecutive months of operation per grant dollar requested. Points will not be awarded for more than one category.

(i) *RES.* The quantity of energy generated or replaced per grant dollar requested will be determined by dividing the projected total annual energy generated or replaced by the RES or RES retrofit (minus energy for residential use), which will be converted to BTUs, by the grant dollars requested. Points will be awarded based on the annual amount of energy generated or replaced (minus energy for

residential use) per grant dollar requested for the proposed RES project. In cases where there are ineligible pre-application costs, the entire quantity of energy produced by the system is utilized for this scoring criteria as long as the use of energy produced is eligible. The Agency will award up to 10 points as determined using paragraphs (b)(1)(i)(A) and (B) of this section. If the annual amount of energy generated or replaced per grant dollar requested is:

(A) 50,000 BTUs average annual energy generated or replaced per grant dollar requested or higher, 10 points will be awarded; or

(B) Less than 50,000 BTUs annual energy generated or replaced per grant dollar requested, points will be awarded according to the results of taking the energy generated or replaced per grant dollar requested/50,000 × 10 points. The points awarded are rounded to the nearest hundredth of a point.

(ii) *EEI.* The Agency will award up to 10 points under this sub-criterion based on the average annual energy saved per grant dollar requested for the EEI project. The Agency will award up to 10 points as determined under paragraph (b)(1)(ii)(A) and (B) of this section. If the average annual energy saved per grant dollar requested is:

(A) 50,000 BTUs average annual energy saved per grant dollar requested or higher, 10 points will be awarded; or

(B) Less than 50,000 BTUs average annual energy saved per grant dollar requested, points will be awarded according to the result of taking the energy saved per grant dollar requested/50,000 × 10 points. The points awarded are rounded to the nearest hundredth of a point.

(2) *Quantity of energy replaced, generated, or saved.* A maximum of 15 points will be awarded for this sub-criterion. Points will be awarded on the basis of whether the project is for energy replacement, energy savings, or energy generation; points will not be awarded for more than one category.

(i) *Energy replacement.* The Agency will award points under this sub-criterion for a RES project based on the amount of energy replaced by the project compared to the amount of energy used by the applicable process(es) over a 12-month period. If the estimated energy produced is more than 150 percent of the energy used by the applicable process(es), the project will be scored as an energy generation project under paragraph (b)(2)(ii) of this section.

(A) *Documentation for energy replacement.* For a RES project to qualify as energy replacement, the applicant must provide documentation

in its application on prior energy use incurred by the applicant. Proposed energy use, such as that attributed to an expansion, is not considered in the replacement calculation. For a RES project involving new construction and being installed to serve the new facility, the project can be classified as energy replacement only if the applicant can document prior energy use from a facility that is within plus or minus 10 percent of the size of the facility it is replacing. The estimated quantities of energy must be converted to either BTUs, watts, or similar energy equivalents to facilitate scoring.

(B) *Calculation.* Energy replacement is determined by dividing the quantity of renewable energy that the RES project is estimated would have been generated if it were in place over the most recent 12-month period by the quantity of energy actually consumed over the same period by the applicable energy process(es) that is(are) consuming energy.

(C) *Awarding of points.* Using the results from paragraph (b)(2)(i)(B) of this section, if the percentage of energy replacement is:

(1) Greater than 50 percent, 15 points will be awarded;

(2) Greater than 25 percent, but equal to or less than 50 percent, 10 points will be awarded; or

(3) Equal to or less than 25 percent, 5 points will be awarded.

(ii) *Energy generation.* If the proposed RES is intended for production of energy or is a proposed retrofitting of an existing RES which increases the amount of energy generated, the Agency will award 10 points.

(iii) *Energy saved.* The Agency will award up to 15 points under this sub-criterion for an EEI project based on the percentage of estimated energy saved by the installation of the project as determined by the projections in the applicable energy assessment or energy audit. If the estimated energy expected to be saved over the same period used in the energy assessment or energy audit, as applicable, will be:

(A) 50 percent or greater, 15 points will be awarded;

(B) 35 percent up to, but not including 50 percent, 10 points will be awarded;

(C) 20 percent up to, but not including 35 percent, 5 points will be awarded; or

(D) Less than 20 percent, no points will be awarded.

(c) *Commitment of funds.* A maximum of 15 points will be awarded for this criterion based on the percentage of written commitment an applicant has from its fund sources that are documented with a complete application.

(1) *Calculation.* The percentage of written commitment is calculated as follows: Percentage of written commitment = total amount of funds for which written commitments have been submitted with the application/total amount of matching funds and other funds required.

(2) *Awarding of points.* Using the result from paragraph (c)(1) of this section, the Agency will award points as shown in paragraphs (c)(2)(i) through (iii) of this section.

(i) If the percentage of written commitments is 100 percent of the matching funds, 15 points will be awarded.

(ii) If the percentage of written commitments is less than 100 percent, but more than 50 percent, points will be awarded as follows: $((\text{Percentage of written commitments} - 50 \text{ percent}) / (50 \text{ percent})) \times 15 \text{ points}$, where points awarded are rounded to the nearest hundredth of a point.

(iii) If the percentage of written commitments is 50 percent or less, no points will be awarded.

(d) *Previous grantees and borrowers.* A maximum of 15 points will be awarded for this criterion based on whether the applicant has received and accepted a REAP grant award or guaranteed loan commitment under 7 CFR part 4280 of this title or a guaranteed loan commitment under either this part or 7 CFR part 5001 of this title.

(1) If the applicant has never received and accepted a grant award or a guaranteed loan commitment under either this part or 7 CFR part 5001 of this title, 15 points will be awarded.

(2) If the applicant has not received and accepted a grant award or guaranteed loan commitment under this subpart, or a guaranteed loan commitment under 7 CFR part 5001 of this title within the 2 previous Federal fiscal years, 5 points will be awarded.

(3) If the applicant has received a grant award or guaranteed loan commitment under this subpart, or a guaranteed loan commitment under 7 CFR part 5001 of this title within the 2 previous Federal fiscal years, no points will be awarded.

(e) *Existing business.* A maximum of 5 points will be awarded for an existing agricultural producer business or rural small business that meets the definition of existing business in § 4280.103 of this part.

(f) *Simple payback.* A maximum of 15 points will be awarded for this criterion based on the simple payback of the project as defined in § 4280.103. Points will be awarded for either RES or EEI;

points will not be awarded for more than one category.

(1) *RES.* If the simple payback of the proposed project is:

(i) Less than 10 years, 15 points will be awarded;

(ii) 10 years up to but not including 15 years, 10 points will be awarded;

(iii) 15 years up to and including 25 years, 5 points will be awarded; or

(iv) Longer than 25 years, no points will be awarded.

(2) *EEI.* If the simple payback of the proposed project is:

(i) Less than 4 years, 15 points will be awarded;

(ii) 4 years up to but not including 8 years, 10 points will be awarded;

(iii) 8 years up to and including 12 years, 5 points will be awarded; or

(iv) Longer than 12 years, no points will be awarded.

(g) *Size of request.* For grant applications requesting \$250,000 or less for RES, or \$125,000 or less for EEI, an additional 10 points may be awarded such that a maximum score of 100 points is possible. All other applications will have a maximum possible score of 90 points.

(h) *State Director and Administrator priority points.* A maximum of 10 points are available for this criterion. A State Director, for its State allocation under this subpart, or the Administrator, for making awards from the National Office reserve, may award up to 10 points to an application based on the conditions specified in paragraphs (h)(1) through (5) of this section. In no case shall an application receive more than 10 points under this criterion.

(1) The application is for an under-represented technology.

(2) Selecting the application helps achieve geographic diversity, which may include points based upon the size of the funding request.

(3) The applicant is a member of an unserved or under-served population described as follows:

(i) Owned by a veteran, including but not limited to individuals as sole proprietors, members, partners, stockholders, etc., of not less than 20 percent. In order to receive points, applicants must provide a statement in their applications to indicate that owners of the project have Veteran status; or

(ii) Owned by a member of a socially-disadvantaged group, which are groups 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 order to receive points, the application must include a statement to indicate that the owners of

the project are members of a socially disadvantaged group.

(4) Selecting the application helps further a Presidential initiative or a Secretary of Agriculture priority.

(5) The proposed project is located in a Federally declared disaster area. Declarations must be within the last 2 calendar years.

(6) The proposed project is located in an area where 20 percent or more of its population is living in poverty, as defined by the United States Census Bureau, underserved community(ies) or has experienced long-term population decline, or loss of employment.

§ 4280.122 Selecting RES and EEI grant applications for award.

Unless otherwise provided for in a **Federal Register** notice, RES and EEI grant applications will be processed in accordance with this section. Complete applications will be evaluated, processed, and subsequently ranked, and will compete for funding, subject to the availability of grant funding. Each State will receive two grant allocations, an allocation of grant funds restricted to funding requests of \$20,000 or less, and an allocation of grant funds which are unrestricted and can fund any size funding request.

(a) *RES and EEI grant applications.* Complete RES and EEI grant applications, including combination grant and guaranteed loan requests, regardless of the amount of funding requested, are eligible to compete in two competitions within a Federal fiscal year—a State competition and a National competition.

(1) To be competed in the State and National competitions, complete applications must be received by the applicable State Office by 4:30 p.m. local time no later than March 31. If March 31 falls on a non-business day or a federally-observed holiday, the next Federal business day will be considered the last day for receipt of a complete application. Complete applications received after this date and time will be processed in the subsequent fiscal year.

(2) All eligible RES and EEI grant applications that remain unfunded after completion of the State competition will be competed in a National competition.

(b) *RES and EEI grant applications requesting \$20,000 or less.* Complete RES and EEI grant applications, including combination grant and guaranteed loan requests, requesting \$20,000 or less are eligible to compete in up to five competitions—two State competitions and a National set-aside competition for grants of \$20,000 or less, as well as the two competitions

referenced in paragraph (a) of this section.

