

Proposed Rules

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

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1942 and 4284

RIN 0570-AA28

Rural Business Enterprise Grant Program

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Business-Cooperative Service (RBS), an agency within the United States Department of Agriculture (USDA), Rural Development proposes to implement 7 CFR part 4284, subpart B in order to have an all-inclusive processing and servicing regulation. USDA Rural Development intends to provide a more user-friendly regulation that will be a better resource for public understanding and improvement in program administration.

DATES: Written comments on this proposed rule must be received on or before June 19, 2007 to be assured of consideration. The comment period for the information collection under the Paperwork Reduction Act of 1995 continues through June 19, 2007.

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

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow instructions for submitting comments.
- *Mail:* Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, Rural Development U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue, SW., Washington, DC 20250-0742.

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

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

FOR FURTHER INFORMATION CONTACT: Cindy Mason, Loan Specialist, Business Programs, USDA Rural Development (U.S. Department of Agriculture) STOP 3225, 1400 Independence Ave., SW., Washington, DC 20250, Telephone (202) 690-1433. The TDD number is (800) 795-3272 or (202) 720-6382.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be non-significant under Executive Order 12866 and has, therefore, not been reviewed by the Office of Management and Budget (OMB).

Programs Affected

The Catalog of Federal Domestic Assistance number for the program impacted by this action is 10.769, Rural Business Enterprise Grants.

Intergovernmental Review

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

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-602), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact a substantial number of small entities to a greater extent than large

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entities. Therefore, a regulatory flexibility analysis was not performed.

Civil Justice Reform

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

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." RBS has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Unfunded Mandates Reform Act

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

This 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.

Federalism

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

Paperwork Reduction Act

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

E-Government Act Compliance

USDA Rural Development is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-GOV compliance related to this proposed rule, please contact Jeanette Waters on (202) 720-4059.

Title: Rural Business Enterprise Grant Program.

Type of Request: New collection.

Abstract: The Rural Business Enterprise Grant (RBEG) Program is authorized under section 310B(c) of the Consolidated Farm and Rural Development Act, as amended. The purpose of the program is to finance or facilitate the development of small and emerging private business enterprises; to create, expand or operate rural distance learning networks or programs that provide educational or job training instruction related to the potential employment or job advancement of adult students; and to provide technical assistance and training to rural communities for the purpose of improving passenger transportation services or facilities. An additional purpose authorized under section 310B(f) of the Consolidated Farm and Rural Development Act is for statewide broadcasting systems that provide information on agriculture and other issues of importance to farmers and other rural residents. USDA Rural Development intends to incorporate all of the authorized purposes discussed above into one program regulation, 7 CFR part 4284, subpart B. This subpart contains various requirements for information from grantees, and some requirements may cause the grantees to

require information from other parties. The information requested is vital for USDA Rural Development to be able to process applications in a responsible manner, make prudent program decisions, and effectively monitor the grantees' activities to protect the Government's financial interest and ensure that funds obtained from the Government are used appropriately. This collection of information is necessary in order to implement 7 CFR part 4284, subpart B.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 7 hours per response.

Respondents: Nonprofits and public bodies.

Estimated Number of Respondents: 700.

Estimated Number of Responses per Respondent: 12.

Estimated Number of Responses: 8,160.

Estimated Total Annual Burden on Respondents: 53,435.

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

Comments

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

Background

The current 7 CFR part 1942, subpart G, has recently been updated with a rural area definition change made by

section 6020 of the Farm Security and Rural Investment Act of 2002; however, the regulation has not been completely reissued since 1992. USDA Rural Development consistently reissues administrative notices year after year to our field offices regarding clarifications and policies on our program. This guidance should officially be made part of the regulation through the Federal government regulatory review process and allow the public the opportunity to make comments on the policy decisions. 7 CFR part 1942, subpart G, along with Attachment 1, is currently used to administer the program and at times can be difficult to follow. USDA Rural Development hopes to provide a more user-friendly regulation with the implementation of 7 CFR part 4284, subpart B. The existing regulation for the Rural Business Enterprise Grants and Television Demonstration Grants founds in 7 CFR part 1942, subpart G, will be removed upon publication of the final rule.

List of Subjects

7 CFR Part 1942

Business and industry, Grant programs—Housing and community development, Industrial park, Rural areas.

7 CFR Part 4284

Business and industry, Economic development, Grant programs—Housing and community development, Rural areas.

Therefore, chapters XVIII and XLII, title 7, of the Code of Federal Regulations are proposed to be amended as follows:

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

PART 1942—ASSOCIATIONS

1. The authority citation for part 1942 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1932, 7 U.S.C. 1989, and 16 U.S.C. 1005.

Subpart G [Removed and Reserved]

2. Subpart G of part 1942 is removed and reserved.

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

PART 4284—GRANTS

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

Authority: 5 U.S.C. 301, 7 U.S.C. 1932, 7 U.S.C. 1989, and 16 U.S.C. 1005.

4. Subpart B is added to part 4284 to read as follows:

Subpart B—Rural Business Enterprise Grant Program

Sec.

- 4284.101 Purpose.
- 4284.102 Policy.
- 4284.103 Definitions.
- 4284.104 Exception authority.
- 4284.105 [Reserved]
- 4284.106 Applicant eligibility requirements.
- 4284.107–4284.108 [Reserved]
- 4284.109 Eligible purposes.
- 4284.110 Ineligible purposes.
- 4284.111–4284.112 [Reserved]
- 4284.113 Project eligibility.
- 4284.114–4284.115 [Reserved]
- 4284.116 Small business eligibility certification.
- 4284.117 Small business eligibility exception.
- 4284.118 Private tribally-owned business.
- 4284.119–4284.120 [Reserved]
- 4284.121 Grant ownership.
- 4284.122 Leveraging.
- 4284.123–4284.124 [Reserved]
- 4284.125 Preapplication.
- 4284.126 Preapplication contents.
- 4284.127 Scope of work requirements.
- 4284.128 Other narrative information.
- 4284.129–4284.130 [Reserved]
- 4284.131 Program income.
- 4284.132 Indirect cost rate.
- 4284.133–4284.134 [Reserved]
- 4284.135 Civil rights requirements.
- 4284.136 Environmental review.
- 4284.137–4284.138 [Reserved]
- 4284.139 Project selection criteria.
- 4284.140–4284.141 [Reserved]
- 4284.142 Application.
- 4284.143 Application contents.
- 4284.144 Revolving loan fund work plan requirements.
- 4284.145–4284.148 [Reserved]
- 4284.149 Application selection.
- 4284.150–4284.151 [Reserved]
- 4284.152 Letter of Conditions.
- 4284.153 Grant Agreement.
- 4284.154–4284.155 [Reserved]
- 4284.156 Time frame for use of grant funds.
- 4284.157 Financial management system.
- 4284.158 Grant disbursement.
- 4284.159–4284.160 [Reserved]
- 4284.161 Insurance requirements.
- 4284.162–4284.163 [Reserved]
- 4284.164 Changes in scope of work, work plan or budget.
- 4284.165–4284.166 [Reserved]
- 4284.167 Reporting requirements.
- 4284.168–4284.169 [Reserved]
- 4284.170 Site visits.
- 4284.171–4284.172 [Reserved]
- 4284.173 Record retention.
- 4284.174–4284.177 [Reserved]
- 4284.178 Disposition of real property, equipment, and supplies.
- 4284.179–4284.180 [Reserved]
- 4284.181 Construction requirements.
- 4284.182–4284.183 [Reserved]
- 4284.184 Clarification of revolving loan fund operation.
- 4284.185–4284.188 [Reserved]

- 4284.189 Grant termination.
- 4284.190 Transfer and assumption.
- 4284.191–4284.193 [Reserved]
- 4284.194 Appeal rights.
- 4284.195–4284.200 [Reserved]

Subpart B—Rural Business Enterprise Grant Program

§ 4284.101 Purpose.

