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Rural Business-Cooperative Service

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7 CFR Part 4280

Rural Energy for America Program; Final Rule

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

RIN 0570-AA76

**Rural Energy for America Program**

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

**ACTION:** Final rule.

**SUMMARY:** The Rural Business-Cooperative Service (Agency) is publishing this final rule for the Rural Energy for America Program (REAP). This final rule modifies REAP based on comments received on the interim rule, which was published on April 14, 2011, and the proposed rule, which was published on April 12, 2013. The final rule establishes provisions for the grants and loan guarantees available for renewable energy systems (RES) and energy efficiency improvements (EEI) and for the grants available for energy audits and for renewable energy development assistance.

**DATES:** This final rule is effective February 12, 2015.

**FOR FURTHER INFORMATION CONTACT:** Kelley Oehler, Energy Branch, U.S. Department of Agriculture, 1400 Independence Avenue SW., Stop 3225, Washington, DC 20250-3201; telephone (202) 720-6819.

**SUPPLEMENTARY INFORMATION:****Executive Summary**

The Farm Security and Rural Investment Act of 2002 (FSRIA), established the renewable energy systems (RES) and energy efficiency improvements (EEI) program under Title IX, Section 9006, for making grants, loan guarantees, and direct loans to farmers and ranchers (agricultural producers) or rural small businesses to purchase renewable energy systems and make energy efficiency improvements.

Section 9001 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) amended Title IX of the FSRIA. Under the 2008 Farm Bill, Section 9007 of the amended FSRIA authorized the Agency to continue providing to agricultural producers and rural small businesses loan guarantees and grants for the development and construction of RES and EEI projects, but removed the ability to provide direct loans. The 2008 Farm Bill also expanded the types of RES technologies eligible for funding to include

hydroelectric and ocean energy. Further, the 2008 Farm Bill authorizes the Agency to provide grants specifically for energy audits (EA), renewable energy development assistance (REDA), and RES feasibility studies. The 2008 Farm Bill also changed the name of the program to the Rural Energy for America Program (REAP).

REAP's authority is continued in the Agricultural Act of 2014 (2014 Farm Bill), with several specific changes: (1) Removing RES feasibility study grants, (2) removing the ability to provide assistance for flexible fuel pumps, adding councils as defined in 16 U.S.C. 3451, to be an eligible applicant for EA and REDA grants, and (4) creating a three tier application process for RES and EEI projects.

REAP seeks to promote energy efficiency and renewable energy development for agricultural producers and rural small businesses by providing grants and guaranteed loans for eight different categories of renewable energy production (e.g., wind, solar, anaerobic digestion, hydro, and geothermal) as well as for EEI.

Eligible applicants for RES and EEI financial assistance are agricultural producers and rural small businesses. For EA and REDA grants, eligible entities are units of a state tribal or local government; land-grant colleges and universities, and other institution of higher education; rural electric cooperatives; councils, as defined in 16 U.S.C. 3451; public power entities; and instrumentalities of a state, tribal, or local government.

**Purpose of the Regulatory Action**

This final rule revises 7 CFR part 4280, subpart B to implement the provisions contained in the 2014 Farm Bill and addresses comments received on both the interim rule, published in the **Federal Register** on April 14, 2011, and the proposed rule, published in the **Federal Register** on April 12, 2013.

**Summary of the Major Changes**

For RES and EEI projects, the final rule implements a three-tier application process based on total project cost; reduces the technical reports requirements; removes pre-commercial technologies as eligible technologies; and modifies several scoring criteria for RES and EEI. For EA and REDA projects, the final rule removes the scoring criterion regarding contracting. The final rule also incorporates grant and guaranteed loan application deadline dates that allow the Agency to meet the statutory deadlines for funding the EA and REDA grants and RES and EEI grants of \$20,000 or less.

**Costs and Benefits**

For a typical fiscal year, the Agency estimates that approximately 1,393 REAP awards will be made as follows: 487 RES awards, 884 EEI awards, and 22 EA/REDA awards. Of the RES awards, the vast majority are expected to be associated with solar, followed by wind and biomass projects. The awardees are expected to be mostly businesses, including sole proprietors, with relatively few state, local, and tribal government entities.

The Regulatory Impact Analysis (RIA) completed for this final rule calculates a net costs savings of approximately \$10 million as the result of improvements in the implementation of the REAP program. The cost savings achieved by the rule are attributed to the decreased costs estimated for the changes in program implementation. In addition the reduction in burden meets the reporting requirements of the retrospective review report which provided a specific percentage reduction in application burden, specifically the time it takes to complete the narrative portion of the application, which was reduced from 40 hours in the baseline, down to 20 hours in the final rule, a 50 percent reduction.

**Executive Order 12866**

This final rule has been reviewed under Executive Order (EO) 12866 and has been determined to be economically significant by the Office of Management and Budget (OMB). The EO defines a "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this EO. The Agency conducted a benefit-cost analysis to fulfill the requirements of EO 12866.

**Executive Order 13563**

The agency has reviewed this regulation pursuant to EO 13563, issued on January 18, 2011 (76 FR 3281, January 21, 2011). EO 13563 is supplemental to and explicitly reaffirms

the principles, structures, and definitions governing regulatory review established in EO 12866. To the extent permitted by law, agencies are required by EO 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

The Agency identified REAP as one of the Department's periodic retrospective review of regulations under Executive Order 13563, and has proposed a tiered application approach that reduces applicant burden for technical reports and streamlines the narrative portion of the application. Notably, there is an estimated 20 percent reduction in the number of hours it takes to complete a technical report for those applications for projects with total project costs of more than \$80,000 to \$200,000; the elimination of a technical report for those applications for projects with total project costs of \$80,000 or less; and a 50 percent reduction in the number of hours it takes to complete the narrative portion of burden.

#### **Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, Rural Development generally 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 one year.

When such a statement is needed for a rule, section 205 of the UMRA generally requires Rural Development to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This 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**

REAP has been operating since 2005 under 7 CFR part 4280, subpart B, and through the issuance of various Notices of Funds Availability (NOFA), including several notices issued in response to Title IX of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill). Under this program, the Agency conducts a National Environmental Policy Act (NEPA) review for each application received. To date, no significant environmental impacts have been reported, and Findings of No Significant Impact (FONSI) have been issued for each approved application. Taken collectively, the applications show no potential for significant adverse cumulative effects.

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." Rural Development has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with NEPA of 1969, 42 U.S.C. 4321 *et. seq.*, an Environmental Impact Statement is not required. Grant applications will be reviewed individually to determine compliance with NEPA.

#### **Executive Order 12988, Civil Justice Reform**

This final rule has been reviewed under EO 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 the regulations of the Department of Agriculture's National Appeals Division (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.

#### **Executive Order 13132, Federalism**

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

#### **Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601-612) (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 or any other statute unless the Agency certifies that the rule will not have an economically significant impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

In compliance with the RFA, Rural Development has determined that this action, while mostly affecting small entities, will not have a significant economic impact on a substantial number of these small entities. Rural Development made this determination based on the fact that this regulation only impacts those who choose to participate in the program. Small entity applicants will not be affected to a greater extent than large entity applicants.

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

The regulatory impact analysis conducted for this final rule meets the requirements for EO 13211, which states that an agency undertaking regulatory actions related to energy supply, distribution, or use is to prepare a Statement of Energy Effects. This analysis finds that this rule will not have any adverse impacts on energy supply, distribution, or use.

#### **Executive Order 12372, Intergovernmental Review of Federal Programs**

This program is not subject to the provisions of EO 12372, which require intergovernmental consultation with state and local officials.

#### **Executive Order 13175, Consultation and Coordination With Indian Tribes**

This EO imposes requirements on Rural Development in the development

of regulatory policies that have tribal implications or preempt tribal laws. Rural Development has determined that this rule does not have a substantial direct effect on one or more Indian Tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and the Indian Tribes. Thus, this rule is not subject to the requirements of EO 13175.

However, in implementing changes to the program resulting from the 2008 Farm Bill, this program was included in the USDA Joint Agency Regional Consultations that consolidated the consultation efforts of 70 USDA rules from the 2008 Farm Bill. USDA Rural Development sent senior level agency staff to seven regional locations and engaged tribal leadership in each region to consult on a host of programmatic adjustments.

Upon completion of the consultation process, USDA Rural Development analyzed the feedback and incorporated input from the consultation into REAP. For example, with the intent to increase tribal participation in the program, the definition of a small business in this rule includes tribal business entities formed as Section 17 Corporations as determined by the Secretary of the Interior or other tribal business entities that have similar structures and relationships with their tribal governments as determined by USDA Rural Development.

#### **Programs Affected**

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

#### **Paperwork Reduction Act**

The information collection requirements contained in this final rule have been submitted to the Office of Management and Budget (OMB) for review and approval.

#### **E-Government Act Compliance**

Rural Development is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. The rule allows electronic submission of applications through grants.gov. The Rural Development Web site contains information on all of Rural Development's programs, including regulations, fillable forms, and factsheets.

#### **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, venture 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. The 2008 Farm Bill contains several sections under which Rural Development provides financial assistance for the production and use of biofuels. This authority is continued in the Agricultural Act of 2014 (2014 Farm Bill).

In response to the Farm Security and Rural Investment Act of 2002 (FSRIA), which established the Renewable Energy Systems and Energy Efficiency Improvements Program under Title IX, Section 9006, the Agency promulgated a rule (70 FR 41264, July 18, 2005) under 7 CFR part 4280, subpart B) a program for making grants, loan guarantees, and direct loans to farmers and ranchers (agricultural producers) or rural small businesses to purchase RES and make EEI. Renewable energy sources eligible for funding included bioenergy, anaerobic digesters, geothermal electric, direct geothermal, solar, hydrogen, and wind.

Section 9001 of the 2008 Farm Bill amended Title IX of the FSRIA. Under the 2008 Farm Bill and Section 9007 of the amended FSRIA, the Agency is authorized to continue providing to agricultural producers and rural small businesses loan guarantees and grants for the development and construction of RES and EEI projects. In addition to the current set of renewable energy projects eligible for funding, the 2008 Farm Bill expanded the program to include two new renewable energy technologies: hydroelectric and ocean energy. Further, the 2008 Farm Bill authorized the Agency to provide grants specifically for energy audits, renewable energy development assistance, and feasibility studies. This expanded program is referred to as REAP, which continues the Agency's assistance for the adoption of both RES and EEI through Federal Government loan guarantees and grants. During the promulgation of this final rule, the 2014 Farm Bill was enacted

and repealed the RES feasibility study component of REAP. This change has been incorporated into this final rule. In addition, the 2014 Farm Bill report language removed the ability to provide assistance for flexible fuel pumps, and the Bill added a provision to allow a council to be an eligible applicant for energy audit and renewable energy development assistance. Both of these changes have also been incorporated into this final rule. All comments regarding RES feasibility study grants and flexible fuel pumps will not be summarized or addressed. All references in the final rule to RES feasibility study grants and flexible fuel pumps have been removed.

After the 2008 Farm Bill, the Agency issued a series of **Federal Register** notices implementing the provisions in the 2008 Farm Bill for RES feasibility studies, energy audits, and renewable energy development assistance. For energy audits and renewable energy development assistance, these notices were published on March 11, 2009 (74 FR 10533), and May 27, 2010 (75 FR 29706).

On April 14, 2011 (76 FR 21110), the Agency published an interim final rule that established a consolidated REAP program by including each part of the program in a single subpart. Because the majority of the interim final rule was based on existing provisions that were at that time being implemented through the existing subpart for RES and EEI (7 CFR part 4280, subpart B) and the notices identified above, the Agency published the REAP regulation as an interim final rule, with the opportunity to comment.

On April 12, 2013 (78 FR 22044), the Agency published a proposed rule for REAP, which proposed a number of changes to the interim final rule.

The Agency requested comments on both the interim final rule and the proposed rule. All of the comments received are summarized in Section III of this preamble. Most of the proposed rule's provisions have been carried forward into subpart B of this final rule, although there have been several significant changes. A summary of major changes to the proposed rule are summarized below in Section II of this preamble.

#### **II. Summary of Changes to the Proposed Rule**

This section presents the major changes to the REAP April 12, 2013, proposed rule. Most of the changes were the result of the Agency's consideration of public comments on the proposed rule. As indicated above, the Agency is also making changes to the rule due to

statutory changes resulting from the enactment of the 2014 Farm Bill. Other changes, however, are being made even though the Agency did not receive comments on those provisions. The Agency is making these other changes as a result of the recent revocation of the USDA's 1971 Statement of Policy titled "Public Participation in Rulemaking," FR Doc. 2013-25321. This revocation restores to USDA the discretion to use notice-and-comment rulemaking procedures when appropriate. Rather than making these other changes in a separate rulemaking, the Agency has elected to include them in this final rule. Unless otherwise indicated, rule citations refer to those in the final rule.

#### A. Definitions (§ 4280.103)

The following definition was added to the final rule:

**Council.** The definition was added because the 2014 Farm Bill allows a council, as defined in 16 U.S.C. 3451, to be an eligible applicant for energy audit and renewable energy development assistance grants.

The following definitions were revised from what was published in the proposed rule:

**Agricultural Producer.** Clarified that the 50 percent of gross income must come from the products that are grown or raised.

**Annual Receipts.** Directly incorporates the definition found in Small Business Administration regulations.

**Anaerobic Digester Project.** Clarifies that the digester uses animal waste.

**Commercially Available.** The Agency added a second part to the definition such that a Renewable Energy System would be considered "commercially available" if the system has been certified by a recognized industry organization whose certification standards are acceptable to the Agency. In addition, the Agency clarified the definition to make clear that the provisions are applied equally to domestic and foreign systems.

**Complete Application.** Revised definition to encompass that an application must be complete enough for the Agency to determine technical merit, which is similar process to the existing rules methodology to determine technical merit.

**Departmental Regulations.** Removed 7 CFR part 3021, because the cross reference is no longer valid.

**Eligible Project Costs.** Reference REAP by name, instead of general term "program."

**Energy Assessment.** Added language to the definition for projects with total project costs of \$80,000 or less that an

individual or entity can conduct energy assessments and does not require the individual or entity to be "independent."

**Feasibility Study.** The term business was replaced with business operation, to clarify that it was not just a requirement for businesses but Ag producers as well.

**Instrumentality.** Removed the examples since the 2014 Farm Bill now includes a council as an eligible applicant.

**Matching Funds.** This definition was revised to clarify that matching funds are the additional funds required to complete the project that are required by 7 U.S.C. 8107, which are 75 percent of eligible project costs for grants and 25 percent of eligible project costs for guaranteed loans. Other funds provided that are in excess of the funds required by statute are not considered matching funds.

**Refurbished.** This definition was revised to add the requirement that refurbishment must take place in a "commercial" facility and that the refurbished equipment must come with a warranty that is approved by the Agency or its designee.

**Retrofitting.** The Agency made the definition more general by removing reference to renewable energy system and added a requirement that the retrofit does not affect the original warranty, if the warranty is still in existence.

**Renewable Energy System.** The definition is being modified in 7 CFR, part 4280 because the 2014 Farm Bill added the definition of "renewable energy systems" to the statute. The statutory definition of a "renewable energy system" is a system that produces a usable energy from a renewable energy source and may include distribution components necessary to move energy produced by such system to initial point of sale, but may not include a mechanism for dispensing energy at retail.

**Simple Payback.** A number of changes were made to this definition.

1. Replaced net income with earnings before interest, taxes, depreciation and amortization (EBITDA), which is financing measure of operating cash flow, based on data from the income statement.

2. Removed all tax credits, carbon credits, renewable energy credits, from the calculation.

3. Based on eligible project costs rather than total project costs.

4. For EEI projects and RES systems that reduce onsite energy use, calculation of historical energy used prior to the project implementation can

now be calculated on a 12, 24, 36, 48, or 60 month basis at the applicant's discretion, versus the proposed rule which required applicants to use a 36 months.

5. For projects that reduce energy use, added "or replace" to identify that projects that replace energy will use this method to determine simple payback and removed the ability to include revenue from byproducts produced by the energy system. Also those RES project that replace over 100 percent of the energy used by the applicant will use the actual average price paid for the energy replaced, and the projected revenue received from energy sold in a typical year.

**Small Business.** Added an additional option to qualify as a small business using average net income and net worth, and reorganized the definition.

The following definitions were in the proposed rule but were removed from the final rule:

**Blended Liquid Transportation Fuel.** The definition was required to define flexible fuel pumps and the 2014 Farm Bill report language repealed the ability of the REAP to provide assistance for flexible fuel pumps, therefore the Agency is removing the definition.

**Energy Analysis.** As a result of this deletion, conforming changes were made throughout rule.

**Flexible fuel pump.** The 2014 Farm Bill report language repealed the ability of the REAP to provide assistance for flexible fuel pumps, therefore the Agency is removing the definition.

#### B. General Applicant, Application, and Funding Provisions (§ 4280.110)

The Agency clarified that a grant application for EA and REDA can be submitted at any time.

#### C. Notifications (§ 4280.111)

The final rule clarifies that once an application is determined to be ineligible no further processing of the application will occur. The Agency also relabeled paragraph (c) to "Funding Determination" rather than "Disposition of applications."

#### D. Project Eligibility (§ 4280.113)

The Agency added a provision to identify conditions under which a subsequent EEI, that improves or replaces an EEI project previously funded under REAP, is eligible for funding.

Based on comments, for agricultural producers with operations in non-rural areas, the Agency removed the italicized text in the following: "the application can only be for renewable energy systems or energy efficiency

improvements on *integral* components of or that are directly related to the operation . . .” so that it now reads: “the application can only be for RES or EEI on components that are directly related to and their use and purpose is limited to the agricultural production operation . . .” (see § 4280.113(d)). This same change was also made for project eligibility for Energy Audits grants, Renewable Energy Development Assistance grants, and RES/EEI guaranteed loans.

The Agency added provisions identifying how a renewable energy system project, in which a residence is closely associated with and shares an energy metering device with the rural small business or agricultural operation, would be eligible for funding (see § 4280.113(e)).

#### *E. RES and EEI Grant Funding (§ 4280.114)*

In determining items that qualify as an eligible project cost, the Agency removed the phrase “integral component” so that an item is an eligible project cost if it is “directly related to and its use and purpose is limited to the RES or EEI.” (see § 4280.114(c)).

The Agency also identified that a second meter will be considered eligible project costs for those applicants whose projects involve residences (see § 4280.114(c)(6)).

Lastly, the Agency revised ineligible project costs (§ 4280.114(d)) in the proposed rule by rephrasing “guaranteeing of lease payments” to “lease payments” and removing reference to “guaranteeing loans made by other Federal agencies” which is not applicable to RES and EEI grants, but only to RES and EEI guaranteed loans.

#### *F. Determination of Technical Merit (§ 4280.116)*

Under the final rule, the process and criteria that the Agency will use in determining whether a project has technical merit has been established in a new section (see § 4280.116).

#### *G. Grant applications for RES and EEI Projects (§ 4280.117, § 4280.118, § 4280.119)*

The Agency clarified the time frames associated with determining if the applicant meets the definition of Rural Small Business for Annual receipts and number of employees, and with determining if the applicant meets the definition of Agricultural Producer for gross income (Annual receipts). This change applies to all three tiers of grant applications and to guaranteed loan applications.

The Agency removed references to Form AD 2106, but included language in the application that requests applicant to provide ethnicity, race, and gender information. This information is optional and is not required for a Complete Application. This change was also made to the energy audit and renewable energy development assistance grants.

The Agency added provisions to technical reports that were not in the proposed rule to describe how the technology meets Commercially Available definition, and to include simple payback calculations for the project.

The Agency added language to the final rule to indicate what documentation is required to receive points for commitment of funds. This same change was also made for Energy Audits grants and Renewable Energy Development Assistance grants.

#### *H. Scoring RES and EEI Grant Applications (§ 4280.120)*

Environmental benefits criterion was modified to detail how points are awarded if an applicant can document a positive effect on any of the three impact areas: Resource conservation, public health, and the environment.

The Agency modified the second score criterion, “Quantity of energy generated or saved per REAP dollar requested,” by reducing the points allocated to 10 points. Due to this point reduction, the Agency has added back the scoring criterion from the existing rule “Energy replaced, saved, or generated” and allocated a maximum of 15 points to this criterion.

“Quantity of energy generated or saved per REAP dollar requested” was further modified to use energy generated or saved over a 12 month period rather than 36 months that was required in the proposed rule, and the project will need to achieve 50,000 BTUs per REAP dollar requested rather than 25,000 to receive maximum point under this criterion.

Size of agricultural producer or rural small business was clarified to indicate that the calculation is made on the size of the applicant’s agricultural operation or business concern as applicable. This change conforms to language used in Small Business Administration (SBA) regulations for small business determination.

The Agency has revised the “readiness” criterion (now referred to as “Commitment of Funds”) to reflect a sliding scale for those applications that can show commitment of more than 50 percent matching funds and other funds.

Previous grantees and borrowers criterion was revised to increase points for applicants who have not received previous assistance.

Simple payback was revised to increase the maximum number of years for RES project payback by 5 years, raising it from 20 to 25.

Under the State Director and Administrator priority points, the Agency added three new categories for consideration in awarding points: (1) The applicant is a member of an unserved or under-served population, (2) furthers a Presidential initiative or a Secretary of Agriculture priority, and (3) the proposed project is located in an impoverished area, has experienced long-term population decline, or loss of employment. . . .

#### *I. Selecting RES and EEI Grant Applications for Award (§ 4280.121)*

Competition cycles for REAP applications were modified such that all RES/EEI grant applications, regardless of the amount of funding requested (which includes \$20,000 or less), will compete in up to two competition cycles. RES/EEI grant applications requesting \$20,000 or less will compete an additional three times for the \$20,000 or less set aside, for a total of up to 5 competitions. Guaranteed loan-only applications will compete periodically, provided that the Agency receives a sufficient number of applications in order to maintain a competitive awards process.

All competitions dates may be modified by a **Federal Register** Notice (see § 4280.121 for RES/EEI grants).

The Agency clarified that an application received after the application submittal deadline can be considered for funding in the subsequent fiscal year if the applicant remains interested in the grant. This same change was also made for Energy Audits grants and Renewable Energy Development Assistance grants.

The Agency relabeled paragraph (e) from “Disposition of ranked applications not funded” to “Handling of Ranked Applications Not Funded.”

#### *J. Awarding and Administering RES and EEI Grants (§ 4280.122)*

A change was made to indicate that commitments for matching funds and other funds are needed prior to closing the grant.

#### *K. Servicing RES and EEI Grants (§ 4280.123)*

Under programmatic changes the Agency revised the provision that requires prior approval (paragraph (b)(1)) to reflect that prior approval is

not required in cases where there is a decrease in project cost that does not have any negative affect on the long-term viability of the project. In these cases review and approval will be required prior to disbursement.

For transfer of ownership, the Agency added a requirement that the project is also operational.

For both RES and EEI reports, the Agency clarified that jobs reported, if any, are a direct result of the REAP funded project.

For EEI reports, the Agency removed reference to 36 months and refers to the time period as reported in the energy assessment or energy audit.

#### *L. Construction Planning and Performing Development (§ 4280.124)*

The Agency rephrased “unnecessary experience and bonding requirements” in the proposed rule to read “unnecessary experience or excessive bonding requirements” to better reflect Agency intent (see § 4280.124(a)(1)).

The final rule clarifies that any exception requested for surety must be in writing and will require Agency funding be disbursed after project is operational (see § 4280.124(a)(3)(v)).

The final rule eliminates the cross reference in the proposed rule to 7 CFR 1780.74 regarding contracts awarded prior to application and brought the applicable requirements into this section (see § 4280.124 (g)).

#### *M. Guaranteed Loan Funding (§ 4280.129)*

The Agency added provisions to allow refinancing in the final rule under certain conditions. The final rule also clarifies that eligible project costs include buildings and equipment acquisition when an existing renewable energy system is being financed with guaranteed loan funds.

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

The final rule incorporates a periodic competition for guaranteed loan-only applications, provided that the Agency receives a sufficient number of applications in order to maintain a competitive awards process.

The final rule clarifies that all guaranteed loan-only applications that do not meet the minimum score will be competed in a National competition at end of the fiscal year.

The Agency removed reference to Form AD 2106, but included language in the application that requests applicant to provide ethnicity, race, and gender information. This information is optional and is not required for a Complete Application.

#### *O. Application and Documentation (§ 4280.137)*

The final rule corrects the reference in paragraph (b)(2)(v) from “the applicant must submit an estimated appraisal” to “the lender must submit an estimated appraisal.”

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

The Agency changed quarterly competitions to periodic competitions in the final rule in order to improve access to capital and indicated that the final National competition would be the first business day of September. All competitions dates may be modified by a **Federal Register** Notice (see § 4280.139 for RES/EEI guaranteed loans).

The final rule relabels paragraph (c) from “Disposition of ranked applications not funded” to “Handling of Ranked Applications Not Funded.”

#### *Q. Technical Reports for Energy Efficiency Improvement Projects (Appendix A to Part 4280)*

The final rule requires energy audit or energy assessment to use actual energy consumed for the building and equipment being evaluated for 12, 24, 36, 48, or 60 months at the applicant’s discretion, versus all applicants being required to use 36 months. The technical report was also modified to require information for simple payback calculations to be submitted. Lastly, the Agency added requirements for an individual or entity to perform assessments if total project cost is \$80,000 or less.

#### *R. Technical Reports for Renewable Energy System (RES) Projects With Total Project Costs of Less Than \$200,000, but More Than \$80,000 (Appendix B to Part 4280)*

The Agency clarified what needs to be included in “Project description” and “Resource assessment.” The required information for simple payback calculations was clarified.

### **III. Summary of Comments and Responses**

The current REAP program was implemented through the interim final rule which was published in the **Federal Register** on April 14, 2011 (76 FR 21110), with a 60-day comment period that ended June 13, 2011. The proposed rule was published in the **Federal Register** on April 12, 2013 (78 FR 22044), with a 60-day comment period that ended June 11, 2013. Comments on the interim final rule were received from 32 commenters and

comments on the proposed rule were received from 37 commenters.

Combined, these commenters provided approximately 150 similar comments. Commenters included biorefinery owner/operators, community development groups, industry and trade associations, investment banking institutions, Rural Development personnel, and individuals. As a result of some of the comments, the Agency made changes in the rule. The Agency sincerely appreciates the time and effort of all commenters.

Responses to the comments on both the interim final rule and the proposed rule are discussed below. Comments made in response to requested comments found in the proposed rule are presented first, followed by comments on the interim final rule and the proposed rule grouped by category and rule section.

#### *Requested Comments—a. Application Threshold for Projects With Total Project Costs of No More Than \$200,000*

*Comment:* One commenter stated that larger thresholds skew to favor larger projects. According to the commenter, most agricultural producers that the commenter works with in southern Oregon are working on solar projects that are much less expensive, generally involving 5 kilowatt (kW), which can now be installed for less than \$5/watt, for cattle water or power production for remote locations. The commenter recommended that the threshold be reduced to \$100,000 or less.

*Response:* The proposed rule contains two thresholds—\$200,000 and \$80,000. The commenter recommended a threshold of \$100,000. The \$80,000 threshold is sufficient to address the commenter’s concern.

#### *Requested Comments—b. Less Documentation for Applications for Projects With Total Project Costs of No More Than \$80,000*

*Comment:* Numerous commenters agreed with the Agency’s decision to create a third category for projects totaling less than \$80,000. The commenters stated that the current application for small projects is burdensome at 40 to 50 pages in length, and dissuades farmers and rural small businesses interested in small wind technologies from applying to the program. The commenters suggested developing a template that meets all the statutory requirements and one commenter submitted an alternative application for consideration. Many of the commenters endorsed the proposal to simplify the application process for projects in the \$80,000 to \$200,000 tier,

as it would presumably increase small wind energy participation in the REAP program.

One commenter, in contrast, did not support the three-tiered grant application system, stating that three-tiers lead to additional complexity for applicants and Agency staff. This commenter recommended that the Agency use a two-tiered system, incorporating the simplified application process outlined for projects under \$80,000 for all projects \$200,000 or less.

*Response:* The Agency thanks the commenters supporting the proposed three-tier application system. While the Agency agrees with the one commenter that a two-tier system would be simpler, the Agency finds that a three-tier system achieves a better balance in the information being requested to account for the differences in the level of technologies; that a two-tier system would either result in obtaining more information than is necessary for the smallest projects or not obtaining enough information on the larger projects.

With regard to the suggestion by one commenter to develop a template for applications for \$80,000 or less, the Agency agrees that this would be useful and intends to pursue the development of such a template.

#### *Requested Comments—c. Definition of Small Business*

The Agency received comments on the definition of small business in both the interim final rule and the proposed rule. Both sets of comments are addressed below.

*Comment:* In commenting on the interim final rule, a number of commenters were concerned that the restrictions in the SBA standards for defining a small business were unduly limiting retailers, especially those with multiple facilities, from participating in REAP. The commenters were seeking, in general, either to eliminate the use of SBA size standard for determining REAP eligibility or to apply the SBA size standard at the individual business concern level rather than at the entire entity level, which includes accounting for affiliates.