(1) For complete RES and EEI grant applications for grants requesting \$20,000 or less, there will be two State competitions each Federal fiscal year. Complete applications for \$20,000 or less that are received by the Agency by 4:30 p.m. local time on October 31 of the Federal fiscal year will be competed against each other. Complete applications for \$20,000 or less that are received by the Agency by 4:30 p.m. local time on March 31 of the Federal fiscal year and any applications for \$20,000 or less that were not ready to compete or were not funded from the prior competition, will be competed against each other. If either October 31 or March 31 falls on a weekend or a federally observed holiday, the next Federal business day will be considered the last day for receipt of a complete application. Complete applications received after 4:30 p.m. local time on March 31, regardless of the postmark on the application, will be processed in the subsequent fiscal year.

(2) All eligible RES and EEI grant applications requesting \$20,000 or less that remain unfunded after completion of the State competition for applications received by March 31 will be competed in the National competition.

(c) *Ranking of applications.* The Agency will rank complete eligible applications using the scoring criteria specific in § 4280.121. Higher scoring applications will receive first consideration.

(d) *Funding selected applications.* As applications are funded, if insufficient funds remain to fund the next highest scoring application, the Agency may elect to fund a lower scoring application. Before this occurs, the Agency will provide the applicant of the higher scoring application the opportunity to reduce the amount of the applicant's grant request to the amount of funds available. If the applicant agrees to lower its grant request, the applicant must certify that the purposes of the project will be met and provide the remaining total funds needed to complete the project. If two or more applications score the same and if remaining funds are insufficient to fund each such application, the Agency will notify the applicants that they may either accept a proportional amount of funds or submit their total request for the next available competition. At its discretion, the Agency may also elect to allow any remaining multi-year funds to be carried over to the next fiscal year rather than selecting a lower scoring application.

(e) *Handling of ranked applications not funded.* Based on the availability of funding, a ranked application might not be funded. Handling of unfunded applications depends on whether the request is more or less than \$20,000.

(1) All complete and eligible applications requesting \$20,000 or less may be competed in up to five competitions within a Federal fiscal year and if not selected for funding, the Agency will discontinue consideration of the applications.

(2) The Agency will discontinue consideration for funding all complete and eligible applications requesting more than \$20,000 that are not selected for funding after the State and National competitions for the Federal fiscal year.

(f) *Commencement of the project.* Not all grant applications that compete for funding will receive an award. Thus, the applicant assumes all risks if the applicant chooses to purchase the proposed equipment or start construction of the proposed project after the complete application has been received by the Agency, but before the applicant is notified as to whether or not they have been selected for an award.

§ 4280.123 Awarding and administering RES and EEI grants.

The Agency will award and administer RES and EEI grants in accordance with Departmental Regulations and with paragraphs (a) through (h) of this section.

(a) *Letter of Conditions.* A Letter of Conditions will be prepared by the Agency, establishing conditions that must be agreed to by the applicant before any obligation of funds can occur. Upon reviewing the conditions and requirements in the Letter of Conditions, the applicant must complete, sign, and return the Form RD 1942-46, "Letter of Intent to Meet Conditions," and Form RD 1940-1, "Request for Obligation of Funds," to the Agency if they accept the conditions of the grant; or if certain conditions cannot be met, the applicant may propose alternate conditions to the Agency. The Agency must concur with any changes proposed to the Letter of Conditions by the applicant before the application will be further processed.

(b) *Insurance requirements.* Agency approved insurance coverage must be maintained for 3 years after the Agency has approved the final performance report unless this requirement is waived or modified by the Agency in writing. Insurance coverage shall include, but is not limited to:

(1) Property insurance, such as fire and extended coverage, will normally be

maintained on all structures and equipment.

(2) Liability.

(3) National flood insurance is required in accordance with 7 CFR part 1806, subpart B, if applicable.

(4) Business interruption insurance for projects with total project costs of more than \$200,000.

(c) *Forms and certifications.* The forms specified in paragraphs (c)(1) through (5) of this section will be attached to the Letter of Conditions referenced in paragraph (a) of this section. The forms specified in paragraphs (c)(1) through (4) of this section and all of the certifications must be submitted prior to grant approval. The form specified in paragraph (c)(5) of this section, which is to be completed by contractors, does not need to be returned to the Agency, but must be kept on file by the grantee.

(1) Form RD 1942-46, "Letter of Intent to Meet Conditions."

(2) Form RD 1940-1.

(3) Form SF-LLL, "Disclosure of Lobbying Activities," if the grant exceeds \$100,000 and/or if the grantee has made or agreed to make payment using funds other than Federal appropriated funds to influence or attempt to influence a decision in connection with the application.

(4) Form RD 400-4, "Assurance Agreement," or successor form.

(5) Form AD-1048, as signed by the contractor or other lower tier party.

(d) *Evidence of matching funds and other funds.* If an applicant submitted written evidence of matching funds and other funds with the application, the applicant is responsible for ensuring that such written evidence is still in effect (*i.e.*, not expired) when the grant is executed. If the applicant did not submit written evidence of matching funds and other funds with the application, the applicant must submit such written evidence that is in effect before the Agency will execute the Financial Assistance Agreement. In either case, written evidence of matching funds and other funds needed to complete the project must be provided to the Agency before execution of the Financial Assistance Agreement and must be in effect (*i.e.*, must not have expired) at the time Financial Assistance Agreement is executed.

(e) *System for Award Management (SAM) registration.* Before the Financial Assistance Agreement can be executed, the applicant's UEI number must be registered in the SAM and a valid (*e.g.* non-expired) Commercial and Government Entity (CAGE) code must be submitted to the Agency.

(f) *Financial Assistance Agreement.* Once the requirements specified in paragraphs (a) through (e) of this section have been met, the Financial Assistance Agreement can be executed by the grantee and the Agency. The Agreement should be signed as soon as possible, but no later than within 6 months of obligation of funds or grant funds may be de-obligated by the Agency. The grantee must abide by all requirements contained in the Financial Assistance Agreement, this subpart, and any other applicable Federal statutes or regulations. Failure to follow these requirements might result in termination of the grant and adoption of other available remedies.

(g) *Grant approval.* The grantee will be sent a copy of the executed Form RD 1940–1 and the Financial Assistance Agreement.

(h) *Power purchase agreement.* Where applicable, the grantee shall provide to the Agency a copy of the executed power purchase agreement within 12 months from the date that the Financial Assistance Agreement is executed, unless otherwise approved by the Agency.

§ 4280.124 Servicing RES and EEI grants.

The Agency will service RES and EEI grants in accordance with the requirements specified in Departmental Regulations; 7 CFR part 3; 7 CFR 1951 Subparts E and O; the Financial Assistance Agreement; and paragraphs (a) through (k) of this section.

(a) *Inspections.* Grantees must permit periodic inspection of the project records and operations by a representative of the Agency.

(b) *Programmatic changes.* Grantees may make changes to an approved project's costs, scope, contractor, or vendor subject to the provisions specified in paragraphs (b)(1) through (3) of this section. If the changes result in lowering the project's score to below what would have qualified the application for award, the Agency will not approve the changes.

(1) *Prior approval.* The grantee must obtain prior Agency approval for any change to the scope, contractor, or vendor of the approved project. Changes in project cost will require Agency approval as outlined in paragraph (b)(1)(iii) of this section.

(i) Grantees must submit requests for programmatic changes in writing to the Agency for Agency approval.

(ii) Failure to obtain prior Agency approval of any such change could result in such remedies as suspension, termination, and recovery of grant funds.

(iii) Prior Agency approval is required for all increases in project costs. Prior Agency approval is required for a decrease in project cost only if the decrease would have a negative effect on the long-term viability of the project. A decrease in project cost that does not have a negative impact on long-term viability requires Agency review and approval prior to disbursement of funds.

(2) *Changes in project cost or scope.* If there is a significant change in project cost or any change in project scope, then the grantee's funding needs, eligibility, and scoring, as applicable, will be reassessed. Decreases in Agency funds will be based on revised project costs and other factors, including Agency regulations used at the time of grant approval.

(3) *Change of contractor or vendor.* When seeking a change, the grantee must submit to the Agency a written request for approval. The proposed contractor or vendor must have qualifications and experience acceptable to the Agency. The written request must contain sufficient information, which may include a revised technical report as required under § 4280.118(e), 4280.119(b)(4), 4280.120(b)(3), or 4280.120(b)(4), as applicable, to demonstrate to the Agency's satisfaction that such change maintains project integrity. If the Agency determines that project integrity continues to be demonstrated, the grantee may make the change. If the Agency determines that project integrity is no longer demonstrated, the change will not be approved and the grantee has the following options: Continue with the original contractor or vendor; find another contractor or vendor that has qualifications and experience acceptable to the Agency to complete the project; or terminate the grant by providing a written request to the Agency. No additional funding will be available from the Agency if costs for the project have increased. The Agency decision will be provided in writing.

(c) *Transfer of ownership.* After the Financial Assistance Agreement for the project has been executed, the grantee may request, in writing, a transfer of the Financial Assistance Agreement to another entity. Subject to Agency approval provided in writing, the Financial Assistance Agreement may be transferred to another entity provided:

(1) The entity is determined by the Agency to be an eligible entity under this subpart; and

(2) The type of RES or EEI technology and the scope of the project for which the Agency funds will be used remain unchanged.

(d) *Disposition of acquired property.* Grantees must abide by the disposition requirements outlined in Departmental Regulations.

(e) *Financial management system and records.* The grantee must provide for financial management systems and maintain records as specified in paragraphs (f)(1) and (2) of this section.

(1) *Financial management system.* The grantee will provide for a financial system that will include:

(i) Accurate, current, and complete disclosure of the financial results of each grant;

(ii) Records that identify adequately the source and application of funds for grant-supporting activities, together with documentation to support the records. Those records must contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income; and

(iii) Effective control over and accountability for all funds. The grantee must adequately safeguard all such assets and must ensure that funds are used solely for authorized purposes.