This subpart outlines policies and procedures for administering the Rural Business Enterprise Grant (RBEG) Program. The purpose of this program is to provide grants to stimulate economic activity and employment in rural areas by:

- (a) Financing and facilitating development of small and emerging private business enterprises;
- (b) Creating, expanding, and operating rural distance learning networks or rural learning programs that provide educational or job training instruction related to the potential employment or job advancement of adult (as defined per State law) students;
- (c) Providing technical assistance and training to rural communities for the purpose of improving passenger transportation services or facilities; and
- (d) Financing statewide broadcasting systems that provide information on agriculture and other issues of importance to farmers and other rural residents.

§ 4284.102 Policy.

(a) The RBEG Program will be administered under this subpart; however, the requirements of 7 CFR parts 3015, 3016, 3017, 3018, 3019, and 3052 also govern the United States Department of Agriculture (USDA) grant programs. USDA Rural Development has attempted to address these requirements in this subpart. Nevertheless, any conflicts between those parts and this subpart will be resolved in favor of the applicable 7 CFR parts of 3015, 3016, 3017, 3018, 3019, and 3052.

(b) Grants will not be awarded under this program unless all eligibility requirements are met in accordance with this subpart.

(c) Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to USDA Rural Development employees, members of their families, close relatives, or business or close personal associates is subject to the provisions of RD Instruction 1900-D. Applicants will be required to identify any relationship or association with a USDA Rural Development employee.

(d) Grantees and USDA Rural Development program administrators

will be held accountable for following the procedures provided in this subpart.

§ 4284.103 Definitions.

The following definitions pertain to this subpart:

Agriculture production. The cultivation, production, growing, raising, feeding, housing, breeding, hatching, or managing of crops, plants, animals or birds, either for fiber, food for human consumption or livestock feed.

Cognizant agency. The Federal agency that has the largest dollar value of awards with a grantee and the one responsible for negotiating and approving indirect cost rates for that grantee.

Conflict of interest. When the grantee's immediate family, employees, or board of directors including their immediate families have a legal or personal financial interest in the recipient(s) receiving the benefits or services of the grant.

Corporation. A body of persons granted a charter legally by a state government or Federally recognized Indian tribe recognizing it as a separate entity having its own rights, privileges, and liabilities distinct from its members.

Cost of goods sold. The amount determined by subtracting the value of the ending merchandise inventory from the sum of the beginning merchandise inventory and the net purchase for the fiscal period.

Grant closeout. When all required work is completed, administrative actions relating to the completion of work and expenditures of funds have been accomplished, and USDA Rural Development accepts final expenditure information.

Grant period. The period of time to complete a project and receive grant funds as reimbursement for allowable expenses.

Gross profit. Net sales minus cost of goods sold.

Indirect cost rate. A percentage of an organization's total indirect costs to its direct cost base.

Long-term. The period of time covered by the three most recent decennial censuses of the United States to the present.

Net sales. Gross sales less discounts, allowances and returns.

Non-metropolitan median household income. Median household income of the state's non-metropolitan counties and portions of metropolitan counties outside of cities, towns, and places of 50,000 or more population.

Predominantly rural coverage area. The area covered by the signal of a statewide, private, nonprofit public

television system that is more than 50 percent of the rural (as defined in this section) population according to the latest decennial census of the United States.

Private business. A business owned and controlled either by individuals or by a nonpublic entity, which is legally organized under State law or under the laws or codes of a Federally recognized Indian tribe.

Private nonprofit corporation. A corporation created for private purposes including Federal Credit Unions if properly organized as a private nonprofit corporation (not controlled or associated with government interest) that does not distribute any part of its income to its members and has a 501(c)(3) Internal Revenue Service tax-exempt revenue code.

Program income. Gross income earned by the grantee directly generated by the grant-supported activity or earned as a result of the grant award during the grant period.

Project. The real property, equipment, supplies, revolving loan fund, technical assistance or any other assistance funded under this program.

Public body. A state; county; city; township; and incorporated towns and villages, boroughs, authorities, districts; and Federally recognized Indian tribes.

Qualified national nonprofit organization. A corporation created for private purposes (not controlled or associated with government interest) that does not distribute any part of its income to its members and has a 501(c)(3) Internal Revenue Service tax-exempt revenue code. The corporation must also operate in a Multi-state area.

Revolved funds. The portion of the revolving loan fund that is not composed of USDA Rural Development grant funds including principal and interest payments and fees collected on loans made from the revolving loan fund. Revolved funds shall not be considered Federal funds.

Revolving loan fund. A fund created with grant funds under this program and/or funds from other sources used to make loans to small businesses for economic development and job creation purposes that uses the loan repayments to make additional loans in accordance with the approved work plan.

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

Rural Development. For purposes of this regulation, the Rural Business-Cooperative Service (RBS), an Agency of

the United States Department of Agriculture, or a successor Agency, will be referred to as USDA Rural Development.

Rural distance learning networks. A telecommunication link between instructors and adult students.

Rural distance learning programs. A system or means of providing education or job training instruction relating to potential employment or job advancement of adult students.

Small and emerging private business enterprise. Any private business that will employ 50 or fewer new employees and has less than \$1 million in projected gross profit (per generally accepted accounting principles). Small and emerging private business enterprise is referred to as "small business" in this subpart.

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

Statewide. Having a coverage area of not less than 90 percent of the population of a State and not less than 80 percent of the rural land area of the State.

Technical assistance. Providing support by analyzing, evaluating, or training to solve a problem. USDA Rural Development will determine whether a specific activity qualifies as technical assistance.

Third-party, in-kind contributions. The value of non-cash contributions provided by non-Federal third parties. Third-party, in-kind contributions may be in the form of real property, equipment, supplies and other expendable property. The value of the goods and services must directly benefit and be specifically identifiable to the project.

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

§ 4284.104 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart that is not inconsistent with the authorizing statute or any applicable law if the Administrator determines that requirement or provision would adversely affect the government's interest.