Four commenters stated that an obstacle to using REAP that hits at the heart of rural America are the SBA size requirements. These requirements are based on average annual profits and/or number of employees, which prevent interested businesses from using this program. One commenter stated numerous farm cooperatives are unable to take advantage of REAP because they are owned by a parent company, have subsidiaries or affiliates at other

locations, and do not qualify for the program because they come under the umbrella of a much larger entity, exceeding SBA eligibility requirements. The commenter encouraged USDA to allow these types of businesses to be judged as a stand-alone company when determining their eligibility based on SBA standards.

Another commenter urged the Agency to use an alternate consideration for small business that would allow a broader interpretation of the term “small business” by allowing each site to be treated as its own entity rather than requiring small business status to be determined at the entire-entity level. According to the commenter, multi-site locations rarely qualify as a small business.

*Response:* The Agency has determined that defining “small business” in accordance with how the SBA defines “small business” is not only reasonable, but helps provide consistency within the Federal Government. That being said, even SBA has several definitions for “small business” depending on the specific SBA program. In evaluating the various SBA programs, the Agency has decided to use the small business sized standards used by the SBA financial assistance programs, commonly referred to as the 7A and the SBA 504 programs, as found in 13 CFR 121.301(a) and (b).

As noted in the comment, commenters were seeking, in general, either to remove the cap or to apply the cap at the individual business concern level rather than at the entire entity level, which includes accounting for affiliates. The Agency disagrees with both suggestions, primarily because the Agency has determined that it would be inappropriate to adjust how a business is determined to be a small business relative to the restrictions found in these SBA definitions; that is, the Agency defers to SBA’s expertise and years of experience in the specific metrics to use to define a “small business.”

Further, with regard specifically to the recommendation to apply the income limitation to the individual business concern only, the Agency is concerned that either change would open the door for huge companies to obtain assistance by forming a secondary company that could apply for and receive REAP assistance. These companies would have resources not available to other small businesses and potentially have an unfair advantage when putting together an application for assistance.

With regard to removing the income limitation altogether, the statutory authority for the program requires the

Agency to consider the applicant’s small business status as an eligibility criterion and the Agency cannot do otherwise. Thus, the Agency has not adopted this suggestion in the final rule.

*Comment:* In commenting on the interim final rule, two commenters recommended revising the definition of small business to follow an Agency guideline or the broad guideline used by SBA, which only looks at net income and/or net worth, or some other standard guideline. According to the commenters, the small business size standards for each industry are so different that it makes it difficult to determine eligibility. Both commenters stated that, if there were one or two numbers to review in every case, it would be much easier and the Agency would be able to help more businesses.

*Response:* For the reasons stated in the responses to the previous two comments, the Agency has decided to use the small business sized standards used by the SBA financial assistance programs, commonly referred to as the 7A and the SBA 504 programs, as found in 13 CFR 121.301(a) and (b).

With regard to the suggestion to look at net income and/or net worth in determining the size of the applicant, the Agency agrees that this is appropriate. By incorporating reference to 13 CFR 121.301(b), the Agency is adding the tangible net worth and average net income of the business concern and its affiliates as an alternative set of metrics for determining whether the applicant is a small business.

*Comment:* One commenter suggested removing the limit on the size of the applicant all together given the intent of the program is to encourage energy savings and generation of renewable energy. According to the commenter, the SBA size standards are one of the most burdensome and inconsistent areas within REAP, particularly the determination of parent subsidiary and affiliate status and aggregation of this income has been a challenge. The commenter recommended that consideration be given to continue using SBA size standards thresholds as a cap for each business type, but not necessarily using the same process for defining the threshold.

As an alternative, the commenter recommended using only the income of the applicant entity when determining eligibility. The commenter also asked whether the small business component could be addressed only in scoring rather than in eligibility determination. The commenter pointed that by doing this it would open up the eligibility to any for profit business and would

simplify the application process (e.g., no need to provide previous year's tax returns or look up North American Industry Classification System (NAICS) code).

*Response:* While the Agency acknowledges the potential benefits of the commenter's suggestion to remove the size restriction on the applicant, as noted in a previous response, the statutory authority for the program requires the Agency to consider the applicant's small business status as an eligibility criterion and the Agency cannot do otherwise.

In addition, the Agency does not agree with the commenter's alternative to use only the applicant's income for the reasons cited in a previous response and therefore has not adopted the commenter's suggestion in the final rule.

Finally, because it is a statutory requirement that a business applicant be a "small business," the Agency cannot accommodate the commenter's suggestion to address the size of the business as a scoring criterion only. The Agency notes that the final rule, as found in the proposed rule, does award points based on business size relative to the SBA small business size standards.

*Requested Comments—d. Maximum Grant Size for Renewable Energy System Feasibility Studies*

The Agency received comments regarding the appropriate size for feasibility study grants, however the 2014 Farm Bill repealed the ability of REAP to make grants for feasibility studies, therefore the Agency will not summarize or address those comments.

*Requested Comments—e. Using Average Annual Gallons of Renewable Fuel To Award Points for Flexible Fuel Pumps*

The Agency received comments regarding the average annual gallons of renewable fuel for flexible fuel pumps, however the 2014 Farm Bill repealed the ability of the REAP to provide assistance for flexible fuel pumps, therefore the Agency will not summarize or address those comments.

*Requested Comments—f. Using a Minimum 25 Percent Tangible Balance Sheet Equity in Lieu of Cash Equity Requirement*

*Comment:* Two commenters expressed opposition to replacing the current cash equity requirement with a minimum of 25 percent tangible balance sheet equity (or a maximum debt-to-tangible net worth ratio of 3:1).

According to one commenter, the term "net tangible balance sheet equity," which is used in the Business

and Industry Guaranteed Loan (B&I) program, is not a typical lender used term and calculating this figure is confusing and does not provide any real useful information to the lender or the Agency. The present REAP rule allows the fair market value of equity to be used in the calculation of the equity requirements. If farmers are going to use REAP, they are going to meet the equity requirement by using current assets and their values as opposed to cash injection. The term "land rich and cash poor" applies to most farming operations at this time. On-farm renewable energy project applications will be reduced to miniscule amounts if we use the B&I equity requirement. If the future of the REAP program is the guaranteed loan, then the Agency should not be making it more difficult to potential applicants to meet the REAP requirements and that is precisely what such a change would do.

The other commenter stated the use of tangible balance sheet equity (TBSE) appears to be a source of confusion for some existing B&I lenders and borrowers and extending the requirement to REAP would only make this worse. The B&I program requires TBSE when the loan is closed. Given REAP closings are after projects are in service, a TBSE requirement could create significant challenges as the balance sheet will likely see equity changes (cash) used to fund the construction phase. The current process of capping projects at 75 percent and using cash injection into the project works well. Also, agricultural producers typically do not provide Generally Accepted Accounting Principles (GAAP)-based financials as are typical to business and required in the B&I program. This requirement would be an additional burden. The commenter pointed out that REAP loans are generally secured well as there is new equipment with no existing liens, and that RES projects typically have takeoff contracts or power purchase agreement's to ensure cash flow, plus added security with the use of commercially available technology. Given these circumstances, the commenter is unsure as to what, if any, benefit using TBSE would bring to the program. Unless the current cash requirement is not working or the default rate has been unfavorable, the commenter recommended leaving the cash requirement as is. The commenter also noted that the cash equity requirement works with the combination grant/loan application where the grant is used for the cash injection.

*Response:* The Agency agrees with the commenters. While a goal of the Agency is for REAP to be as consistent with the B&I program as possible, REAP's agricultural producer and rural small business constituents are poorly served by the use of the term "net tangible balance sheet equity" and it will not be used. The final rule requires equity to be cash equity.

*Requested Comments—g. Options for Increasing Use of REAP Guaranteed Loans*

*Comment:* One commenter recommended that the Agency allow for waivers of the 20 percent personal guarantee when mitigation factors are in place in order to encourage greater use of REAP guaranteed loans.

*Response:* The Agency proposed to revise REAP to follow the B&I program's provisions for personal and corporate guarantees, except as they apply to passive investors. The B&I provisions allow the Agency to waive the 20 percent requirement if the lender can document to the Agency's satisfaction that collateral, equity, cash flow, and profitability indicate an above-average ability to repay the loan (7 CFR 4279.149(a)). By doing so, the commenter's recommendation has been addressed and the final rule maintains the incorporation of these B&I provisions.

*Comment:* One commenter recommended removing the SBA threshold all together and mimic the B&I program eligibility.

*Response:* The Agency does not agree with the commenter's suggestion to follow the B&I program in lieu of the SBA threshold. The B&I program is not specific to small businesses. Aligning REAP with how the SBA defines "small business" rather than how the B&I program determines applicant eligibility is more appropriate. Further, aligning REAP with the B&I program would be statutorily inconsistent with the REAP requirement to provide assistance to small businesses. For these reasons, the Agency has not adopted the commenter's suggestion in the final rule.

*Comment:* One commenter recommended allowing refinancing of existing renewable energy projects, which is frequently inquired about. The commenter recommended that the Agency implement provisions that are equal to or less restrictive than those found in the current B&I program.

*Response:* The Agency agrees with the commenter that allowing refinancing of existing projects would encourage the use of REAP loan guarantees and has added provisions to allow such

refinancing in the final rule. These provisions, however, require certain conditions be met. First, the existing project to be refinanced must be part of an application for a new project; that is, an application that proposes only to refinance an existing project is not eligible. Second, the existing project being refinanced must be a project that would otherwise be eligible under REAP. Third, the cost of the refinancing must be less than 50 percent of the eligible project costs of the application. In applying these provisions, the existing debt may be either current debt with the lender applying for the guarantee or debt from another lender.

*Comment:* One commenter recommended allowing loan note guarantees to be issued up-front prior to complete system being installed and tested.

*Response:* For the reasons discussed in response to directed question i below, the Agency is not incorporating this recommendation in the final rule.

*Comment:* One commenter indicated quarterly competition is positive improvement from the current REAP program, but monthly funding cycles is better than quarterly.

*Response:* The Agency agrees that shorter periods for competing guaranteed loan applications will provide the best service to those applying for such applications. The Agency, therefore, has decided to compete guaranteed loan-only applications on a periodic basis, provided that the Agency receives a sufficient number of applications in order to maintain a competitive awards process, and has included this provision in the final rule.

*Requested Comments—h. Frequency for Competing Guaranteed Loan-Only Applications*

*Comment:* One commenter stated that, while quarterly competitions are a positive proposal to the existing regulation, allowing projects to compete on a monthly basis will be more consistent with the B&I program. The commenter also stated that continuous funding would also mirror SBA programs, which lenders are familiar with.

*Response:* As noted in the response to the previous comment, the Agency agrees that shorter periods for competing guaranteed loan applications will provide the best service to those applying for such applications and, therefore, has incorporated periodic competitions for guaranteed loan-only applications in the final rule, provided that the Agency receives a sufficient

number of applications in order to maintain a competitive awards process.

*Requested Comments—i. Issuance of REAP Loan Note Guarantee Prior to Construction for Technologies That Demonstrate Lower Risk to the Government*

*Comment:* One commenter recommended allowing loan note guarantees to be issued up-front prior to complete system being installed and tested in order to encourage participation in the REAP loan guaranteed portion of the program.

*Response:* The Agency agrees with the commenter that issuing the loan note guarantee up-front prior to the complete system being installed and tested would encourage participation in the program. However, no substantive suggestions were provided by the commenter on how risk to the program could be mitigated. Further, the similar B&I program does not issue loan note guarantees up-front for energy projects primarily because of the inherent increased risk with doing so. Therefore, the Agency has decided not to allow the issuing of loan guarantees up-front under REAP.

*Requested Comments—j. Development of Multi-Farm, Community Digester Projects Under the Rule*

*Comment:* One commenter stated that a community digester may not qualify given the SBA size determination method if all entities incomes are aggregated. According to the commenter, looking at only the income or projected income or employees of newly formed entities may allow this type of project to be eligible.

The commenter also suggested that the Agency consider modifying the Administrator points to encourage community-based renewable or energy efficiency projects with justification being that more people will benefit with project funding.

*Response:* The Agency agrees with the commenter that more community digesters would qualify as eligible by not aggregating all of the entities' incomes. However, for the reasons stated earlier in a response concerning this issue, the Agency had determined that consistency with the application of SBA definitions of small business is important and that it is important to look at the financial position of all entities associated with a project. Therefore, the Agency has not revised the rule to incorporate the commenter's suggestion.

With regard to the commenter's suggestion to modify how Administrator priority points are awarded, the Agency

is not persuaded that funding a single, large community-based project necessarily benefits more people than funding an equivalent number of smaller projects. Thus, the Agency has not revised the rule in response to this suggestion.

*Requested Comments—k. Subcategorization of Energy Efficiency Improvements for Purposes of Determining Under-Representation When Awarding State Director or Administrator Priority Points and Whether Historical Data or the Current Pool of Applications Should Be Used in Determining Under-Representation.*

*Comment:* One commenter did not support subdividing EEI projects to award under-represented project points. According to the commenter, this would lead to more political influenced awards from year-to-year versus supporting the true goal of energy savings, which these projects currently promote. According to the commenter, penalizing projects types that have formerly been completed also penalizes the applicant that was not an early innovator or just learned about the program, but still has a project that achieves energy savings. The commenter claims that the Agency's credibility with renewable energy technology awards has been hurt because grant writers/vendors do not know from year to year if their applications will be competitive as these priority points for under-represented technologies can be critical for renewable energy projects to receive funding.

With regard to the second part of the question, the commenter stated that, while using historical data is preferable over considering the annual pool of applications, allowing states to award points to encourage growth specific to their state is the preferred method.

*Response:* In the absence of input from other commenters on supporting a subdivision of EEI projects, the Agency has elected not to subdivide EEI projects for the purposes of determining whether a specific type of EEI project is under-represented when awarding discretionary points.

The Agency is not subdividing EEI projects for the purposes of determining under-represented technologies, therefore, the agency did not respond to the second part of the comment (historical versus pool of applications for the year) because it is not applicable.

*General*

*Support for Program*

*Comment:* Two commenters expressed general support for the

program, with one commenter stating that these programs will help jumpstart economic growth in alternative sectors in the United States.

*Response:* The Agency thanks the commenters for their support.

#### Consolidation of Rule

*Comment:* One commenter stated that consolidating each part of the program into a single subpart should be helpful in enhancing the REAP program's effectiveness in fostering the development of more anaerobic digesters.

*Response:* The Agency agrees that consolidating each part of the REAP program into a single subpart enhances the Agency's effectiveness in implementing REAP, to the benefit of all eligible technologies, including anaerobic digesters.

*Comment:* Two commenters expressed strong support for REAP from the dairy farmer perspective. One of the commenters stated that dairy farmers have a great opportunity to take advantage of multiple USDA programs to develop and construct anaerobic digester systems. The commenter appreciates the Secretary's commitment to these efforts as put forth in the dairy sustainability Memorandum of Understanding signed in late 2009. For example, dairy farmers may be able to utilize Environmental Quality Incentives Program (EQIP) through USDA's Natural Resource Conservation Service (NRCS) with REAP to develop an anaerobic digester system. The commenter recommended continuing to work to make certain these opportunities are developed and understood throughout the nation.

The commenter also supported the comments submitted by the Innovation Center for U.S. Dairy, especially the Center's recommendations for modifying the personal loan guarantee language could allow for a number of dairy farmers to secure the necessary finances to utilize REAP for anaerobic digester systems.

The other commenter expressed belief that REAP is critical for our nation's energy future and that opportunities abound for not only realizing the energy efficiencies on the farm, but also for dairy farmers to become producers of renewable energy.

*Response:* The Agency thanks the commenters for supporting REAP. Agency officials collaborate closely with REAP applicants via its state offices through an array of supporting entities; such as the Natural Resource Conservation Service (NRCS), the Farm Service Agency (FSA), and the Forest Service (FS), state, and private

stakeholders; to leverage program funds to their maximum impact upon national and departmental priorities.

The Innovation Center for U.S. Dairy did not submit comments on the interim or proposed rule, so the Agency was unable to determine what the commenter was referring to beyond the comment on personal loan guarantee. The Agency notes that among the changes implemented by this rule is the incorporation of the personal and corporate guarantee requirements of the B&I program.

#### Rebate Program

*Comment:* In commenting on the interim final rule, one commenter stated that there should be a rebate program for micro wind and solar in order to facilitate greater use of the program by these technologies.

*Response:* The statutory authority of REAP requires the Agency to implement grants and loan guarantees. As such, the Agency is not authorized to use rebates in implementing REAP. In lieu of being able to implement a rebate program, the Agency is implementing a simplified application process for applications for projects with total project costs of \$80,000 or less where funds are disbursed at project completion. This streamlined application process achieves many of the burden reductions that could be achieved under a direct rebate program.

#### EO 12372 Intergovernmental Review

*Comment:* One commenter noted that the preamble to the interim final rule states that intergovernmental consultation results are not reported because they are "not required of this program." The commenter stated that he understands that certain field offices insist that the U.S. Fish and Wildlife Service be consulted on all wind projects, regardless of their size, following a memo from Rural Development in Washington. According to the commenter, for fiscal year 2011 this resulted in a severely compressed application deadline and dissuaded a number of qualified applicants. The commenter recommended that this situation be clarified, and that all wind projects of 100 kW, as a minimum, and under be allowed to proceed without such consultation. The commenter's preference would be exclusion for single turbine projects with heights up to 200 feet (ft).

*Response:* The consultations referred to by the commenter are in connection with the NEPA and not with EO 12372, Intergovernmental Review. The Agency consultations with U.S. Fish and Wildlife Service regarding proposed

project installations are not governed by EO 12372, but are instead governed by NEPA and Agency environmental regulations published in 7 CFR 1940, part G. Projects must comply with all environmental requirements; including Federal, state, and local requirements. All applicants must comply with the environmental requirements applicable to their project, including having the environmental review completed prior to approval of the project. Funding a grant or providing a loan guarantee is a Federal action requiring compliance with the NEPA. NEPA clearance must be done before the Agency obligates money, versus before application, so NEPA requirements should not significantly impact the time needed to submit an application.

#### Demonstrated Financial Need

*Comment:* Four commenters supported the removal of the demonstrated financial need requirement. One commenter stated that the need to demonstrate financial need was one of the most onerous requirements of the program and that it is not called for in the current statute, is burdensome, and a significant obstacle to participation on very small projects. The other two commenters stated that the requirement was undefined and difficult to prove. Other commenters stated that the change should remain in the final regulation.

*Response:* The Agency thanks the commenters for their support. The final rule does not contain a "demonstrated financial need" requirement. Further Congress evidenced its intent that "demonstrated financial need" not be shown when the 2008 Farm Bill removed it as a requirement for this program.

#### Funded Technologies

*Comment:* Numerous commenters stated the 2002 Farm Bill and 2008 Farm Bill specifically sought to promote renewable energy development for agricultural producers and rural small businesses. The 2008 Farm Bill set aside 20 percent of REAP funds for small business- and farm-scale renewable energy technologies for grants of \$20,000 or less. The commenters believe that the lengthy project cycles for small wind, burdensome REAP paperwork, and application process and lower success rates for small wind applications have resulted in increasingly poor program participation rates by small wind retailers.

During fiscal years 2009 through 2012, the average funding success rate across all REAP technologies was 67 percent, which resulted in 6,605 funded

projects out of 9,856 requests. Yet, during that same 4-year period, the average funding success rate for wind was 40 percent, which resulted in 376 funded projects out of 942 total requests. The percentage of REAP awards between fiscal years 2009 through 2021 for wind projects was just 6 percent. Agency data indicate that the low amount funded for wind projects has been even lower in recent years. The commenters suggested the numbers indicate that the REAP program, including the application process, is not accessible for farmers and small businesses interested in wind generation and there is a programmatic bias against small wind projects.

*Response:* While the Agency agrees with the figures presented by the commenters, the Agency disagrees that the program is not accessible to farmers and small businesses interested in wind generation. The Agency has made and is making modifications to the program to ensure all technologies, including wind, have an ability to compete for funding, which include:

- Scoring adjustment in simple payback awards full points at a 10-year payback period rather than a 4-year payback period. This increase in the payback period to receive full points has helped certain renewable energy system projects, including small wind projects.

- To the extent that any one RES technology is unrepresented or under-represented in REAP awards, the program allows State Directors and the Administrator to award discretionary points to such projects. In fiscal year 2012 and fiscal year 2013, these discretionary points were awarded to wind projects and resulted in a higher percentage being funded. In fiscal year 2011, only 19 percent of the wind applications received were funded, but in fiscal year 2012 and fiscal year 2013 45 percent and 56 percent, respectively, of the wind applications received were funded.

#### *Multi-Farm Anaerobic Digester Projects*

*Comment:* In commenting on the interim final rule, one commenter recommended that a separate procedure be provided for projects involving multiple farms. The commenter provided a detailed separate procedure for providing an alternative combination grant and loan procedures for multi-farm digester projects, which would differ from the current combination grant and guaranteed loan process, as follows:

- The grant portion should be available in the full amount of up to 25 percent of total costs of the activity, as authorized by REAP.

- The loan guarantee portion should be authorized for up to 75 percent of eligible project costs, less the amount of a grant, when:

- (1) At least 15 percent of eligible project costs is committed as private equity, and

- (2) A minimum 10-year contract has been executed for the end-use of the fuel.

- The loan guarantee should also be available to support restructuring of loan amortization.

- A project developer should be able to apply for a combined grant and loan guarantee on a rolling basis, or as soon as concept design and business plan are completed.

- Project review should not be based on competitive scoring, but would instead be expedited and measured against a set of fixed criteria.

- “Hybrid” project funding would be simultaneously available in the full amount offered by any separate program, whether USDA or Department of Energy (DOE) or other, and would not reduce the availability of the REAP grant.

- An interim procedure should be devised for “shovel ready” projects, to phase in their financing and construction over 2 years, beginning this summer. Some funding should be allocated from the fiscal year 2011 funds to finance the initiation of construction in fiscal year 2011 and a commitment of fiscal year 2012 funding be provided to finance the continuation and completion of construction next year. The current hard June 15 deadline for fiscal year 2011 should be modified to allow the submission of applications for the filing of interim applications under this new procedure.

- In the alternative, if a combination of full, 25 percent funding and a revised loan guarantee is to be made available for multi-digester projects under a competitive scoring procedure, the current hard June 15 deadline needs to be modified to enable submission of applications for funding in fiscal year 2011.

The commenter concluded by stating that, with greater, targeted funding and improved loan financing flexibility for these types of projects, the program’s incentive value may be greatly leveraged so as to reach more farms and more sectors of the renewable energy marketplace.

*Response:* The Agency points out that multi-farm anaerobic (community) digester projects are eligible projects under the current process and disagrees with the commenter that a separate award procedure is needed for providing a combination grant and loan

for multi-farm anaerobic digesters because the current award process is sufficient and allows such facilities to compete on an equitable basis with all other technologies. The Agency has implemented periodic guaranteed loan-only competitions in the rule to improve access to capital. Furthermore, to fully implement the recommendation made by the commenter would require the Agency to set aside funds specifically for multi-farm digesters. This is something that the Agency cannot do without specific statutory authority, which the Agency does not currently have. Finally, the Agency works to sustain a diverse portfolio of RES and EEI projects across every state. To develop a procedure specific to one technology would be counter to this goal for the program.

*Comment:* In commenting on the interim final rule, a number of commenters supported increased funding for multi-farm digesters. Some simply requested that the interim final rule be amended to allow multi-farm digester projects to be funded in an amount equal to a full 25 percent of project costs as authorized by REAP. According to one of the commenters, the up-front funding cap of \$500,000 per digester for projects combining a loan guarantee with a grant is simply insufficient to drive the investment for a project of this scale, whereas funding of 25 percent of project costs approaches the necessary amount. Therefore, the commenter recommended changing the rule to allow this amount of funding.

Other commenters echoed similar concern and recommendations, explaining that the completion of the projects hinge largely on whether REAP funding can be made available at a level in the amount of 25 percent of project costs, or substantially more than the \$750,000 currently authorized by the REAP funding rule and thus the cap of \$750,000 must be raised, but would still need to conform to the 25 percent of project costs statutory limitation.

The commenters as a whole stressed the potential benefits of these changes to facilitate multi-farm digester projects. One of commenters noted that these projects take advantage of the economies of scale involved, where the only limitation on the number of farms that may be involved in this type of project is proximity to the host digester site and the associated costs of transporting the farm wastes and returned nutrient spread and bedding byproduct.

Another commenter noted that there are challenges in making digester technology cost effective for single, small farm operations and that it is hard

to envision broad-based application of single digester equipment on smaller dairy operations as are typically found in the eastern United States. This commenter stated that the community digester model provides a workable solution to this challenge by allowing multiple producers to supply their wastes collectively to a single, larger scale operation.

Still other commenters provided examples of projects currently being considered that would provide renewable natural gas as a substitute for #6 and #2 fuel oil in a co-generation plants at universities and extensive discussion of the potential overall benefits of the projects to the universities and local farming operations.

*Response:* As implemented in 2011, REAP has two maximum funding levels: a \$500,000 limit for any one renewable energy project and a \$750,000 limit to any one entity (for all projects funded under REAP). With regard to combined funding requests (those requests seeking both a grant and a loan guarantee) for RES, the maximum loan amount is \$25 million and the maximum grant amount is \$500,000. While the Agency acknowledges that certain projects, such as multi-farm digesters, may have significant funding requirements, the Agency seeks a program that not only supports a diversity of technologies, but provides funds to a large number of projects in all states to ensure a national-level program. Removing maximum funding levels would work counter to both of those goals (e.g., very large projects could take a significant portion of the limited funds available thereby reducing the number of projects that could otherwise have been funded and in turn reduce the diversity of projects). Further, multi-farm projects are not prohibited from seeking a combined funding request, as long as the grant portion does not exceed \$500,000. For these reasons, the Agency has retained these levels in the final rule.

#### *Project Eligibility*

##### Pre-Commercial Technology/ Commercially Available Definition

Two commenters expressed concern about removing pre-commercial technology for the rule.

One commenter stated that the rationale behind the removal of pre-commercial technology was difficult to understand. The stated reason is to avoid overlap with the Biorefinery Assistance guaranteed loan program. The Biorefinery Assistance program appears to focus primarily on biofuels,

which presumably encompasses only a subset of projects that apply for REAP funding. If the Agency is seeking to avoid overlap with the Biorefinery Assistance program, it appears that there are more efficient and precise mechanisms, such as explicitly stating that biorefinery projects receiving loans from the Biorefinery Assistance program would be ineligible.

In pointing to the definition of pre-commercial technology (Technology that has emerged through the research and development process and has technical and economic potential for commercial application, but is not yet commercially available), the commenter pointed out that the definition is clearly broader than biorefinery projects, and making this category ineligible affects project types outside of what would also be relevant for the Biorefinery Assistance program.

As proposed, only commercially available technologies would be available for funding. The definition for commercially available (from the same document) begins with “A system that has a proven operating history specific to the proposed application” and contains other requirements such as “an established warranty exists for parts, labor, and performance.” While the definition for pre-commercial is fairly broad, the requirements for a technology to be considered “commercially available” are relatively restrictive. If the proposed rule change is accepted, then several new (but beyond pre-commercial) technologies could conceivably be made ineligible. Under a strict reading of the current definition of commercially available, products coming onto the market, such as an innovative wind turbine design or a new biodigester system, would be ineligible for REAP funding.

There may be an argument for removing pre-commercial technology from eligibility to ensure participating projects are likely to succeed, but the given rationale appears incongruent with the potential consequences.

The second commenter opposed eliminating the pre-commercial available technology from the rule because many projects do not qualify for the Biorefinery Assistance program and the removal will leave a void in the Agency’s funding spectrum. This commenter stated that, if the Agency does their due diligence in the technical reviews to ensure sound projects are funded, the program can continue to foster innovative energy improvement and renewable energy projects.

In contrast to these two commenters, numerous commenters supported the removal of pre-commercial technologies

as eligible projects from the REAP program and, at the same time, recommended that the Agency strengthen the definition of “commercially available.” Without the qualified examination of documentation supporting the claim of commercial availability by an organization such as National Renewable Energy Laboratory (NREL), the broad language (one commenter specifically identified “operating history of 1 year, established design and installation procedures, professional service providers’ familiarity with the system”) risks the reputation of the program by inviting the entry of questionable wind energy systems into REAP.

Commenters strongly recommended that the Agency require safety and performance standards certification to either American Wind Energy Association (AWEA) 9.1–2009 (for turbines >200m<sup>2</sup> rotor area, ~ 60 kW) or International Electrotechnical Commission (IEC) 61400–12–1 and IEC 61400–11 (2005 or future versions) by the Small Wind Certification Council, or other accredited certification body, for qualification as “commercially available.” One of the commenters specifically recommended that the Agency include in the definition of “commercially available” certification standards for all RES from an accredited certification body.