(2) *Records.* The grantee will retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least 3 years after completion of grant activities except that the records must be retained beyond the 3-year period if audit findings have not been resolved or if directed by the United States. The Agency and the Comptroller General of the United States, or any of their duly authorized representatives, must have access to any books, documents, papers, and records of the grantee that are pertinent to the specific grant for the purpose of making audit, examination, excerpts, and transcripts.

(f) *Audit requirements.* If applicable, grantees must provide an annual audit in accordance with 7 CFR part 3052. The Agency may exercise its right to do a program audit after the end of the project to ensure that all funding supported eligible project costs.

(g) *Grant disbursement.* As applicable, grantees must disburse grant funds as scheduled in accordance with the appropriate construction and inspection requirements in §§ 4280.119, 4280.120 or 4280.125 as applicable. Unless required by third parties providing cost sharing payments to be provided on a pro-rata basis with other funds, grant funds will be disbursed after all other funds have been expended.

(1) Unless authorized by the Agency to do so, grantees may submit requests for reimbursement no more frequently than monthly. Ordinarily, payment will

be made within 30 days after receipt of a proper request for reimbursement.

(2) Grantees must not request reimbursement for the Federal share of amounts withheld from contractors to ensure satisfactory completion of work until after it makes those payments.

(3) Payments will be made by electronic funds transfer.

(4) Grantees must use SF-271, "Outlay Report and Request for Reimbursement for Construction Programs," or other format prescribed by the Agency to request grant reimbursements. Fund requests must at a minimum include documentation of costs and evidence of payment(s), including payment date(s). Failure to provide sufficient documentation of costs and evidence of payment, including payment date, may result in denied reimbursement.

(5) For a grant awarded to a project with total project costs of \$200,000 and greater, grant funds will be disbursed in full after the project is completed, is operational, and has met or exceeded the steady state operating level as set out in the grant award requirements. Grant funds may also be disbursed through 90 percent of grant disbursement. The final 10 percent of grant funds will be held by the Agency until construction of the project is completed, the project is operational, and the project has met or exceeded the steady state operating level as set out in the grant award requirements. In addition, the Agency reserves the right to request additional information or testing if upon a final site visit or review of documentation, the 30-day steady state operating level is not found acceptable to the Agency.

(h) *Monitoring of project.* Grantees are responsible for ensuring that all activities are performed within the approved scope of work and that funds are only used for approved purposes.

(1) Grantees shall constantly monitor performance to ensure that:

- (i) Time schedules are being met;
- (ii) Projected work is being accomplished by projected time periods;
- (iii) Financial resources are being appropriately expended by contractors (if applicable); and
- (iv) Any other performance objectives identified in the scope of work are being achieved.

(2) To the extent that resources are available, the Agency will monitor grantees to ensure that activities are performed in accordance with the Agency-approved scope of work and to ensure that funds are expended for approved purposes. The Agency's monitoring of grantees neither:

(i) Relieves the grantee of its responsibilities to ensure that activities are performed within the scope of work approved by the Agency and that funds are expended for approved purposes only; nor

(ii) Provides recourse or a defense to the grantee should the grantee conduct unapproved activities, engage in unethical conduct, engage in activities that are or that give the appearance of a conflict of interest, or expend funds for unapproved purposes.

(i) *Reporting requirements.* Financial and project performance reports must be provided by grantees and contain the information specified in paragraphs (i)(1) through (3) of this section.

(1) *Federal financial reports.* Between grant approval and completion of project (*i.e.*, construction), SF-425, "Federal Financial Report" will be required of all grantees as applicable on a semiannual basis. The grantee will complete the project within the total sums available to it, including the grant, in accordance with the scope of work and any necessary modifications thereof prepared by grantee and approved by the Agency.

(2) *Project performance reports.* Between grant approval and completion of project (*i.e.*, construction), grantees must provide semiannual project performance reports and a final project development report containing the information specified in paragraphs (i)(2)(i) and (ii) of this section. These reports are due 30 working days after June 30 and December 31 of each year.

(i) *Semiannual project performance reports.* Each semiannual project performance report must include the following:

(A) A comparison of actual accomplishments to the objectives for that period;

(B) Reasons why established objectives were not met, if applicable;

(C) Reasons for any problems, delays, or adverse conditions which will affect attainment of overall program objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular objectives during established time periods. This disclosure must be accompanied by a statement of the action taken or planned to resolve the situation; and

(D) Objectives and timetables established for the next reporting period.

(ii) *Final project development report.* The final project development report must be submitted 90 days after project completion and include:

(A) A detailed project funding and expense summary; and

(B) A summary of the project's installation/construction process, including recommendations for development of similar projects by future Applicants to the program.

(3) *Project completion requirements.* Once the project has been constructed, the grantee must provide the Agency as applicable via form RD 4280-3D "Annual Outcome Project Performance Certification", a certification that their system has for the past year performed at the steady operating level as described in the technical report of their application, and whether projected jobs created or saved have occurred, or certify that it has not performed as described. If it has not performed, a description of the circumstances which have occurred and affected system performance must be reported, along with the actual performance of the subject REAP project, and the actual number of jobs created or saved as a direct result of the REAP project.

(i) *RES.* Three total annual outcome project performance certifications or reports are required for RES projects. The first is due at the completion of the first full calendar year following the year in which the project was completed. The remaining are required for subsequent calendar years.

(ii) *EEI.* Two total annual outcome performance certifications or reports are required for EEI projects. The first is due at completion of the first full calendar year following the year in which the project was completed. The second is required for the subsequent calendar year.

(j) *Grant close-out.* Grant close-out must be performed in accordance with the requirements specified in 2 CFR part 200.

§ 4280.125 Construction planning and performing development.

(a) *General.* The following requirements are applicable to all procurement methods specified in paragraph (f) of this section.

(1) *Maximum open and free competition.* All procurement transactions, regardless of procurement method and dollar value, must be conducted in a manner that provides maximum open and free competition. Procurement procedures must not restrict or eliminate competition. Competitive restriction examples include, but are not limited to, the following: Placing unreasonable requirements on firms in order for them to qualify to do business; noncompetitive practices between firms; organizational conflicts of interest; and unnecessary experience or excessive bonding requirements. In specifying

material(s), the grantee and its consultant will consider all materials normally suitable for the project commensurate with sound engineering practices and project requirements. The Agency will consider any recommendation made by the grantee's consultant concerning the technical design and choice of materials to be used for such a project. If the Agency determines that a design or material, other than those that were recommended, should be considered by including them in the procurement process as an acceptable design or material in the project, the Agency will provide such applicant or grantee with a comprehensive justification for such a determination. The justification will be documented in writing.

(2) *Equal employment opportunity.* For all construction contracts and grants in excess of \$10,000, the contractor must comply with Executive Order 11246, as amended by Executive Order 11375 and Executive Order 13672, and as supplemented by applicable Department of Labor regulations (41 CFR part 60). The applicant, or the lender and borrower, as applicable, is responsible for ensuring that the contractor complies with these requirements.

(3) *Surety.* The Agency will require surety on any contract for procurement exceeding \$100,000, except as provided for in paragraph (a)(3)(iv) of this section. For contracts of lesser amounts, the grantee may require surety.

(i) Surety covering both performance and payment will be required. The United States, acting through the Agency, will be named as co-obligee on all surety unless prohibited by State or Tribal law. Surety may be provided as specified in paragraphs (a)(3)(i)(A) or (B) of this section.

(A) Surety in the amount of 100 percent of the contract cost may be provided using either:

(1) A bank letter of credit; or
(2) Performance bonds and payment bonds. Companies providing performance bonds and payment bonds must hold a certificate of authority as an acceptable surety on Federal bonds as listed in Treasury Circular 570 as amended and be legally doing business in the State where the project is located.

(B) Cash deposit in escrow of at least 50 percent of the contract amount. The cash deposit cannot be from funds awarded under this subpart.

(ii) The surety will normally be in the form of performance bonds and payment bonds; however, when other methods of surety are necessary, bid documents must contain provisions for such alternative types of surety. The use

of surety other than performance bonds and payment bonds requires concurrence by the Agency after submission of a justification to the Agency together with the proposed form of escrow agreement or letter of credit.

(iii) When surety is not provided, contractors must furnish evidence of payment in full for all materials, labor, and any other items procured under the contract in an Agency-approved form.

(iv) The Agency may make exceptions to surety for any of the situations identified in paragraphs (a)(3)(iv)(A) through (E) of this section.

(A) Small acquisition and construction procedures as specified in § 4280.119(c) and (d) or § 4280.120(c) and (d) as applicable are used.

(B) The proposed project is for equipment purchase and installation only and the contract costs for the equipment purchase and installation are \$200,000 or less.

(C) The proposed project is for equipment purchase and installation only and the contract costs for the equipment purchase and installation are more than \$200,000 and the following requirements can be met:

(1) The project involves two or fewer subcontractors; and

(2) The equipment manufacturer or provider must act as the general contractor.

(D) Other construction projects that have only one contractor performing work.

(E) The grantee agrees to request reimbursement of grant funds only after the contractors have furnished evidence of payment in full and evidence there are no outstanding liens regarding any materials, labor, and any other items procured under the contract, and the systems are deemed operational.

(4) *Grantees accomplishing work.* In some instances, grantees may wish to perform a part of the work themselves. Grantees may accomplish construction by using their own personnel and equipment, provided the grantees possess the necessary skills, abilities, and resources to perform the work and there is not a negative impact to their business operation. For a grantee to provide a portion of the work, with the remainder to be completed by a contractor:

(i) A clear understanding of the division of work must be established and delineated in the contract;

(ii) Grantees are not eligible for payment for their own work as it is not an eligible project cost;

(iii) Warranty requirements applicable to the technology must cover the grantee's work; and

(iv) Inspection and acceptance of the grantee's work must be completed by either:

(A) An inspector that will:

(1) Inspect, as applicable, and accept construction; and

(2) Furnish inspection reports; or

(B) A licensed engineer that will:

(1) Prepare design drawings and specifications;

(2) Inspect, as applicable, and accept construction; and

(3) Furnish inspection reports.