§ 4284.105 [Reserved]

§ 4284.106 Applicant eligibility requirements.

The applicant eligibility requirements will be listed by type of grant followed by other requirements that must be met by the applicant for eligibility unless otherwise noted.

(a) Project grant (other than paragraphs (b) or (c) of this section). Applicants must be a public body or a private, nonprofit corporation.

(b) Passenger transportation technical assistance grant. Applicants must be a qualified national nonprofit organization with experience in providing technical assistance and training to rural communities for the purpose of improving passenger transportation service or facilities.

(c) Television demonstration grant. Applicants must be a statewide, private, nonprofit public television system (licensed by the Federal Communications Commission under its non-commercial classification), whose coverage area is predominantly rural, for the purpose of demonstrating the effectiveness of such systems in providing information on agriculture and other issues of importance to farmers and other rural residents. The National Public Broadcasting System makes the determination of eligibility for statewide and predominantly rural coverage area as defined in this subpart.

(d) Other applicant eligibility requirements. Applicants must also meet the following requirements to be eligible for assistance. A certification must be signed stating that the applicant has:

(1) The legal authority to carry out the purpose(s) of the proposed project;

(2) No delinquent debt to the Federal Government or any outstanding Federal judgments;

(3) At least 3 years experience as an organization in the proposed type of project. The only exception is if the project is for a revolving loan fund and a third-party with the required experience will be hired to do the credit and financial analysis. The applicant may certify if this is the case;

(4) No conflict of interest in the proposed project;

(5) Ownership and control of the proposed project; and

(6) At least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence (applies only if the applicant is a private nonprofit).

§§ 4284.107–4284.108 [Reserved]**§ 4284.109 Eligible purposes.**

Grant funds may be used to do the following; however, if the grant is to benefit a small business by using purposes defined in paragraphs (a) through (c) of this section, the small business must lease any real property or equipment from the applicant at rates that would ensure sustainability of the project (i.e., the grantee's cost of operating the facility including insurance premiums):

- (a) Purchase and develop land, easements, and right-of-ways;
- (b) Construct or improve buildings; plants; access streets and roads; parking areas; utilities; and pollution control and abatement facilities;
- (c) Purchase of machinery and equipment;
- (d) Provide technical assistance or training;
- (e) Create, expand, and operate rural distance learning networks or rural learning programs that provide educational instruction or job training instruction related to potential employment or job advancement of adult (as defined per State law) students. Paragraphs (a) through (d) of this section may be utilized for this purpose;
- (f) Establish or recapitalize a revolving loan fund;
- (g) Pay for reasonable fees and charges for professional services necessary for the planning and development of a construction project;
- (h) Pay off an interim financing loan incurred in connection with a construction project when a preapplication is received by USDA Rural Development before construction is started;
- (i) Pay for on-site technical assistance and training to local and regional governments, public transit agencies, and related nonprofit and for-profit organizations in rural areas, the development of training materials, and the provision of necessary training assistance to local officials and agencies in rural areas for the purpose of improving passenger transportation services or facilities; and
- (j) Pay for capital equipment expenditures, start-up and program costs, and other costs necessary to the operation of television demonstration programs.

§ 4284.110 Ineligible purposes.

Grant funds may not be used for the following:

- (a) Costs incurred on the project before receipt of the completed preapplication by USDA Rural

Development unless it is for professional services necessary for the planning and development of a construction project;

- (b) Agriculture production;
- (c) Residential housing;
- (d) Any illegal or gambling activities;
- (e) Lending and investment institutions and insurance companies;
- (f) Charitable institutions and fraternal organizations;
- (g) Duplicating current services or replacing or substituting support previously provided beyond a 2-year period of time;
- (h) Paying the costs of preparing the preapplication or application package for funding under this program;
- (i) Technical assistance which duplicates assistance provided by the Forest Service to implement an action plan under the National Forest-Dependent Rural Communities Economic Diversification Act;
- (j) Making loans from a revolving loan fund that do not have reasonable rates and terms as compared to what is charged in the area where the project is located;
- (k) Transferring jobs from one area to another or increasing the production of goods when there is not sufficient demand or the availability of services or facilities;
- (l) Funding part of a project that is dependent on other funding unless there is a firm commitment in writing of other funding to ensure completion of the project;
- (m) Projects where USDA Rural Development determines that construction was initiated to avoid Federal environmental compliance requirements;
- (n) Financial assistance requests in excess of \$500,000;
- (o) Passing grant funds directly to a third-party recipient;
- (p) Using technical assistance to pay for operating expenses of a small business;
- (q) Operating expenses of an eligible applicant unless it is for television demonstration projects or the salaries and expenses related to employees who directly perform technical assistance to small businesses, adult students or passenger transportation projects;
- (r) Fund political activities; and
- (s) Paying for construction or improvement projects when the applicant is leasing the real property where the construction or improvement will occur.

§§ 4284.111–4284.112 [Reserved]**§ 4284.113 Project eligibility.**

The applicant must provide supporting documentation to illustrate the project:

- (a) Has a demonstrated need;
- (b) Is economically feasible to ensure sustainability beyond grant assistance unless the project is for a feasibility study;
- (c) Is located in a rural area;
- (d) Will benefit small business or provide job placement or advancement for adult students as the end result of the project unless the project is for passenger transportation or television demonstration grants; and
- (e) Is measurable to document performance outcomes and demonstrate results of the program.

§§ 4284.114–4284.115 [Reserved]**§ 4284.116 Small business eligibility certification.**

Any small business receiving assistance under this program must be a separate, private business and cannot be the grantee or any affiliate thereof. Each small business must sign a certification stating they:

- (a) Meet the small and emerging private business enterprise definition contained in § 4284.103 of this subpart;
- (b) Are located in a rural area as defined in § 4284.103 of this subpart;
- (c) Have no delinquent debt to the Federal Government or any outstanding Federal judgments;
- (d) Have no conflict of interest in the proposed project;
- (e) Have at least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence.

§ 4284.117 Small business eligibility exception.

If the small business is a nonprofit entity or other tax-exempt organization (as defined by the Internal Revenue Service revenue codes) located in a city, town or unincorporated area with a population of 5,000 or less and has a principal office on land of an existing or former Native American reservation, the small business does not need to meet the small business definition contained in § 4284.103 of this subpart. However, the small business receiving assistance must sign a certification stating they meet the requirements of paragraphs (b) through (e) defined in § 4284.116.

§ 4284.118 Private tribally-owned business.

For a tribally-owned business to be considered a private business, it must be

held through a separate entity, such as a tribal corporation. The corporation may be owned by the tribe and distribute profits to the tribe. However, the governing board must be independent from the tribal government and elected or appointed for a specific time period. Board members must not be subject to removal without cause by the tribal government. A majority of the board members must not now or in the future, as long as they are board members, be members of the tribal council or other governing board of the tribe. Tribally-owned small businesses will be required to sign a small business certification in accordance with either § 4284.116 or § 4284.117.