*Response:* As discussed below, the Agency is not including pre-commercial technologies as eligible for REAP funding in the final rule and has revised the definition of “commercially available.”

With regard to the exclusion of pre-commercial technologies, the Agency acknowledges that the Agency’s rationale presented in the preamble was incomplete. The Agency also acknowledges that eliminating the overlap with the Section 9003 program can be handled in several ways, as pointed out by the commenters. However, the Agency is concerned that including pre-commercial technologies within REAP continues to expose the Agency and taxpayer dollars to the risks associated with financing unproven technologies that do not meet the commercially available definition. Further, with the streamlining of applications, the Agency will be receiving less information to make technical merit determinations. To create another set of application requirements increases the complexity of the program at a time when the Agency is making a concerted effort to simplify it. Lastly, with regards conducting “due diligence,” the Agency is concerned that due diligence may be

insufficient to overcome the potential risks inherent with pre-commercial technologies, such as whether the technology can be successfully scaled-up to a commercial level.

Several commenters, in supporting the removal of pre-commercial technologies, recommended that the Agency strengthen the definition of “commercially available” by requiring review of applications by such entities as the National Renewable Energy Laboratory (NREL) and/or requiring certification of projects as being commercially available by an appropriate industry body or meeting certain industry standards. The Agency has and will continue to work with NREL and other recognized industry experts, as needed.

As described below, the Agency has revised the definition of “commercially available” by requiring the system have:

- “Proven performance data” in addition to a “proven operating history” and that there is at least one year of data demonstrating both the performance data and operating history; and
- An existing established warranty that is valid in the United States.

In addition, the Agency is adding the option of demonstrating that a system can be determined “commercially available” if it has been certified by a recognized industry organization whose certification standards are acceptable to the Agency. The Agency also revised the definition to clarify that the requirements apply equally to both domestic and foreign systems.

Finally, with regard to the suggestion that the Agency explicitly state that biorefinery projects receiving loans from the Biorefinery Assistance program would be ineligible for REAP, the Agency agrees with the commenter that this helps delineate the two programs. The Agency intends to address this suggestion in the Biorefinery Assistance program final rule.

In sum, the changes made in the final rule in response to this set of comments strengthen, clarify, and increase flexibility in demonstrating that a system is “commercially available.”

#### *Definitions (§ 4280.103)*

##### Anaerobic Digester Product

*Comment:* One commenter recommended that the underlined text be added to the definition: “Anaerobic digester project. A renewable energy system that uses animal waste and other organic substrates, via anaerobic digestion, to produce biomethane that is used to produce thermal or electrical energy or converted to a compressed gaseous or liquid state for direct use or

for injection into natural gas transmission and distribution systems.” According to the commenter, this change will increase the demand for renewable biogas produced by anaerobic digesters. It would allow anaerobic digester projects that inject renewable biogas into the natural gas, in addition to or instead of using the gas on-site. Anaerobic biogas producers can receive added value from the renewable quality of their biogas, even when that gas is not used on site but put into transmission; wind and solar generators sell the renewable quality of their electrons to firms far from where the electrons are consumed. Encouraging the wheeling of renewable biogas through the natural gas transmission system allows customers, including stationary fuel cell power plants and hydrogen production systems at fuel cell electric vehicle fueling stations, to take advantage of renewable fuel using the existing natural gas system.

*Response:* With regard to the suggestion that the definition be modified to include “for direct use or for injection into natural gas transmission and distribution systems,” the Agency disagrees that this is needed. The current definition does not exclude such uses and including the suggested language might unintentionally disqualify anaerobic digesters that the Agency would otherwise have funded. Therefore, the Agency has not included this suggested language in the final rule.

##### Annual Receipts

*Comment:* One commenter stated that income limitations should be defined using net income, not gross income.

*Response:* For the reasons stated earlier in our response to comments on the definition of “small business,” the Agency is using in the final rule the definitions of small business as found in SBA’s provisions in 13 CFR 121.301(a) and (b). Having made this determination, the Agency defers to SBA’s expertise and years of experience in the specific metrics to use to define a “small business” and, in the case of 13 CFR 121.301(b). The Agency notes that 13 CFR 121.301(b), is still in the process of being updated, but based on 15 U.S.C. Section 632(a)(5), SBA can determine a small business eligible, for development company programs and for 7(a) business loans by using average net income after taxes of less than \$5 million and tangible net worth of less than \$15 million in the preceding 2 years. Thus, the commenter’s request has been accommodated.

##### Energy Analysis

*Comment:* Two commenters did not agree with adding the new definition of “Energy Analysis.” One commenter stated that the definition is ambiguous and does not provide a clear meaning as to what is expected, while the other commenter stated that it adds another level of confusion to the energy savings documentation requirement. According to the commenters, this new term varies little from the “energy assessment” definition, and will result in added confusion for potential applicants. The commenters also questioned whether this definition will provide the Agency with the necessary information for informed energy savings decisions.

*Response:* After considering these comments, the Agency has determined that it is unnecessary to have a separate definition for “energy analysis” and has eliminated the term from the final rule.

##### Energy Assessor

*Comment:* One commenter raised concerns with the “energy assessor” definition. The commenter questioned the credibility of using 3 years of experience and completion of five energy assessments or energy audits as a measure for a qualified consultant.

*Response:* The Agency has reviewed the proposed definition for “energy assessor” with knowledgeable federal professionals who indicated that the 3 years and five energy assessments or energy audits is a reasonable threshold to provide sufficient experience to perform energy assessments. Further, part of the definition of “energy assessor” is that the energy assessor is a “Qualified Consultant.” To be a “qualified consultant,” the individual or entity must possess “the knowledge, expertise, and experience to perform the specific task required.” In this case, the specific task required is performing an energy assessment. The purpose of the “number of years of experience” and the “number of similar projects” within the definition of “energy assessor” is to set a minimum benchmark to be applied across the various technologies included in REAP. Therefore, the Agency has not revised the rule in response to this comment.

##### Energy Audit

*Comment:* One commenter indicated that there are three types on energy audits: Level I, a walk through audit; Level II, a full audit; and Level III, a full investment grade audit. The commenter asked if walk through audits are sufficient for REAP. According to the commenter, full audits identify numerous energy conservation measures

(ECMs) and it is customary to recommend that a specialist make a detailed analysis of a particular aspect regarding an ECM. The commenter noted that most REAP projects do not focus on one particular piece of equipment. If this is indeed the case, the commenter recommended that the Agency prescribe what is acceptable for such measures as many utility rebate or state grant programs do.

Another commenter recommended that the Agency makes sure that the energy auditor performs the on-farm energy audit according to the American Society of Agricultural and Biological Engineers (ASABE) definitions.

*Response:* As defined in the rule, an “energy audit” is, in part, a “comprehensive report that meets an Agency-approved standard.” Rather than defining what level energy audits would be acceptable to the Agency in the rule, the Agency will include guidance on what is acceptable in the Agency’s instructions for the rule so as to identify those industry-recognized energy audit standards that are acceptable for conducting energy audits under this program. The Agency notes that, while the Level II and Level III energy audits described by the commenter would constitute energy audits acceptable to the Agency, a walk through energy audit (Level I) may be acceptable depending on the work that is done and presented in the audit. To be accepted by the Agency, an energy audit must contain the information outlined in Section B of Appendix A to 7 CFR part 4280.

While the Agency agrees that an audit performed according to ASABE definitions is acceptable under REAP, not all audits need to be performed according to ASABE definitions in order for the audit to be acceptable to the Agency under REAP. As noted above, the Agency will include up-to-date guidance on what is acceptable in the Agency’s instructions so as to further clarify that energy audits include industry recognized energy audit standards.

#### Energy Auditor

*Comment:* One commenter recommended that the Agency ensures that the energy auditor conducting on-farm energy audits is either a professional engineer or certified energy manager.

*Response:* The Agency disagrees with the commenter that the only entities qualified to perform energy audits under REAP are professional engineers and certified energy managers. The Agency has determined that a certified energy auditor; 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; or an individual supervised by one of these individuals, has the sufficient experience for conducting energy audits under REAP and the Agency has not revised the rule in response to this comment.

#### Inspector

*Comment:* One commenter stated that the definition of “inspector” does not define how the inspector is qualified other than having 3 years of experience and completion of five energy assessments or energy audits. The commenter asked how the Agency arrived at five assessments or audits as a meaningful number and questioned whether five audits or assessments in 3 years makes an individual qualified.

*Response:* The Agency points out that in the proposed rule “inspector” is used in conjunction with the quality of the project work completed and not with energy audits or energy assessments. Nevertheless, the Agency disagrees with the commenter’s assertion that the definition of “inspector” is solely defined by the number of years of experience and the number of projects. Part of the definition of “inspector” is that the inspector is a “Qualified Consultant.” To be a “Qualified Consultant,” the individual or entity must possess “the knowledge, expertise, and experience to perform the specific task required.” The purpose of the number of years of experience and number of similar projects within the definition of “inspector” is to set a minimum benchmark to be applied across the various technologies included in REAP. The Agency has not revised the rule in response to this comment.

#### Qualified Consultant

*Comment:* One commenter was concerned that requiring the Qualified Consultant be “independent” will have a negative effect on applications for small projects, which have the vendor perform the energy savings analysis, plus supply the equipment, and at times the project installation. The commenter pointed out that there are many small vendors in rural America who are qualified to provide the savings analysis as a service to their potential customers and this should not be discouraged. According to the commenter, this proposed definition would discourage this activity and harm small projects.

*Response:* The Agency agrees with the point being made by the commenter. However, neither the proposed rule nor the final rule require projects with total project costs of \$80,000 or less to use an

energy assessor, who must be a qualified consultant. As found in the definition of “Energy Analysis” in the proposed rule, the energy analysis could have been performed by an individual or entity with at least 3 years of experience and at least five energy assessments or energy audits for similar projects. In § 4280.103 of the final rule, while the Agency has removed the definition of energy analysis (for reasons discussed above), such an individual or entity can still be used to conduct energy assessments for projects with total project costs of \$80,000 or less (as found in Section B of Appendix A to 7 CFR part 4280). As such, the final rule does not require the individual or entity to be “independent.” Thus, for these small projects, the vendor or installer of the RES or EEI may be sufficiently qualified to provide energy savings or energy replacement information.

To the extent, however, that the commenter is referring to projects with total project costs of more than \$80,000, the Agency disagrees with the commenter and is keeping the requirement that the energy assessment is performed by an independent entity (as found in the definition of “Qualified Consultant”).

#### Retrofitting

*Comment:* One commenter questioned why the term “retrofitting” applies only to RES. The commenter asked: “Can’t one retrofit an existing fan, motor, or lighting system?”

*Response:* The Agency agrees that the definition of “retrofitting” does not need to reference RES and has revised the definition accordingly.

#### Simple Payback

*Comment:* One commenter agreed with the proposed change to remove the adjustment of energy efficiency equipment based on the ratio of capacity when determining simple payback. According to the commenter, annualized energy savings is sufficient to ensure the goal of the program is being met.

*Response:* As in the proposed rule, determining simple payback under the final rule does not include adjusting the EEI based on the ratio of capacity. The Agency agrees with the commenter that annualized energy saving is sufficient to ensure the goal of the program is being met.

*Comment:* Two commenters disagreed with using 36 months of energy use data within the “Simple Payback” definition for EEI projects because the 36 month energy usage history requirement can be detrimental to certain applicants. According to the commenters, the

nature of some industries does not require the applicant to record 36 months of energy usage. The commenters further state that the penalty of ineligibility due to an applicant's inability to produce 36 months of energy usage history is too severe. One commenter recommended that the Agency either retain the current 12 month energy usage history criteria or use a 3-year average.

*Response:* In consideration of these comments, the Agency has decided not to implement the proposed rule's 36 month of energy usage, but instead allow the applicant a choice to use either the most recent 12 months or an average of 2, 3, 4, or 5 years to provide the baseline data. The ability to use more than just 12 months will provide a more accurate picture of historical data, but not put an undue burden on the applicant or auditor to compile the data on past energy use for all EEI applications.

*Comment:* One commenter encouraged the Agency to allow flexibility with the requirement that all utility bills be supplied with the audit/application. The commenter pointed out that agricultural producers and businesses have the records on file, which are submitted to their auditor to derive at overall energy consumption, and the Agency should only request actual bills if necessary. This controls the paperwork burden on applicants as well as the paper volume for Agency files.

*Response:* Neither the proposed rule nor the final rule requires applicants to submit their actual utility bills with either the energy audit or the application. The energy audit or energy assessment must present the information in the audit. The Agency agrees that applicants should keep such documentation in their files should the Agency request them as it reviews the energy audit and application.

*Comment:* One commenter pointed out that the simple payback calculation allows Production Tax Credits (PTCs) and Renewable Energy Credits (RECs) to be counted, but not Investment Tax Credits (ITCs) or state subsidies. The commenter stated that this makes little sense, because a subsidy is a subsidy in a payback calculation whether it is paid at once or over time. According to the commenter, not including ITCs discriminates against wind and solar projects under 100 kW because such projects qualify for Section 48 ITCs, rather than the Section 45 PTCs. The result is that the payback period of smaller projects is significantly exaggerated and their REAP scores are unfairly reduced.

To remedy this situation, the commenter recommended eliminating the scoring for micro-projects entirely and replacing it with a "first come/first served" award system once annual funding is determined. The commenter stated that this unfair payback accounting, at a minimum, must be equitably revised so that smaller distributed generation projects are not improperly penalized.

*Response:* The Agency must evaluate all projects against each other as required by the authorizing statute, and thus cannot implement a "first-come, first-served" approach, as suggested by the commenter, in making awards.

With regard to making changes to the calculation of simple payback, the Agency acknowledges that the simple payback calculation has been difficult to apply because of the differences in utility rates and incentives between state and regions. Rather than adding additional considerations (such as investment tax credits) to the calculation of simple payback, the Agency has decided to simplify its calculation by also removing from consideration in the calculation of net income all tax credits, carbon credits, and renewable energy credits. In addition to simplifying the calculation, this change allows the Agency to better evaluate each project on its own merits.

*Comment:* One commenter noted that the simple payback calculation does not allow one time incentives to be figured into the return on the project for simplicity purposes and to allow equitable scoring between EEI projects and renewable energy projects and stated that this is understandable. The commenter then stated that one incentive that should be considered in the simple payback definition is depreciation on RES. This incentive is received as an annual benefit to a grantee, who installs a renewable energy system. The Modified Accelerated Cost Recovery System (MACRS) shortens the useful life of renewable energy equipment to 5 years and is recorded for tax purposes. The total value of the system (in terms of upfront costs) will be taken out of gross income over the 5 year depreciation period allowed by MACRS. For example in the case of solar MACRS reduces the solar energy equipment owner's tax liability with a net result of them keeping more of the annual revenue produced. This is an annual benefit taken over a period of years and should be reflected in the simple payback calculation. The commenter pointed out that, as it stands now, the formula subtracts depreciation to arrive at average net income and then adds it back in essentially creating a

"wash" for depreciation and not figuring in this valuable annual incentive in the payback calculation for REAP scoring purposes. This should be considered to provide a more realistic view of the simple payback on RES. According to the commenter, EEI projects have historically had advantages in scoring under REAP and by allowing annual depreciation (MACRS) under the formula this would allow a more level playing field for the two types of purposes under REAP.

Another commenter stated that tax credits and accelerated depreciation should be considered in the payback calculation if an accountant for the applicant can verify the company can benefit from them.

*Response:* Incorporating MARCS as an alternative deduction method would result in increasing the complexity of the rule and the burden to the applicant and the Agency. Further, using MARCS would be difficult to calculate for each project. Therefore, the Agency is not modifying the simple payback calculation as requested by the commenters.

*Comment:* Two commenters stated that the simple payback calculation should look at eligible project costs (EPC) instead of total project costs. Because the grant amount is based off of EPC, the commenter stated that it only makes sense that the scoring criteria look at the same amount.

*Response:* The Agency agrees with the commenter and has modified the definition of simple payback to use eligible project costs instead of total project costs.

#### Small Wind System

*Comment:* In commenting on the interim final rule, one commenter recommended eliminating the hub height limit of 120 ft. for small wind systems (used in various parts of the interim final rule), stating that the limitation to 100 kW is sufficient.

*Response:* The Agency proposed in the proposed rule to eliminate the distinction between small and large wind projects, and the Agency is not distinguishing between small and large wind projects in the final rule. Thus, this comment is not relevant to the rule.

#### Total Project Costs

*Comment:* In commenting on the interim final rule, one commenter recommended keeping the feasible study or energy audit cost included in the total project cost.

*Response:* The rule continues to include feasibility study and energy audit costs as part of a project's total project cost. However, the Agency

points out that these two costs are not included in calculating a project's eligible project costs. This change was made because the 2008 Farm Bill allowed grants specific to feasibility studies and energy audits available. While the 2014 Farm Bill has repealed the feasibility study grant the Agency has not made a change to eligible projects cost. Since the cost for these items have already been incurred at submission of the RES/EEI application and there is no bona-fide need for the grant to cover these costs.

*Laws That Contain Other Compliance Requirement (§ 4280.108)*

Environmental

*Comment:* One commenter agreed with changing "will" to "may" with regard to the Agency determining whether a project becomes ineligible when an applicant takes any actions or incurs any obligations that would either limit the range of alternatives to be considered or that would have an adverse effect on the environment prior to Agency completing the environmental review.

*Response:* The Agency thanks the commenter for supporting this change, which has been retained in the final rule.

*Comment:* One commenter recommended that the Agency consider allowing environmental reviews to be conditional upon award as necessary to compete for funding. The commenter provided two examples as to why the Agency should consider this.

*Example A:* A Small producer completing an irrigation efficiency project is required to spend \$1,500 on an archeological survey to complete the environmental without a funding guarantee. Over 90 percent of the time the surveys are completed with no findings. Most producers withdraw applications versus completing the study.

*Example 2:* Applications comes in on deadline and Agency must process all applications as timely as possible. However, the environmental reviews are not always completed in time (given required 30 day comment period) in order to have such affected applications compete for funding. Many of these affected applications are renewable energy projects, which creates an unfair advantage to energy efficiency projects who are allowed to compete in all funding competitions.

*Response:* The Agency cannot accommodate the commenter's suggestion allowing environmental reviews be conditional upon award because the Agency is bound by Agency regulations, outside the purview of the REAP rule, to complete the necessary environmental review prior to the obligation of funds for a project. The

Agency does note that the final rule incorporates provisions that allow all applications, both for renewable energy projects and EEI projects, to compete in the same number of funding cycles. Thus, while a RES application may not be competed in the same funding cycles as an EEI application submitted at the same time, the RES application is still eligible to compete in the same total number of funding cycles. This addresses the commenter's concern of EEI projects having an "unfair" advantage in being able to compete in all funding competitions.

*Comment:* One commenter stated that REAP should grant NEPA Categorical Exclusions for single wind turbine distributed generation projects up to, as a bare minimum, 100 kW and preferably for any single turbine up to 200 ft in height. Single small wind turbines have been installed at National Wildlife Refuges, National and State Parks, Audubon Preserves, schools, historical sites, tribal headquarters, and thousands of farms. No published study has identified small wind systems as having undesirable environmental impacts, such as noise or avian impacts. Available studies point to little or no impact from these small distributed installations. Medium scale wind turbine with heights up to 200 ft. (the Federal Aviation Administration determination threshold) have been installed at numerous sites and shown in pre-installation impact studies and post-installation monitoring to have little or no avian impacts. There should be a clear distinction between the environmental concerns for wind farm projects and the much smaller distributed generation projects.

The commenter recommended that, if this is not acceptable to the Agency, then the Agency should adopt the DOE NEPA Categorical Exclusions for wind turbines up to 20 kW (and solar up to 60 kW) to reduce the burden on small project applicants.

*Response:* With regard to the recommendation for a categorical exclusion for small wind and solar projects, it is outside the purview of this regulation to make such determinations. The Agency notes that it will pass this comment on to those within the Agency who perform the environmental assessments for REAP projects and make determinations as to whether these projects, or any other projects, should be categorically excluded. Thus, no changes have been made to this rule with regard to categorical exclusions.

*Comment:* One commenter pointed to the preamble to the proposed rule that states, in part: "To date, no significant environmental impacts have been

reported, and Finding of No Significant Impact (FONSI) have been issued for each approved application. Taken collectively, the applications show no potential for significant adverse cumulative effects." Given this, the commenter asked whether a programmatic assessment can be issued to limit the Agency's environmental reviews on REAP applications to only certain areas per technology type that need to be addressed in full to ensure potential impacts are mitigated. According to the commenter, such streamlining would decrease the time and potential cost burdens on applicants, plus reduce Agency staff time as historically the program has shown to have no significant adverse effects on the environment.

*Response:* The commenter is correct that all approved REAP projects have resulted in FONSI. Programmatic assessments cannot assess the site specific impacts of an individual project and can be useful only for programmatic decisions by the Agency. All applicants must comply with the environmental requirements applicable to their project. Funding a grant or providing a loan guarantee is a Federal action requiring compliance with the NEPA. While small projects are likely to have fewer adverse environmental impacts than similar larger projects, USDA cannot predetermine that all projects will have limited impacts. USDA believes it is appropriate for environmental evaluations to be prepared on a project by project basis to analyze the nature and extent of a project's environmental impact. Thus, the Agency has not accommodated this suggestion.

The Agency notes that it will pass this comment on to those within the Agency who perform the environmental assessments for REAP projects.

*General Applicant, Application, and Funding Provisions (§ 4280.110)*

Project Completion

*Comment:* Two commenters are concerned that the 2 year deadline for project completion will put larger projects with longer durations in peril. One commenter asks how long a project could be extended, if the agency grants concurrence. In regard to small projects, one commenter suggested that the Agency utilize the Grant Agreement or the Letter of Conditions to make a statement that it has authority to de-obligate funds after a specified date. The commenter stated that this measure will reduce confusion for the applicants.

*Response:* The Agency acknowledges the commenters' concern over the two year period. Extensions to the two year

requirement can be granted with justifications by the approval official (see § 4280.110(i)(1)). Because there are many circumstances that may cause an extension to be required, the approval official has the authority to grant such extensions. The guidance recommended by the commenter to be included into the Letter of Conditions is acceptable and may be used to communicate the Agency's authority to de-obligate funds after a specified date.

#### *Notifications (§ 4280.111)*

*Comment:* One commenter stated that "Disposition of Applications" may be a conflicting Agency term to determine when applications can be destroyed. The commenter recommended using "Funding Determinations" instead.

*Response:* The Agency agrees with the commenter that using "disposition of applications" could be confusing. The Agency has revised the terminology in the final rule to read "Handling of Ranked Applications Not Funded."

#### *RES/EEI Applicant Eligibility (§ 4280.112)*

##### Applicant Eligibility

*Comment:* In commenting on the interim final rule, two commenters recommended maintaining eligibility for all agricultural producers, regardless of location. The commenters supported the Agency's action to remove the rural restriction for agricultural producers under all relevant REAP programs, stating that this action demonstrates support for REAP as a diverse program providing broad benefits to all agricultural producers across the country, which should remain a defining program goal.

This is a commendable action for a number of reasons. Foremost, the authorizing legislation never restricted REAP eligibility to only rural agricultural producers, just to rural small businesses. The exclusion had the effect of excluding many nursery and greenhouse growers, fruit and vegetable growers and other growers of specialty crops from participating in this program. Many of these sectors have their own unique energy needs and can benefit from implementing both energy efficiency as well as renewable energy improvements.

In addition, this change comports REAP with other USDA programs that serve all agricultural producers regardless of location. By this change the REAP program can have a greater reach in sectors across the country. The commenters urged USDA to maintain this policy of eligibility for all agricultural producers, regardless of

location, in the Notice of Proposed Rulemaking for REAP.

*Response:* The Agency thanks the two commenters for their comments and the final rule does not take into account an agricultural producer's location in determining the agricultural producer's eligibility for REAP funding.

Dun and Bradstreet Data Universal Numbering System/System for Awards Management System/Central Contractor Registration

Since the 2011, applicants have been required to supply a Central Contractor Registration (CCR) number in order to be eligible. The CCR requirement was implemented through program notices published in the **Federal Register**. The CCR number has since been replaced with a System for Awards Management System (SAM) number, and applicants are now required to supply their SAM number with their application in order to be eligible. The proposed rule contains reference to the SAM number requirement. The Agency received comments on this requirement, whether commenting on the CCR or SAM number, as presented below.

*Comment:* Several commenters were concerned over the requirement to submit a Dun and Bradstreet Data Universal Numbering System (DUNS) number and a CCR/SAM number as a condition for being eligible for REAP funding.

According to one commenter, the process for requiring every applicant including individuals to obtain a DUNS number and register that number in SAM is very burdensome. In addition to the application burden, the commenter stated that the SAM system does not work properly at times, or provides delayed results or results are lost in cyberspace creating huge burdens for applicants and the Agency. This commenter further stated that individual, including sole proprietors, should not have to register with the CCR. According to the commenter, many of the program's applicants do not have Internet access or are unfamiliar with the Internet. According to the commenter, the process is burdensome and not user friendly, further complicating the program rather than simplifying it. Therefore, the commenter encouraged the Agency to remove the SAM requirement and rely on existing proven data systems already in use by the Agency to provide funding information. If this cannot be considered, the Agency needs to understand that SAM at times has some significant issues and it is not always feasible for borrowers to get the SAM number with expiration in a timely

fashion. Agency staff should be allowed to document such cases in the running record, noting attempts made by the applicant, and provide waivers as needed in this event.

Two other commenters were concerned about the burden of the CCR requirement on small farmers and businesses. One of these commenters stated that the requirement for the CCR registration will create a hurdle as many of the farmers and small business people are not computer literate, or will find the process too complicated. This commenter, therefore, suggested that projects less than \$50,000 be exempted from the CCR requirements. The commenter stated that in Washington State, there are not many applicants for less than \$20,000 projects, and after completing the applications for them, he knows why. The commenter acknowledged that Agency staff have been very helpful in supporting applicants and that the commenter hopes the process can be streamlined.

*Response:* While the Agency shares the commenters' concerns, the DUNS and CCR/SAM requirement is a Federal-wide law. Effective October 1, 2010, changes were adopted to 2 CFR part 25 which required all grant applicants other than individuals who would use the grant for personal use (unrelated to any business or nonprofit organization they may own or operate in their name), to have a DUNS number and to be registered in the CCR database, which has since migrated to the SAM. The Agency will continue to work with all applicants to help ease the burden associated with meeting this Federal requirement.

*Comment:* One commenter recommended exempting micro wind and solar projects from being required to demonstrate that satisfactory sources of revenue in an amount sufficient to provide for the operation, management, maintenance, and debt service of the project are available for the life of the project (§ 4280.113(h)). According to the commenter, it is burdensome and unnecessary to require applicants to show that resources for operations and maintenance and debt service are available for the life of the project. First, it assumes that these costs will exceed the savings in electric bills and, second, it implies that rural businesses are ill equipped to make sound investment decisions. Because REAP grants are limited to 25 percent of project costs, the commenter recommended eliminating this requirement.

*Response:* The Agency disagrees with the commenter's recommendation. Regardless of an applicant's size, the Agency has determined that this

information is necessary to help ensure that it is making awards that are financially viable. It would be an imprudent use of taxpayer money to approve a project that cannot show that it is financially viable. Therefore, the Agency has not revised the rule in response to this comment.

#### Residential

*Comment:* In commenting on the interim final rule, two commenters suggested alternatives to the residential restriction on farms.

One commenter noted that the interim final rule allows excess electricity to be sold to the grid, but not to be used in a farm-related residence. This means the applicant can get some value for excess, but not maximum value. It also means that the utility makes a profit on selling excess electricity generated from the project even though they did not pay any of the capital costs. The commenter believes a better approach would be to remove the residential restriction on farms with only one meter or allow applicant certification of non-use for non-business purposes. Applicants would show and affirm as part of a simplified form that the farm operation uses more energy on an annual basis than the RES is projected to produce.

The other commenter supported the restriction of funding residential RES or EEI projects, but suggested allowing prorating project cost to the non-residential uses. According to this commenter, many agricultural producers wish to also power their homes on their farmsteads with RES and requiring a separate meter at additional costs discourages these applicants from applying. If we allowed them to size the system accordingly, interconnect to all load sources, but only provide funding for business portion of their load supported by appropriate documentation, both the applicant and the Agency would win.

*Response:* The Agency agrees with the commenters that there should be more flexibility to allow agricultural producers to submit applications for RES where the resulting power is shared between the farm operation and the farm residence. To this end, the final rule provides applicants with three options to qualify an RES project in which a residence is closely associated with and shares an energy metering devices with the agricultural operation:

- Install a second meter (or similar device) that results in all of the energy generated by the RES to be used for non-residential energy usage;
- Certify that any excess power generated will be sold to the grid and will not be used by the residence; or

- Demonstrate that 51 percent or greater of the energy to be generated will benefit the agricultural operation. If the farm residence uses more than 49 percent of the energy, however, this option would not apply.