(b) *Forms used.* Technical service and procurement documents must be approved by the Agency and may be used only if they are customarily used in the area and protect the interest of the applicant and the Government with respect to compliance with items such as the drawings, specifications, payments for work, inspections, completion, nondiscrimination in construction work and acceptance of the work. The Agency will not become a party to a construction contract or incur any liability under it. No contract will become effective until concurred in writing by the Agency. Such concurrence statement must be attached to and made a part of the contract.

(c) *Technical services.* Unless the requirements of paragraph (c)(4) of this section can be met, all RES and EEI projects with total project costs greater than \$1,000,000 require:

(1) The design, installation monitoring, testing prior to commercial operation, and project completion certification be completed by a licensed professional engineer (PE) or team of licensed PEs. Licensed PEs may be "in-house" PEs or contracted PEs.

(2) Any contract for design services must be subject to Agency concurrence.

(3) Engineers must be licensed in the State where the project is to be constructed.

(4) The Agency may grant an exception to the requirements of paragraphs (c)(1) through (3) of this section if the following requirements are met:

(i) State or Tribal law does not require the use of a licensed PE; and

(ii) The project is not complex, as determined by the Agency, and can be completed to meet the requirements of this program without the services of a licensed PE.

(d) *Design policies.* Unless the applicant plans to request a lump sum reimbursement of grant funds at the end of construction and 30 days of successful operation, regardless of total project costs, final plans and specifications must be reviewed by the Agency and approved prior to the start of construction. Facilities funded by the

Agency must meet the following design requirements, as applicable:

(1) *Environmental requirements.*

Actions taken under this subpart must comply with the environmental review requirements in accordance with 7 CFR part 1970. Project planning and design must not only be responsive to the grantee's needs but must consider the environmental consequences of the proposed project. Project design must incorporate and integrate, where practicable, mitigation measures that avoid or minimize adverse environmental impacts. Environmental reviews serve as a means of assessing environmental impacts of project proposals, rather than justifying decisions already made. Applicants may not take any action on a project proposal that will have an adverse environmental impact or limit the choice of reasonable project alternatives being reviewed prior to the completion of the Agency's environmental review. If such actions are taken, the Agency has the right to withdraw and discontinue processing the application.

(2) *Architectural barriers.* All facilities intended for or accessible to the public or in which physically handicapped persons may be employed must be developed in compliance with the Architectural Barriers Act of 1968 (42 U.S.C. 4151 *et seq.*) as implemented by 41 CFR 101–196, section 504 of the Rehabilitation Act of 1973 (42 U.S.C. 1474 *et seq.*) as implemented by 7 CFR parts 15 and 15b, and Titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*).

(3) *Energy/environment.* Project design shall consider cost effective energy-efficient and environmentally-sound products and services.

(4) *Seismic safety.* All new structures, fully or partially enclosed, used or intended for sheltering persons or property will be designed with appropriate seismic safety provisions in compliance with the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 *et seq.*), and E.O. 12699, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction. Designs of components essential for system operation and substantial rehabilitation of structures that are used for sheltering persons or property shall incorporate seismic safety provisions to the extent practicable as specified in 7 CFR part 1792, subpart C.

(e) *Contract methods.* This paragraph identifies the three types of contract methods that can be used for projects funded under this subpart. The procurement methods, which are applicable to each of these contract

methods, are specified in paragraph (f) of this section.

(1) *Traditional method or design-bid-build.* The services of the consulting engineer or architect and the general construction contractor must be procured in accordance with the following paragraphs.

(i) *Solicitation of offers.* Solicitation of offers must:

(A) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description must not, in competitive procurements, contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary will set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used to define the performance or other salient requirements of a procurement. The specific features of the named brands which must be met by offerors must be clearly stated.

(B) Clearly specify all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(ii) *Contract pricing.* Cost plus a percentage of cost method of contracting must not be used.

(iii) *Unacceptable bidders.* The following will not be allowed to bid on, or negotiate for, a contract or subcontract related to the construction of the project:

(A) An engineer or architect as a person who has prepared plans and specifications or who will be responsible for monitoring the construction;

(B) Any entity in which the grantee's architect or engineer is an officer, employee, or holds or controls a substantial interest in the grantee;

(C) The grantee's governing body officers, employees, or agents;

(D) Any member of the grantee's immediate family or partners in paragraphs (e)(1)(iii)(A), (B), or (C) of this section; or

(E) An entity which employs, or is about to employ, any person in paragraph (e)(1)(iii)(A), (B), (C), or (D) of this section.

(iv) *Contract award.* Contracts must be made only with responsible parties possessing the potential ability to perform successfully under the terms and conditions of a proposed

procurement. Consideration must include, but not be limited to, matters such as integrity, record of past performance, financial and technical resources, and accessibility to other necessary resources. Contracts must not be made with parties who are suspended or debarred.

(2) *Design/build method.* The design/build method, where the same person or entity provides design and engineering work, as well as construction or installation, may be used with Agency written approval.

(i) *Concurrence information.* The applicant will request Agency concurrence by providing the Agency at least the information specified in paragraphs (e)(2)(i)(A) through (H) of this section.

(A) The grantee's written request to use the design/build method with a description of the proposed method.

(B) A proposed scope of work describing in clear, concise terms the technical requirements for the contract. It shall include a nontechnical statement summarizing the work to be performed by the contractor, the results expected, and a proposed construction schedule showing the sequence in which the work is to be performed.

(C) A proposed firm-fixed-price contract for the entire project which provides that the contractor will be responsible for any extra cost which result from errors or omissions in the services provided under the contract, as well as compliance with all Federal, State, local, and Tribal requirements effective on the contract execution date.

(D) Where noncompetitive negotiation is proposed and found, by the Agency, to be an acceptable procurement method, then the Agency will evaluate documents indicating the contractor's performance on previous similar projects in which the contractor acted in a similar capacity.

(E) A detailed listing and cost estimate of equipment and supplies not included in the construction contract but which are necessary to properly operate the project.

(F) Evidence that a qualified construction inspector who is independent of the contractor has or will be hired.

(G) Preliminary plans and outline specifications. However, final plans and specifications must be completed and reviewed by the Agency prior to the start of construction.

(H) The grantee's attorney's opinion and comments regarding the legal adequacy of the proposed contract documents and evidence that the grantee has the legal authority to enter into and fulfill the contract.

(ii) *Agency concurrence of design/build method.* The Agency will review the material submitted by the applicant. When all items are acceptable, the Agency approval official will concur in the use of the design/build method for the proposal.

(iii) *Forms used.* Agency approved contract documents must be used provided they are customarily used in the area and protect the interest of the applicant and the Agency with respect to compliance with items such as the drawings, specifications, payments for work, inspections, completion, nondiscrimination in construction work, and acceptance of the work. The Agency will not become a party to a construction contract or incur any liability under it. No contract shall become effective until concurred, in writing, by the Agency. Such concurrence statement must be attached to and made a part of the contract.

(iv) *Contract provisions.* Contracts will have a listing of attachments and must contain the following:

(A) The contract sum;

(B) The dates for starting and completing the work;

(C) The amount of liquidated damages, if any, to be charged;

(D) The amount, method, and frequency of payment;

(E) Surety provisions that meet the requirements of paragraph (a)(3) of this section;

(F) The requirement that changes or additions must have prior written approval of the Agency as identified in the letter of conditions;

(G) Contract review and concurrence. The grantee's attorney will review the executed contract documents, including performance and payment bonds, and will certify that they are in compliance with Federal, State, or Tribal law, and that the persons executing these documents have been properly authorized to do so. The contract documents, engineer's recommendation for award, and bid tabulation sheets will be forwarded to the Agency for concurrence prior to awarding the contract. All contracts will contain a provision that they are not effective until they have been concurred, in writing, by the Agency;

(H) This part does not relieve the grantee of any responsibilities under its contract. The grantee is responsible for the settlement of all contractual and administrative issues arising out of procurement entered into in support of Agency funding. These include, but are not limited to, source evaluation, protests, disputes, and claims. Matters concerning violation of laws are to be

referred to the applicable local, State, Tribal, or Federal authority; and

(3) *Construction management.* Construction managers as a constructor (CMc) acts in the capacity of a general contractor and is financially and professionally responsible for the construction. This type of construction management is also referred to as construction manager "At Risk." The construction contract is between the grantee and the CMc. The CMc in turn subcontracts for some or all of the work. The CMc will need to carry the Agency required 100 percent surety and insurance, as required under paragraph (a)(3) of this section. Projects using construction management must follow the requirements of (e)(2)(i) through (iv) of this section.

(f) *Procurement methods.* Procurement must be made by one of the following methods: Competitive sealed bids (formal advertising); competitive negotiation; or noncompetitive negotiation. Competitive sealed bids (formal advertising) are the preferred procurement method for construction contracts.

(1) *Competitive sealed bids.* In competitive sealed bids (formal advertising), sealed bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest, price and other factors considered. When using this method, the following will apply:

(i) At a sufficient time prior to the date set for opening of bids, bids must be solicited from an adequate number of qualified sources. In addition, the invitation must be publicly advertised.

(ii) The invitation for bids, including specifications and pertinent attachments, must clearly define the items or services needed in order for the bidders to properly respond to the invitation under paragraph (f)(1) of this section.

(iii) All bids must be opened publicly at the time and place stated in the invitation for bids.

(iv) A firm-fixed-price contract award must be made by written notice to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. When specified in the bidding documents, factors such as discounts and transportation costs will be considered in determining which bid is lowest.

(v) The applicant, with the concurrence of the Agency, will consider the amount of the bids or proposals, and all conditions listed in

the invitation. On the basis of these considerations, the applicant will select and notify the lowest responsible bidder. The contract will be awarded using an Agency-approved form.

(vi) Any or all bids may be rejected by the grantee when it is in their best interest.

(2) *Competitive negotiation.* In competitive negotiations, proposals are requested from a number of sources. Negotiations are normally conducted with more than one of the sources submitting offers (offerors). Competitive negotiation may be used if conditions are not appropriate for the use of formal advertising and where discussions and bargaining with a view to reaching agreement on the technical quality, price, other terms of the proposed contract and specifications are necessary. If competitive negotiation is used for procurement, the following requirements will apply:

(i) Proposals must be solicited from two qualified sources, unless otherwise approved by the Agency, to permit reasonable competition consistent with the nature and requirements of the procurement.