§ 4284.119–4284.120 [Reserved]

§ 4284.121 Grant ownership.

The grantee must have ownership and control of the project until transfer, disposition, or termination of the project occurs.

(a) The grantee must retain ownership of any real property that will be purchased or improved with grant funds. In the case of installation or improvements to utilities or streets, the grantee does not have to own the land, utility, or street that is improved in the public right of way, but must retain ownership of the land surrounding the improvements.

(b) The grantee must retain ownership of any equipment or supplies acquired with grant funds.

(c) The grantee must establish a separate bank account for a revolving loan fund, secure the account by signing a control agreement (available from any USDA Rural Development State Office) and direct and manage the fund.

(d) The grantee must oversee and control technical assistance, passenger transportation and television demonstration projects until the grants are closed out.

§ 4284.122 Leveraging.

Supplemental funding at a minimum of 20 percent of the total project cost must be included in the project. Supplemental funds may be from cash injection by the applicant, financial institutions, state or local governmental sources, or third-party, in-kind contributions. Third-party, in-kind contributions will be limited to 10 percent of supplemental funding and USDA Rural Development will advise if the third-party, in-kind contributions are acceptable. Applicants may not use third-party, in-kind contributions for revolving loan fund projects. Other Federal grant awards cannot be used to meet the 20 percent leveraging match.

§§ 4284.123–4284.124 [Reserved]

§ 4284.125 Preapplication.

A preapplication is required to establish communication between the potential applicant and USDA Rural Development, determine the potential applicant's eligibility, and identify projects which have little or no chance for funding before applicants incur significant costs.

§ 4284.126 Preapplication contents.

A complete preapplication must be submitted to the USDA Rural Development State Office where the project is located. Multi-state projects must be submitted to the USDA Rural Development State Office where the applicant is headquartered. A complete preapplication must include:

(a) An SF-424, "Application for Federal Assistance," including the appropriate non-construction (SF-424A and SF-424B) or construction (SF-424C and SF-424D) budget and assurance forms, and a Dun and Bradstreet Universal Numbering System (DUNS) number handwritten or typed on the SF-424;

(b) Intergovernmental review comments from the State Single Point of Contact, or evidence that the State has elected not to review the program under Executive Order 12372. Applicants can obtain the necessary state clearinghouse contacts from the USDA Rural Development State Office where the project is located;

(c) Evidence of legal existence including a copy of the articles of incorporation, by-laws, and certificate of good standing or incorporation;

(d) Form RD 1940-20, "Request for Environmental Information," unless the project is considered a categorical exclusion in accordance with 7 CFR part 1940, subpart G. Applicants can verify if their project is a categorical exclusion with the USDA Rural Development State Office where the project is located;

(e) A signed applicant eligibility certification;

(f) A copy of the most recent year-end financial statements that should include a balance sheet and income statement prepared in accordance with generally accepted accounting principles;

(g) A preliminary architectural or engineering report for construction projects that includes a description of the facility; including size, location, related facilities, schematic cost estimate, and schematic plans; and

(h) A scope of work.

§ 4284.127 Scope of work requirements.

The scope of work is a detailed written narrative identifying the aspects

of a proposed project. It must be completed for all projects and contain the following:

(a) Specific purposes, objectives, and need for grant funds including identification of the proposed project in a local or regional plan;

(b) Timeframes to complete the proposed project;

(c) Names and responsibilities of key personnel who will carry out the objectives of the proposed project;

(d) Experience specifically related to the type of project proposed;

(e) Availability of other funds and sources;

(f) Number and type of small businesses to be assisted as a result of the grant including number of jobs created and/or saved and other anticipated goals and/or benefits of the proposed project, if applicable. This should be based on letters of interest or commitments;

(g) Number of adult students to be assisted as a result of the grant and other anticipated goals and/or benefits of the proposed project when the grant is for a rural distance learning network or rural learning program, if applicable. This should be based on letters of interest or commitments; and

(h) Anticipated goals and/or benefits for passenger transportation or television demonstration projects as a result of the grant, if applicable.

§ 4284.128 Other narrative information.

The following narrative information should be addressed in your preapplication to assist USDA Rural Development in assigning points under the scoring criteria. You may address it in the scope of work or in a separate document.

(a) Documented statistical information on population, unemployment rate, and median household income for the area to be served by the proposed project;

(b) Documented information on sudden and severe economic dislocation produced by such factors as the departure or downsizing of a major employer, or natural disaster, if applicable; and

(c) Documented statistical information on long-term decline in population, if applicable.

§§ 4284.129–4284.130 [Reserved]

§ 4284.131 Program income.

Program income must be addressed in the SF-424 and the respective budget forms. Any program income earned during the grant period may be retained by the grantee to further the objectives and goals of the project.

§ 4284.132 Indirect cost rate.

The maximum indirect cost rate USDA Rural Development will pay is 25 percent of the grant request unless the grantee already has a negotiated agreement with its cognizant agency. A copy of the negotiated agreement must be provided with the preapplication.

§§ 4284.133–4284.134 [Reserved]**§ 4284.135 Civil rights requirements.**

(a) All grants made under this subpart are subject to Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and part 1901, subpart E of this title.

(b) USDA Rural Development will inform grantees of their civil rights requirements in accordance with paragraph (a) of this section. Grantees may be required to collect certain information on their project or program to ensure that they are serving the public without discrimination.

§ 4284.136 Environmental review.

(a) All grants under this subpart are subject to the environmental requirements of 7 CFR part 1940, subpart G before any application is approved. The grantee must not take any actions that would have an adverse impact on the environment or limit the range of alternatives USDA Rural Development considers during the environmental review. If USDA Rural Development finds evidence that construction was initiated to avoid compliance requirements, the preapplication will not be considered for assistance. Any mitigation measures will be included in the Letter of Conditions or other grant approval document. The grantee is responsible for communicating the mitigation measures to the project designers for inclusion in the project construction documents.

(b) USDA Rural Development will conduct an initial environmental review on revolving loan fund projects and a separate environmental review on each loan the grantee is proposing to provide funds for until all grant funds have been expended. However, if the grantee has one loan project committed to use the total amount of the grant, USDA Rural Development will only conduct an individual project review.

(c) The grantee will be responsible for preparation of environmental reviews after they have lent out an amount equal to the grant award. Preparation will be accomplished using professional consultant services and the review document will conform to the

requirements and formats of 7 CFR part 1940, subpart G.

§§ 4284.137–4284.138 [Reserved]**§ 4284.139 Project selection criteria.**

USDA Rural Development will evaluate the preapplication and give it a priority score based on criteria in this section. This process will assist USDA Rural Development in prioritizing for funding approval. Any scoring criteria not addressed will automatically receive zero points. Applicants may average any figures that are based on the rural area to be served. All written commitment supporting documentation for priority points must be submitted to USDA Rural Development no later than the application stage. Points will be distributed as follows:

(a) *Population.* Figures from the latest decennial census of the United States must be used to score population on the area to be served by the proposed project as follows:

(1) The proposed project will be located in areas of under 5,000 population—15 points;

(2) The proposed project will be located in areas of between 5,000 and 15,000 population—10 points;

(3) The proposed project will be located in areas of between 15,001 and 25,000 population—5 points.