Although not requested by the commenters, the Agency has concluded that rural small business seeking to purchase RES that would provide energy to the small business and the business' residence should be afforded the same options, provided the residence is located at the place of business, and the Agency has incorporated this in the final rule.

In addition, the Agency has revised the eligible project cost provisions to make clear as to what items associated with these options qualify as eligible project costs. Specifically, the following, as applicable, are eligible project costs:

- The installation of the second meter, and
- The portion of the project that benefits the agricultural operation or rural small business.

#### *Project Eligibility (§ 4280.113)*

##### New and Unused Versus Refurbished/ Remanufactured

*Comment:* Numerous commenters requested that the Agency disallow refurbished wind turbines or, in general, refurbished RES. The commenters stated that refurbished wind turbines undergo tremendous wear and tear and are being sold for scrap metal prices when decommissioned, and must be significantly refurbished to gain additional viability for an additional 20 years. Commenters were concerned that allowing refurbished turbines may create significant problem for the Agency in the future, with one commenter stating that significant variances in quality will damage the reputation of the program.

One of the commenters recommended that § 4280.113(a) specify "new and unused" because, according to the commenter, there is no way to adequately police the degree to which a wind turbine is refurbished/ remanufactured and most of the refurbished turbines that have been sold to farmers were mostly cleaned up and repainted. Another commenter stated that the refurbishment process for wind turbines is not well governed. Commenters also pointed out that there is a risk of purchasing unviable refurbished turbines.

One commenter pointed out that the Internal Revenue Service, the American Recovery and Reinvestment Act of 2009 program, and most states require new equipment "nor previously placed in

service" for tax credit and rebate eligibility. According to the commenter, there are con artists exploiting the REAP loophole and the Agency should close it.

Commenters also stated that new turbines are often more cost effective than their refurbished counterparts, with one commenter stating that to refurbish a wind turbine that has operated in a wind farm for 15 to 20 years so that it can be expected to provide an additional 20 years of service costs more than a new wind turbine.

If refurbished systems are allowed, commenters suggested that the Agency works with NREL to establish technical criteria for refurbished wind systems to ensure they meet standards for safety, performance and reliability.

Commenters also suggested that refurbished wind turbines receive approval from qualified engineers to ensure project quality. For example, one commenter stated that any retrofitted or refurbished renewable energy system should receive the review and approval of a qualified engineer—a "wet stamp"—to ensure project quality and that engineering qualifications should be based on significant experience working with correlating RES. This commenter also recommended that the Agency require engineering recertification for the replacement of dynamic components as well as a review of all non-dynamic components to ensure sound support structures.

Finally, commenters objected to subsidizing components that have previously been subsidized under other Federal programs because it constitutes unfair competition to the current manufacturers, amounting to, as one commenter described, a "double subsidy."

*Response:* The Agency disagrees with the comments recommending that refurbished/remanufactured RES, such as wind systems, be ineligible for REAP funding. Many of the uncertainties surrounding refurbished wind turbines is a matter of missing market information that can be resolved with clear signaling; that is to say, an established set of certifications and/or standards and commensurate guarantees and/or warranty security. Secondary markets for small wind should in principle be no different than for that of used cars, farm equipment, etc. Given sufficient market information, agricultural producers and rural small businesses should be able to choose intelligently among available technologies subject to their preferences, policy support, and budget constraints. The presumption of unfair price competition assumes that

refurbished and new wind systems sell for the same price, which would not be the case given sufficient market information.

In allowing refurbished equipment to be eligible for REAP funding, the Agency has revised the definition of “refurbished” to address concerns and suggestions raised by the commenters. Specifically, the revised definition:

- Requires the RES to be brought into a commercial facility for refurbishment. This is intended to reduce unqualified businesses from “refurbishing” RES.
- Requires a warranty that is approved by the Agency or its designee. This is intended to provide additional market information to the potential buyer of the refurbished RES and to reduce unqualified businesses from “refurbishing” RES.

The Agency agrees that an RES could be refurbished and establishes a new “useful life.”

*Comment:* One commenter, in supporting the use of refurbished and retrofitted energy systems on the basis that it is consistent with other programs aimed at supporting small renewable energy projects, recommended that the Agency develop resources for project developers to find quality refurbished parts.

*Response:* The Agency thanks the commenter for their support on this provision of the rule. However, the Agency cannot accommodate the commenters suggestion because REAP is a financing program and cannot serve as a “clearinghouse” for acceptable refurbished parts.

#### Certification of Turbines

*Comment:* Several commenters recommended that wind turbines be certified.

One commenter, who commented on both the interim final rule and the proposed rule, recommended that the Agency establish a requirement that small wind turbines be certified by an independent certification body prior to awarding grants and loans through REAP in order to promote confidence that small wind turbines installed with REAP funding have been tested for safety, function, performance and durability and to ensure consistency in ratings. In addition, for the 2011 funding cycle, the commenter recommended that small wind turbines that have achieved at least Small Wind Certification Council (SWCC) Limited Power Performance Certification or Conditional Temporary Certification receive higher scores in application review.

The commenter provided detailed suggestions for such certification. This

commenter requested that the Agency establish a requirement for wind turbines to be certified by an independent certification body. In addition, for the 2013 funding cycle, the commenter recommended that wind turbines that have achieved either full certification to the AWEA 9.1 Standard or at least SWCC Limited Power Performance Certification or Conditional Temporary Certification (or equivalent) receive higher scores during application review.

The growth of the distributed wind market is often tied to grants, incentives and rebates administered by Federal, State and utility programs. On-site wind turbines have great potential to serve increasing demands for distributed generation and can provide a cost-effective solution for many homes, farms, schools and other end-users. However, performance and reliability obstacles have hindered greater adoption, and both consumers and agencies providing financial incentives need greater assurance of safety, functionality, and durability to justify investments. Certification helps prevent unethical marketing and false claims, thereby ensuring consumer protection and industry credibility.

The commenter has received 50 Notices of Intent to Apply for Certification since its inception, certified its first turbine model in 2011 and became an accredited certification body in 2012. The commenter pointed out that it has recently issued its fourth full certification along with a new Conditional Temporary Certification, bringing the tally to nine turbine models now SWCC-certified.

Representing a significant share of the North American distributed wind market, the commenter’s published certification ratings and labels are allowing easier comparison shopping, aiding incentive programs with setting payment levels, and leading toward national requirements. In addition to the nine models carrying SWCC certifications, five other models are currently collecting data at their respective testing sites, and several more are taking steps towards certification.

SWCC certification has been identified as a pathway to eligibility for most of the leading wind incentive programs nationwide, and numerous programs have taken steps to require independent certification for small and medium wind turbines to be eligible for funding. The time is now for USDA to follow suit and ensure REAP’s support of the continued development of the distributed wind sector. To provide perspective, the commenter included

information on wind incentive programs already requiring or expecting to require certification, including links to individual programs administered by states.

The commenter is an independent non-profit organization with the public purpose of providing certification services. A three-member Certification Commission makes all certification decisions. SWCC Commissioners are qualified and independent industry experts appointed by the SWCC Board of Directors. The Board includes representatives of different stakeholder groups and includes 3 directors (out of 11) who represent the industry sector. SWCC bylaws and operating procedures prevent conflicts of interest in certification decisions.

A second commenter on the interim final rule stated support for the specific language regarding certification that is being recommended by the first commenter.

A third commenter recommended that turbines certified by the SWCC should have priority over projects with uncertified equipment. Suitable approved lists would include that as provided and maintained by the Interstate Technical Advisory Council.

Another commenters requested that the Agency provide guidance on what hardware is used, to require that turbines be certified, or in process of certification, so that the installed wind turbine actually works and the REAP money is well used.

*Response:* All technologies eligible for REAP funding must be found to have technical merit and the proposed project must be found determined to be technically feasible. The documentation applicants submit with their applications must be sufficient to allow the Agency to make these determinations. The Agency will continue to use experts, such as those in NREL and other public institutions, to assist in making these determinations when needed in order to ensure safety, performance, and reliability of RES, including refurbished wind systems.

In some cases, the documentation to support technical merit and technical feasibility determinations may require, or be enhanced by, appropriate certifications from existing boards for a particular type of technology. The Agency, however, is not incorporating into the rule specific certification requirements for wind turbines or any other technology. It remains the applicant’s responsibility to demonstrate the quality of the technology being proposed. No changes have been made to the rule as a result of this comment.

### Projected Annual Energy Costs

*Comment:* One commenter suggested that the Agency clarify in § 4280.113(a)(4)(i) that a project is eligible without being subject to any capacity calculation reductions that are currently applied due to size of building or equipment if annual projected energy usage is less than historical usage.

*Response:* The Agency agrees with the commenter that, in determining if a project qualifies as an EEI, there is no adjustment to the energy usage based on capacity differences before and after the EEI. The language in the rule text cited by the commenter makes no mention of such an adjustment. Further, the definition of “energy efficiency improvement” specifically references a reduction of energy consumption on an annual basis and also does not reference any adjustment to take into account any capacity changes. Thus, the Agency has determined that it is unnecessary to modify the language in the rule as suggested by the commenter.

### RES/EEI Repeat Assistance on Same Project

*Comment:* One commenter found the term “shortly thereafter” in § 4280.113(a)(4)(ii) to be ambiguous. The commenter recommended providing a definitive timeframe after grant installation. The commenter suggested using the useful life of the improvements as outlined in the grant agreement for the originally funded project.

*Response:* The Agency agrees that the example provided in the proposed rule needs further definition and that reference to the useful life of the EEI as the timeframe is appropriate. The Agency has revised the cited paragraph in the final rule to make clear that a subsequent EEI to previously REAP-funded EEI is eligible only if the following two conditions are met: (1) The replacement occurs at or after the end of the useful life as specified in the grant agreement of the previously REAP-funded EEI, and (2) the subsequent EEI is more energy efficient than the previously REAP-funded EEI.

### Grant Applications—General (§ 4280.115)

*Comment:* One commenter stated that all REAP applicants should receive funding for some proportion of their project cost.

*Response:* While the Agency appreciates the commenter’s sentiment, it is simply not feasible to do so. The authorizing statute requires the Agency to score applications using certain criteria and that by doing so we rank

applications to determine those projects that score the highest. It is through such a process that the Agency is able to distribute the limited resources made available to the program to the more meritorious projects. No changes have been made to the rule in response to this comment.

### Third-Party Contributions

*Comment:* In commenting on the interim final rule, two commenters recommended reinstating the prohibition against third-party in-kind contributions as found in the 2005 final rule for REAP. Because REAP helps fund construction and equipment costs, it is not the type of assistance program where a third-party would come in and offer a valued assistance. According to the commenters, allowing in-kind contributions allows the applicant to manipulate total project costs. One of the two commenters also stated that allowing third-party in-kind contributions becomes a processing burden when determining how to value in-kind contributions, thus further complicating the program rather than simplifying it.

*Response:* The Agency removed the prohibition against third-party in-kind contributions because it conflicts with Agency regulations found in 7 CFR 3015, which specifically allows the use of third-party in-kind contributions to count towards satisfying cost-sharing and matching requirements of a Federal grant (see 7 CFR 3015.51(b)). Thus, the Agency has not reinstated the prohibition on third-party in-kind contributions in the final rule.

### Eligible Project Costs (§ 4280.115(c))

*Comment:* One commenter stated that eligible project costs should not include remanufactured or refurbished equipment for the reasons previously provided by the commenter on allowing the purchase of refurbished RES as an eligible project for REAP funding.

*Response:* As discussed previously in responding to comments on allowing the purchase of a refurbished RES to be an eligible project, the Agency has determined that it is equally reasonable to allow refurbished equipment to be an eligible project cost, provided such equipment comes with a warranty that is approved by the Agency or its designee.

*Comment:* In commenting on the interim final rule, one commenter recommended that storage bins be excluded as an eligible project cost, but that grain dryers and other energy efficient savings, such as an air transfer system that is replacing a diesel tractor, be included as eligible project costs.

Limiting the total project cost to just the dryer and any EEI. Putting up an 80,000 bushel storage bin that was included in the total project cost is not energy improvements. The money allocated for the 80,000 bushel bin could have been used for helping a first generation farmer replace two 30 year old bin dryers with a more energy efficient dryer. The commenter stated that more clarification is needed on eligible costs (*i.e.*, what can be included and what must be excluded).

*Response:* The Agency agrees with the commenter that more clarification is needed on what is included as eligible project costs, as illustrated through the commenter’s example on storage bins, but disagrees with a blanket exclusion of storage bins as eligible project costs. In order to qualify as an eligible project cost for an EEI, the item in question (in this case, the storage bins) must be identified in the audit and must be “directly related to and its use and purpose is limited to” the EEI. If a project proposed to replace a grain dryer and its associated storage bins, the entire project would have to show an energy savings in order to be eligible. If this condition is met, then only those project items identified in the energy audit or energy assessment and that are directly related to and their use and purpose are solely for the EEI would be considered eligible project costs. If storage bins are added to eligible project costs, the simple payback for the project would be longer, potentially decreasing the score and competitiveness of the project. Thus, for the storage bins to be included as an eligible project cost, they must be identified in the energy audit or energy assessment, must be directly related to the EEI, and cannot be used for any other purpose. So, in some cases, storage bins may qualify as an eligible project costs and in others cases, they may not.

The final rule contains slightly different provisions if the applicant is seeking a guaranteed loan. In this case, the storage bins are “directly related to” the EEI and would qualify as an eligible project cost.

The Agency notes that in either case—grant or guaranteed loan—the storage bins would be part of total project costs.

*Comment:* One commenter stated that capacity for a grain crop should be defined as the number of bushels harvested. A farmer should have to show an average as proven by at least 2 years. Unless there is a catastrophic event (hailstorm, drought, tornado)—then omit the 1 year and use the prior year—explaining why.

Another commenter stated that, relevant to grain dryer applications,

information provided by energy auditors that have completed hundreds of grain dryer audits in over 20 states indicates that comparing bushels per hour (BPH) does not provide a reliable measurement of drying capacity change when evaluating two grain drying systems. A measurement of BPH indicates a system's speed of drying, much like the miles per hour when driving a vehicle. The best measurement of capacity change between two drying systems is measuring the total number of bushels dried through each system on an annual basis which then compare apples to apples. Using BPH is inaccurate, particularly for in-bin dryers compared to continuous flow dryers.

In the case of in-bin systems, these operate with fewer BPH when compared to a high capacity systems and require more time dry from a certain moisture point to another (*i.e.*, 25% to 15% which is the safe storage moisture). When measuring the total BTUs consumed by a dryer annually, the total annual bushels dried makes the most impact on the total consumption of fuel and electrical power. The lower BPH system in most cases utilize less fuel, but more electricity per bushel to remove 10 percentage points of moisture because of lower instant air heating temperature and more time with fans operating on electrical horsepower.

Consequently, when completing several grain dryer energy audits where a lower BPH system is looking to be replaced by a higher BPH system, often the lower BPH system has lower energy consumption and illustrates more efficiency when drying the same amount of bushels annually, but takes more time. Such as the typical case where projects involving converting from an in-bin dryer to a high capacity/continuous flow dryer have demonstrated notably higher BPH have been deemed inadequate for application to REAP because of the higher fuel cost.

*Response:* The Agency disagrees with the comment to use bushels harvested because the amount of energy to be saved is directly related to the amount of grain to be dried and not to the amount of bushels harvested. To illustrate, an agricultural producer can use corn several different ways. The corn could be used for high moisture corn in the agricultural producers operation, sold without being dried, or dried and sold to a local grain elevator. Thus using bushels harvested could over estimate energy savings for an agricultural producer that is replacing a grain dryer.

The Agency agrees with the commenter that limiting of capacity such as bushels per hours may not be

the best way to evaluate a process, and the capacity limitation has been removed. The final rule requires actual average annual energy usage, based on historical records for up to 5 consecutive years, to be used in the energy assessment or energy audit for replacement of an inefficient system. An energy audit or energy assessment must document the historical energy usage by either attaching energy bills or providing a summary of those bills. If an agricultural producer had a bad year or catastrophic event where not as much grain was dried, it can be averaged with prior years or subsequent years, as appropriate.

*Comment:* In commenting on the interim final rule, one commenter stated that, at the time of the NOFA, there were several changes that made it seem that the Agency was trying not to fund grants for grain dryers, especially through the limitation of capacity. When this was implemented in the interim final rule as the capacity of harvest (prior year) compared to capacity of harvest (current year), this allowed farmers to update outdated equipment, but didn't allow them to double or triple their set-up. The commenter stated that, while this was an excellent way of handling this, the Agency could just state that only the grain dryer and the motors (perhaps also a variable frequency drive because it makes the motors run more efficiently) for grain moving equipment are eligible—this would make it much clearer and fairer. The commenter then continued, stating that he would like to see the money awarded in a much fairer manner. According to the commenter, larger farmers are always somehow able to be eligible for greater amounts and seem to always figure out a way to expand at the expense of others.

*Response:* While the Agency disagrees with the commenter's characterization of trying not to fund grain dryers, the Agency was, and is still, seeking to develop a scoring methodology that would achieve a greater diversification of technologies receiving funds under REAP. To further achieve this goal, the Agency included several changes to the REAP program and some of the proposed changes address the commenter's concern about awarding funds in a clearer and fairer manner. For example, one proposed change was to modify one of the scoring criteria for EEI projects to awards points on an "energy saved per dollar amount requested," which applies to all energy efficiency technologies, including grain dryers. Further, the proposed rule removed the "capacity" aspect for determining the amount of a project's cost that is an

eligible project cost and instead required that the project as a whole showed energy savings in order to be an eligible EEI project. These two proposed changes, which are included in the final rule, help level the playing field across all size applicants.

#### Funding Limits

*Comment:* In commenting on the interim final rule, one commenter stated that the award process should allow for some flexibility in the award amount. For some of the projects very close to the cut-off score that might be funded if their request was smaller, the Agency should be able to ask multiple applicants if they would be interested in a reduction of funds or if they need the amount applied for.

*Response:* The Agency agrees with the commenter and proposed a process to allow an applicant to accept a lower level of funding in the proposed rule. The Agency is retaining this provision in the final rule.

#### Application—General (§§ 4280.116 through 4280.119)

##### Number of Copies

*Comment:* In commenting on the interim final rule, one commenter stated that USDA should only require the original application to be submitted to the Agency (not original and one copy).

*Response:* The Agency agrees with commenter, especially now that the Agency is encouraging electronic submittals. As was proposed in the proposed rule, the final rule requires only the original application be submitted to the Agency.

##### Foreign Technology

*Comment:* In commenting on the interim final rule, one commenter encourages the Agency to use § 4280.116(a)(3) to police unproven/risky foreign wind turbines, but is concerned that the Agency may not have the technical expertise to make these judgments, particularly in light of the fraudulent documentation that some unscrupulous manufacturers and exporters have provided in the past. The commenter stated that they have previously recommended the adoption of certification standards for turbines that fall under the scope of AWEA 9.1–2009 (>200m2 rotor area, ~ 40 kW).

*Response:* As noted in a response to previous comments regarding certification standards for wind turbines, the Agency will continue to use experts, such as those in NREL and other public institutions, to assist in making these determinations when needed in order to ensure safety,

performance, and reliability of RES, including refurbished wind systems. In addition, both domestic and foreign technologies are held to the same set of standards for demonstrating that they are commercially available technologies (see the definition of Commercially Available), including the option of being considered Commercially Available if the system is certified by a recognized industry organization whose certification standards are acceptable to the Agency.

With regard to the recommendation to adopt certification standards for wind turbines, the Agency notes, as stated in a previous response, that the documentation to support technical merit and technical feasibility determinations may require, or be enhanced by, appropriate certifications from existing boards for a particular type of technology. The Agency, however, is not incorporating into the rule specific certification requirements for wind turbines or any other technology. No changes to the rule have been in response to this specific comment.

#### *Applications—Period and Submittal* Timing of Notices

*Comment:* In commenting on the interim final rule, several commenters expressed concern as to the timing for when applications would be accepted, including frequency and consideration for accepting applications throughout the year. Commenters as a whole recommended advancing the timing of the whole solicitation process in the calendar year, which would allow more time for application preparation.

One commenter stated that an earlier solicitation process would allow awardees to start construction before the winter freeze and to improve coordination with other Agency programs that will facilitate the construction of digesters.

Another commenter pointed out that, since the beginning of the REAP program, the Agency has had difficulty releasing program funding notice before agricultural producers start spring planting. While state offices now accept applications based on the previous year's notice, this practice is not well known and is unevenly followed in the states.

Another commenter stated that in 2011 the Agency allowed only 2 months between the release of the NOFA (April 15) and the due date for applications (June 15). The early due date is not well explained, especially as USDA reserves more time for itself to review applications than for applicants to

prepare them—with 3.5 months before the end of the fiscal year. The timing is during the busiest part of the year for many agricultural producers, reducing their ability to use the program. The late release date and early deadline restrict the ability of various farm energy technology sectors to use the program. The commenter stated that USDA needs to release the funding notice by December or January.

Still another commenter stated that the Agency needs to provide guidance or role for the 2012 program sooner than within 60 days of the deadline.

*Response:* The Agency acknowledges the concerns expressed by the commenters. Under the final rule, REAP applications are accepted throughout the year. The rule establishes application deadlines and increases the number of competitions cycles and application deadlines depending on the type of application as follows:

- RES/EEI grant applications requesting \$20,000 or less may be competed up to five times a year;
- combined RES/EEI guaranteed loan and grants twice a year; and
- guaranteed loan-only applications will be competed periodically, provided that the Agency receives a sufficient number of applications in order to maintain a competitive awards process.

This process is accomplished in the final rule without the need to publish a notice in the **Federal Register** each year and thus there is no longer an issue associated with waiting for funding before publishing a notice seeking applications. While the application deadlines are found in the final rule, the Agency will continue to identify the application deadlines in a FR notice published prior to the Federal fiscal year. In addition, the Agency intends to identify the application deadlines on the REAP Web page of the Agency's Web site and on grants.gov as applicable.

#### Hard Deadlines

*Comment:* In commenting on the interim final rule, two commenters stated that the series of fixed deadlines for the submission of grant applications represents a tremendous disincentive for larger-scale projects, involving a number of farms and diverse technologies. According to the commenters, it is very difficult to incorporate a hard deadline and the concept of competitive funding into the two-party project design and review that must occur for this type of project. As one of the commenters stated, the current procedure may allow for fair review of the submission of a number of single farm digester projects, but it is

quite an impediment for a project such as this, involving intensive, two-sided, review and negotiation between project developer and large-scale customer.

One of the commenters also stated that this form of application procedure is unduly burdensome for a project that utilizes private equity. A review procedure should be devised that first requires and then serves to verify the due diligence that must have been performed by the investors.

Further, the prospect that a properly designed and financed project must nonetheless be contingent on the competitive allocation of limited funds is almost an overwhelming obstacle for start-up entrepreneurs and their customer partners. It is one thing to put time and capital at risk as part of the business venture. It is quite another to be required to risk capital in an uncertain competition for funding. One of the commenters stated that he was sure that more than one similar project has been taken off the drawing board because either developer or customer, or both, does not have the wherewithal to pursue design of the project by a set deadline, and without any certainty that in the end the project will even be funded.

According to one commenter, the combination of an arbitrary deadline and then passage of time for the competitive process is onerous for the development of a project in a northern climate because these areas have a limited building season to begin with, and the passage of any additional time creates tremendous pressure.

The same commenter recommended that the Agency implement a rolling application procedure, which would allow for submission of design and business plans as soon as completed, and then quick review of such plans against stated project funding requirements derived from the current scoring protocol. According to this commenter, combining this quick review procedure with on-line, updated notice of current available funds would allow developers to know where they stand going into development of a project and minimize many of these risks for all parties concerned.

*Response:* As noted in an earlier response, the Agency has included a continuous application process for both grant and guaranteed loan applications with periodic competitions throughout the year depending on the type of application. This allows applicants to submit applications any time during the year. These provisions should help mitigate the commenters' concerns.

*Comment:* In commenting on the interim final rule, one commenter noted

that there is no mention of the possibility of going to an open and continuous grant cycle for micro projects.

*Response:* As noted in the response to the previous comment, both the proposed rule and the final rule include a continuous application process with periodic competitions for grant applications for all technologies, including micro projects.

#### Rolling Over Applications

*Comment:* In commenting on the interim final rule, one commenter suggested that the option for rolling over the same application should remain each year so that the applicant of a project has started construction has a chance at two funding cycles instead of just one. The commenter noted that many of the other Rural Development funding programs allow for funding consideration in more than one cycle.

In contrast, another commenter commenting on the interim final rule recommended removing the option for rolling over an application. The commenter pointed out that the program is already oversubscribed and if a project did not score high enough to be funded in a fiscal year, the likelihood that it will be funded in a subsequent year is minimal. The commenter suggested that the applicant instead have the option to re-file a new application for the same project if the project has not already been completed. This same commenter, in commenting on the proposed rule, supported the proposed provision that would limit roll-over applications to two semi-annual competitions and one National competition.

*Response:* After considering these comments, the Agency has made a few changes to how RES and EEI grant applications will be competed.

A RES and EEI grant application requesting more than \$20,000 in grant funds will be eligible to compete twice in one fiscal year—once in a state competition and, if unfunded at the state level, once in a national competition. If the application remains unfunded after the national competition, the Agency will discontinue considering the application for potential funding.

A RES and EEI grant application requesting \$20,000 or less in grant funds will be eligible to compete in up to five consecutive competitions—three state competitions and two national competitions. The order in which such an application is competed can be two state competitions followed by one National competition for grants of \$20,000 or less, followed by one state

competition and one National competition for all grants regardless of size (all within the same Federal fiscal year) or one state and one national competition for grants of \$20,000 or less, then one state competition and one national competition for all grants regardless of size and another state competition, which means that the application would be competed across two fiscal years. If an application requesting \$20,000 or less in grant funds is not funded after its fifth competition, the Agency will discontinue considering the application for potential funding.

#### First-Come, First Served Basis

*Comment:* In commenting on the interim final rule, two commenters recommended the Agency include a “first-come, first-served” application procedure, one for multi-farm projects and one for small REAP grants.

One commenter requested that a separate application procedure be devised to allow projects involving multi-farms and a fixed price fuel supply contract to apply on a rolling basis as they are ready, on a first-come, first-serve basis. According to the commenter, this will remove the impediments of the current application procedure.

The other commenter stated that qualifying small REAP grants should be awarded on a first-come, first-served basis once funding is determined for that fiscal year. After submission from the state offices the qualifying applications should be funded in the order of their submission date until the mandatory 20 percent of REAP funds are exhausted.

*Response:* As noted in a previous response, the Agency must evaluate all projects against each other as required by the authorizing statute, and thus cannot implement a “first-come, first-served” approach to making awards.

#### Small Projects/\$20,000 or Less Grant Requests/Total Project Costs \$80,000 or Less

##### Placement

*Comment:* In commenting on the interim final rule, one commenter recommended placing the short-form application for grants under \$20,000 in § 4280.116.

*Response:* The Agency agrees that the placement of the application material for grants of \$20,000 or less could have been placed more appropriately. The Agency restructured the application provisions in the proposed rule to delineate clearly the application requirements for projects whose total project costs are \$200,000 and greater

(§ 4280.117), less than \$200,000, but more than \$80,000 (§ 4280.118), and \$80,000 or less (§ 4280.119). The Agency has determined this structure is reasonable and has retained it in the final rule.

#### Streamline Application Process

*Comment:* In commenting on the interim final rule, one commenter stated that, while applications can be submitted year round, the application process and grant making overall still takes longer than necessary for small wind projects.

Another commenter stated that the current documentation requirements require a professional grant writer to win REAP awards. The commenter suggested that past distribution of REAP grants in Oregon would show that distribution is skewed in favor of large agricultural producers established in areas closest to metropolitan areas because agricultural producers in the commenter’s county (Lake County) are so remote from where grant writers live that they typically do not have access to grant writers willing to travel to the county to do the grant work at a cost the agricultural producer is willing to pay for the chance of winning a grant. The commenter pointed out that they wrote a grant for the same financial benefit through the Oregon Department of Energy that could be completed in a 6-page document compared to the 60+ page document required by the REAP process. If the REAP documentation cannot be reduced to allow ranchers to write their own grants, then the REAP process, as it has been established, will continue with large agricultural producers being the beneficiaries of the program.

*Response:* With the changes proposed to the program as adopted in the final rule, the Agency has reduced the burden associated with submitting applications under REAP, especially for small projects. The Agency notes that it still must collect sufficient information both to evaluate the merits of a project and for competition. Thus, there is a limit to how much the process can be streamlined. The Agency also notes that it will be making available an application form that will help streamline the process for applicants seeking grants of \$20,000 or less.

*Comment:* In commenting on the interim final rule, one commenter believes that, although OMB has approved the information collection requirements and Rural Development states that the information being collected is necessary to ensure compliance with the regulation and proper use of funds, the information

required of applicants is excessive, duplicative, and burdensome.