(ii) The request for proposal must identify all significant evaluation factors, including price or cost where required, and their relative importance.

(iii) The grantee must provide mechanisms for technical evaluation of the proposals received, determination of responsible offerors for the purpose of written or oral discussions, and selection for contract award.

(iv) Award may be made to the responsible offeror whose proposal will be most advantageous to the grantee, price and other factors considered. Unsuccessful offerors must be promptly notified.

(v) Owners may utilize competitive negotiation procedures for procurement of architectural/engineering and other professional services, whereby the offerors' qualifications are evaluated, and the most qualified offeror is selected, subject to negotiations of fair and reasonable compensation.

(3) *Noncompetitive negotiation.* Noncompetitive negotiation is procurement through solicitation of a proposal from only one source. Noncompetitive negotiation may be used when the award of a contract is not feasible under small acquisition and construction procedures, competitive sealed bids (formal advertising) or competitive negotiation procedures. Circumstances under which a contract may be awarded by noncompetitive negotiations are limited to the following:

(i) After solicitation of a number of sources, competition is determined inadequate; or

(ii) No acceptable bids have been received after formal advertising.

(4) *Additional procurement methods.* The grantee may use additional innovative procurement methods provided the grantee receives prior written approval from the Agency. Contracts will have a listing of attachments and the minimum provisions of the contract will include:

- (i) The contract sum;
- (ii) The dates for starting and completing the work;
- (iii) The amount of liquidated damages to be charged;
- (iv) The amount, method, and frequency of payment;
- (v) Whether or not surety bonds will be provided; and
- (vi) The requirement that changes or additions must have prior written approval of the Agency.

(g) *Contracts awarded prior to applications.* Owners awarding construction or other procurement contracts prior to filing an application, must provide evidence that is satisfactory to the Agency that the contract was entered into without intent to circumvent the requirements of Agency regulations.

(1) *Modifications.* The contract shall be modified to conform to the provisions of this subpart. Where this is not possible, modifications will be made to the extent practicable and, as a minimum, the contract must comply with all State and local laws and regulations as well as statutory requirements and executive orders related to the Agency financing.

(2) *Consultant's certification.* Provide a certification by an engineer, licensed in the State where the facility is constructed, that any construction performed complies fully with the plans and specifications.

(3) *Owner's certification.* Provide a certification by the owner that the contractor has complied with applicable statutory and executive requirements related to Agency financing.

(h) *Contract administration.* Contract administration must comply with 7 CFR 1780.76. If another authority, such as a Federal, State, or Tribal agency, is providing funding and requires oversight of inspections, change orders, and pay requests, the Agency will accept copies of their reports or forms as meeting oversight requirements of the Agency.

§§ 4280.126–4280.136 [Reserved]

Combined Funding for Renewable Energy Systems and Energy Efficiency Improvements

§ 4280.137 Combined grant and guaranteed loan funding requirements.

The requirements for a RES or EEI project for which an applicant is seeking a combined grant and guaranteed loan are specified in this section.

(a) *Eligibility.* All applicants must be eligible under the requirements specified in § 4280.112. If the applicant is seeking a loan, the applicant must also meet the borrower eligibility requirements specified in 7 CFR 5001.126. Lenders must meet eligibility requirements specified in 7 CFR 5001.130–132. Projects must meet the project eligibility requirements specified in §§ 4280.113, 7 CFR parts 5001.102 (b) and (c) and 5001.106–107, as applicable. For projects that include New Markets Tax Credits, the guaranteed loan portion of the combined funding request must meet provisions found in 5001.141.

(b) *Funding.* Funding provided under this section is subject to the limits described in paragraphs (b)(1) through (2) of this section.

(1) The amount of any combined grant and guaranteed loan shall not exceed 75 percent of eligible project costs and the grant portion shall not exceed 25 percent of eligible project costs. Loan amount provisions of 7 CFR part 5001.406(d) apply, except for (d)(2). For purposes of combined funding requests, eligible project costs are based on the total costs associated with those items specified in § 4280.115(c) and 7 CFR part 5001.121(d), except for (d)(2). The applicant must provide the remaining total funds needed to complete the project.

(2) The minimum guaranteed loan request allowed is \$5,000, with the grant portion of the funding request being at least \$1,500 for EEI projects and at least \$2,500 for RES projects.

(c) *Loan origination provisions.* Provisions found in 7 CFR parts 5001.201 through 5001.208 apply to the guaranteed loan portion of a combined grant and guaranteed loan funding request.

(d) *Application provisions and documentation.* When applying for combined funding, the applicant/borrower must provide all documentation outlined in this section and the lender must submit grant and guaranteed loan application information simultaneously.

(1) Applications must include the following documentation, including the requisite forms and certifications, specified in §§ 4280.118, 4280.119, or

4280.120 as applicable, for the grant request, except that applicants submitting a properly completed 5001–1 form only need to submit the applicable RD 4280–3 form containing the applicant's CAGE code and properly signed certifications. The guaranteed loan applications are filed in accordance with 7 CFR part 5001.301 where they will be processed in accordance with 7 CFR parts 5001.303 and 5001.307, and as follows:

(2) Where both the grant application and the guaranteed loan application provisions request the same documentation, form, or certification, such documentation, form, or certification may be submitted once; the combined application does not need to contain duplicate documentation, forms, and certifications.

(e) *Loan provisions.* Provisions found in 7 CFR parts 5001.401 through 5001.408 apply to the guaranteed loan portion of a combined funding request.

(f) *Guarantee provisions.* Provisions found in 7 CFR parts 5001.450 through 5001.459 apply to the guarantee on the guaranteed loan portion of a combined funding request.

(g) *Servicing provisions.* Provisions found in 7 CFR parts 5001.501 through 5001.524 apply to the guaranteed loan portion of a combined funding request.

(h) *Evaluation, scoring, and award.* The Agency will evaluate each combined application according to § 4280.116(c) and 7 CFR part 5001.315 (a) and (b). The Agency will select applications according to applicable procedures specified in § 4280.122(a) and (b) unless modified by this section. A combination loan and grant request will be selected based upon the grant score of the project. The Agency will score combined funding applications based upon the grant score as noted in § 4280.121. Projects will be ranked and selected for award according to applicable competition procedures specified in § 4280.122 (c), unless modified by this section or via a **Federal Register** notification.

(i) *Interest rate and terms of loan.* The interest rate and terms of the guaranteed loan for the loan portion of the combined funding request will be determined based on the procedures specified in 7 CFR parts 5001.401 and 5001.402.

(j) *Other provisions.* In addition to the requirements specified in paragraphs (a) through (i) of this section, the combined funding request is subject to the other requirements specified in this subpart, including, but not limited to, processing and servicing requirements, as applicable, as described in paragraphs (j)(1) through (4) of this section.

(1) All other provisions of §§ 4280.101 through 4280.111 apply to the grant portion of the combined funding request and all other provisions as applicable of 7 CFR parts 5001.1 through 5001.10 apply to the guaranteed loan portion of the combined funding request.

(2) All other provisions of §§ 4280.112 through 4280.124 apply to the grant portion of the combined funding request and § 4280.125 applies if the project for which the grant is sought has a total project cost of \$200,000 and greater.

(3) All guarantee loan and grant combination applications that are ranked, but not funded, will be processed in accordance with provisions found in § 4280.122(d), (e), and (f).

(4) Applicants whose combination applications are approved for funding must utilize both the loan and the grant. The guaranteed loan will be closed prior to grant funds being disbursed. The Agency reserves the right to reduce the total loan guarantee and grant award, as appropriate, if construction costs are less than projected or if funding sources differ from those provided in the application.

(5) Ineligible project provisions of §§ 5001.115 and 5001.119, and ineligible use of funds provision of § 5001.122 apply to the guaranteed loan portion of the combined funding request. Borrower ineligibility provisions of § 5001.127 are also applicable.

§§ 4280.138–4280.148 [Reserved]

Energy Audit and Renewable Energy Development Assistance Grants

§ 4280.149 Applicant eligibility.

To be eligible for an EA grant or a REDA grant under this subpart, the applicant must meet each of the criteria, as applicable, specified in paragraphs (a) through (d) of this section. The Agency will determine an applicant's eligibility.

(a) The applicant must be one of the following:

- (1) A unit of State, Tribal, or local government;
- (2) A land-grant college or university, or other institution of higher education;
- (3) A rural electric cooperative;
- (4) A public power entity;
- (5) An instrumentality of a State, Tribal, or local government; or
- (6) A council, as defined under the Resource Conservation and Development Program, at 16 U.S.C. 3451.

(b) The applicant must have sufficient capacity to perform the EA or REDA activities proposed in the application to ensure success. The Agency will make

this assessment based on the information provided in the application.

(c) The applicant must have the legal authority necessary to apply for and carry out the purpose of the grant.

(d) The applicant must:

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

(2) Maintain an active SAM registration with current information at all times until final fund disbursement has been made.

(3) Provide its UEI number in each application it submits to the Agency. Generally, the UEI number is included on SF-424.

§ 4280.150 Project eligibility.

To be eligible for an EA or a REDA grant, the grant funds for a project must be used by the grantee to assist agricultural producers or rural small businesses in one of the purposes specified in paragraphs (a) and (b) of this section, and must also comply with paragraphs (c) through (f) of this section.

(a) Conducting and promoting energy audits as defined in 4280.103.

(b) Conducting and promoting REDA by providing to agricultural producers and rural small businesses recommendations and information on how to improve the energy efficiency of the operations and to use renewable energy technologies and resources in their operations.