(b) *Economic Conditions.* Figures must be used for the area to be served by the proposed project as follows:

(1) *Unemployment rate.*

Unemployment figures must come from the most recent published unemployment data by the Bureau of Labor Statistics, U.S. Department of Labor or State Department of Labor Statistics. Projects serving all of a State's rural area or Multi-State rural areas will compare State unemployment rates to the national unemployment rate.

(i) The proposed project will be located in areas where the unemployment rate exceeds the State rate by 50 percent or more—20 points;

(ii) The proposed project will be located in areas where the unemployment rate exceeds the State rate by 25 percent or more but less than 50 percent—10 points;

(iii) The proposed project will be located in areas where the unemployment rate exceeds the State rate by less than 25 percent—5 points.

(2) *Median household income.* Income figures must come from the latest decennial census of the United States, updated according to changes in the consumer price index. The poverty line figure used must be as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C.

9902 (2)) for a family of four for the State. Projects serving all of a State's rural area or Multi-State rural areas will compare State non-metropolitan median household incomes to the national poverty line.

(i) The proposed project will be located in areas where the median household income is less than poverty line—25 points;

(ii) The proposed project will be located in areas where the median household income is more than the poverty line, but less than 85 percent of the State non-metropolitan median household income—15 points;

(iii) The proposed project will be located in areas where the median household income is between 85 percent and 100 percent of the State non-metropolitan median household income—10 points;

(c) *Supplemental funding.* Written commitments from other financing sources must be provided with the application. Third-party, in-kind contributions will not be considered under this criterion only as part of the matching requirement. Points are awarded as follows:

(1) The proposed project will have supplemental funding in an amount equal to or greater than 75 percent of total project cost—25 points;

(2) The proposed project will have supplemental funding in an amount equal to or more than 50 percent, but less than 75 percent of total project cost—15 points;

(3) The proposed project will have supplemental funding in an amount equal to or more than 25 percent, but less than 50 percent of total project cost—10 points.

(4) The proposed project will have supplemental funding above 20 percent, but less than 25 percent of the total project cost—5 points.

(d) *Full-time direct jobs created or saved.* Evidence of full-time direct jobs created or saved must be included in the application. Full-time direct jobs must be calculated based on the total project cost and scored as follows:

(1) The proposed project will create or save one job per each \$15,000 of the total project cost—10 points;

(2) The proposed project will create or save one job per each \$25,000 of the total project cost—5 points.

(e) *Fund utilization.* Points will be awarded if the proposed project will utilize grant funds of \$100,000 or less—25 points;

(f) *Local or regional plans.* The proposed project is identified in a local or regional economic development plan adopted by the area to be served by the project—5 points. A copy of the plan

must be included with the application to receive points.

(g) *Small business.* The small business to be assisted is a nonprofit entity or other tax-exempt organization (as defined by the Internal Revenue Service revenue codes) located in a city, town or unincorporated area with a population of 5,000 or less and has a principal office on land of an existing or former Native American reservation—5 points. Evidence of organization and location must be provided with the application.

(h) *Discretionary points.* USDA Rural Development may assign up to additional 30 points for discretionary items if the proposed project is an initial grant. An initial grant means that this would be the first time grant funds are being requested for the proposed project. Subsequent grant requests are not eligible for discretionary points. Evidence must be provided in the application to receive points. In addition, discretionary points will be awarded in the following situations:

- (1) The proposed project is located in a Champion Community—5 points;
- (2) The area to be served by the proposed project has had a loss of a major employer or industry within the last 3 years—5 points;
- (3) The area to be served by the proposed project has had a Presidential or Secretarial natural disaster designation within the last 3 years—5 points;

(4) The area to be served by the proposed project has had a long-term decline in population—5 points;

(5) This would be the applicant's first grant award under the RBEG Program—10 points;

§ 4284.140—4284.141 [Reserved]

§ 4284.142 Application.

USDA Rural Development will issue Form AD-622, "Notice of Preapplication Review Action," or similar letter notifying the applicant that they are eligible to complete and submit an application or ineligible for assistance under this subpart due to legal existence or intended use of grant funds.

§ 4284.143 Application Contents.

A complete application will be submitted to the USDA Rural Development State Office and include the following:

- (a) An updated SF-424 signed by the applicant, if necessary;
- (b) Preliminary plans and specifications for construction projects; which will include a preliminary floor plan, site plan and elevations in

sufficient detail for preparing an appraisal along with a preliminary estimate of construction costs;

(c) Comments from the State Historical Preservation Office or the Tribal Historical Preservation Office for construction projects;

(d) An independent third-party appraisal if the proposed project is to purchase real property;

(e) A work plan if the proposed project is for a revolving loan fund;

(f) Written commitments for supplemental funding;

(g) Letters of interest or commitment from small businesses needing assistance, if applicable;

(h) Small business certification, if applicable;

(i) Letters of interest or commitment from local employers, schools, training facilities, etc. to show the need of employment or job advancement opportunities for adult students, if applicable;

(j) A copy of the local or regional plan in which the proposed project is identified;

(k) Form RD 400-1, "Equal Opportunity Agreement" if the proposed project includes construction;

(l) Form RD 400-4, "Assurance Agreement";

(m) Form AD 1049, "Certification Regarding Drug-Free Workplace Requirements";

(n) Form AD 1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions";

(o) RD Instruction 1940-Q, Exhibit A-1, "Certification for Contracts, Grants and Loans (Lobbying Activities)" if the grant request is over \$100,000; and

(p) SF-LLL, "Disclosure of Lobbying Activities," if the grant is over \$100,000 and the applicant has made or has agreed to make any payments to influence a decision in connection with the specific project.

§ 4284.144 Revolving loan fund work plan requirements.

If the grant will be used to create or add to a revolving loan fund, the requirements of this section must be met. The revolving loan fund plan governs the operation of the fund and must have sufficient detail to provide USDA Rural Development with a complete understanding of what will be accomplished. It must contain the following:

(a) Demonstrated need of the fund including identification of the proposed project in a local or regional plan and the accomplishments to be completed with the fund. This should include a list of eligible small businesses (based on

letters of interest or commitments) that need loans with the anticipated amount needed, purpose, and number of jobs to be created and/or saved.