This commenter recommended that the REAP rule allow the smallest projects to have a greatly simplified application. REAP has a standard application and a simplified application for projects below \$200,000, but it lacks a third, even simpler, application for the special category of small projects—expressly created by Congress—with grants up to \$20,000. Farmers and rural businesses wanting to apply for these smallest grants often have to resort to paid grant writers to assemble the 40 to 50 pages of documentation required for a qualifying application. Many qualified applicants are dissuaded from applying by the difficulty of the application. The commenter has prepared and attached a suggested 12 page streamlined alternative (of which all but 3 pages are mandatory Federal forms) to the existing application requirements which meet all of the statutory requirements. The commenter believes that a simpler, less intimidating, application for REAP grants up to \$20,000 would substantially increase participation, particularly for projects using small-scale wind and solar technologies.

The commenter stated that the failure to streamline “mini-project” applications may not meet the intent of the Regulatory Flexibility Act, despite Rural Development’s assertion that the rule has “no significant impact” because it only impacts those that choose to participate in the program. This position neglects those that choose not to participate in the program because the requirements for the application are overly burdensome. Small wind system retailers report that up to 90 percent of potential applicants are dissuaded by the application requirements such as plot plans, financial statements, tax returns, and the NEPA form (they do not understand that the short form is often sufficient).

Another commenter on the interim final rule also recommended that the Agency continue to reduce application complexity, especially for small projects. The interim final rule takes a strong step toward program simplification by removing the preferences for grant/loan guarantee applications. More complex application systems mean that many applicants must hire grant writers, which biases the program towards those who are better able to afford grant writers. Simplification will benefit agricultural producers of all means, especially smaller operators. REAP rules should require a greatly simplified application process for the smallest projects. Because so many smaller systems used

off-the shelf technology, much of the application can be drastically simplified. A number of requirements, such as for design warranties not commonly offered, should be removed from application requirements for small projects.

A third commenter echoed these same concerns. The commenter stated that the grant application is lengthy and overly burdensome for small, independent operators whose main focus is running their business. Faced with these burdensome requirements, many small business operators are contemplating hiring outside grant writers at considerable expense. Any action to lessen the burden for these operators would be a welcome change. Alternatively, the Department could allow application preparation as an eligible expense under professional service fees.

*Response:* In the proposed rule, the Agency proposed a third-tier application process for projects with total project costs of \$80,000 or less, which streamlines the application process for these smaller projects. The final rule maintains this third-tier application process. The Agency notes that there is a limit to how much the application process can be streamlined because the Agency must still receive sufficient information in order to determine a project’s technical merit and to make selection among various meritorious projects.

*Comment:* Many commenters expressed concern over the amount of paperwork and resulting expense required to file an application.

Two commenters commended the Agency for creating a third category for projects with total project costs of \$80,000 or less, and agreed that the smallest projects should have a greatly simplified application. According to the commenters, the current application is a lengthy 40 to 50 pages for project grants up to \$20,000, and farmers and rural small businesses interested in RES are often dissuaded by the daunting application process, or end up paying grant writers to assemble the paperwork. The commenters, therefore, recommended that the Agency develop a short form and, if practicable, an on-line application. One of these commenters provided a 12 page application example that, according to the commenter, meets all of the statutory requirements as an alternative to the current, lengthy application. According to the commenters creating simplified, less-intimidating applications for projects totaling under \$80,000 and under \$200,000 would substantially increase the number of

small project applications (e.g., small wind energy) to and participation in the REAP program.

Another commenter, who has worked on REAP applications since 2005, stated that REAP grants are long, repetitive, and cumbersome. The commenter asked for the Agency to make them shorter and easier to file.

Another commenter has stated dissatisfaction with the length and difficulty of REAP applications, citing it took over a week of intensive work to complete each application package for \$20,000 grants. The commenter highlighted that a consultant fee for the present application ranges from \$3,000 to \$5,000, which is too high of a cost for a potential return of \$20,000. The commenter stated that the commenter will not participate unless wind is able to compete fairly, and the application is drastically shortened. According to the commenter, nothing in a small wind grant application should take more than two pages or more than one hour to complete.

*Response:* The Agency thanks the commenters for the recommendations. The proposed rule streamlines the application process, including a simplified application for grants of \$20,000 or less is provided in the final rule. The final rule incorporates three application categories, for which the Agency has developed forms to assist applicants with the application requirements. For projects with total costs \$200,000 and greater, applicants can use RD Form 4280-3C, “Application for Renewable Energy Systems and Energy Efficiency Improvement Projects, Total Project Cost of \$200,000 and Greater.” For projects with total costs of less than \$200,000, but more than \$80,000, applicants can use Form RD 4280-3B, “Application for Renewable Energy Systems and Energy Efficiency Improvement Projects, Total Project Cost of Less Than \$200,000, but More Than \$80,000.” Finally, for projects with total costs of \$80,000 or less, applicants can use Form RD 4280-3A, “Application for Renewable Energy Systems and Energy Efficiency Improvement Projects, Total Project Cost of \$80,000 or Less.” The three application categories require different amounts of paperwork.

The smaller the total project costs, the lesser amount of paperwork and burden are associated with the process. The forms can be used to meet the application requirements and will reduce burden because all the information needed for a complete application is in one complete concise form.

## Certifications

*Comment:* One commenter agreed with simplifying the application process to require certifications versus additional information upfront.

*Response:* The Agency thanks the commenter for supporting this change. The final rule contains the same set of certifications as in the proposed rule for this set of applications.

## Energy Bills

*Comment:* One commenter stated that, with regard to applications for projects with total project costs of \$80,000 or less, the requirement of small producers to maintain and provide 36 months of energy bills (see proposed § 4280.119(b)(3)(iii)) is burdensome on the applicant and will result in many applicants being deemed ineligible after applying. According to the commenter, requiring a producer to go back for 36 months when they had no idea that they would be applying for these funds 30 months ago is unrealistic and should not be required.

*Response:* As noted in the response to this issue on the calculation of simple payback, the Agency agrees with the commenter that maintaining 36 months' worth of energy bills may be burdensome to some applicants. The final rule allows the applicant to use the most recent 12 months or calculate an annual average over the most recent 24, 36, 48, or 60 month period for the energy assessment and energy audit.

## Technical Review

*Comment:* In commenting on the interim final rule, one commenter suggested that the Agency improve technical oversight at the program level and reduce technical reporting for single projects, especially small ones. Many of the concerns for project and technology viability that are addressed in applications can be addressed through other means. In the early years of the REAP program, the Agency worked more closely with the NREL to review and score applications. NREL works on renewable energy programming across multiple agencies and can continue to provide beneficial program design advice to the Agency. For example, NREL can assist the Agency in developing lists of prequalified equipment for the REAP program in order to avoid funding bad technology.

In addition, a certification process is now under development in the small wind industry. The commenter recommended incorporating this process in order to bypass high reporting and application requirements. If a manufacturer's equipment has

already been certified, that should be sufficient for technology evaluation. The commenter recommended that the Agency use prequalification and valid industry certification systems to reduce technical reporting requirements.

*Response:* The Agency will work with third-party agencies, such as NREL, on an as-needed basis to help address concerns with "questionable" technologies. For example, the Agency will use a third-party to help review all applications received for refurbished systems.

With regard to reducing technical reporting for projects, especially small ones, the Agency has targeted the burden associated with the technical reporting requirements based on the size of the request for funding. This has resulted in much less burden for small project applications (those with total project costs of \$80,000 or less). However, the Agency must collect sufficient information to both evaluate the merit of a project and compete that project with others. Thus, there is a limit to how much the process can be streamlined. The Agency also notes that it will be making available an application template that will help streamline the process for applicants seeking grants of \$20,000 or less.

The Agency disagrees that precertification of technologies is appropriate for this program. However, the final rule allows a technology to be determined commercially available if it is certified by a recognized industry organization whose certification standards are acceptable to the Agency.

## Matching Funds Verification

*Comment:* One commenter agreed with the Agency's decision to require applicants to provide a verification of matching funds equal to the 75 percent contribution.

Another commenter agreed with the Agency's decision to require applicants to provide the remainder of total project costs as a match. The commenter asked if the equity raised from the sale of Federal tax credits is able to be documented at the time of application in order to be used as a match.

*Response:* The Agency thanks the commenters for the support. In response to the one commenter's question, equity raised from tax credits can be counted as equity if they can provide third party verification.

## Working With Applicants

*Comment:* Two commenters requested that the Agency work closely with applicants to help them through the application process.

One commenter suggested that there be a representative to work directly with farmers or the installers that work with farmers in order to get more farmers putting in systems.

The other commenter recommended that the Agency focus on providing paperwork assistance to applicant that is part of smaller agricultural operations or business owners, with a similar change considered for beginning farmers and entrepreneurs. The commenter noted that applicants that fall into these categories may not have the resources to seek extra assistance if they require it, and that paperwork assistance may determine the success of an application. The commenter stated that, if increased assistance were implemented within the program, it would help minimize the difficulty of applying for a loan, making it much easier for small operations to take advantage of REAP and encourage a diverse set of applicants.

*Response:* Subject to available resources, the Agency endeavors to assist every potential REAP participant that requests support in completing an application. A simplified application for grants of \$20,000 or less is provided in the final rule.

## Evaluation of Applications (§ 4280.120)

### Independent Organizations

*Comment:* In commenting on the interim final rule, one commenter recommended that the Agency contract with an independent organization to evaluate the actual benefits from the broad inclusion of grain dryers under program eligibility and recommended program changes with a goal to focus limited program funds on adoption of the most energy efficient technologies available.

The commenter stated that, over the years, the REAP program has worked better for some technologies than others. In recent years, the commenter has seen a growing dominance in the number of awards for a small handful of awards technologies. Grain dryers, in particular, have risen greatly in awards under the REAP program. The commenter stated that project award information they have reviewed is not definitive on which awards are grain dryers, but the numbers of awards clearly reach well over 1,300. As a result, many other technology providers are coming to regard REAP as "the grain dryer program."

The commenter stated that project data they have reviewed indicates claims of increases in grain dryer efficiency of 33 percent to as much as 77 percent, usually for propane but also natural gas and electricity. The new

grain dryers are modern equipment using modern moisture sensors, flow control and metering that often replace equipment that is decades old and of lower technology. As a result, for some manufacturers, every grain dryer in their product line qualifies for REAP when replacing an old system, with no programmatic favor for more efficient models. The commenter questioned if REAP is truly driving technology improvements or if this is essentially a bonus for grain dryer purchases due to occur anyway (the “free rider” effect).

In previous years, many awards for dryers were based upon expanded capacity for the new system. The interim final rule includes new changes that address this by restricting the amount of the award to the replacement capacity of the system. The rule addresses the definition of “capacity,” which varies for the many technologies covered by REAP (in some cases generating capacity, or horsepower capacity or BPH or other). The Agency should be commended for taking first steps to rein in the unwelcome dominance of REAP by one technology sector, but there is more to be done. The new definition should establish set criteria for definitions and calculation used by national and state offices for the sake of fairness and accuracy. As a rule, the Agency should focus the already limited program funds on adoption of the most energy efficient technology available.

The large number of grain dryers funded under the program raises questions regarding how truly diverse the REAP program is when one type of technology so thoroughly dominates. In the case of grain dryers, this equipment is run only a few weeks per year, raising questions of how much energy is actually saved for the investment of public dollars. The commenter stated that they have heard reports that these grain dryers have also been very helpful in saving grain during the wet harvest seasons of recent years, though that is a side benefit. The commenter recommended that the Agency contract with an independent organization to evaluate the actual benefits from the broad inclusion of grain dryers under program eligibility and recommend program changes to reflect total energy efficiency gains due to program incentives.

*Response:* The commenter is especially concerned with how well REAP allows for the diversification of projects, pointing specifically to grain dryers and whether additional oversight is needed to verify information being reported in grain dryer applications. While the Agency acknowledges that

grain dryers have been a dominate technology, the Agency points out that the program (e.g., awarding discretionary points to under-represented technologies) helped diversify the program’s portfolio, such that the percentage of the projects awarded to grain dryers fell by 50 percent or more from 52 percent in fiscal year 2010 to between 13 and 26 percent in fiscal years 2011 through 2013.

The Agency expects a further diversification to take place under the final rule by scoring projects on the basis of energy saved per Federal dollar requested. This should level the playing field further. In addition, by obtaining this metric, the Agency will be able to identify any project (grain dryer or otherwise) that reports a very high energy saved per Federal dollar requested figure to the extent that such a figure appears to be an outlier. The Agency will then be able to target such applications for further evaluation and can enlist, as necessary, additional assistance from third-parties, such as NREL, to help ensure that the information being reported is appropriate and not overstated.

#### *Scoring Applications (§ 4280.120)*

##### Overhaul

*Comment:* In commenting on the interim final rule, one commenter stated that the existing scoring system used for the REAP program is in need of review and improvement. The commenter recommended that the point system be reorganized so as to realize public policy goals of the program, which include maximizing environmental protection, energy savings, and renewable energy production for producers and rural businesses. Many of the existing scores in the program relate more to paperwork preparation and less to energy or environmental performance of the system in question. The majority of points should evaluate the degree to which the proposals meet program goals for energy and environmental benefits. The changes should result in clear definitions, clear criteria, and a weighting that reflects the program criteria. In some cases, it will be helpful to develop criteria in consultation with the DOE and other Federal or state agencies with relevant experience.

*Response:* The Agency agrees with the commenter that the program’s scoring system needed improvement. The Agency reviewed the scoring system and the final rule contains changes that address the commenter’s concerns. Under the existing rule, the energy (replacement, generation, and savings)

and environmental benefit scoring criteria represented approximately 20 percent of the total potential application score. Under the final rule, these two scoring criteria account for 30 percent of the total potential score, thus emphasizing these particular aspects of the program’s goals. The Agency also provides clearer definitions and scoring criteria. Finally, the Agency has evaluated the relative weightings of the scoring criteria to reflect all of the goals of the program.

*Comment:* In commenting on the interim final rule, one commenter recommended that anaerobic waste digester technology that produces renewable biogas power and electricity be treated under the rule in a manner that is equitable in comparison to other renewable technologies. One of the specific suggestions made by the commenter was to improve the ranking/scoring criteria that support digester projects by making changes to the ranking criteria that consider environmental attributes of a digester project.

A second commenter expressed similar concerns, stating that anaerobic digesters need to be better supported by the USDA. More REAP or similar funds need to be dedicated to anaerobic digesters as the bigger lobbying interests of wind power, solar power, and ethanol have long monopolized USDA funds. Anaerobic digesters are proven technology that cannot happen on our dairy farms without financial assistance from the Agency. This type of renewable energy project needs to have funding equity with the other technologies being funded under REAP.

*Response:* In both the proposed rule and the final rule, the Agency has strived to reduce any actual or perceived imbalances in its consideration of meritorious projects to fund. However, with any set of scoring criteria, some technologies will have inherent advantages or disadvantages compared to others. It is impossible to totally eliminate this. With the inclusion of discretionary points for under-represented technologies, the Agency can help alleviate any unintended biases that occur as a result of the scoring criteria.

With regard to funds being dedicated to a particular technology, in this case anaerobic digesters, the Agency cannot do so without specific statutory authorization.

*Comment:* One commenter asserted that the scoring criteria in the proposed rule still places renewable energy projects at a disadvantage. The commenter suggested that reverting to separate pools of money per technology

type as a first round competition may help renewable energy projects to compete. Those that did not score high enough to be funded in their technology type pool should also be allowed to compete in the final National competition of funds.

*Response:* While the Agency disagrees with the commenter's assertion, the Agency cannot accommodate the suggestion to create separate pools of money for each technology type without statutory authority.

#### Environmental Benefits

*Comment:* One commenter asked why this criterion is being scored as an "all or nothing" rather than being scored on a graduated basis. Typically, the program has awarded points when appropriate documentation is made available and it specifically cites the project, but almost all EEI and RES projects have benefits. The commenter stated that it would be more effective to award more points when a project demonstrates that it is reducing greenhouse gases more than another. If that is not the case, then what are the quantitative values or is simply a pass/fail document worth 5 points? The commenter stated that the Agency's criterion lacks any quantitative aspect.

*Response:* The Agency agrees that this criterion can be scored on a graduated basis based on meeting one or more of the three impact areas—environment, public health, and resource conservation. However, the Agency disagrees that this scoring criterion can be scored on a quantitative graduated basis as there are too many potential metrics and no one metric that would be suitable to all of the potential technologies. Further, selecting one specific metric, such as the commenter's greenhouse gas example, will raise a particular environmental aspect to a higher level than other, equally important environmental aspects; that is, it is difficult, if not impossible, to weigh one positive environmental impact against another.

In consideration of the comment, the Agency has revised the rule to award one point if any one of the three impact areas is met, three points if any two of the three impact areas are met, and 5 points if all three impact areas are met.

*Comment:* In commenting on the interim final rule, three commenters recommended increasing the points awarded for the Environmental Benefits scoring criterion. A fourth commenter, commenting on the proposed rule, also recommended increasing the points awarded for this criterion.

One commenter recommended that the points awarded be increased from 10

to 25 points, with acceptable documentation being an NRCS-approved conservation plan.

A second commenter also believes more weight needs to be considered for the environmental benefits provided from REAP-eligible projects. Dairy farmers have never faced greater environmental demands than they do today. Fortunately, there are tools available to help alleviate many of these concerns. For example, anaerobic digester systems can provide vast opportunities for dairy farmers to mitigate air and water concerns. An anaerobic digester system can allow for a dairy farmer to vastly reduce their greenhouse gas emissions, especially methane. Also, anaerobic digester systems give dairy farmers a tool to reduce and control key nutrients, such as nitrogen and phosphorus.

The third commenter stated that the Agency should increase the scoring proportion for air and water co-benefits. According to the commenter, a key rationale for the existence of REAP is to provide environmental benefits, but the program scoring falls short of gauging projects by their ability to serve this fundamental public policy goal of an improved environment. The commenter points out that the 10 points for environmental benefits are only approximately 8 percent of the overall program scoring. Furthermore, by undervaluing environmental benefits, the interim final rule's point allocation may miss opportunities during technology selection to achieve environmental gains such as better water or air quality, or habitat diversity. The marketplace already undervalues environmental benefits and REAP should provide a strong corrective for this market failure by more strongly favoring projects with environmental benefits. Examples of environmental co-benefits that should receive higher value include water savings from more energy efficient irrigation technologies, reduced pathogens or surface water due to anaerobic digesters, or the complete elimination of fossil fuel combustion due to noncombustible renewable energy sources such as wind and solar.

Lastly, the third commenter stated that the existing requirement of a letter from a state agency is largely meaningless. The true determination of the letter is more a reflection of the ability of state agencies to generate them for specific projects rather than improved stewardship. The commenter recommended that the Agency replace this letter requirement with a better system reflecting environmental co-benefits.

The commenter on the proposed rule recommended increasing the environmental benefit criterion point value from the proposed maximum of 5 points to some level above the maximum 10 points as found in the interim final rule. The commenter stated that this is an important facet of the program, as it helps give priority to projects that have a positive impact within the specified areas of the criterion—public health, the environment, and resource conservation. According to the commenter, these focus areas of this criterion are at the heart of REAP, and should be given sufficient weight. Projects that show a positive effect on the criterion's impact categories should be given priority, especially if a positive impact can be shown across all three.

*Response:* The Agency has considered the commenters' recommendation to increase the point value for the environmental criterion to some level higher than 10 points. The primary purpose of REAP is to generate or save energy through RES and EEI, not to provide environmental benefits as claimed by one of the commenters. The Agency acknowledges that general letters from states were not a useful mechanism, and therefore revised the provision in the proposed rule. The Agency further acknowledges many of the points made by the commenters concerning the need to reduce the adverse impacts on the environment caused by energy generation. However, consideration of environmental impacts is but one of a number of criteria that the Agency must consider in determining which projects to fund. Because many, if not all, projects eligible for funding will have some positive impact on the environment, this criterion is not necessarily a very good discriminator between projects and is subjective. Further, as noted in the previous response, it is difficult to weigh one positive environmental impact against another, let alone to necessarily be able to measure them prior to a project being built. In consideration of these factors, the Agency reviewed the scoring criteria and their associated weights and has determined that relative to the overall goals of the program the 5 points for this criterion as found in the proposed rule is reasonable and is retained in the final rule.

Energy Generated or Saved per Dollar Requested/Quantity of Energy Replaced, Produced, or Saved

*Comment:* Many commenters were against the addition of the "energy generated per dollar requested"

criterion on the basis that it places small wind systems at a disadvantage.

A number of the commenters stated that solar systems often have state or utility based incentives not available to wind, and “dumping” of Chinese solar modules has created a distorted market place which this criterion would exacerbate. According to the commenters, over 70 percent of the solar modules installed in the U.S. in 2012 were built in China, while 91 percent of the small wind systems installed in America were built here. By making this change in the scoring criterion, the commenters state that this proposal will reduce the participation of small wind in the REAP program.

Two commenters also did not support the Agency’s proposed change to this scoring criterion because, according to these commenters, it favors certain renewable energy technologies, which one of the commenters stated would contradict the promotion of all renewable energy technologies mandated by the 2002 and 2008 Farm Bills. One of these two commenter stated that, based on sample calculations, solar projects would score lower than the typical energy efficiency projects, precluding them from competing fairly for REAP grant funds. Energy generation programs are typically more costly, and it is unfair that they are scored using the same criterion as efficiency projects. The commenter requests a study be done to fairly award energy system projects on an equal basis as energy efficiency projects.

The other of these two commenters stated that certain RES often have state or utility based incentives not available to other technologies (e.g., solar renewable energy payment incentives, Made-in a certain state solar energy tax credits, technology specific feed-in tariffs, etc.). To a degree, all forms of energy receive incentives, but certain technologies receive disproportionate ones, which skews the energy marketplace. The commenter, therefore, recommended that the Agency statistically normalize scoring across technologies rather than apply a blunt “energy-generated-per-dollar-requested” criterion.

*Response:* Based on the comments received, the Agency has modified this scoring criterion. The modifications are:

- Creating two scoring components as follows:

(1) Quantity of energy generated or saved per dollar requested. The points allocated to criterion were reduced from the 25 points in the proposed rule to 10 points. To obtain maximum points, the project must demonstrate it can generate

or save at least 50,000 BTU’s per dollar requested. This is an increase from the 25,000 BTU’s published in the proposed rule.

(2) Quantity of energy replaced, produced, or saved as found in the REAP program, but not in the proposed rule. However, energy efficiency projects must demonstrate 50 percent savings, up from 35 percent in the program, to receive the maximum of 15 points.

- Applications for RES and EEI projects are eligible to receive points under both the “Quantity of energy generated or saved per REAP dollar requested,” and the “Energy generated, replaced, or saved” components.

To the extent that any technologies become under-represented as a result of this change (or as the result of any other changes to the scoring criteria), the final rule also allows State Directors and the Administrator to award up to 10 discretionary points.

With regard to the suggestion that the Agency “normalize” the scoring, this is not feasible at the state competition level because the level of funds is insufficient to allow a meaningful normalization. While there may be sufficient funding at the National Office pool level to consider normalization, the Agency has determined a more objective scoring criterion with the ability to award up to 10 discretionary points for under-represented technologies is the preferred approach and will still allow a broadly diverse project portfolio of renewable energy system and EEI technologies.

*Comment:* In commenting on the interim final rule, one commenter stated that anaerobic digester technologies provide for energy replacement, energy savings, and energy generation. The commenter then suggested that anaerobic digester technologies be eligible to receive the maximum points associated for all three categories under § 4280.117(c)(1) of the interim final rule. Currently, the digester systems would be able to receive points for only one of these three categories and this discriminates against valuable and important attributes of the system.

*Response:* The Agency acknowledges that anaerobic digesters have multiple attributes, but they are not the only technology to have such multiple attributes. To help maintain a balanced portfolio of technologies, the Agency has determined that it is reasonable to determine the primary use of the technology (either energy generation or energy savings) in the awarding of points. If a technology is found to be under-represented under the program, the regulation allows State Directors and

the Administrator to award discretionary points to such technologies. The Agency has not made any changes to the final rule in response to this comment.

*Comment:* In commenting on the interim final rule, one commenter recommended that the Agency add “anaerobic digesters and biomethane fueling stations” as a special, separate category reflecting the Secretary’s commitment to rapidly expand the digester industry. The commenter specifically referred to: § 4280.117(c)(1) of the interim final rule, add a new § 4280.117(v) detailing that digesters and biomethane fueling stations should receive similar sliding scale of points depending on the combination amount of energy replaced, saved and generated; in 7 CFR 4280.117(c)(10), add “anaerobic digesters and biomethane fueling stations.”

*Response:* The 2014 Farm Bill modified the definition of renewable energy system to produce a usable energy from a renewable energy source and may include distribution components necessary to move energy produced by such system to initial point of sale, but may not include a mechanism for dispensing energy at retail. Therefore the Agency is unable to create a separate category for “anaerobic digesters and biomethane fueling stations” and has not revised the final rule in response to this comment.

*Comment:* In commenting on the interim final rule, one commenter suggested that the underlined text be added to paragraph § 4280.117(c)(1)(iii): “(iii) Energy generation or biomethane production. If the proposed RES is intended primarily for production of energy for sale, or for the production of biomethane for injection into natural gas transmission and distribution systems, 10 points will be awarded.” The commenter believes this change will increase the demand for renewable biogas produced by anaerobic digesters. It would allow anaerobic digester projects that inject renewable biogas into the natural gas, in addition to or instead of using the gas on-site. Anaerobic biogas producers can receive added value from the renewable quality of their biogas, even when that gas is not used on site but put into transmission; wind and solar generators sell the renewable quality of their electrons to firms far from where the electrons are consumed.

Encouraging the wheeling of renewable biogas through the natural gas transmission system allows customers, including stationary fuel cell power plants and hydrogen production systems and hydrogen production

systems at fuel cell electric vehicle fueling stations, to take advantage of renewable fuel using the existing natural gas system.

*Response:* The Agency does not agree with the commenter that the suggested text needs to be included in the rule. Under the scoring system in the proposed rule and as included in the final rule scoring, a biogas application qualifies for points based on the biogas produced, including biogas that is cleaned, compressed, and injected into a natural gas transmission and distribution system. Thus, the Agency has not revised the rule as suggested by the commenter.

*Comment:* In commenting on the interim final rule, one commenter stated that as a key goal of the program is to replace or save energy, or produce renewable energy, the overall weight for this scoring criterion should increase. As it stands now, this share of the points for energy replaced, produced, or saved is approximately 12 percent of the overall score. The weight should be substantially increased in proportion to the overall score, at least to 25 percent.

The commenter recommended that the minimum energy efficiency gains required to earn additional points should be increased at all levels, especially the highest, in order to provide greater energy savings benefits. The commenter pointed out that the interim final rule provides more maximum points for energy efficiency or energy replacement, 15, compared to 10 maximum points for renewable energy for sale. The additional five points at the highest level should only be awarded in those cases with significantly higher efficiency gains or for use of multiple energy efficiency technologies, so as to award the highest points to the best performing proposals and not unduly diminishing renewable energy generation awards.

*Response:* The Agency acknowledges that awarding of points for this scoring criterion needed to be revised. The Agency proposed revisions to this scoring criterion in the proposed rule, which addresses the commenter's concerns, including increasing the maximum points available under this criterion to 25 points and this maximum is retained in the final rule.

*Comment:* In commenting on the interim final rule, one commenter opposes favored treatment of any eligible technology, particularly when small wind systems received approximately 2 percent of the 2010 awards.

*Response:* The Agency revised the State Director and Administrator discretionary criterion in the final rule

so that all projects, including small wind projects, will be equally eligible to receive discretionary points if they meet any of the conditions identified in this criterion, including, for example, if they are an under-represented technology or are needed to achieve geographic diversity.

*Comment:* In commenting on the interim final rule, one commenter stated that a renewable energy project being installed at a brand new facility does not receive points under this scoring criterion. The commenter recommended that a new scoring criterion be added to incentivize new businesses to install renewable energy projects.

*Response:* The Agency added a scoring criterion found in the proposed rule, and as carried into § 4280.120(b)(1) of the final rule that awards points to a renewable energy systems based on the amount of energy generated per dollar requested. In addition, new facilities may qualify for points under § 4280.120(b)(2)(iii) which allows points to be awarded for energy production. These changes address the concern raised by the commenter and the need for another separate scoring criterion is unnecessary.

**Readiness**

*Comment:* One commenter asked if the readiness scoring criteria will have a sliding scale for readiness points.

*Response:* The Agency has revised this criterion to reflect a sliding scale for those applications that can show more than 50 percent matching funds and other funds, while those applications showing 50 percent or less will still receive no points. In addition, the Agency is reducing the maximum number of points for this criterion from the 25 in the proposed rule to 20 points in the final rule; note that the 20 points is still higher than the maximum 15 points under the existing program.