(c) EA and REDA can be provided only to a project located in a rural area unless the grantee of such project is an agricultural producer. If the project is owned by an agricultural producer, the project for which such services are being provided may be located in either a rural or non-rural area and the EA or REDA can only be for an EEI or RES on components that support the production, processing, vertical integration, or marketing of agricultural products. If the agricultural producer's operation is in a non-rural area, then the Energy Audit or REDA can only be for RES or EEI components of the business operation that are directly related to and their use and purpose is limited to the agricultural production operation, such as vertically integrated operations, and are part of and co-located with the agricultural production operation.

(d) The EA or REDA must be provided to a recipient in a State.

(e) The applicant must have a place of business in a State.

(f) The applicant is cautioned against taking any actions or incurring any obligations prior to the Agency completing the environmental review that would either limit the range of alternatives to be considered or that would have an adverse effect on the

environment, such as the initiation of construction. If the applicant takes any such actions or incurs any such obligations, it could result in project ineligibility.

§ 4280.151 Ineligible projects.

Ineligible projects for EA and REDA grants include, but are not limited to:

- (a) Research related projects.
- (b) Feasibility studies of any nature.
- (c) Projects where funding is not targeted directly to assisting agricultural producers or rural small businesses.
- (d) Projects to develop computer software or programs.

(e) Projects where 50 percent or more of the costs are in-eligible or where project costs as defined in the application do not meet the definition of providing energy audits or renewable energy development assistance.

(f) Projects which propose to provide energy audits or renewable energy development assistant for residential purposes.

§ 4280.152 Grant funding for Energy Audit and Renewable Energy Development Assistance.

(a) *Maximum grant amount.* The maximum aggregate amount of EA and REDA grants awarded to any one recipient under this subpart cannot exceed \$100,000 in a Federal fiscal year. Grant funds awarded for EA and REDA projects may be used only to pay eligible project costs, as described in paragraph (b) of this section. Ineligible project costs are listed in paragraph (c) of this section. Provisions for EA applications are listed in paragraph (d) of this section.

(b) *Eligible project costs.* Eligible project costs for EA and REDA are those costs incurred after the date a complete application has been received by the Agency and that are directly related to conducting and promoting EA and REDA, which include but are not limited to:

- (1) Salaries;
- (2) Travel expenses;
- (3) Office supplies (e.g., paper, pens, file folders); and
- (4) Expenses charged as a direct cost or as an indirect cost of up to a maximum of 5 percent for administering the grant.

(c) *Ineligible project costs.* Ineligible project costs for EA and REDA grants include, but are not limited to:

- (1) Payment for any construction-related activities;
- (2) Purchase or lease of equipment;
- (3) Payment of any judgment or debt owed to the United States;
- (4) Any goods or services provided by a person or entity who has a conflict of interest as provided in § 4280.106;

(5) Any costs of preparing the application package for funding under this subpart; and

(6) Funding of political or lobbying activities.

(7) Funding to train individuals to become qualified to perform EA or REDA assistance.

(8) Payment or waiver of student tuition.

(d) *EA*. A grantee that conducts energy audits must require that, as a condition of providing the EA assistance, the agricultural producer or rural small business pay at least 25 percent of the cost of the energy audit. Further, the amount paid by the agricultural producer or rural small business will be retained by the grantee as a contribution towards the cost of the energy audit and considered program income. The grantee may use the program income to further the objectives of their project or EA services offered during the grant period in accordance with Departmental Regulations. The 25% to be paid by an agricultural producer or rural small business does not count towards the commitment of funds scoring criteria noted in 4280.155(f).

§ 4280.153 EA and REDA grant applications—content.

(a) Unless otherwise specified in a **Federal Register** notice, applicants may only submit one EA grant application and one REDA grant application each Federal fiscal year. No combination (EA and REDA) applications will be accepted.

(b) Applicants must submit complete applications consisting of the elements specified in paragraphs (b)(1) through (7) of this section, except that paragraph (b)(3), is optional. Applications will be evaluated based only on information submitted by the applicant in the application.

(1) Form SF-424.

(2) Form SF-424A, “Budget Information—Non Construction Programs.”

(3) Identify the ethnicity, race, and gender of the applicant. This information is optional and is not required for a complete application.

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

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

(6) A proposed scope of work to include the following items:

(i) A brief summary including a project title describing the proposed project;

(ii) Goals of the proposed project;

(iii) Geographic scope or service area of the proposed project and the method and rationale used to select the service area;

(iv) Identification of the specific needs for the service area and the target audience to be served. The number of agricultural producers and/or rural small businesses to be served must be identified including name and contact information, if available, as well as the method and rationale used to select the agricultural producers and/or rural small businesses;

(v) Timeline describing the proposed tasks to be accomplished and the schedule for implementation of each task. Include whether organizational staff, consultants, or contractors will be used to perform each task. If a project is located in multiple States, resources must be sufficient to complete all projects;

(vi) Marketing strategies to include a discussion on how the applicant will be marketing and providing outreach activities to the proposed service area ensuring that agricultural producers and/or rural small businesses are served;

(vii) Applicant’s experience as follows:

(A) If applying for a REDA grant, the applicant’s experience in completing similar REDA activities, such as renewable energy site assessments and renewable energy technical assistance provided directly to agricultural producers and rural small businesses, including the number of similar projects the applicant has performed and the number of years the applicant has been performing a similar service.

(B) If applying for an EA grant, the number of energy audits the applicant has completed and the number of years the applicant has been performing those services;

(C) For all applicants, the amount of experience in administering EA, REDA, or similar activities as applicable to the purpose of the proposed project. Provide discussion if the applicant has any existing programs that can demonstrate the achievement of energy savings or energy generation with the agricultural producers and/or rural small businesses the applicant has served. If the applicant has received one or more awards within the last 5 years in recognition of its renewable energy, energy savings, or energy-based

technical assistance, please describe the achievement;

(viii) Itemized budget; and

(ix) Identify the amount of matching funds and other funds and the source(s) the applicant is proposing to use for the project. Provide written commitments for matching funds and other funds at the time the application is submitted.

(A) If financial resources come from the applicant, documentation may include a bank statement that demonstrates availability of funds.

(B) If a third party is providing financial assistance to the project, the applicant must submit a commitment letter signed by an authorized official of the third party. The letter must be specific to the project, identify the dollar amount being provided and any applicable rates and terms.

§ 4280.154 Evaluation of EA and REDA grant applications.

The Agency will evaluate EA and REDA grant applications, based only upon information submitted in the application, to determine if:

(a) The application is complete, as defined in § 4280.103 and as per § 4280.153;

(b) The applicant is eligible according to § 4280.149;

(c) The project is eligible according to § 4280.150 and 4280.151, including 50% or more of proposed project costs are eligible; and

(d) Grant funding provisions according to § 4280.152 are met.

§ 4280.155 Scoring EA and REDA grant applications.

The Agency will score each EA and REDA application using the criteria specified in paragraphs (a) through (f) of this section, with a maximum score of 100 points possible. Unless otherwise altered via a **Federal Register** notification, the project must score a minimum of 40 points to be eligible to compete for funding.

(a) *Geographic scope of project in relation to identified need.* A maximum of 20 points can be awarded.

(1) If the applicant’s proposed or existing service area is state-wide or includes all or parts of multiple states, and the scope of work has identified needs throughout that service area, 20 points will be awarded.

(2) If the applicant’s proposed or existing service area consists of multiple counties in a single state and the scope of work has identified needs throughout that service area, 15 points will be awarded.

(3) If the applicant’s service area consists of a single county or municipality and the scope of work has

identified needs throughout that service area, 10 points will be awarded.

(b) *Number of agricultural producers/rural small businesses to be served.* A maximum of 20 points will be awarded for this criterion based on the proposed number of ultimate recipients to be assisted and if the applicant has provided the names and contact information for the ultimate recipients to be assisted.

(1) If the applicant plans to provide EA or REDA to:

(i) Up to 10 ultimate recipients, 2 points will be awarded.

(ii) Between 11 and up to and including 25 ultimate recipients, 5 points will be awarded.

(iii) More than 25 ultimate recipients, 10 points will be awarded.

(2) If the applicant provides a list with at least 50 percent of the total number of proposed ultimate recipients ready to be assisted, including their name and contact information, an additional 10 points may be awarded.

(c) *Marketing and outreach plan.* A maximum of 5 points will be awarded for this criterion. If the scope of work included in the application provides a satisfactory discussion of each of the following criteria, one point for each can be awarded.

(1) The goals of the project;

(2) Identified need;

(3) Targeted ultimate recipients;

(4) Timeline and action plan; and

(5) Marketing and outreach strategies and supporting data for strategies.

(d) *Applicant's organizational experience in completing the EA or REDA proposed activity.* A maximum of 25 points will be awarded for this criterion based on the experience of the organization in providing EA or REDA as applicable to the purpose of the proposed project. The organization must have been in business and provided services for the number of years as identified in the paragraphs below. Experience of contractors proposed in the application to perform the services may be applied to this scoring criteria as long as the experience relates to the same type of activity, e.g., energy audit experience for an EA application.

(1) More than 10 years of experience, 25 points will be awarded.

(2) At least 5 years and up to and including 10 years of experience, 20 points will be awarded.

(3) At least 2 years and up to and including 5 years of experience, 10 points will be awarded.

(4) Less than 2 years of experience, no points will be awarded.

(e) *Potential of project to produce energy savings or generation and its attending environmental benefits.* A

maximum of 10 points will be awarded for this criterion under both paragraphs (e)(1) and (2) of this section

(1) If the applicant (does not include entities the applicant will contract with) has an existing program that can demonstrate the achievement of energy savings or energy generation with the agricultural producers and/or rural small businesses it has served, 5 points will be awarded.

(2) If the applicant (does not include entities the applicant will contract with) provides evidence that it has received one or more awards (e.g., recognition, not funding awards) within the last 5 years in recognition of its renewable energy, energy savings, or energy-based technical assistance, up to a maximum of 5 points will be awarded as follows:

(i) International/national—3 points for each.

(ii) Regional/State—2 points for each.

(iii) Local—1 point for each.

(f) *Commitment of funds.* A maximum of 20 points will be awarded for this criterion if written documentation from each source providing matching funds and other funds are submitted with the application. Compare eligible commitment of funds to the amount of grant requested to derive percentage to be used for scoring.