(b) Experience of the organization in operating a revolving loan fund;

(c) Marketing and outreach plan with specific timeframes to complete the proposed accomplishments of the fund;

(d) Key personnel involved in the operation of the fund and their specific responsibilities;

(e) Availability of other funds and their sources;

(f) Service area where the loans will be offered;

(g) Eligibility criteria, loan purposes, and loan limits of the fund;

(h) Proposed fees, loan interest rate, and loan terms and how they are determined. These charges should be sufficient to support the operating expenses of the fund;

(i) Proposed collateral requirements;

(j) Application review and loan committee approval process;

(k) A copy of your application that must include, at a minimum, a space for the name and address of the loan recipient; loan purpose; interest rate and terms; location, nature, and scope of the project being financed; other funding included in the project; type and lien priority of collateral; and jobs to be created and/or saved.

(l) Process to be followed if a loan applicant is rejected;

(m) Monitoring system for distribution of approved funds and loan recipient accomplishments;

(n) Monitoring system for financial and activity reports; and

(o) Any other information pertinent to the revolving loan fund.

§§ 4284.145—4284.148 [Reserved]

§ 4284.149 Application selection.

(a) Pending the availability of sufficient funds, USDA Rural Development State Offices receive an allocation of funds under this subpart each fiscal year. State Offices use the scoring criteria as defined in § 4284.139 to select the highest-ranking applications until the state allocation has been depleted. State Offices set internal cut-off dates for receipt of preapplications and attempt to make the information public knowledge. However, it is recommended that applicants contact the State Office to find out the specific amounts available and funding deadlines for this program. Applicants will receive a Letter of Conditions for grant approval and instructions from the State Office if the application is selected for funding.

(b) The National Office generally holds a minimal amount of appropriated

funds for a national reserve competition each fiscal year. State Offices that have depleted the state allocation are eligible to submit applications to the National Office for competition. Starting with the highest-ranking application received nationwide, the highest-ranking application per state is selected until the reserve is exhausted. This ensures USDA Rural Development is distributing funds on a geographical basis. If a tie exists in the competition, projects are selected based on viability of the projects in accordance with the funds available. State Offices will submit applications to the National Office for reserve competition. Applicants will receive a Letter of Conditions and instructions for grant approval from the USDA Rural Development State Office if the application is selected for funding.

§ 4284.150–4284.151 [Reserved]

§ 4284.152 Letter of Conditions.

The Letter of Conditions establishes conditions that must be understood and agreed to by the applicant before any obligation of funds can occur. The applicant must sign a Form RD 1942–46, “Letter of Intent to Meet Conditions,” and a Form RD 1940–1, “Request for Obligation of Funds,” if they wish to accept the conditions of the grant. These forms will be enclosed with the Letter of Conditions. The grant will be obligated when the USDA Rural Development State Office receives an executed Letter of Intent and Request for Obligation of Funds from the applicant.

§ 4284.153 Grant Agreement.

The applicant will also be required to sign a Form RD 4284–1, “Grant Agreement,” which is a contract between the grantee and USDA Rural Development for receipt of grant funds under the RBEG Program. The Grant Agreement will also be enclosed with the Letter of Conditions and must be signed and returned to the USDA Rural Development State Office before any grant funds can be disbursed.

§ 4284.154–4284.155 [Reserved]

§ 4284.156 Timeframe for use of grant funds.

The grant period will be established in your Letter of Conditions for a 12-month timeframe unless USDA Rural Development approves the scope of work or work plan for a longer period of time.

§ 4284.157 Financial management system.

The grantee will provide for a financial management system, which will include:

(a) Accurate, current, and complete disclosure of the financial result of each grant.

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

(c) Effective control over and accountability for all funds, property and other assets. Grantee shall adequately safeguard all such assets and assure that funds are used solely for authorized purposes.

§ 4284.158 Grant disbursement.

Grant funds are disbursed on a reimbursement basis except if they are for revolving loan funds. Grant disbursement for revolving loan funds will be advanced. The financial management system of the grantee must provide for effective control and accountability of all funds. Grant funds may be requested as follows:

(a) *Reimbursement requests.* An SF-270, “Request for Advance or Reimbursement,” may be submitted to USDA Rural Development once every 30 days for reimbursement on allowable grant expenses. A pro rata portion of supplemental funds must be included in the request. An SF-271, “Outlay Report and Request for Reimbursement for Construction Programs,” or similar form may be submitted to USDA Rural Development once every 30 days on construction projects.

(b) *Advance requests.* An SF-270 may be submitted once every 30 days for an advance of funds. A pro rata portion of supplemental funds must be included in the request for an advance. Before any grant funds can be advanced, the grantee must submit information on each loan that they are proposing to make for review and concurrence by USDA Rural Development. The specific information required is defined in § 4284.184. Grantees must remit any interest earned on advanced grant funds. Interest should be forwarded to USDA Rural Development on a quarterly basis.

§ 4284.159–4284.160 [Reserved]

§ 4284.161 Insurance requirements.

(a) Fidelity bond coverage will be required on grantees that are nonprofit organizations. Coverage may be provided either for all individual positions or persons, or through blanket coverage that provides protection for all appropriate employees and officials.

The amount of coverage will be at least equal to the maximum amount of monies that the grantee will have on hand at any one time. The grantee must renew fidelity bond coverage on a yearly basis if they are operating a revolving loan fund. There are no fidelity bond coverage requirements for a public body.

(b) Hazard insurance will be maintained by grantees whose project involves purchase or improvements to real property or purchase of machinery or equipment. In the case of a revolving loan fund, the loan recipient will be required to maintain hazard insurance with a standard mortgagee clause naming the grantee as beneficiary as long as a lien exists. The grantee’s interest in the insurance will be assigned to USDA Rural Development, upon USDA Rural Development’s request, in the event of termination of the revolving loan fund. The amount of coverage should be at least the lesser of the depreciated replacement value of the property being insured or the amount of the grant or loan. Hazard insurance includes fire, windstorm, lightning, hail, business interruption, explosion, riot, civil commotion, vehicle, marine, smoke, builder’s risk, public liability, property damage, and any other hazard insurance that may be required to protect the property being insured or the grantee’s security.

(c) Worker’s compensation insurance will be required on the grantee and any recipient who receives a loan from a revolving loan fund in accordance with State law.

(d) Flood insurance will be required on grantees and loan recipients if their project is located in a special flood or mudslide hazard area.

§ 4284.162–4284.163 [Reserved]

§ 4284.164 Changes in scope of work, work plan or budget.

(a) Prior approval must be obtained from USDA Rural Development for any of the following changes to the approved project:

- (1) Project scope or objectives;
- (2) Need to extend the period of availability of funds;

(3) Change in key personnel as specified in the application;

(b) Prior approval must be obtained from USDA Rural Development for any of the following budget revisions:

- (1) Transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa;
- (2) Transfer of amounts previously budgeted for training allowances to other categories of expense;

(3) Costs that require prior approval in accordance with the applicable OMB cost principles circulars; or

(4) Need for additional funds.

(c) Prior approval must be obtained from USDA Rural Development on projects that have both construction and nonconstruction activities before making any fund or budget transfer from the nonconstruction or construction budgets or vice versa.