To illustrate the effect of the sliding scale compared to the interim final rule provision, please see the following table:

Percentage of matching funds and other funds	Points awarded	
	Interim final rule	Final rule
50% or less .....	0	0
60 .....	5	4
70 .....	5	8
75 .....	10	10
80 .....	10	12
90 .....	10	16
100 .....	15	20

**Previous Grantees and Borrowers**

*Comment:* One commenter agreed with increasing the maximum points

awarded under the “previous grantee and borrower” criterion, but recommended that the Agency give more to this scoring criterion.

*Response:* The Agency has reviewed the overall scoring weights for the criteria in light of this and other comments and has determined that increasing the maximum points that can be awarded under this criterion to 15 would further encourage new applicants to apply. The final rule reflects this increase to 15 points for this scoring criterion.

*Comment:* The commenter suggested that the Agency polls its field offices with specific calculations to determine how the proposed scoring change would affect the proposals prior to making any regulatory changes.

*Response:* The Agency engaged its field staff during the development of the proposed rule. In addition, the public, including Agency field staff, has had the opportunity to comment on the proposed rule. Thus, the Agency has determined it is not necessary to further pursue the commenter's suggestion.

**State Director and Administrator Priority Points**

*Comment:* One commenter recommended that, if comments are being sought for awarding under-represented or administrator points, the Agency should allow each state to award additional points specific to encouraging necessary growth within their state.

*Response:* In considering the categories for which the State Director and Administrator can award their priority points, the Agency has expanded this criterion by adding three additional categories. The addition categories will allow State Directors more flexibility in awarding points to encourage necessary growth within their state for projects funded from their state allocation. These three categories are, in brief: (1) The applicant is a member of an unserved or under-served population; (2) furthers a Presidential initiative or Secretary of Agriculture priority; and (3) the proposed project is located in an impoverished area, has experienced long-term population decline, or loss of employment. The Agency has determined that these categories for administrative points are required to maintain uniformity and consistency for awarding points between states.

*Comment:* One commenter encouraged the Agency to allow states to retain the State Director awarded administrative points for a percentage of their caseload submitted to the National

Office for the pooled funding award consideration.

*Response:* The commenter is requesting that the National Office keep any State Director points awarded to an application that is forward to the National Office for competition in the national pool of funds. The Agency disagrees with this recommendation because the purpose of the National competition is to compete all unfunded, eligible projects against each other to determine, at a National level, under-representation and geographic distribution. It is using the “national” lens that the Administrator will be determining whether to award these discretionary points.

#### Normalization

*Comment:* In commenting on the interim final rule, numerous commenters recommended reinstating data normalization across technologies in the application scoring process. One of the commenters stated that the recent dominance of grain dryers in REAP, and the desire to continue to promote technology diversity, could be addressed in other ways. In previous years, the Agency took steps intended to increase technology diversity in determining REAP awards. The Agency employed a “normalization” process developed by the NREL. The normalization process took place after proposals were all scored and sought to preserve some degree of balance among the technologies supported in the program. The normalization system maintained the relative point scores within single technology classes.

This one commenter, in commenting on the proposed rule, again recommended that the Agency consider applying the normalization process to the REAP application process to avoid the dominance by one single technology. The commenter acknowledged that this may be difficult to do with the existing system for state allocations of program funds, but the allocations themselves also need to be reviewed and should be based on a metric related to energy. (Right now the state allocation system is vague and the method used to arrive at it is opaque). The Agency could also apply the normalization process across states to avoid grossly disproportionate awards.

In contrast to these commenters, two commenters suggested that normalization should not come back into the final regulation for REAP. According to these commenters, a normalization process just complicates the program and removes the transparency of awards.

*Response:* The Agency has chosen not to normalize, but to allocate funding to the states which has increased both technology diversity and participation in all 50 states and territories, and no changes have been made to the rule in response to this set of comments. The normalization procedure was performed in the past when only one funding competition was held and there were no state allocations. The use of administrative points has also allowed the Agency to sustain a broadly diverse technology portfolio.

With regard to the comment suggesting that the allocations also need to be reviewed and should be based on a metric related to energy, that is outside the purview of this particular rulemaking, but the Agency will pass this comment on to those within the Agency dealing with state allocation of funds.

#### Small Projects

*Comment:* In commenting on the interim final rule, one commenter recommended that the REAP application scoring system should be abandoned for the smallest projects and its complexity was inappropriate for micro projects. According to the commenter, the current REAP application scoring system is disproportionately complex and opaque for the smallest (grants up to \$20,000) projects and it should be replaced with a simple checklist for the state offices to use before forwarding an application to USDA-Washington and all projects that meet this criteria should be eligible.

*Response:* The Agency partially agrees with the commenter in that some of scoring criteria were unduly complex for very small (micro) projects, including the technical merit criterion and the commercial availability criterion. Both criteria were excluded in the proposed rule. The Agency removed the criterion for commercial availability entirely (for reasons discussed elsewhere in this preamble) and replaced the technical merit scoring criterion with a pass/fail determination.

The Agency, however, cannot abandon a scoring system for the smallest projects because the Agency still needs to evaluate all projects against each other, as required by the authorizing statute, in order to determine the more meritorious projects. A “simple checklist” does not do this and, even though a project may be “checked off,” it does not speak to the project’s merits relative to the Agency’s goals.

#### Technical Report/Technical Merit

*Comment:* In commenting on the interim final rule, several commenters recommended that the technical report be a pass/fail review instead of being scored using a points system. According to the commenters, the score awarded is subjective and depends on the opinion of the reviewer causing inconsistencies among similar projects. Similarly, a number of commenters on the proposed rule supported the proposed removal of technical merit as a scoring criterion due to its inconsistency and subjectivity in favor of a “pass/fail” screen.

*Response:* The Agency agrees with the commenters, although the scoring criterion being referred to by the commenters was “technical merit” and not “technical report.” The Agency recognized that the “technical merit” criterion was posing the difficulties identified by the commenters and, in the proposed rule, proposed to remove it as a scoring criterion and replace it with a pass/fail determination, which the Agency is retaining in the final rule.

*Comment:* Some commenters recommended that the Agency work closely with NREL to establish the “pass/fail” criteria for the proposed rule. One of the commenters pointed out that NREL has a renewable energy science and engineering background to provide guidance to identify technically qualified projects.

*Response:* The Agency agrees that the rule needs to identify a metric by which the “pass/fail” determination will be made, and has included such in the final rule. Both the areas in the technical reports and the criteria developed and used to score a project’s technical merit were developed in consultation with NREL. The Agency took that information to identify the key areas of each technical report to examine in determining whether a project has “technical merit” and distilled the criteria used to score projects on technical merit into a concise metric—does the information exhibit any weaknesses in the area and does it show that the project meets or exceeds any requirements specified for it.

*Comment:* Due to the nature of the small wind market, some commenters recommended that the Agency regularly communicate with the NREL to maintain a current and consistent understanding of which manufacturers and distributors may be considered reputable.

*Response:* The Agency agrees with the commenter. While Agency staff will continue to work to ensure that technologies eligible for REAP funding

are commercially available and meritorious, it is not the Agency's role to be either a clearinghouse of information on manufacturers and distributors or to make judgments on their reputations.

#### Commercial Availability and Warranty

*Comment:* In commenting on the interim final rule (§ 4280.117(c)(3)), one commenter recommended that the Agency add the ability to utilize an "Operations and Performance" contract as an alternative to a warranty requirement. Two other commenters stated that the scoring criterion that gives 5 extra points for a 5-year warranty should be removed. According to these two commenters, this criterion is unclear and can be interpreted in many ways, and it is difficult to prove that the applicant actually received the warranty upon project completion.

*Response:* The Agency has removed the "commercial availability" scoring criterion and, as a result, the language concerning warranties referred to by the commenter is no longer part of scoring. Thus, the concerns expressed by the commenters are no longer relevant.

*Comment:* In commenting on the interim final rule, one commenter pointed out that The Innovation Center for U.S. Dairy is working with USDA to address the lack of a North American Industry Classification System (NAICS) code(s) for anaerobic digesters, which would help relieve difficulties experienced by the industry in applying for Federal grants. If such a new code(s) is established or selected, the commenter urges its immediate adoption by the program for the process of analyzing an applicant's credit.

*Response:* The Agency acknowledges that at this time anaerobic digesters do not have a NAICS code specifically applicable to them, and that they are being covered under an "energy generation" NAICS code. If and when a NAICS code specific to anaerobic digesters is developed, the Agency does not anticipate any issues with its adoption as soon as it is available. The Agency notes that no changes to the rule are required to address the commenter's concern.

#### Construction Planning and Performing Development (§ 4280.124)

*Comment:* One commenter, referencing page 22048, column 3, paragraph 4 of the proposed rule's **Federal Register** notice, expressed support for the elimination of all procurement contracts for projects with total project cost less than \$200,000.

*Response:* While the Agency thanks the commenter for their support, the

Agency notes that the preamble paragraph the commenter is referencing states ". . . the Agency is proposing to remove the requirement that the Agency has to sign off on all procurement contracts for projects with total project costs of less than \$200,000." The Agency did not propose to eliminate procurement contracts for this set of projects. The Agency has retained the proposed rule's provision found in §§ 4280.118(c)(2) and 4280.119(c)(2) of the final rule to remove the "sign off" requirement and no changes were made to the final rule as a result of this comment.

*Comment:* One commenter disagreed with the Agency's removal of surety on contracts between \$100,000 and \$200,000 and the ability to use deposits and letters of credit in lieu of payment and performance bonds. The commenter indicated that a payment bond provides superior protection compared to a letter of credit or cash deposit to public bodies because a subcontractor or supplier can make a direct claim against the payment bond. A performance bond assures that qualified contractors are hired and that funds are available to complete the project.

*Response:* The Agency has not removed the requirement for surety for contracts between \$100,000 and \$200,000, but has enabled the grantee to request exception to the surety requirement under certain conditions (see § 4280.124(a)(3)(v)). The Agency has added language to § 4280.124(a)(3)(v) of the final rule that this must be requested by the applicant and, if an exception is made, Agency funds will not be paid out until the project is operational and performing as describe in the technical report.

*Comment:* One commenter noted that proposed § 4280.124(a)(3)(i) requires that the Agency be named as co-obligee on the required surety bonds. The commenter did not object to the addition as co-obligee subject to certain clarifying conditions. The Agency, as a co-obligee on the bond, is not a party to the contract between the contractor and grantee. It is a well-established principle that the obligee may not enforce the surety's obligations under the bond if the obligee itself is in default under the contract. However, the commenter presumes that the Agency is not a party to the contract. Thus, there is a question of whether the Agency can still require the surety to complete a project even when the grantee has stopped paying the contractor. A surety typically requires that the dual obligee bond have clarifying language to state that the surety cannot be expected to perform by either obligee if the first obligee (in this

case, the grantee) is in breach of its payment obligations. The commenter recommended that such language be included in the regulations and the bond form.

*Response:* The Agency agrees with the commenter that clarifying language is needed, but will address this in instructions to the rule rather than in the rule itself. The Agency is required to review and approve all contracts and will require that the clarifying language reference by the commenter be included in all contracts. It is noted that the Agency/applicant would typically resolve any undisputed financial obligations prior to bond enforcement.

*Comment:* In referring to proposed § 4280.124(a)(l), which includes within the examples of competitive restrictions "unnecessary . . . bonding requirements," one commenter (Duke) suggested that bond requirements should not be viewed as an unreasonable barrier to entry if the pool of eligible contract awardees that the grantee and Agency wish to reach are qualified contractors. According to the commenter, through prequalification as described by the commenter, bonds facilitate the procuring agency's function of awarding contracts to capable and qualified contractors. The commenter further stated that bonds help ensure that the pool of contractors competing for a procurement are qualified and bonds do not keep such contractors from competing.

*Response:* The Agency did not intend the wording in the proposed rule concerning "unnecessary . . . bonding requirements" to create the situation outlined by the commenter. The Agency generally agrees with the commenter. Therefore, to clarify the proposed rule language, the final rule reads, in part: "unnecessary experience or excessive bonding."

*Comment:* One commenter supported the proposed exemption from the requirement to use a licensed professional engineer (PE) either when tribal (or state) law does not require the use of a licensed PE or when 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.

*Response:* The Agency thanks the commenter for their support on these proposed revisions, which have been included in the final rule.

*Comment:* In commenting on the interim final rule, two commenters recommended that the forms referenced in § 4280.119(e)(8), Final Payments, not be required for projects that are reimbursed by grant funds after project completion. Because the applicant is

allowed to incur costs as soon as the application is submitted, there is a chance that the project has been completed for some time before grant approval. Thus, it is burdensome to require paperwork on contracts that are already fulfilled and payment complete. One of the two commenters further stated that the applicant should assume this responsibility during the construction phase and the Agency would pay out funds only after the project proves it is operational.

*Response:* The Agency disagrees with the commenters as these forms are needed to ensure that there are no outstanding liens on the project before the Agency disburses funds, and the final rule continues to require them. After the application has been submitted, the Agency can provide these forms to the applicant if the applicant makes the Agency aware that the applicant is going to start construction. This allows the applicant to have the forms for contractor sign off at the time the project is completed.

#### *Awarding and Administering RES and EEI Grants (§ 4280.122)*

*Comment:* Two commenters agreed with the Agency's decision in the proposed rule to obtain certain forms and certifications on approved projects after selection rather than having every applicant complete them with their application.

*Response:* The Agency thanks the commenter for the support. The final rule incorporates the same provisions in this regard as found in the proposed rule.

#### *Servicing RES and EEI Grants (§ 4280.123)*

##### Programmatic Changes

*Comment:* One commenter stated that Agency concurrence on programmatic changes should only be required if the project costs increase. If a grantee is able to do the project at the same level as planned and do it for less cost, the Agency should not need to be consulted in advance of the work being done. Because reimbursements are made after the project is completed, the Agency would still be able to limit the maximum grant to 25 percent of actual costs. According to the commenter, getting Agency prior approval to spend less money is burdensome for both the grantee and the Agency and serves no useful purpose.

*Response:* The Agency generally agrees with the commenter that requiring Agency prior approval for a decrease in project costs applied burdens both the grantee and the

Agency, and is of no advantage to the Federal Government, provided that the reason(s) for decrease in the project cost does not have a negative impact on the long-term viability of the project. If the reason(s) for the lower cost is associated with the technology, its installation, or any other factor that negatively affects the long-term viability of the project, however, the Agency must retain the ability to approve any such cost reductions. Further, the final rule requires any decrease in project cost that does not have a negative impact on the long-term viability to be reviewed and approved by the Agency prior to disbursement of funds.

**Note:** These changes discussed here do not affect the requirement for prior Agency approval for changes in project scope and contractor or vendor.

##### Renewable Energy System Reports

*Comment:* Two commenters supported the Agency's proposal to remove the health/sanitation requirement from the RES servicing report.

*Response:* The Agency thanks the commenter for their support and the final rule does not require, as found in the proposed rule, this information to be submitted with the RES servicing report.

##### Energy Efficiency Improvement Reports

*Comment:* One commenter was concerned about whether a grantee would be able to report the actual amount of energy saved in the project performance report for EEI. For example, if a grantee is switching fuel types from diesel to electric the grantee is not going to have any idea how much energy has been saved. The commenter recommended that the report instead ask for how much energy the grantee has used and the Agency can then compare that figure to grantee's previous energy usage as shown in the grantee's energy audit and prior energy bills. The commenter noted that making this change would allow the Agency to use consistent numbers when calculating the BTU value of each energy type and would provide a better overall report of savings from the overall projects.

A second commenter made a similar suggestion, but recommended that grantees be given two options—either report the annual energy savings as calculated by the applicant or report annual energy consumption by fuel source to be compared to the energy audit and calculated by the Agency. According to the commenter, these changes would ensure the accuracy of information the Agency provides to Congress.

*Response:* The Agency disagrees with the commenters that the requirement for applicants to report energy savings should be shifted from the applicant to the Agency. It is the Agency's position that, unlike other Federal programs where the government is implementing the improvement, REAP is financing the applicant to do the improvements. Thus, it is the applicant's responsibility to report to the Agency the energy savings to be realized. The Agency developed forms to assist applicants in meeting this requirement and to achieve more consistent reporting.

*Comment:* One commenter stated that the Agency has no recognized Measurement and Verification Procedure for monitoring energy generated or saved for any of its projects. The commenter asked how reporting can be deemed accurate without a Measurement and Verification protocol. The Agency's report on results issued to Congress shows the actual performance of projected energy saved or generated based on projected results for 2009 REAP projects as 35.66 percent realized for 2010 and 75.84 percent in 2011. For 2010, REAP projects reporting shows 39.74 percent of the projected results were realized. Some of individual project reporting results show that the projected energy saved or generated is exactly the same, which is an improbable result. Without any real measurement and verification mechanism how does anyone really know how effective this program is? Measurement and Verification protocol is a common practice in the industry and it is requirement in the Federal Energy Management Program. While the typical Measurement and Verification protocol cost adds 10 percent to project costs, not every Measurement and Verification protocol program need be that expensive. The single most expensive monitoring expense that REAP identified has been a separate gas meter. However, data loggers are available that record the use of propane burners, given the operating characteristics of equipment, time of use may be correlated to gas use. The cost of data logger equipment is relatively inexpensive. The commenter asked why the Agency has not adopted a program of Measurement and Verification if only on a spot basis to test a sample of projects. The commenter also asked, "What is the justification for self-reporting?"

*Response:* The Agency acknowledges that a formal measurement and verification program helps ensure the accuracy of information reported. However, the Agency has decided not to implement such a program for this rule.

It is the Agency's position that, unlike other Federal programs where the Government is implementing the improvement, REAP is financing the applicant to do the improvements. Thus, it is the applicant's responsibility to (self-) report to the Agency the energy savings to be realized. Further, requiring a third-party verification process will increase the cost of the program to the grantee and may be cost prohibitive for some grantees. Implementing a "spot" check program run by the Agency would inappropriately shift the burden from the applicant to the government. The Agency has not made any changes to the rule as a result of this comment. However, the Agency will develop templates to assist applicants in providing accurate and consistent measurement of energy saved or generated by the project funded with REAP.

#### Job Reporting

*Comment:* One commenter stated that the requirement to submit jobs created or saved will, in virtually every case of energy efficiency, result in a negative report. If we already know that to be the case, why require it from the grantee for the 2 to 3 years of reports that have to be filed?

Another commenter suggested directly incorporating into the regulation and reporting documents that energy savings reports may report zero jobs if applicable. The commenter also recommended that the Agency clarify in the reporting document that the jobs must be a direct result of the project, not simply a statement of the number of individuals that the business currently employs.

*Response:* While the primary purpose of REAP is energy creation and savings, the Agency is frequently asked by Administration officials and Congress to identify the number of jobs created or saved by all of its programs. Thus, even though EEI projects are unlikely to create or save many jobs, the Agency still needs to gather this information, which is at most a minimal burden on the grantee.

With regard to the comments made by the second commenter, the Agency has made revisions to the final rule by (1) adding "if any" to follow "Actual number of jobs" to address the comment about being able to report "0 jobs"; and (2) revising the requirement to read, in part, "created or saved as a direct result of the EEI [RES] project for which REAP funding was used" to address the comment about not reporting the number of people employed by the business.

#### Guaranteed Loans

##### Guaranteed Loans Awarded Subject to Available Funds

*Comment:* One commenter stated that the Agency needs to ensure that it has funding available when selecting awarded projects, or that it has the ability to issue conditional commitments subject to funding if the guaranteed loan program is to be successful.

*Response:* The Agency agrees with the commenter that funding must be in hand before the Agency makes any obligations to projects selected for funding. The Agency does not intend to issue "conditional commitments" as suggested because it would commit the Agency to funding projects before it actually has the funds available, which would be in violation of the Anti-deficiency Act.

##### Funding Level

*Comment:* In referring to the interim final rule, one commenter stated that increasing the maximum amount of the loan guarantee made available to an eligible project from 50 percent to 75 percent of the eligible project costs and increasing the total amount of loans guaranteed to any one borrower from \$10 million to \$25 million would enhance the REAP program's effectiveness in fostering the development of more anaerobic digesters.

On the other hand, another commenter stated that the interim final rule further facilitates larger projects through increases in loan/grant percentage (50 percent to 75 percent) and the maximum loan guarantee to a single borrower (\$10 million to \$25 million). The commenter stated that these two changes will further tilt the program towards the already successful larger project segment. This commenter recommended eliminating these two changes. The commenter stated that a project that needs a USDA loan guarantee is not a better project than one that does not and pointed to distributed wind projects with medium and large scale wind turbines that are going unfunded by REAP because they have not needed or wanted USDA loan guarantees.

In commenting on the proposed rule, a third commenter stated that, given there are already equity requirements in place for all REAP guaranteed loan projects, the 75 percent cap hinders the growth of the program. The commenter suggested, for example, that a small business or agricultural producer should be able to seek a REAP guaranteed loan for 100 percent of total project costs

through a lender and that the 25 percent equity requirement should be placed on the business or agricultural producer and demonstrated from the balance sheet at closing as it is done in the B&I program.

This third commenter then pointed out that the B&I program does not implement a 75 percent cap, but still has plenty of risk mitigation due to the requirements of the tangible balance sheet equity formula—20 percent for existing businesses and 10 percent for new businesses. [**Agency note:** The commenter inadvertently reversed the percentages—the correct percentages are 10 percent for existing businesses and 20 percent for new businesses. See 7 CFR 4279.131(d).] The commenter recommended that the same be implemented for REAP guaranteed loans. The renewable energy sector has matured somewhat since the early implementation of this program in 2002. At that time it would have seemed reasonable to impose a 75 percent threshold on funds and promote cost sharing with REAP guaranteed loans; however, the risk of these projects has decreased and elimination of the 75 percent cap would attract more lending institutions to utilize these underutilized guaranteed loan program funds and benefit rural businesses and agricultural producers as is the intention of the program.

*Response:* The Agency implemented these two provisions in response to the 2008 Farm Bill, which limited the maximum amount of a loan guaranteed under REAP to \$25 million and the maximum amount of a combined grant and loan guarantee to no more than 75 percent of the cost of the activity.

With regards to the \$25 million limitation, the Agency must apply this statutory. Further this limitation is being applied not only on a single project basis, but on a single borrower basis over the life of the program.

The 75 percent of total eligible funds cap is specifically identified in the 2008 Farm Bill and continued in the 2014 Farm Bill as applying to combination requests (*i.e.*, grant plus guaranteed loan requests) and the Agency must retain and cannot modify that requirement. Further, the Agency determined that extending this same cap to guaranteed loan-only requests is consistent with the intent of the statute as stated in the bill's accompanying managers' report.

##### Guarantee Fee Language

*Comment:* One commenter expressed concern that the guarantee fee language will automatically result in increased guarantee and annual renewal fees, making the already undersubscribed

REAP guarantee program less attractive to lenders. The commenter encouraged the Agency to maintain existing annual and renewal fees to encourage participation.

*Response:* The guarantee fee language in the proposed rule will not automatically result in the Agency increasing guarantee and annual renewal fees. Rather, the proposed language provides the Agency the ability to change the fee if and when necessary to have an operational program. Therefore, the Agency has incorporated the proposed rule language in the final rule.

*Comment:* One commenter recommended that the REAP guarantee fee be allowed to be passed on to the borrower as is allowed in the B&I program.

*Response:* The Agency agrees with the commenter, and points out that the proposed rule allowed the guarantee fee to be passed onto the borrower. This has been retained in the final rule.

#### Balloons

*Comment:* In commenting on the interim final rule, one commenter recommended that anaerobic waste digester technology that produces renewable biogas power and electricity be treated under the rule in a manner that is equitable in comparison to other renewable technologies. One of the specific suggestions made by the commenter was for the Agency to add flexibility to loan term guidelines by allowing balloon maturities in combination with longer amortization schedules, because commercial banks that might typically utilize the REAP guarantee program will not extend loans past (say) ten years. The commenter pointed out that, although digester projects are steady cash flow producers, they typically cannot generate sufficient cash to amortize 100 percent of principal in 10 years.

Another commenter, also commenting on the interim final rule, recommended that the lender and borrower be able to negotiate a term for the loan that may be shorter than the amortization schedule (e.g., a balloon payment which would then extinguish the loan guarantee.)

*Response:* The Agency acknowledges the potential benefit of allowing balloon maturities in combination with longer amortization schedules; however, doing so is not without risk both to the Agency and the borrower (in this case, to the rural small business and agricultural producer). It is because of this increased risk that all RBS guaranteed loan programs do not allow balloon payments. Therefore the Agency has

decided not to implement balloon payments.

#### Restructuring Loan

*Comment:* In commenting on the interim final rule, one commenter stressed the importance of changing the interim final rule to enable restructuring of amortization as part of a loan guarantee. Currently, the REAP rule allows only a simple loan guarantee in which the borrower must pay equal principal and interest payments for the term of the loan. This is a reasonable approach for a project where the technology needs to be proven out, or to provide further guarantee for a borrower.

A project relying on private equity to secure the loan and utilizing proven technology certainly still benefit in part from this form of loan guarantee, as it no doubt ensures the security for the lending institution. Yet this benefit of a loan guarantee can be greatly enhanced with authorization of use of the loan guarantee to restructure the amortization. Again, this would ensure sufficient return on equity for the first few years. At the same time, the loan can be repaid well in advance of the expiration of the equipment's useful life.

*Response:* The Agency intends to conform the REAP regulation for guaranteed loans to the B&I program. Under the B&I program, loan reamortization is only available when a loan is in default (either technical or monetary default). The Agency finds no grounds for deviating from those provisions for projects funded under REAP and therefore has not revised the rule as a result of this comment.

#### Personal and Corporate Guarantees

*Comment:* In commenting on the interim final rule, one commenter recommended that the Agency incorporate a graduated reduction of the personal loan guarantee requirement for digester projects forecasting positive debt service coverage; that is, as the forecast coverage increases, the extent of the guarantee is reduced so that at some predetermined coverage level the personal guarantee requirement is eliminated entirely. According to the commenter, this change is needed to allow anaerobic waste digester technology that produces renewable biogas power and electricity to be treated under the rule in a manner that is equitable in comparison to other renewable technologies.

*Response:* The Agency disagrees with the recommendation made by the commenter for a graduated reduction of the personal loan guarantee

requirement. The Agency has determined that a higher probability of success for a project can be achieved when the borrower is actively managing the project. Reducing the personal guarantee can reduce the incentive for actively managing a project and may result in placing the project in a higher risk position that could result in higher losses. For these reasons, the Agency has not revised the rule in response to the commenter's recommendation.

The Agency notes that the personal (and corporate) guarantee provisions for REAP in this regard are consistent with the Agency's B&I program and that a lender may request exceptions in cases where collateral, equity, cash flow, and profitability indicate an above average ability to repay the loan (see 7 CFR 4279.149(b)).

*Comment:* In commenting on the interim final rule, one commenter recommended revising § 4280.142(b) to underscore that an exemption be allowed to the longstanding requirement for a personal loan guarantee. The commenter specifically recommended that the Agency prepare business criteria for state offices to provide to lenders to evaluate the financial strength of digester projects utilizing a Debt Service Coverage Ratio (DSCR).

*Response:* In the proposed rule, the Agency proposed to incorporate fully the personal and corporate guarantee provisions from the B&I program (see 7 CFR 4279.149). The B&I provisions allow exemptions from the personal loan guarantee under certain circumstances. The Agency has determined that this change, as incorporated in the final rule, is sufficient so as to meet the concern of the commenter. Lastly, the suggestion to prepare separate business criteria to provide to lenders is administrative in nature and outside the scope of the final rule.

#### Working Capital Funding

*Comment:* While recognizing the benefit on placing a cap on working capital, one commenter recommended increasing the limit (cap) in order to help attract lenders to the guaranteed loan portion of REAP. According to the commenter, applicants have requested working capital for existing energy projects under REAP, but have consequently funded such projects under the Business and Industry guaranteed loan program. The commenter also recommended that the REAP regulation provide the Agency the discretion to set annual working capital funding caps as deemed necessary given program subscriptions to allow maximum flexibility from year to year.

*Response:* The Agency has determined that the 5 percent cap is appropriate for existing businesses because the items included in the cap have already been incurred by the business. The Agency has not revised the rule in response to this comment.

#### *Energy Audit and REDA Grants*

##### Applicant Eligibility

*Comment:* Several commenters recommended expanding the applicant eligibility section for energy audits and renewable energy developing assistance grants.

One commenter recommended including non-profit entities that can document, in their application, their qualification and historical success in providing renewable energy development assistance.

A second commenter recommended including as eligible entities non-profit or public entities, including those entities that provide water and sewer service in rural areas.

A third commenter recommended allowing milk cooperatives to be eligible for energy audit grants and renewable energy development assistance grants. Truly being the “boots on the ground,” milk cooperative field staff interacts every day with dairy farmers and have explicit knowledge and understanding of the operations of the farm. The commenter believes milk cooperatives have the ability and resources to provide this important service to better improve the delivery of energy audits and renewable energy development assistance.