(1) If the applicant proposes to match 50 percent or more of the grant funds requested, 20 points will be awarded.

(2) If the applicant proposes to match 20 percent or more but less than 50 percent of the grant funds requested, 15 points will be awarded.

(3) If the applicant proposes to match 5 percent or more but less than 20 percent of the grant funds requested, 10 points will be awarded.

(4) If the applicant proposes to match less than 5 percent of the grant funds requested, no points will be awarded.

§ 4280.156 Selecting EA and REDA grant applications for award.

Unless otherwise provided for in a **Federal Register** notice, EA and REDA grant applications will be processed in accordance with this section. EA and REDA grant funding is maintained at the National Office and applications compete for funds only once in a nationwide competition.

(a) *Application competition.* Complete EA and REDA applications received by the Agency by 4:30 p.m. local time on January 31 will be competed against each other. If January 31 falls on a weekend or a Federally observed holiday, the next Federal business day will be considered the last day for receipt of a complete application. Complete applications received after 4:30 p.m. local time on January 31,

regardless of the postmark on the application, will be processed in the subsequent fiscal year. Unless otherwise specified in a **Federal Register** notice, the two highest scoring applications from each State, based on the scoring criteria established under § 4280.155, will compete for initial funding. If undersubscribed on eligible applications, the third highest scoring application from each state shall be requested for National Office review and potential competition, ranking and funding, until funds are expended.

(b) *Ranking of applications.* All applications submitted to the National Office under paragraph (a) of this section will be ranked in priority score order. All applications that are ranked and meet the minimum scoring threshold will be considered for selection for funding.

(c) *Selection of applications for funding.* Using the ranking created under paragraph (a) of this section, the Agency will consider the score an application has received compared to the scores of other ranked applications, with higher scoring applications receiving first consideration for funding. If two or more applications score the same and if remaining funds are insufficient to fund each such application, the Agency will distribute the remaining funds to each such application on a pro-rata basis. At its discretion, the Agency may also elect to redirect unused funds into the RES/EEI program or allow any remaining multi-year funds to be carried over to the next fiscal year rather than funding on a pro-rata basis.

(d) *Handling of ranked applications not funded.* Based on the availability of funding, a ranked application submitted for EA or REDA funds may not be funded. Such ranked applications will not be carried forward into the next Federal fiscal year's competition.

§ 4280.157 [Reserved]

§ 4280.158 Awarding and administering EA and REDA grants.

The Agency will award and administer EA and REDA grants in accordance with Departmental Regulations and with the procedures and requirements specified in § 4280.123, except as specified in paragraphs (a) through (b) of this section.

(a) Instead of complying with § 4280.123(b), the grantee must provide satisfactory evidence to the Agency that all officers of grantee organization authorized to receive and/or disburse Federal funds are covered by such

bonding and/or insurance requirements as are normally required by the grantee.

(b) The power purchase agreement specified in § 4280.123 (h) is not required.

§ 4280.159 Servicing EA and REDA grants.

The Agency will service EA and REDA grants in accordance with the requirements specified in Departmental Regulations, the Financial Assistance Agreement, 7 CFR part 3, 7 CFR 1951 Subparts E and O, and the requirements in § 4280.124, except as specified in paragraphs (a) through (d) of this section.

(a) *Grant disbursement.* The Agency will determine, based on the applicable Departmental Regulations, whether disbursement of a grant will be by advance or reimbursement. Form SF-270, Request for Advance or Reimbursement, must be completed by the grantee and submitted to the Agency no more often than monthly to request either advance or reimbursement of funds.

(b) *Semiannual performance reports.* Project performance reports shall include, but not be limited to, the following:

(1) A comparison of actual accomplishments to the objectives established for that period (*e.g.*, the number of EA performed, number of recipients assisted, and the type of assistance provided for REDA);

(2) A list of recipients, each recipient's location, and each recipient's NAICS code;

(3) Problems, delays, or adverse conditions, if any, that have in the past or will in the future affect attainment of overall project objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation;

(4) Objectives and timetable established for the next reporting period.

(c) *Final performance report.* A final performance report will be required with the final Federal financial report within 90 days after project completion. The final performance report must contain the information specified in paragraphs (c)(1)(i) or (ii) of this section, as applicable.

(1) For EA projects, the final performance report must provide complete information regarding:

(i) The number of audits conducted,

(ii) A list of recipients (agricultural producers and rural small businesses) with each recipient's NAICS code,

(iii) The location of each recipient,

(iv) The cost of each audit and documentation showing that the recipient of the EA provided 25 percent of the cost of the audit, and

(v) The expected energy saved for each audit conducted if the audit is implemented.

(2) For REDA projects, the final performance report must provide complete information regarding:

(i) The number of recipients assisted, and the type of assistance provided,

(ii) A list of recipients with each recipient's NAICS code,

(iii) The location of each recipient, and

(iv) The expected renewable energy that would be generated if the projects were implemented.

(d) *Outcome project performance report.* One year after submittal of the final performance report, the grantee will provide the Agency a final status report on the number of projects that are proceeding with the grantee's recommendations, including the amount of energy saved and the amount of renewable energy generated, as applicable.

§§ 4280.160–4280.165 [Reserved]

§ 4280.166 OMB control number.

The report and recordkeeping requirements contained in this part have been approved by the Office of Management and Budget and have been assigned OMB control number 0570–0067

Appendix A to Subpart B of Part 4280—Technical Reports for Energy Efficiency Improvement (EEI) Projects

For all EEI projects with total project costs of more than \$80,000, provide the information specified in Sections A and D and in Section B or Section C, as applicable. If the application is for an EEI project with total project costs of \$80,000 or less, please see § 4280.120 (b)(3) for the technical report information to be submitted with your application.

If the application is for an EEI project with total project costs of \$200,000 and greater, you must conduct an energy audit. However, if the application is for an EEI project with a total project costs of less than \$200,000, you may conduct either an energy assessment or an energy audit.

Section A—Project Information. Describe how all the improvements to or replacement of an existing building and/or equipment meet the requirements of being commercially available. Describe how the design, engineering, testing, and monitoring are sufficient to demonstrate that the proposed project will meet its intended purpose, ensure public safety, and comply with applicable laws, regulations, agreements, permits, codes, and standards. Describe how all equipment required for the EEI(s) is

available and able to be procured and delivered within the proposed project development schedule. In addition, present information regarding component warranties and the availability of spare parts.

Section B—Energy audit. If conducting an energy audit, provide the following information.

(1) *Situation report.* Provide a narrative description of the existing building and/or equipment, its energy system(s) and usage, and activity profile. Also include average price per unit of energy (electricity, natural gas, propane, fuel oil, renewable energy, etc.) paid by the customer for the most recent 12 months, or an average of 2, 3, 4, or 5 years, for the building and equipment being audited. Any energy conversion should be based on use rather than source.

(2) *Potential improvement description.* Provide a narrative summary of the potential improvement and its ability to reduce energy consumption or improve energy efficiency, including a discussion of reliability and durability of the improvements.

(i) Provide preliminary specifications for critical components.

(ii) Provide preliminary drawings of project layout, including any related structural changes.

(iii) Identify significant changes in future related operations and maintenance costs.

(iv) Describe explicitly how outcomes will be measured.

(3) *Technical analysis.* Give consideration to the interactions among the potential improvements and the current energy system(s).

(i) For the most recent 12 months, or an average of 2, 3, 4, or 5 years, prior to the date the application is submitted, provide both the total amount and the total cost of energy used for the original building and/or equipment, as applicable, for each improvement identified in the potential project. In addition, provide for each improvement identified in the potential project an estimate of the total amount of energy that would have been used and the total cost that would have been incurred if the proposed project were in operation for this same time period.

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

(iii) Rank potential improvements measures by cost-effectiveness; and

(iv) Provide an estimate of Simple Payback, including all calculations, documentation, and any assumptions.

(4) *Qualifications of the auditor.* Provide the qualifications of the person which completed the energy audit.

Section C—Energy Assessment. If conducting an Energy Assessment, provide the following information.

(1) *Situation report.* Provide a narrative description of the existing building and/or equipment, its energy system(s) and usage, and activity profile. Also include average price per unit of energy (electricity, natural gas, propane, fuel oil, renewable energy, etc.) paid by the customer for the most recent 12 months, or an average of 2, 3, 4, or 5 years, for the building and equipment being evaluated. Any energy conversion shall be based on use rather than source.

(2) *Potential improvement description.* Provide a narrative summary of the potential improvement and its ability to reduce energy consumption or improve energy efficiency.

(3) *Technical analysis.* Giving consideration to the interactions among the potential improvements and the current energy system(s), provide the information specified in section C(3)(i) through (iii) of this appendix.

(i) For the most recent 12 months, or an average of 2, 3, 4, or 5 years, prior to the date the application is submitted, provide both the total amount and the total cost of energy used for the original building and/or equipment, as applicable, for each improvement identified in the potential project. In addition, provide for each improvement identified in the potential project an estimate of the total amount of energy that would have been used and the total cost that would have been incurred if the proposed project were in operation for this same time period.

(ii) Document baseline data compared to projected consumption, together with any explanatory notes on source of the projected consumption data. When appropriate, show before-and-after data in terms of consumption per unit of production, time, or area.

(iii) Provide an estimate of Simple Payback, including all calculations, documentation, and any assumptions.

(4) *Qualifications of the assessor.* Provide the qualifications of the person that completed the assessment. If the energy assessment for a project with total project costs of \$80,000 or less is not conducted by Energy Auditor or Energy Assessor, then the person must have at least 3 years of experience and completed at least five energy assessments or energy audits on similar type projects.

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

Appendix B to Subpart B of Part 4280— Technical Reports for Renewable Energy System (RES) Projects With Total Project Costs of Less Than \$200,000, but More Than \$80,000

Provide the information specified in Sections A through D for each technical report prepared under this appendix. A renewable energy site assessment may be used in lieu of Sections A through C if the renewable energy site assessment contains the information requested in Sections A through C. In such instances, the technical report would consist of Section D and the renewable energy site assessment.