(d) Prior approvals will not be valid unless they are in writing and approved by USDA Rural Development. Failure to obtain prior approval of changes to the approved project or budget may result in suspension or termination of grant funds.

§ 4284.165–4284.166 [Reserved]

§ 4284.167 Reporting requirements.

(a) *Project performance reports.* Grantees shall constantly monitor performance to ensure time schedules and other performance objectives are being achieved. A project performance report is not required for construction projects. On-site technical inspections and certified percentage-of-completion data will serve as the performance monitoring system for construction projects. This will be done in accordance with RD Instruction 1942–A, § 1942.18. A project performance report is required for all non-construction projects on a quarterly basis. The report is due 30 days after the end of the quarter. The final report can serve as the last quarterly report. The report should include the following:

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

(2) Reasons why established goals were not met;

(3) Any significant developments that would have an adverse or favorable affect on the overall project objectives. This notification must include a statement of the action taken or contemplated, and any assistance needed to resolve the situation;

(4) Objectives and timetables for the next reporting period; and

(5) Additional information on the final report as follows:

(i) Actual accomplishments as a result of the grant, i.e. number of jobs created, saved, and number of businesses assisted or other performance goals established in the scope of work.

(ii) What have been the most challenging or unexpected aspects of this program?

(iii) What advice would the grantee give to other organizations planning a similar program? These should include strengths and limitations of the

program. If the grantee had the opportunity, what would they have done differently?

(iv) If an innovative approach was used successfully, the grantee should describe its program in detail so that other organizations might consider replication in their areas.

(b) *Financial reports.* The following financial reports will be required and are available in any USDA Rural Development State Office:

(1) *All projects.* An SF 269 or 269A, “Financial Status Report,” is required for all nonconstruction and construction projects on a quarterly basis. The report is due 30 days after the end of the quarter. SF 269A may be used by the grantee if there is no program income being generated in the project.

(2) *Additional revolving loan fund reports.* Grantees will also be required to submit a Form RD 1951–4, “Reporting of IRP/RDLF Lending Activity,” report on a quarterly basis until all of the grant funds have been loaned out to small businesses. The report is due 30 days after the end of the quarter. Thereafter, reports will be required semiannually 30 days after the end of the period.

(c) *Audits.* Grantees must provide an annual audit in accordance with 7 CFR part 3052. USDA Rural Development will inform the grantee of its auditing requirements.

§ 4284.168–4284.169 [Reserved]

§ 4284.170 Site visits.

(a) The grantee is responsible for managing the day-to-day operations of the project to ensure time schedules are met and that performance goals are achieved. However, USDA Rural Development will make site visits, as necessary, to assure compliance with applicable Federal requirements. After all grant funds have been disbursed for revolving loan fund, capital improvements or equipment purchase projects, a site visit will occur every 3 years until the project is transferred, terminated, disposed of, or has met its useful life term in accordance with the Grant Agreement.

(b) During the site visit the USDA Rural Development representative will perform and document due diligence if actual or potential site contamination by hazardous materials or petroleum products is observed on the site or adjacent sites. Due diligence documentation is necessary to assure USDA Rural Development maintains lender liability protection under the Comprehensive Environmental Response, Conservation and Liability Act (CERCLA).

(c) Site visits can include a civil rights compliance review; a physical inventory

of any property purchased or improved with grant funds or equipment purchased with grant funds; a revolving loan fund review to ensure the fund is still operating in accordance with the work plan, if applicable; and other reviews as needed to ensure the project is in compliance with the Letter of Conditions and Grant Agreement.

§§ 4284.171–4284.172 [Reserved]

§ 4284.173 Record retention.

USDA Rural Development must have access to grantees records including financial, supporting documents, statistical or other records pertinent to the grant. Records must be retained for 3 years after the date of the final grant disbursement unless there is:

(a) Any litigation, claim, negotiation, audit or other action involving the records that have been started before the expiration date of the 3-year period. The records must be retained until completion of the action and resolution of all issues that arise from it or until the end of the regular 3-year period, whichever is later.

(b) Real property; equipment; and revolving loan fund project records. Records must be retained until transfer, termination, disposition, or replacement occurs or the useful life term has expired in accordance with the grant agreement. The 3-year retention period would start the date of transfer, termination, disposition, replacement or the date the useful life term has expired.

(c) Indirect cost rate proposals, cost allocation plans, etc. Records must be retained for 3 years from the date the proposal is submitted for negotiation. If the proposal is not required to be submitted for negotiation, then the 3-year retention period starts the end of the fiscal year covered by the proposal.

§§ 4284.174–4284.177 [Reserved]

§ 4284.178 Disposition of real property, equipment, and supplies.

(a) If grant funds are used to acquire or improve real property, and if the property is sold or is no longer needed for any reason, USDA Rural Development will have an interest in the current fair market value of the property in proportion to its participation in the project. Installation or improvements to utilities or streets in the public right of way is considered improving the surrounding property or land owned by the grantee. USDA Rural Development also has the right to the current fair market value of that property in proportion to its participation in the project if that property is sold or not used for its originally approved purpose. The

grantee may be required to file a Notice of Interest when grants funds are used to purchase or improve real property unless it is prohibited by State law.

(b) If grant funds are used to purchase equipment and the equipment is no longer needed for any reason, the grantee may retain, sell or otherwise dispose of the equipment with no further obligation to USDA Rural Development if the current fair market value of the equipment (per unit) is less than \$5,000. However, if the current fair market value (per unit) is \$5,000 or more USDA Rural Development has the right to an amount calculated by multiplying the current fair market value (per unit) if it is retained or proceeds from the sale if sold by the Federal share of the equipment.

(c) If the grant funds are used to purchase supplies and the grant is closed out, the grantee may keep unused supplies if the total aggregate fair market value of the supplies was less than \$5,000. Otherwise, the grantee will compensate USDA Rural Development the current fair market value of the unused supplies to its participation.

§§ 4284.179–4284.180 [Reserved]

§ 4284.181 Construction requirements.

Section 1942.18 of this title will be followed in the planning and performance of construction projects.

§§ 4284.182–4284.183 [Reserved]

§ 4284.184 Clarification of revolving loan fund operation.

The following paragraphs will provide clarification on operating revolving loan funds under this subpart:

(a) A revolving loan fund must be operated on a long-standing basis and not duplicate services provided by an existing loan fund serving the same geographic area. It should not be established to assist one small business with a short-term working capital need and never have another loan made from it to assist other small businesses.

(b) A third-party with required experience can be hired to do the credit and financial analysis, but the grantee is still responsible for approving loans and managing the fund. USDA Rural Development will review and concur in any service agreement when this is the case before the grant is approved.

(c) Grantees are required to deposit grant funds and the 20 percent matching funds into a separate FDIC insured account. A control agreement will be executed to allow USDA Rural Development a security interest in the revolving loan fund deposit account as well as access to account information. The control agreement will also ensure

that the deposit account/revolving loan fund will not be closed without prior approval of USDA Rural Development.