*Response:* In determining which entities are eligible to apply for an energy audit or REDA grant, the Agency is limited to those entities identified in the authorizing statute. The authorizing statute identifies three specific groups of entities—a unit of state, tribal, or local government; a land grant college or university or other institution of higher education; and a rural electric cooperative or public power entity. None of the entities suggested by the commenters match any of these entities identified in the statute. The closest possible match is reference to “public power companies” and the public entities that provide water and sewer that were mentioned by one of the commenters. However, it is the intent of the statute that public power entities have the same definition of state utility as defined in section 214(a) of the Federal Power Act (16 U.S.C. 824q(a)), where state utility is defined, in part as “. . . to carry on the business of developing, transmitting, utilizing, or distributing power.” Public entities that

provide water and sewer are not providing “power” and thus would not be included.

The authorizing statute also allows as eligible entities “any other similar entity, as determined by the Secretary.” None of the entities suggested by the commenters are “similar.” For example, none are educational institutions or government bodies. While one commenter suggested allowing milk cooperatives as eligible entities and the statute identifies rural electric cooperatives as eligible entities, the fact that both entities are cooperatives is insufficient to find them to be similar to the extent that milk cooperatives would be an eligible entity under the “any other similar entity” provision.

In summary, none of the entities identified by the commenters are found to be eligible under the statutory provisions and no changes to the rule have been made as a result of these comments.

##### Scoring EA and REDA Grant Applications

*Comment:* In commenting on the interim final rule, one commenter stated that the point scoring system for the \$100,000 renewable energy development assistance grants provides up to 15 points for low cost energy audits, which means that proposals that provide energy audit services have a potential 15 point advantage over proposals that provide renewable energy development assistance. Given this criterion, it appears that the Agency does not really want to provide renewable energy development assistance, but is more focused on energy audits. Or does this scoring criterion only apply to energy audit proposals . . . and renewable energy development assistance grants will not be judged using this criterion or judged against the energy audit proposals?

The commenter asked: “How can the rules give a fair opportunity and level playing field to both renewable energy development assistance as well as energy audits?” Both are equally vital and important in creating rural success in the transition to a secure clean energy future.

*Response:* The Agency acknowledges the commenter’s concern, which the Agency addressed in the proposed and final rules by providing equal footing for both energy audit grant applications and renewable energy development assistance grant applications.

##### Reporting EA/REDA

*Comment:* One commenter asked whether the Agency knew the number

of EEI projects resulting from energy audits the program has funded.

*Response:* The Agency does not know the number of EEI projects that have resulted from energy audit funding under REAP. The Agency will consider developing a data management system for future tracking.

##### Appendix Comments

###### Proposed Rule—Appendix A

*Comment:* One commenter found the second paragraph in Appendix A to be confusing, stating that allowing EEI projects costing \$200,000 or less the ability to conduct either an energy audit or energy assessment appears to conflict with the new definition for energy analysis and when it can be used.

*Response:* The Agency understands the potential confusion expressed by the commenter. For the reasons discussed previously in a response to another comment, the Agency has removed the definition of energy analysis from the final rule. Removing the definition of energy analysis from the rule eliminates this potential confusion.

###### Interim Final Rule—Appendix A and Appendix B, Section 2—Anaerobic Digester Projects

*Comment:* One commenter suggests adding the underlined text to the introductory paragraph: “The technical requirements specified in this section apply to anaerobic digester projects, which are, as defined in § 4280.103, RES that use animal waste and other organic substrates to produce thermal or electrical energy via anaerobic digestion or produce biomethane in a compressed gaseous or liquid state for direct use or for injection into natural gas transmission and distribution systems.”

The commenter also suggests the following addition to paragraph (b)(2): “(2) For systems planning to interconnect with a gas or electric utility, describe the utility’s system interconnection requirements, power purchase agreements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements.”

The commenter believes these changes will increase the demand for renewable biogas produced by anaerobic digesters. It would allow anaerobic digester projects that inject renewable biogas into the natural gas, in addition to or instead of using the gas on-site. Anaerobic biogas producers can receive added value from the renewable quality of their biogas, even when that gas is not used on site but put into transmission; wind and solar generators sell the renewable quality of their electrons to

firms far from where the electrons are consumed.

Encouraging the wheeling of renewable biogas through the natural gas transmission system allows customers, including stationary fuel cell power plants and hydrogen production systems and hydrogen production systems at fuel cell electric vehicle fueling stations, to take advantage of renewable fuel using the existing natural gas system.

*Response:* For the reasons discussed earlier in response to comments made by this commenter on the definition of “anaerobic digesters,” the Agency is not revising the rule as requested by the commenter. In addition, the proposed rule, and as found in the final rule, no longer contains the text being referred to by the commenter and, thus, the comment regarding the appendix for RES is no longer relevant.

Interim Final Rule, Appendix A, Section 8(f)

*Comment:* One commenter stated that the instructions for the payback analysis for small wind systems (Appendix A of Subpart B, Section 8) list inclusion of “applicable investment incentives”, which conflicts with the definition of simple payback found in § 4280.103.

*Response:* The “applicable investment incentives” the commenter is referring to is in the context of providing an economic assessment of the project and is not in reference to the calculation of simple payback. Thus, there is no conflict and no changes to the rule have been made as a result of this comment.

Interim Final Rule, Appendix A, Section 8—Small Wind

*Comment:* One commenter noted that Section 8(i)(1) includes a requirement for a “10 year warranty on design” and a “3 year warranty on equipment”. According to the commenter, the design warranty concept is not used in the wind industry. The commenter suggested that there should be a requirement for a 5-year parts and labor warranty and that turbines under 200 square meters should be certified to AWEA 9.1–2009 by the SWCC or a Nationally Recognized Testing Laboratory.

*Response:* The final rule, as in the proposed rule, does not contain the “10-year” or “3-year” warranty requirements, as referenced by the commenter. Instead, the final rule requires that a system, such as wind, have an established warranty for major parts and labor (that is applicable for that particular system) as part of the requirement for being determined “commercially available.” The Agency

will provide more specific guidance in an instructions document for the rule.

Interim Final Rule, Appendix B, Section 8—Small Wind

*Comment:* One commenter stated that the requirements of Appendix B of Subpart B, Technical Reports, Section 8, should be radically simplified or eliminated (at least for micro projects). The commenter stated that a short-form application the commenter developed hits all the statutory requirements and would eliminate the need for the technical report.

*Response:* The Agency needs information on each proposed project in order to determine the merit of the project and to evaluate it against other projects. Thus, the Agency cannot eliminate technical reports, even for micro-projects. However, the Agency streamlined the application process, which includes the requirement for the technical report, for small and mid-sized grants under the proposed rule and has retained that streamlined application process in the final rule.

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

Loan programs—Business and Industry, Economic Development, Energy, Energy Efficiency Improvements, Grant programs, Guaranteed Loan programs, Renewable Energy Systems, and Rural areas.

For the reasons set forth in the preamble, under the authority at 5 U.S.C. 301, 7 U.S.C. 1989, and 7 U.S.C. 8107, chapter XLII of title 7 of the Code of Federal Regulations (CFR) 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. 940c; 7 U.S.C. 8107

■ 2. Subpart B is revised 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 Statute and regulation references.
- 4280.108 U.S. Department of Agriculture Departmental Regulations and laws that contain other compliance requirements.
- 4280.109 Ineligible Applicants, borrowers, 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 RES and EEI grant funding.
- 4280.115 Grant applications—general.
- 4280.116 Determination of technical merit.
- 4280.117 Grant applications for RES and EEI projects with total project costs \$200,000 and greater.
- 4280.118 Grant applications for RES and EEI projects with total project costs of less than \$200,000, but more than \$80,000.
- 4280.119 Grant applications for RES and EEI projects with total project costs of \$80,000 or less.
- 4280.120 Scoring RES and EEI grant applications.
- 4280.121 Selecting RES and EEI grant applications for award.
- 4280.122 Awarding and administering RES and EEI grants.
- 4280.123 Servicing RES and EEI grants.
- 4280.124 Construction planning and performing development.

Renewable Energy System and Energy Efficiency Improvement Guaranteed Loans

- 4280.125 Compliance with §§ 4279.29 through 4279.99 of this chapter.
- 4280.126 Guarantee/annual renewal fee.
- 4280.127 Borrower eligibility.
- 4280.128 Project eligibility.
- 4280.129 Guaranteed loan funding.
- 4280.130 Loan processing.
- 4280.131 Credit quality.
- 4280.132 Financial statements.
- 4280.133 [Reserved]
- 4280.134 Personal and corporate guarantees.
- 4280.135 Scoring RES and EEI guaranteed loan-only applications.
- 4280.136 [Reserved]
- 4280.137 Application and documentation.
- 4280.138 Evaluation of RES and EEI guaranteed loan applications.
- 4280.139 Selecting RES and EEI guaranteed loan-only applications for award.
- 4280.140 [Reserved]
- 4280.141 Changes in borrower.
- 4280.142 Conditions precedent to issuance of loan note guarantee.
- 4280.143 Requirements after project construction.
- 4280.144–4280.151 [Reserved]
- 4280.152 Servicing guaranteed loans.
- 4280.153–4280.164 [Reserved]

Combined Funding for Renewable Energy Systems and Energy Efficiency Improvements

- 4280.165 Combined grant and guaranteed loan funding requirements.
- 4280.166–4280.185 [Reserved]

Energy Audit and Renewable Energy Development Assistance Grants (REDA)

- 4280.186 Applicant eligibility.
- 4280.187 Project eligibility.
- 4280.188 Grant funding for Energy Audit And Renewable Energy Development Assistance.
- 4280.189 [Reserved]
- 4280.190 Energy Audit and REDA grant applications—content.

- 4280.191 Evaluation of Energy Audit and REDA grant applications.
- 4280.192 Scoring Energy Audit and REDA grant applications.
- 4280.193 Selecting Energy Audit and REDA grant applications for award.
- 4280.194 [Reserved]
- 4280.195 Awarding and administering Energy Audit and REDA grants.
- 4280.196 Servicing Energy Audit and REDA grants.
- 4280.197–4280.199 [Reserved]
- 4280.200 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

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

(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 improving energy efficiency.

#### § 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, borrowers, 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 4280.124 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 funding provisions for these grants. Sections 4280.115 through 4280.119 address grant application content,

technical merit determination, and required documentation. Sections 4280.120 through 4280.123 address the scoring, selection, awarding and administering, and servicing of these grant applications. Section 4280.124 addresses construction planning and development.

(c) Sections 4280.125 through 4280.152 discuss the requirements specific to RES and EEI guaranteed loans. Sections 4280.125 through 4280.128 discuss eligibility and requirements for making and processing loans guaranteed by the Agency. Section 4280.129 addresses funding for guaranteed loans. In general, Sections 4280.130 through 4280.152 provide guaranteed loan origination and servicing requirements. These requirements apply to lenders, holders, and other parties involved in making, guaranteeing, holding, servicing, or liquidating such loans. Section 4280.137 addresses the application requirements for guaranteed loans.

(d) Section 4280.165 presents the process by which the Agency will make combined loan guarantee and grant funding available for RES and EEI projects.

(e) Sections 4280.186 through 4280.196 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.

(f) 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 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 § 4280.119.

#### § 4280.103 Definitions.

Terms used in this subpart are defined in either § 4279.2 of this chapter or in this section. If a term is defined in both § 4279.2 and this section, it will have, for purposes of this subpart only, the meaning given in this section. Terms used in this subpart that have the same meaning as the terms defined in this section have been capitalized in this subpart.

*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 (RBS) 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.* An individual or entity directly engaged in the production of agricultural products, including crops (including farming); livestock (including ranching); forestry products; hydroponics; nursery stock; or aquaculture, whereby 50 percent or greater of their gross income is derived from those products.

*Anaerobic Digester Project.* A Renewable Energy System that uses animal waste or other Renewable Biomass and may include other organic substrates, via anaerobic digestion, to produce biomethane that is used to produce thermal or electrical energy or that is converted to a compressed gaseous or liquid state.

*Annual Receipts.* Means receipts as calculated under 13 CFR 121.104.

*Applicant.* (1) Except for EA and REDA grants, the Agricultural Producer or Rural Small Business that is seeking a grant, guaranteed loan, or a combination of a grant and 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 as defined in 16 U.S.C. 3451; or an Instrumentality of a State, Tribal, or local government that is seeking an EA or REDA grant under this subpart.

*Assignment Guarantee Agreement (Form RD 4279–6, or successor form).* The signed agreement among the Agency, the lender, and the holder containing the terms and conditions of an assignment of a guaranteed portion of a loan, using the single note system.

*Bioenergy Project.* A Renewable Energy System that produces fuel, thermal energy, or electric power from a Renewable Biomass source only.

*Capacity.* The maximum output rate that an apparatus or heating unit is able to attain on a sustained basis as rated by the manufacturer.

*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, for at least one year specific to the proposed application, both a

proven and reliable operating history and proven performance data;

(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 labor 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.

(2) A domestic or foreign Renewable Energy 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, score the application, and, where applicable, enable the Agency to determine the technical merit of the project.

**Conditional Commitment (Form RD 4279-3, or successor form).** The Agency's notice to the lender that the loan guarantee it has requested is approved subject to the completion of all conditions and requirements set forth by the Agency and outlined in the Conditional Commitment.

**Council.** As defined in 16 U.S.C. 3451.

**Departmental Regulations.** The regulations of the USDA'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 and/or borrower as applicable.

**Eligible Project Costs.** The Total Project Costs that are eligible to be paid or guaranteed with REAP 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 and/or equipment that reduces energy consumption on an annual basis.

**Feasibility Study.** An analysis conducted by a Qualified Consultant of

the economic, market, technical, financial, and management feasibility of a proposed project or business operation.

**Federal Fiscal Year.** The 12-month period beginning October 1 of any given year and ending on September 30 of the following year.

**Financial Feasibility.** The ability of a project or business operation to achieve sufficient income, credit, and cash flow to financially sustain a project over the long term. The concept of financial feasibility includes assessments of the cost-accounting system, the availability of short-term credit for seasonal businesses operations, and the adequacy of raw materials and supplies.

**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.

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

**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 Renewable Energy System 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. For the purposes of this subpart, only those Hydroelectric Sources with a Rated Power of 30 megawatts or less are eligible.

**Hydrogen Project.** A system that produces hydrogen from a Renewable Energy source or that uses hydrogen produced from a Renewable Energy source as an energy transport medium in the production of mechanical or electric power or thermal energy.

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

**Inspector.** A Qualified Consultant who has at least 3 years of experience and completed at least five inspections on similar type projects. A project might require one or more Inspectors to perform the required inspections.

**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 or borrower's electric generation equipment and the utility's electric power system.

**Lender's Agreement (Form RD 4279-4, or Successor Form).** Agreement between the Agency and the lender setting forth the lender's loan responsibilities.

**Loan Note Guarantee (Form RD 4279-5, or Successor Form).** A guarantee issued and executed by the Agency containing the terms and conditions of the guarantee.

**Matching Funds.** Those project funds required by the 7 U.S.C. 8107 to receive the grant or guaranteed loan under this program. 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 business entity as evidenced by a contractual agreement.

**Power Purchase Agreement.** The terms and conditions governing the sale and transportation of electricity produced by the grantee or borrower 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.** An independent third-party individual or entity 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 Renewable Energy System 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 (e)(2), (e)(3), and (e)(4) and large-tree retention of subsection (f) of section 102 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6512); 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:

(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, yard waste, and other biodegradable waste. (Waste material does not include unsegregated solid 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 wind, solar, ocean (including tidal, wave, current, and thermal), geothermal or Hydroelectric Sources.

**Renewable Energy Development Assistance (REDA).** Assistance provided by eligible grantees to Agricultural Producers and Rural Small Businesses

to become more energy efficient and to use Renewable Energy technologies and resources. The Renewable Energy Development Assistance may consist of Renewable Energy Site Assessment and/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).** Meets the requirements of paragraph (1) and (2) of this definition:

(1) A system that:

(i) Produces usable energy from a Renewable Energy source; and  
(ii) May include distribution components necessary to move energy produced by such system to initial point of sale.

(2) A system described in paragraph (1) of this definition 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 that incorporates a feature or features not included in the original design or for the replacement of existing components with ones that improve the original design and does not impact original warranty if the warranty is still in existence.

**Rural or Rural Area.** Any area of a State not in a city or town that has a population of more than 50,000 inhabitants, according to the latest decennial census of the United States, or in the urbanized area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants, and any area that has been determined to be "rural in character" by the Under Secretary for Rural Development, or as otherwise identified in this definition.

(1) 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.

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

(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. CDPs with greater than 50,000 inhabitants, other than the San Juan CDP, may be determined to be eligible if they are "not urban in character."

(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.

(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.

(6) 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 (6)(ii) of this definition.

(i) 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 1/4 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 both the appropriate Rural Development State Director and the Administrator on behalf of the Under Secretary. The petition shall document how the area meets the requirements of paragraph (6)(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 Web site, 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.

*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 subpart is located in a Rural Area.

*Simple Payback.* The estimated Simple Payback of a project funded under this subpart as calculated using paragraph (1) or (2) as applicable, of this definition.

(1) For projects that generate energy for use offsite, Simple Payback is calculated as follows:

(i) Simple Payback = (Eligible Project Costs)/(typical year) earnings before interest, taxes, depreciation, and amortization (EBITDA) for the project only.

(ii) EBITDA will be based on:

(A) All energy-related revenue streams and all revenue from byproducts produced by the energy system for a typical year including the fair market value of byproducts produced by and used in the project or related enterprises.

(B) Income remaining after all project obligations are paid (operating and maintenance).

(C) The Agency's review and acceptance of the project's typical year income (which is after the project is operating and stabilized) projections at the time of application submittal.

(D) Does not include any tax credits, carbon credits, renewable energy credits, and construction and investment-related benefits.

(2) For projects that reduce or replace onsite energy use (e.g., EEI projects that reduce and RES projects that replace onsite energy use), Simple Payback is calculated as follows:

(i) Simple Payback = (Eligible Project Costs)/Dollar Value of Energy reduced or replaced)

(ii) Dollar Value of Energy reduced or replaced incorporates the following:

(A) Energy reduced or replaced will be calculated on the quantity of energy saved or replaced as determined by subtracting the result obtained under paragraph (2)(ii)(A)(2) from the result obtained under paragraph (2)(ii)(A)(1) of this definition, and converting to a monetary value using a constant value or price of energy (as determined under paragraph (2)(ii)(A)(3) of this definition).

(1) Actual energy used in the original building and/or equipment, as applicable, prior to the RES or 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.

(2) Projected energy use if the proposed RES or 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 (2)(ii)(A)(1) of this definition.

(3) 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 (2)(ii)(A)(1) of this definition. RES projects that will replace 100 percent of an Applicant's energy use will be required to use the actual average price paid for the energy replaced and the projected revenue received from energy sold in a typical year.

(B) Does not allow Energy Efficiency Improvements to monetize benefits other than the dollar amount of the energy savings the Agricultural Producer or Rural Small Business realizes as a result of the improvement.

(C) Does not include any tax credits, carbon credits, renewable energy credits, and construction and investment-related benefits.

*Small Business.* An entity or utility, as applicable, described below that meets Small Business Administration's (SBA) definition of Small Business as found in 13 CFR part 121.301(a) or (b). With the exception of the entities identified in this paragraph, all other non-profit entities are ineligible.

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

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

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

(4) Tribal corporations or other Tribal business entities (as described in

paragraph (4)(i) and (ii) of this definition). The Agency shall determine the Small Business status of such Tribal entity without regard to the resources of the Tribal government.

(i) Chartered under Section 17 of the Indian Reorganization Act (25 U.S.C. 477), or

(ii) Other Tribal business entities that have similar structures and relationships with their Tribal governments as determined by the Agency.

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

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

*Used Equipment.* Any equipment that has been used in any previous application and is provided in an "as is" condition.

#### § 4280.104 Exception authority.

The Administrator may, with the concurrence of the Secretary of Agriculture, make an exception, on a case-by-case basis, to any requirement or provision of this subpart that is not inconsistent with any authorizing statute or applicable law, if the Administrator determines that application of the requirement or provision would adversely affect the Federal Government's financial interest.

#### § 4280.105 Review or appeal rights.

An Applicant, lender, holder, borrower, or grantee may seek a review of an Agency decision or appeal to the National Appeals Division in accordance with 7 CFR part 11.

(a) *Guaranteed Loan.* In cases where the Agency has denied or reduced the amount of final loss payment to the lender, the adverse decision may be appealed by the lender only. An adverse decision that only impacts the holder may be appealed by the holder only. A decision by a lender adverse to the interest of the borrower is not a decision by the Agency, whether or not concurred in by the Agency.

(b) *Combined guaranteed loan and grant.* For an adverse decision involving a combination guaranteed loan and grant funding request, only the party that is adversely affected may request the review or appeal.

#### § 4280.106 Conflict of interest.

(a) *General.* No conflict of interest or appearance of conflict of interest will be

allowed. For purposes of this subpart, conflict of interest includes, but is not limited to, distribution or payment of grant, guaranteed loan funds, and Matching Funds or award of project construction contracts to an individual owner, partner, or stockholder, or to a beneficiary or Immediate Family of the Applicant or borrower when the recipient will retain any portion of ownership in the Applicant's or borrower's project. Grant and Matching Funds may not be used to support costs for services or goods going to, or coming from, a person or entity with a real or apparent conflict of interest.

(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 Statute and regulation references.

All references to statutes and regulations are to include any and all successor statutes and regulations.

#### § 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, 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.

(2) Grants will require one subsequent compliance review following project completion. This will occur after the last disbursement of grant funds has been made.

(d) *Environmental analysis.* 7 CFR part 1940, subpart G outlines environmental procedures and requirements for this subpart. 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 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, borrowers, and owners.

Applicants, borrowers, 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, borrower, 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, borrower, or owner is not eligible to receive a grant or guaranteed loan until the judgment is paid in full or otherwise satisfied or the delinquency is resolved.

(b) If an Applicant, borrower, or owner is debarred from receiving Federal assistance, the Applicant, borrower, or owner is not eligible to receive a grant or 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.

(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, guaranteed loan-only applications, and combined guaranteed loan and grant 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) *Guaranteed loan-only applications.* Complete guaranteed loan-only applications will be accepted on a continuous basis, with awards made based on the application's score and subject to available funding. Each application that is ready for funding and that scores at or above the minimum score will be competed on a periodic basis, with higher scoring applications receiving priority. Each application ready for funding that receives a score below the minimum score will be competed in a National Office competition at the end of the fiscal year in which the application was ready to be competed.

(3) *Combined guaranteed loan and grant 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) *Limit on number of applications.* An Applicant can apply for only one RES project and one EEI project under this subpart per Federal Fiscal Year.

(d) *Limit on type of funding requests.* An Applicant can submit only one type of funding request (grant-only, guaranteed loan-only, or combined funding) for each project under this subpart per Federal Fiscal Year.

(e) *Application modification.* Once submitted and prior to Agency award, if an Applicant modifies 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 application, and the application will be processed by the Agency as a new application under this subpart.

(f) *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 return it, with 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 §§ 4280.121, 4280.179, or 4280.193 as applicable.

(g) *Application withdrawal.* During the period between the submission of an application and the execution of loan and/or grant 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.

(h) *Technical report.* Each technical report submitted under this subpart, as specified in §§ 4280.117(e), 4280.118(b)(4), and 4280.119(b)(3) and 4280.119(b)(4) must comply with the provisions specified in paragraphs (h)(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 § 4280.119(b)(3), § 4280.119(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 § 4280.116;

(ii) Allow the calculation of Simple Payback as defined in § 4280.103; and

(iii) 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. Such demonstration shall address project design, installation, operation, and maintenance.

(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 an updated Form RD 1940-20, "Request for Environmental Information."

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

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

(1) *Time extensions.* The Agency may extend the 2-year time limit 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 expiration date of the Grant 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 Grant 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, as applicable, in writing.

(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.

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 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 (e) of this section. If an award is made to an Applicant, that Applicant (grantee) must continue to meet the requirements specified in this section. If the grantee does not, then grant funds may be recovered from the grantee by the Agency in accordance with Departmental Regulations.

(a) *Type of Applicant.* The Applicant must be an Agricultural Producer or Rural Small Business.

(b) *Ownership and control.* The Applicant must:

- (1) Own or be the prospective owner of the project; and
- (2) Own or control the site for the project described in the application at the time of application and, if an award is made, for the useful life of the project as described in the Grant Agreement.

(c) *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, for which the assistance is sought. 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.

(d) *Legal authority and responsibility.* Each Applicant must have the legal authority necessary to apply for and carry out the purpose of the grant.

(e) *Universal identifier and 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 during which it has an active

Federal award or an application under consideration by the Agency; and

(3) Provide its Dun and Bradstreet Data Universal Numbering System (DUNS) number in each application it submits to the Agency. Generally, the DUNS number is included on Standard Form-424, "Application for Federal Assistance".

#### § 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 (f) of this section.

(a) Be for:

- (1) The purchase of a new RES;
- (2) The purchase of a Refurbished RES;
- (3) The Retrofitting of an existing RES; or

(4) Making EEI that will use less energy on an annual basis than the original building and/or equipment that it will improve or replace 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 Energy Efficiency Improvements.* A proposed EEI that replaces or duplicates an EEI previously funded under this subpart may or may not be eligible for funding.

(A) If the proposed EEI would replace or duplicate the same EEI that had previously received funds under this subpart prior to the end of the useful life, as specified in the Grant Agreement, of that same EEI, then the proposed improvement, even if it is more energy efficient than the previously funded improvement, is ineligible. Example: An Applicant received a REAP grant to replace an exhaust fan (exhaust fan A) in a barn with a more energy efficient exhaust fan (exhaust fan B) with an expected useful life of 15 years, as specified in the Grant Agreement. If the Applicant decides to replace exhaust fan B after 8 years (*i.e.*, before it has reached the end of its useful life as specified in the Grant Agreement), an application for exhaust fan C to replace exhaust fan B would be ineligible for funding under this subpart

even if exhaust fan C is more energy efficient than exhaust fan B.

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

(b) Be for a Commercially Available technology;

(c) Have technical merit, as determined using the procedures specified in § 4280.116; and

(d) 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. If the Agricultural Producer's operation is in a non-Rural Area, then the application can only be for RES or EEI on components 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 an RES project in which a residence is closely associated with and shares an energy metering device with a Rural Small Business, where the residence is located at the place of business, or agricultural operation, the application is eligible if the applicant can document that one of the options specified in paragraphs (e)(1) through (3) of this section is met:

(1) Installation of a second meter (or similar device) that results in all of the energy generated by the RES being used for non-residential energy usage;

(2) Certification is provided in the application that any excess power generated by the RES will be sold to the grid and will not be used by the Applicant for residential purposes; or

(3) Demonstration that 51 percent or greater of the energy to be generated will benefit the Rural Small Business or agricultural operation. The Applicant must provide documentation that includes, but is not limited to, the following:

(i) A Renewable Energy Site Assessment; or

(ii) The amount of energy that is used by the residence and the amount that is used by the Rural Small Business or agricultural operation. Provide documentation, calculations, etc. to support the breakout of energy amounts.

The Agency may request additional data to determine residential versus business operation usage; and

(iii) The actual percentage of energy determined to benefit the Rural Small Business or agricultural operation will be the basis to determine eligible project costs.

(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.

#### **§ 4280.114 RES and EEI grant funding.**

(a) *Grant amounts.* The amount of grant funds that will be made available to an eligible RES or EEI 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 EEI 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 EEI 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 individual 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 in the applicable Energy Assessment or Energy Audit.

(4) Fees for construction permits and licenses.

(5) Professional service fees 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) Agricultural tillage equipment, Used Equipment, and vehicles;

(2) Residential RES or EEI projects;

(3) Construction or equipment costs that would be incurred regardless of the installation of a RES or EEI shall not be included as an Eligible Project Costs. For example, the foundation for a building where a RES is being installed, storage only grains bins connected to drying systems, and the roofing of a building where solar panels are being attached;

(4) Business operations that derive more than 10 percent of annual gross revenue (including any lease income from space or machines) from gambling activity, excluding State or Tribal-authorized lottery proceeds, as approved by the Agency, conducted for the purpose of raising funds for the approved project;

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

(6) Lease payments;

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

(8) Funding of political or lobbying activities; and

(9) 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 demonstrated by an Energy Audit;

(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.

#### **§ 4280.115 Grant applications—general.**

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

(b) *Application content.* Applications for RES projects or EEI projects must contain the information specified in § 4280.117 unless the requirements of either § 4280.118(a) or § 4280.119(a) are met. If the requirements of § 4280.118(a) are met, the application may contain the information specified in § 4280.118(b). If the requirements of § 4280.119(a) are met, the application may contain the information specified in § 4280.119(b).

(c) *Evaluation of applications.* The Agency will evaluate each RES and EEI grant application and make a determination as to whether:

(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 § 4280.116.