NOTE: If the total project cost for the RES project is \$80,000 or less, this appendix does not apply. Instead, for such projects, please provide the information specified in § 4280.120 (b)(4).

Section A—Project Description. Provide a description of the project, including its

intended purpose and a summary of how the project will be constructed and installed. Describe how the system meets the definition of commercially available. Identify the project's location and describe the project site.

Section B—Resource Assessment. Describe the quality and availability of the renewable resource to the project. Identify the amount of renewable energy generated that will be generated once the proposed project is operating at its steady state operating level. If applicable, also identify the percentage of energy being replaced by the system.

If the application is for a bioenergy project, provide documentation that demonstrates that any and all woody biomass feedstock from National Forest System land or public lands cannot be used as a higher value wood-based product.

Section C—Project Economic Assessment. Describe the projected financial performance of the proposed project. The description must address total project costs, energy savings, and revenues, including applicable investment and other production incentives accruing from Government entities. Revenues to be considered shall accrue from the sale of energy, offset or savings in energy costs, and byproducts. Provide an estimate of Simple Payback, including all calculations, documentation, and any assumptions.

Section D—Project Construction and Equipment Information. Describe how the design, engineering, testing, and monitoring are sufficient to demonstrate that the proposed project will meet its intended purpose, ensure public safety, and comply with applicable laws, regulations, agreements, permits, codes, and standards. Describe how all equipment required for the RES is available and able to be procured and delivered within the proposed project development schedule. In addition, present information regarding component warranties and the availability of spare parts.

Section E—Qualifications of Key Service Providers. Describe the key service providers, including the number of similar systems installed and/or manufactured previously, professional credentials, licenses, and relevant experience. When specific numbers are not available for similar systems, estimations will be acceptable.

Appendix C to Subpart B of Part 4280— Technical Reports for Renewable Energy System (RES) Projects With Total Project Costs of \$200,000 and Greater

Provide the information specified in Sections A through G for each technical report prepared under this appendix. Provide the resource assessment under Section C that is applicable to the project. For hybrid projects, technical reports must be prepared for each technology that comprises the hybrid project.

Section A—Qualifications of the Project Team. Describe the project team, their professional credentials, and relevant experience. The description shall support that the project team key service providers have the necessary professional credentials, licenses, certifications, and relevant experience to develop the proposed project.

Section B—Agreements and Permits. Describe the necessary agreements and permits (including any for local zoning requirements) required for the project and the anticipated schedule for securing those agreements and permits. For example, interconnection agreements and power purchase agreements are necessary for all renewable energy projects electrically interconnected to the utility grid.

Section C—Resource Assessment. Describe the quality and availability of the renewable resource and the amount of renewable energy generated through the deployment of the proposed system. For all bioenergy projects, except anaerobic digesters projects, complete Section C.3 of this appendix. For anaerobic digester projects, complete Section C.6 of this appendix.

1. *Wind.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the source of the wind data and the conditions of the wind monitoring when collected at the site or assumptions made when applying nearby wind data to the site.

2. *Solar.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the source of the solar data and assumptions.

3. *Bioenergy/Biomass Project.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the type, quantity, quality, and seasonality of the renewable biomass resource, including harvest and storage, where applicable. Where applicable, also indicate shipping or receiving method and required infrastructure for shipping. For proposed projects with an established resource, provide a summary of the resource. Document that any and all woody biomass feedstock from National Forest System land or public lands cannot be used as a higher value wood-based product.

4. *Geothermal Electric Generation.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the quality of the geothermal resource, including temperature, flow, and sustainability and what conversion system is to be installed. Describe any special handling of cooled geothermal waters that may be necessary. Describe the process for determining the geothermal resource, including measurement setup for the collection of the geothermal resource data. For proposed projects with an established resource, provide a summary of the resource and the specifications of the measurement setup.

5. *Geothermal Direct Generation.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the quality of the geothermal resource, including temperature, flow, and sustainability and what direct use system is to be installed. Describe any special handling of cooled geothermal waters that may be necessary. Describe the process for determining the geothermal resource, including measurement setup for the collection of the geothermal resource data. For proposed projects with an established resource, provide a summary of the resource and the specifications of the measurement setup.

6. *Anaerobic Digester Project/Biogas.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the substrates used as digester inputs, including animal wastes or other Renewable Biomass in terms of type, quantity, seasonality, and frequency of collection. Describe any special handling of feedstock that may be necessary. Describe the process for determining the feedstock resource. Provide either tabular values or laboratory analysis of representative samples that include biodegradability studies to produce gas production estimates for the project on daily, monthly, and seasonal basis. If an anaerobic digester project, identify the type of operation (e.g., dairy, swine, layer, etc.), along with breed, herd population size and demographics, and the type of waste collection method and frequency information available. For the biogas produced, identify the type of digester (e.g., mixed, plug-flow, attached film, covered lagoon, etc.), if applicable, or the method of capture (landfill, sewage waste treatment, etc.) and treatment. Identify the system designer and determine the digester design assumptions such as the number and type of animals, the bedding type and estimated annual quantity used, the manure and wastewater volumes, and the treatment of digester effluent (e.g., none, solids separation by screening, etc. with details including use or method of disposal).

7. *Hydrogen Project.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the type, quantity, quality, and seasonality of the renewable biomass resource. For solar, wind, or geothermal sources of energy used to generate hydrogen, indicate the renewable resource where the hydrogen system is to be installed. Local resource maps may be used as an acceptable preliminary source of renewable resource data. For proposed projects with an established renewable resource, provide a summary of the resource.

8. *Hydroelectric/Ocean Energy Projects.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the quality of the resource, including temperature (if applicable), flow, and sustainability of the resource, including a summary of the resource evaluation process and the specifications of the measurement setup and the date and duration of the evaluation process and proximity to the proposed site. If less than 1 year of data is used, a qualified consultant must provide a detailed analysis of the correlation between the site data and a nearby, long-term measurement site.

(9) *RES with storage components.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the type, quantity, quality, and seasonality of the renewable energy resource, where applicable. Indicate the storage system specifications and the integrity of the system in conjunction with the RES it is integrated with, including application, size, lifetime, response time, capital and maintenance costs associated with the operation as well as the distribution of the stored resource(s).

Section D—Design and Engineering. Describe the intended purpose of the project and the design, engineering, testing, and monitoring needed for the proposed project. The description shall support that the system will be designed, engineered, tested, and monitored so as to meet its intended purpose, ensure public safety, and comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, identify that all major equipment is commercially available, including proprietary equipment, and justify how this unique equipment is needed to meet the requirements of the proposed design. In addition, information regarding component warranties and the availability of spare parts must be presented.

Section E—Project Development. Describe the overall project development method, including the key project development activities and the proposed schedule, including proposed dates for each activity. The description shall identify each significant historical and projected activity, its beginning and end, and its relationship to the time needed to initiate and carry the activity through to successful project completion. The description shall address applicant project development cash flow requirements. Details for equipment procurement and installation shall be addressed in Section F of this appendix.

Section F—Equipment Procurement and Installation. Describe the availability of the equipment required by the system. The description shall support that the required equipment is available and can be procured and delivered within the proposed project development schedule. Describe the plan for site development and system installation, including any special equipment requirements. In all cases, the system or improvement shall be installed in conformance with manufacturer's specifications and design requirements, and comply with applicable laws, regulations, agreements, permits, codes, and standards.

Section G—Operations and Maintenance. Describe the operations and maintenance requirements of the system, including major rebuilds and component replacements necessary for the system to operate as designed over its useful life. The warranty must cover and provide protection against both breakdown and a degradation of performance. The performance of the RES or EEI shall be monitored and recorded as appropriate to the specific technology.

Appendix D to Subpart B of Part 4280—Feasibility Study Components

EXECUTIVE SUMMARY

Provide an overview to describe the nature and scope of the proposed project, including the purpose, project location, design features, capacity, and estimated capital costs. Include a summary of the feasibility determinations made for each applicable component.

ECONOMIC

What is it?	Cost benefit analysis.
What are the factors to consider?	Minimum amount of inputs (labor, infrastructure, utilities, renewable resources, feedstocks) to operate successfully. Contracts in place and contracts to be negotiated, including terms and renewals. Environmental risks. Cost of project relative to the increase in revenues or benefits provided. Overall economic impact of project including new markets created and economic development.

MARKET

What is it?	Analysis of the current and future market potential, competition, sales or service estimations including current and prospective buyers or users.
What are the factors to consider?	Competition. Type of project: Service, product or commodity based. Target market, new versus established. End user analysis, captive versus competitive. By-product revenue streams. Industry risk.

TECHNICAL

What is it?	Analyzing the reliability of the technology to be used and/or the analysis of the delivery of goods or services, including transportation, business location, and the need for technology, materials, and labor.
What are the factors to consider?	Commercial availability. Product and process success record and duplication of results. Experience of the service providers. Roads, rail, airport infrastructure. Need for local transportation. Labor market. Availability of materials. Use, age, and reliability of technology. Construction risk.

FINANCIAL

What is it?	Analysis of the operation to achieve sufficient income, credit, and cashflow to financially sustain the project over the long term and meet all debt obligations.
What are the factors to consider?	Commercial or project underwriting. Management's assumptions. Accounting policies. Source of repayment. Dependency on other entities. Equity contribution. Market demand forecast. Peer industry comparison. Cost-accounting system. Availability of short-term credit. Adequacy of raw materials and supplies. Sensitivity analysis.

MANAGEMENT

What is it?	Analysis of the legal structure of the business or operation; ownership, board and management analysis.
What are the factors to consider?	History of the business or organization. Professional and educational background. Experience. Skills. Qualifications necessary to implement the project.

RECOMMENDATION

Conclude with an opinion and recommendation presented by the consultant.

QUALIFICATIONS

Provide a resume or statement of qualifications of the author of the feasibility study, including prior experience.

Mark Brodziski,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. 2021-05286 Filed 4-26-21; 8:45 am]

BILLING CODE 3410-XY-P