(d) Loans made from the revolving loan fund must be for purposes in accordance with the revolving loan fund work plan. However, the loan purposes are limited to the eligible purposes defined in paragraphs (a) through (c) of § 4284.109, working capital and debt refinancing.

(e) Loans made from the revolving loan fund must be economically feasible to ensure sustainability of the revolving loan fund.

(f) The receivables created by making loans from the fund, the grantee's security interest in collateral pledged by small businesses, collections on the receivables, interest, fees, and any other income from the operation of the revolving loan fund are considered to be part of the revolving loan fund.

(g) All debt instruments and collateral documents used by the grantee in connection with making loans from the fund must be assignable. Security for a loan from the revolving loan fund to a third party will be negotiated between the grantee and the third party within the policies established in the work plan.

(h) USDA Rural Development will review and concur in each loan the grantee is proposing to make until all of the grant funds are expended. Eligibility, environmental concerns, and other issues necessary to ensure sustainability of the fund will be reviewed. The following will be required for each loan:

- (1) A copy of the application;
- (2) Loan Committee recommendation or write-up;
- (3) Intergovernmental comments;
- (4) Small business certification;
- (5) Form RD 1940–20;
- (6) Form AD 1048, "Certification of Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions;" and
- (7) Form RD 400–4.

(i) USDA Rural Development loan review and concurrence will not be necessary once the grantee lends out an amount equal to the grant. However, the grantee must continue to operate the revolving loan fund in accordance with the work plan, collect civil rights data and obtain all required items defined in paragraphs (h)(1) through (7) of this section for each loan made thereafter. USDA Rural Development will conduct a site visit at least every 3 years to ensure the grantee is complying with all Federal requirements and administering the fund in accordance with the work plan.

(j) Grantees may use principal and interest payments plus fee income received from their borrowers (revolved funds) for debt service, administrative expenses, or making additional loans.

(k) A reasonable amount of revolved funds should be used to create a reserve for bad debts. USDA Rural Development recommends a reserve for bad debts of 6 percent of outstanding loans, which can be accumulated over 3 years and should be maintained from then on.

(l) Grantees may also use up to a maximum of 20 percent of interest and fee income per fiscal year for the administrative costs associated with operating the revolving loan fund.

(m) Failure, inability or unwillingness of the grantee to carry out or comply with the work plan, grant agreement or any applicable Federal or State law is cause for termination. If the grant is terminated, USDA Rural Development takes control of the deposit account in which the fund is located, the pending note receivables and any security interest pledged on the pending note receivables.

§§ 4284.185–4284.188 [Reserved]

§ 4284.189 Grant termination.

The grant award can be terminated in the following situations:

(a) *Termination for cause.* If the grantee fails to comply with the conditions of the Letter of Conditions or the Grant Agreement, USDA Rural Development can terminate the grant. USDA Rural Development will notify the grantee in writing of the decision to terminate, including the reasons and the effective date of the grant termination.

(b) *Termination by mutual agreement.* The grantee must provide written notification to USDA Rural Development explaining the reasons why they wish to terminate the grant and the proposed effective date. If USDA Rural Development mutually agrees that the continuation of the project would not produce beneficial results the grant can be terminated.

(c) *Deobligation of grant funds.* USDA Rural Development will automatically deobligate grant funds if a project is not completed within 3 years from the date of obligation.

§ 4284.190 Transfer and assumptions.

USDA Rural Development will not approve any transfer and assumptions on grants awarded under this subpart.

§§ 4284.191–4284.193 [Reserved]

§ 4284.194 Appeal rights.

The applicant or grantee may have review or appeal rights on adverse decisions made by USDA Rural

Development. Written instructions will be provided to the applicant or grantee by USDA Rural Development when review or appeal rights are applicable in accordance with 7 CFR part 11.

§§ 4284.195–4284.200 [Reserved]

Dated: March 29, 2007.

Thomas C. Dorr,

Under Secretary, Rural Development.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2007-27926; Directorate Identifier 2006-NM-050-AD]

RIN 2120-AA64

Airworthiness Directives; Airbus Model A300 Airplanes; and Airbus Model A300 B4-600, B4-600R, and F4-600R Series Airplanes, and Model C4-605R Variant F Airplanes (Collectively Called A300-600 Series Airplanes)

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to all Airbus Model A300 B2 and B4 series airplanes; and Model A300 B4-600, B4-600R, and F4-600R (collectively called A300-600) series airplanes. The existing AD currently requires repetitive inspections to detect cracking of the upper radius of the forward fitting of frame 47, and repair if necessary. This proposed AD would reduce inspection thresholds and repetitive intervals, and add related investigative and corrective actions. This proposed AD also would provide an optional terminating action for the repetitive inspections only for airplanes with cracking that is within certain limits. This proposed AD results from reports of additional cracking in airplanes that were inspected in accordance with the existing AD. We are proposing this AD to detect and correct fatigue cracking of the left and right upper radius at frame 47, which could propagate and result in reduced structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by May 21, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- **DOT Docket Web site:** Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- **Government-wide rulemaking Web site:** Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- **Mail:** Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590.

- **Fax:** (202) 493-2251.

- **Hand Delivery:** Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number “Docket No. FAA-2007-27926; Directorate Identifier 2006-NM-050-AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT’s complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78), or you may visit <http://dms.dot.gov>.

Examining the Docket

You may examine the AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647-5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

On March 18, 2003, we issued AD 2003-06-04, amendment 39-13091 (68 FR 14894, March 27, 2003), for all Airbus Model A300 B2 and B4 series airplanes, and Model A300 B4-600, B4-600R, and F4-600R (collectively called A300-600) series airplanes. That AD requires repetitive inspections to detect cracking of the upper radius of the forward fitting of frame 47, and repair if necessary. That AD resulted from issuance of mandatory continuing airworthiness information by a civil airworthiness authority. We issued that AD to detect and correct such fatigue cracking, which could result in propagation of the cracking to the rear fitting and reduced structural integrity of fuselage frame 47.

Actions Since Existing AD Was Issued

Since we issued AD 2003-06-04, cracks were found on the left and right upper radius at frame 47 at 48,000 simulated flights, and at 18,000 total flights on an in-service airplane. In-service experience up to 2001 showed there was no propagation of cracking between 30 millimeters (mm) and 40 mm in size. In mid-2001, a crack of 110 mm in size was found on a scrapped Model A300 B4-200 airplane with 23,700 total flights. Further sampling inspections revealed two Model A300 airplanes with cracks greater in size than the defined limit of 50 mm. Based on these last investigation results, Airbus established a revised inspection program that:

- Redefines the threshold and repetitive interval values; and
- Introduces corrective measures in the event of abnormal load events (e.g., hard landing and flight with turbulence). Definitions of abnormal load events are in the applicable airplane maintenance manual.

Relevant Service Information

Airbus has issued the service bulletins described in the following table.