#### **§ 4280.116 Determination of technical merit.**

The Agency will determine the technical merit of all proposed projects for which Complete Applications are submitted under §§ 4280.117, 4280.118, and 4280.119 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 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. For guaranteed loan-only applications that are purchasing an existing RES, the technical report requirements can be provided in the technical feasibility section of the Feasibility Study, instead of completing 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) *EI 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) Energy Assessment (or EA if applicable).

(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) *EI 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 EA as applicable; 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/fail assignments.* The Agency will assign each area of the technical report, as specified in paragraph (b) of this section, a “pass” 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. Otherwise, the area will receive a fail.

(d) *Determination.* The Agency will compile the results for each area of the technical report to determine how to further process an application.

(1) A project whose technical report receives a “pass” in each of the applicable technical report areas will be considered to have “technical merit” and is eligible for further consideration for funding.

(2) A project whose technical report receives a “fail” in any one technical report area will be considered to be without technical merit and is not eligible for funding.

**§ 4280.117 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 this section. This information must be presented in the order shown in paragraphs (a) through (f), as applicable, of this section. Each Applicant is encouraged, but is not required, to self-score the project using the evaluation criteria in § 4280.120 and to submit with their application the total score, including appropriate calculations and attached documentation or specific cross-references to information elsewhere in the application.

(a) *Forms and certifications.* Each application must contain the forms and certifications specified in paragraphs (a)(1) through (9), as applicable, of this section, except that paragraph (a)(4).

- (1) Form SF-424.
- (2) Form SF-424C, “Budget Information-Construction Programs.”
- (3) Form SF-424D, “Assurances-Construction Programs.”

(4) Identify the ethnicity, race, and gender of the applicant. This information is optional and is not required for a Complete Application.

(5) Form RD 1940-20 with documentation attached for the appropriate level of environmental assessment. The Applicant should contact the Agency to determine what documentation is required to be provided.

(6) 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.

(7) 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.

(8) 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.

(9) 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.* Demonstrate that the Applicant meets the definition of Agricultural Producer or Rural Small Business, including appropriate information necessary to demonstrate that the Applicant meets the Agricultural Producer’s percent of gross income derived from agricultural operations or the Rural Small Business’ size, as applicable, requirements identified in these definitions. Include a description of the Applicant’s farm/ranch/business operation.

(i) *Rural Small Business Applicants.* Identify the primary North American Industry Classification System (NAICS) code applicable to the Applicant’s business concern. Provide sufficient information to determine total Annual Receipts and number of employees of the business concern and any parent, subsidiary, or affiliate to demonstrate that the Applicant meets the definition of Small Business according to the time frames specified below.

(A) For Applicant business concerns, parents, subsidiaries, and affiliates that have been in operation for 36 months or more, provide Annual Receipts information for the 36 months and the number of employees for the 12 months preceding the date the application is submitted.

(B) For Applicant business concerns, parents, subsidiaries, and affiliates that have been in operation for less than 36 months but for at least 12 months, provide Annual Receipts and the number of employees for as long as the business concern, parent, subsidiary, or affiliate has been in operation.

(C) For Applicant business concerns, parents, subsidiaries, and affiliates that have been in operation for less than 12 months, provide Annual Receipts and number of employees projections for the applicable entity based upon a typical operating year for a 3-year time period.

(ii) *Agricultural Producer Applicants.* Provide the gross market value of the Applicant’s agricultural products, gross agricultural income of the Applicant,

and gross nonfarm income of the Applicant according to the Annual Receipts time frames specified in paragraphs (b)(1)(i)(A) through (C) of this section, as applicable to the length of time that Applicant's agricultural operation has been in operation.

(2) *Applicant description.* Describe the ownership of the Applicant, including the following information if applicable.

(i) *Ownership and control.* Describe how the Applicant meets the ownership and control requirements.

(ii) *Affiliated companies.* For entities (e.g., corporate parents, affiliates, subsidiaries), provide a list of the individual owners with their contact information of those entities. Describe the relationship between the Applicant and these other entities, including management and products exchanged.

(3) *Financial information.* Financial information is required on the total operation of the Agricultural Producer/Rural Small Business and its parent, subsidiary, or affiliates. All information submitted under this paragraph must be substantiated by authoritative records.

(i) *Historical financial statements.* Provide historical financial statements prepared in accordance with Generally Accepted Accounting Practices (GAAP) for the past 3 years, including income statements and balance sheets. If Agricultural Producers are unable to present this information in accordance with GAAP, they may instead present financial information in the format that is generally required by commercial agriculture lenders. For a Rural Small Business or Agricultural Producer that has been in operation for less than 3 years, provide income statements and balance sheets for as long as the business operation has been in existence.

(ii) *Current balance sheet and income statement.* Provide a current balance sheet and income statement prepared in accordance with GAAP and dated within 90 days of the application. Agricultural Producers can present financial information in the format that is generally required by commercial agriculture lenders.

(iii) *Pro forma financial statements.* Provide pro forma balance sheet at start-up of the Agricultural Producer's/Rural Small Business' business operation that reflects the use of the loan proceeds or grant award; and 3 additional years, indicating the necessary start-up capital, operating capital, and short-term credit; and projected cash flow and income statements for 3 years supported by a list of assumptions showing the basis for the projections.

(4) *Previous grants and loans.* State whether the Applicant has received any grants and/or loans under this subpart. 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.

(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 § 4280.124(a)(1).

(3) Describe how 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, the Applicant must submit documentation in the form of a bank statement 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, identify the dollar amount and any applicable rates and terms. If the third party is a bank, a letter-of-intent, pre-qualification letter, subject to bank approval, or other underwriting requirements or contingencies are not acceptable. An acceptable condition may be based on the receipt of the REAP grant or an appraisal.

(d) *Feasibility Study.* If the application is for a RES project with Total Project Costs of \$200,000 and Greater, a Feasibility Study must be submitted. The Feasibility Study must be conducted by a Qualified Consultant.

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

(f) *Construction planning and performing development.* Each application submitted must be in accordance with § 4280.124 for planning, designing, bidding, contracting, and constructing RES and EEI projects as applicable.

**§ 4280.118 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 § 4280.117. 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 § 4280.122(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 and must be presented in the same order. Each Applicant is encouraged, but is not required, to self-score the project using the evaluation criteria in § 4280.120 and to submit with their application the total score, including appropriate calculations and attached documentation or specific cross-references to information elsewhere in the application.

(1) *Forms and certifications.* The application must contain the items identified in § 4280.117(a). 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 § 4280.117(b), except that the information specified in § 4280.117(b)(3) is not required.

(3) *Project information.* The application must contain the items identified in § 4280.117(c).

(4) *Technical report.* Each application must contain a technical report in accordance with § 4280.110(h) 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 § 4280.124 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.

**§ 4280.119 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 §§ 4280.117 or 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 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 § 4280.122(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, of this section and must be presented in the same order. Each Applicant is encouraged, but is not required, to self-score the project using the evaluation criteria in § 4280.120 and to submit with their application the total score, including appropriate calculations and attached documentation or specific cross-references to information elsewhere in the application.

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

(i) Form SF-424.

(ii) Form SF-424C.

(iii) Form SF-424D.

(iv) Identify the ethnicity, race, and gender of the applicant. This information is optional and is not required for a Complete Application.

(v) Form RD 1940-20 with documentation attached for the appropriate level of environmental assessment. The Applicant should contact the Agency to determine what documentation is required to be provided.

(vi) Certification by the Applicant that:

(A) The Applicant meets each of the Applicant eligibility criteria found in § 4280.112;

(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 § 4280.124(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.

(vii) State whether the Applicant has received any grants and/or loans under this subpart. 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.

(viii) 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.

(ix) 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) Describe in detail or document how 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, the Applicant must submit documentation in the form of 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 is a bank, a letter-of-intent, pre-qualification letter, subject to bank approval, or other 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(h) 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 how it meets the requirements for being Commercially Available.

(ii) *Qualifications of EEI provider(s).* 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 a qualified installer/contractor.

(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 individual or entity 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(h) 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 summary of how the project will be constructed and installed, and how it meets the definition of Commercially Available. Identify the project's location and describe the project site.

(ii) *Resource assessment.* Describe the quality and availability of the renewable resource to the project. Identify the amount of Renewable Energy that will be generated once the proposed system is operating at its steady state operating level.

(iii) *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.

(iv) *Qualifications of key service providers.* Describe the key service providers, including the number of similar systems installed and/or manufactured, 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.

(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 § 4280.124 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 for contracts exceeding \$10,000; and

(ii) Form AD-1048 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 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.

#### **§ 4280.120 Scoring RES and EEI grant applications.**

Agency personnel will score each 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 documented in the application that the proposed project will have a positive effect on any of the three impact areas: 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). Points will be awarded as follows:

(1) If the proposed project has a positive impact on any one of the three impact areas, 1 point will be awarded.

(2) If the proposed project has a positive impact on any two of the three impact areas, 3 points will be awarded.

(3) If the proposed project has a positive impact on 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 will be awarded 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 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) *Renewable Energy Systems.* The quantity of energy generated per grant dollar requested will be determined by dividing the projected total annual energy generated by the RES, which will be converted to BTUs, by the grant dollars requested. Points will be awarded based on the annual amount of energy generated per grant dollar requested for the proposed RES as determined using paragraphs (b)(1)(i)(A) and (B) of this section. A maximum of 10 points will be awarded under this criterion.

(A) The energy generated per grant dollar requested will be calculated using Equation 1.

$$\text{Equation 1: } EG/\$ = (EG_{12}/GR)$$

where:

EG/\$ = Energy generated per grant dollar requested.

EG<sub>12</sub> = Projected total annual energy generated (BTUs) by the proposed RES for a typical year.

GR = Grant amount requested under this subpart.

(B) If the projected total annual energy generated per grant dollar requested calculated under paragraph (b)(1)(i)(A) of this section is:

(1) Less than 50,000 BTUs annual energy generated per grant dollar requested, points will be awarded as follows: Points awarded = (EG/\$)/50,000 × 10 points, where the points awarded are rounded to the nearest hundredth of a point.

(2) 50,000 BTUs average annual energy saved per grant dollar requested or higher, 10 points will be awarded. For example, an Applicant has requested a \$500,000 grant to install an Anaerobic Digester Project with a 500 kilowatt (kW) generator set. The Anaerobic Digester Project will produce 5,913,000 kilowatt hours (kWh) per year. At 3,412 BTUs per kWh, this is equivalent to 20,175,156,000 BTUs. Based on this example, there are 40,350.312 BTUs generated per grant

dollar requested (20,175,156,000 BTUs/\$500,000). Because this is less than 50,000 BTUs average annual energy saved per grant dollar requested, points will be awarded as follows:

$$\text{Points awarded} = 40,350.312 \text{ BTUs}/50,000 \text{ BTUs} \times 10 = 8.07006$$

This would be rounded to the nearest hundredth, or to 8.07 points.

(ii) *Energy Efficiency Improvements.* Energy savings per grant dollar requested will be determined by dividing the average annual energy projected to be saved as determined by the Energy Assessment or Energy Audit for the EEI, which will be converted to BTUs, by the grant dollars requested. Points will be awarded based on the average annual amount of energy saved per grant dollar requested for the proposed EEI as determined using paragraphs (b)(1)(ii)(A) and (B) of this section. A maximum of 10 points will be awarded under this criterion.

(A) The average annual energy saved per grant dollar requested shall be calculated using Equation 2.

$$\text{Equation 2: } ES/\$ = (ES_{36}/GR)$$

where:

ES/\$ = Average annual energy saved per grant dollar requested.

ES<sub>36</sub> = Average annual energy saved by the proposed EEI over the same period used in the Energy Assessment or Energy Audit, as applicable.

GR = Grant amount requested under this subpart.

(B) If the average annual energy saved per grant dollar requested calculated under paragraph (b)(1)(ii)(A) of this section is:

(1) Less than 50,000 BTUs average annual energy saved per grant dollar requested, points will be awarded as follows: Points awarded = (ES/\$)/50,000 × 10 points, where the points awarded are rounded to the nearest hundredth of a point.

(2) 50,000 BTUs average annual energy saved per grant dollar requested or higher, 10 points will be awarded. For example, an Applicant has requested a \$1,500 grant to install a new boiler. The average BTU usage of the existing boiler for the most recent 12 months prior to submittal of the application was 125,555,000 BTUs per year. If the new boiler had been in place for those same 12 months, the annual average BTU usage is estimated to be 100,000,000 BTUs. Thus, the new boiler is projected to save the Applicant 25,555,000 BTUs per year. Based on this example, there are 17,036.6667 BTUs saved per grant dollar requested (25,555,000 BTUs/\$1,500). Because this is less than 50,000 BTUs average annual energy saved per grant dollar requested, points will be awarded as follows:

Points awarded =  $17,036.6667 \text{ BTUs} / 50,000 \text{ BTUs} \times 10 = 3.407$

This would be rounded to the nearest hundredth, or to 3.41 points.

(2) *Quantity of energy replaced, saved, or generated.* A maximum of 15 points will be awarded for this sub-criterion. Points may only be awarded for energy replacement, energy savings, or energy generation. Points will not be awarded for more than one category.

(i) *Energy replacement.* If the proposed RES is intended primarily for self-use by the Agricultural Producer or Rural Small Business and will provide energy replacement of greater than zero, but equal to or less than 25 percent, 5 points will be awarded; greater than 25 percent, but equal to or less than 50 percent, 10 points will be awarded; or greater than 50 percent, 15 points will be awarded. Energy replacement is to be determined by dividing the estimated quantity of Renewable Energy to be generated over the most recent 12-month period, by the quantity of energy consumed over the same period by the applicable energy application. For a project to qualify as an energy replacement it must provide documentation on prior energy use. For a project involving new construction and being installed to serve the new facility, the project may be classified as energy replacement only if the applicant can document previous energy use from a facility of approximately the same size. Approximately the same size is further clarified to be 10 percent larger or smaller than the facility it is replacing. The estimated quantities of energy must be converted to either BTUs, Watts, or similar energy equivalents to facilitate scoring. If the estimated energy produced equals more than 150 percent of the energy requirements of the applicable process(es), the project will be scored as an energy generation project.

(ii) *Energy savings.* If the estimated energy expected to be saved over the same period used in the Energy Assessment or Energy Audit, as applicable, by the installation of the EEI will be from 20 percent up to, but not including 35 percent, 5 points will be awarded; 35 percent up to, but not including 50 percent, 10 points will be awarded; or, 50 percent or greater, 15 points will be awarded. Energy savings will be determined by the projections in an Energy Assessment or Energy Audit.

(iii) *Energy generation.* If the proposed RES is intended for production of energy, 10 points will be awarded.

(c) *Commitment of funds.* A maximum of 20 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. The percentage of written commitment must be calculated using the following equation.

Percentage of written commitment =  $\frac{\text{Total amount of funds for which written commitments have been submitted with the application}}{\text{Total amount of Matching Funds and other funds required}}$

(1) If the percentage of written commitments as calculated is 100 percent of the Matching Funds, 20 points will be awarded.

(2) If the percentage of written commitments as calculated is less than 100 percent, but more than 50 percent, points will be awarded as follows:  $((\text{percentage of written commitments} - 50 \text{ percent}) / (50 \text{ percent})) \times 20$  points, where points awarded are rounded to the nearest hundredth of a point.

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

(d) *Size of Agricultural Producer or Rural Small Business.* A maximum of 10 points will be awarded for this criterion based on the size of the Applicant's agricultural operation or business concern, as applicable, compared to the SBA Small Business size standards categorized by the NAICS found in 13 CFR 121.201. For Applicants that are:

(1) One-third or less of the maximum size standard identified by SBA, 10 points will be awarded.

(2) Greater than one-third up to and including two-thirds of the maximum size standard identified by SBA, 5 points will be awarded.

(3) Larger than two-thirds of the maximum size standard identified by SBA, no points will be awarded.

(e) *Previous grantees and borrowers.* A maximum of 15 points will be awarded for this criterion based on whether the Applicant has received a grant or guaranteed loan under this subpart.

(1) If the Applicant has never received a grant and/or guaranteed loan under this subpart, 15 points will be awarded.

(2) If the Applicant has not received a grant and/or guaranteed loan under this subpart within the 2 previous Federal Fiscal Years, 5 points will be awarded.

(3) If the Applicant has received a grant and/or guaranteed loan under this subpart within the 2 previous Federal Fiscal Years, no points will be awarded.

(f) *Simple Payback.* A maximum of 15 points will be awarded for this criterion based on the Simple Payback of the project. Points will be awarded for

either RES or EEI; points will not be awarded for more than one category.

(1) *Renewable Energy Systems.* 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) *Energy Efficiency Improvements.* 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) *State Director and Administrator priority points.* A maximum of 10 points will be awarded 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 (g)(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.

(3) The Applicant is a member of an unserved or under-served population.

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

(5) The proposed project is located in an impoverished area, has experienced long-term population decline, or loss of employment.

#### **§ 4280.121 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.

(a) *RES and EEI grant applications.* Complete RES and EEI grant applications, regardless of the amount of funding requested (which includes \$20,000 or less), are eligible to compete in two competitions each 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 April 30. If April 30 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 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 competitions will be competed in a National competition.

(b) *RES and EEI grant applications requesting \$20,000 or less.* Complete RES and EEI grant applications requesting \$20,000 or less are eligible to compete in up to five competitions—two State competitions and a National competition for grants of \$20,000 or less set aside, as well as the two competitions referenced in paragraph (a) of this section (see paragraph (e)(2) 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 April 30 of the Federal Fiscal Year will be competed against each other, including any applications for \$20,000 or less that were not funded from the prior competition. If either October 31 or April 30 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 April 30, 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 April 30 will be competed in the National competition.

(c) *Ranking of applications.* The Agency will rank complete eligible applications using the scoring criteria specific in § 4280.120. 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. 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. How the unfunded application is handled depends on whether it is requesting more than \$20,000 or is requesting \$20,000 or less.

(1) 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.

(2) All complete and eligible applications requesting \$20,000 or less may be competed in up to five consecutive competitions as illustrated below. Example 1: An application that is unfunded in the first State competition of a fiscal year is eligible to be competed in the second State competition and the National competition for grants of \$20,000 or less, as well as, the State and National competitions for all grants regardless of the dollar amount being requested, in that fiscal year. Example 2: An application that is first competed in the second State competition of a fiscal year can be competed in the National competition for that fiscal year and the first State competition in the following fiscal year for grants of \$20,000 or less. In addition the application may compete in the State and National competitions for all grants regardless of the amount of funding requested, which are referenced in paragraph (a) of this section. The Agency will discontinue for potential funding all application requesting \$20,000 or less that are not selected for funding after competing in a total of three State competitions and two national competitions.

(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 technology proposed or start construction of the project to be financed in the grant application 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.

#### **§ 4280.122 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 (8) 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 (7) of this section and all of the certifications must be submitted prior to grant approval. The form specified in paragraph (c)(8) 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 AD-1049, "Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative 1-For Grantees Other than Individuals."

(4) 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.

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

(6) Form RD 400-1, "Equal Opportunity Agreement," or successor form.

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

(8) 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 Grant 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 Grant Agreement and must be in effect (*i.e.*, must not have expired) at the time Grant Agreement is executed.

(e) *SAM number.* Before the Grant Agreement can be executed, the number and expiration date of the Applicant's SAM number are required.

(f) *Grant Agreement.* Once the requirements specified in paragraphs (a) through (e) of this section have been met, the Grant Agreement can be executed by the grantee and the Agency. The grantee must abide by all requirements contained in the Grant 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, the approved scope of work, and the Grant 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 Grant Agreement is executed, unless otherwise approved by the Agency.

#### **§ 4280.123 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 1951, subparts E and O, other than 7 CFR 1951.709(d)(1)(B)(iv); the Grant 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 (a)(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 § 4280.117(e), § 4280.118(b)(4), § 4280.119(b)(3), or § 4280.119(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 obligations.* Prior to the construction of the project, the grantee may request, in writing, a transfer of obligation to a different (substitute) grantee. Subject to Agency approval provided in writing, an obligation of funds established for a grantee may be transferred to a substitute grantee provided:

(1) The substituted grantee

(i) Is eligible;

(ii) Has a close and genuine relationship with the original grantee; and

(iii) Has the authority to receive the assistance approved for the original grantee; and

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

(d) *Transfer of ownership.* After the project is completed and operational, the grantee may request, in writing, a transfer of the Grant Agreement to another entity. Subject to Agency approval provided in writing, the Grant 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.

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

(f) *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.

(g) *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.

(h) *Grant disbursement.* As applicable, grantees must disburse grant funds as scheduled in accordance with the appropriate construction and inspection requirements in §§ 4280.118, 4280.119 or 4280.124 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.

(5) For a grant awarded to a project with Total Project Costs of \$200,000 and greater, grant funds will be disbursed in accordance with the above 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 the 30 day steady state operating level is not found acceptable to the Agency.

(i) *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.

(j) *Reporting requirements.* Financial and project performance reports must be provided by grantees and contain the information specified in paragraphs (j)(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 (j)(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) *Outcome project performance reports.* Once the project has been constructed, the grantee must provide the Agency periodic reports. These reports will include the information specified in paragraphs (j)(3)(i) or (ii) of this section, as applicable.

(i) *Renewable Energy Systems.* For RES projects, commencing the first full calendar year following the year in which project construction was completed and continuing for 3 full years, provide a report detailing the

information specified in paragraphs (j)(3)(i)(A) through (G) of this section.

(A) Type of technology;

(B) The actual annual amount of energy generated in BTUs, kilowatt-hours, or similar energy equivalents;

(C) Annual income for systems that are selling energy, if applicable, and/or energy savings of the RES;

(D) A summary of the cost of operations and maintenance;

(E) A description of any associated major maintenance or operational problems;

(F) Recommendations for development of future similar projects; and

(G) Actual number of jobs, if any, created or saved as a direct result of the RES project for which REAP funding was used.

(ii) *Energy Efficiency Improvements.* For EEI projects, commencing the first full calendar year following the year in which project construction was completed and continuing for 2 full years, provide a report detailing, including calculations and any assumptions:

(A) The actual amount of energy saved annually as determined by the difference between:

(1) The annual amount of energy used by the project with the project in place and

(2) The annual average amount of energy used in the period prior to application submittal as reported in the Energy Assessment or Energy Audit submitted with the application; and

(B) Actual number of jobs, if any, created or saved as a direct result of the EEI project for which REAP funding was used.

(k) *Grant close-out.* Grant close-out must be performed in accordance with the requirements specified in Departmental Regulations.

#### **§ 4280.124 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.* Any contract exceeding \$100,000 for procurement will require surety, except as provided for in paragraph (a)(3)(v) of this section.

(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) For contracts of lesser amounts, the grantee may require surety.

(iv) 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.

(v) Applicants may request exceptions to surety for any of the situations identified in paragraphs (a)(3)(v)(A) through (D) of this section. Applicants must submit a written request to the Agency.

(A) Small acquisition and construction procedures as specified in § 4280.118(c) and (d) or § 4280.119(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.

(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 \$400,000 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.* 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 review.* Facilities financed by the Agency must undergo an environmental analysis in accordance with the National Environmental Policy Act and 7 CFR part 1940, subpart G of this title. 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 101-19.6, 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 EO 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 an individual or entity 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.

#### **Renewable Energy System and Energy Efficiency Improvement Guaranteed Loans**

##### **§ 4280.125 Compliance with §§ 4279.29 through 4279.99 of this chapter.**

All loans guaranteed under this subpart must comply with the provisions found in §§ 4279.29 through 4279.99 of this chapter.

##### **§ 4280.126 Guarantee/annual renewal fee.**

Except for the conditions for receiving reduced guarantee fee and unless otherwise specified in a **Federal Register** notice, the provisions specified in § 4279.107 of this chapter apply to loans guaranteed under this subpart.

##### **§ 4280.127 Borrower eligibility.**

To receive a RES or EEI guaranteed loan under this subpart, a borrower must be eligible under § 4280.112. In addition, borrower must meet the requirements of paragraphs (a) through (e) of this section. Borrowers who receive a loan guaranteed under this subpart must continue to meet the requirements specified in this section.

(a) *Type of borrower.* The borrower must be an Agricultural Producer or Rural Small Business.

(b) *Ownership.* The borrower must:

(1) Own or be the prospective owner of the project; and

(2) Own or control the site for the project at the time of application and, if the loan is guaranteed under this subpart, for the term of the loan.

(c) *Revenues and expenses.* The borrower must have available or be able to demonstrate, 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 term of the loan. In addition, the borrower must control the revenues and expenses of the project, including its operation and maintenance, for which the loan is sought. Notwithstanding the provisions of this paragraph, the borrower may employ a Qualified Consultant under contract to manage revenues and expenses of the project and its operation and/or maintenance.

(d) *Legal authority and responsibility.* Each borrower and lender must have the legal authority necessary to apply for and carry out the purpose of the guaranteed loan.

(e) *Universal identifier and SAM.* Unless exempt under 2 CFR 25.110, the borrower must:

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

(2) Maintain an active SAM registration with current information at all times during which it has an active Federal award or an application under consideration by the Agency; and

(3) Provide its DUNS number in each application it submits to the Agency.

##### **§ 4280.128 Project eligibility.**

For a RES or EEI project to be eligible to receive a guaranteed loan under this subpart, the project must meet each criteria specified in § 4280.113(a)

through (f). In addition, the purchase of an existing RES that meets the criteria specified in § 4280.113(b) through (f) is an eligible project under this section.

**§ 4280.129 Guaranteed loan funding.**

(a) The amount of the loan that will be made available to an eligible project under this subpart will not exceed 75 percent of Eligible Project Costs. Eligible Project Costs are specified in paragraph (e) of this section. Ineligible project costs are identified in paragraph (f) of this section.

(b) The minimum amount of a guaranteed loan made to a borrower will be \$5,000, less any program grant amounts. The maximum amount of a guaranteed loan made to a borrower is \$25 million.

(c) The percentage of guarantee, up to the maximum allowed by this section, will be negotiated between the lender and the Agency. The maximum percentage of guarantee is:

(1) 85 percent for loans of \$600,000 or less;

(2) 80 percent for loans greater than \$600,000 up to and including \$5 million;

(3) 70 percent for loans greater than \$5 million up to and including \$10 million; and

(4) 60 percent for loans greater than \$10 million.

(d) The total amount of the loans guaranteed under this subpart to one borrower, including the guaranteed and unguaranteed portion, the outstanding principal, and interest balance of any existing loans guaranteed under this program and the new loan request, must not exceed \$25 million.

(e) Eligible Project Costs are only those costs associated with the items identified in § 4280.114(c)(1) through (c)(6) and paragraphs (e)(1) through (6) of this section as long as the items identified in both sets of paragraphs are directly related to the RES or EEI. The Eligible Project Costs identified in paragraphs (e)(1) through (4) of this section cannot exceed more than 5 percent of the loan amount.

(1) Working capital.

(2) Land acquisition.

(3) Routine lender fees, as described in § 4279.120(a) of this chapter.

(4) Energy Assessments, Energy Audits, technical reports, business plans, and Feasibility Studies completed and acceptable to the Agency, except if any portion was financed by any other Federal or State grant or payment assistance, including, but not limited to, a REAP Energy Assessment or Energy Audit, or REDA grant.

(5) Building and equipment for an existing RES.

(6) Refinancing outstanding debt when the original purpose of the debt being refinanced meets the eligible project requirements of § 4280.128. Existing debt may be refinanced provided that:

(i) The project identified in the application meets the requirements of § 4280.128;

(ii) The debt being refinanced must be less than 50 percent of the overall loan;

(iii) Refinancing is necessary to improve cash flow and viability of the project identified in the application;

(iv) At the time of application, the loan being refinanced has been current for at least the past 12 months (unless such status is achieved by the lender forgiving the borrower's debt); and

(v) The lender is providing better rates or terms for the loan being refinanced.

(f) Ineligible project costs include, but are not limited to costs identified in §§ 4280.114(d)(1), (d)(2), (d)(4) through (d)(9), guaranteeing loans made by other Federal agencies, subordinated owner debt, and loans made with the proceeds of any obligation the interest on which is excludable from income under 26 U.S.C. 103 or a successor statute. Funds generated through the issuance of tax-exempt obligations may neither be used to purchase the guaranteed portion of any Agency guaranteed loan nor may an Agency guaranteed loan serve as collateral for a tax-exempt issue. The Agency may guarantee a loan for a project which involves tax-exempt financing only when the guaranteed loan funds are used to finance a part of the project that is separate and distinct from the part which is financed by the tax-exempt obligation, and the guaranteed loan has at least a parity security position with the tax-exempt obligation.

(g) In determining the amount of a loan awarded, the Agency will take into consideration the criteria specified in § 4280.114(e).

**§ 4280.130 Loan processing.**

(a) Processing RES and EEI guaranteed loans under this subpart must comply with the provisions found in §§ 4279.120 through 4279.187 of this chapter, except for those sections specified in paragraph (b) of this section, and as provided in §§ 4280.131 through 4280.142.

(b) The provisions found in §§ 4279.150, 4279.155, 4279.161, and 4279.175 of this chapter do not apply to loans guaranteed under this subpart.

**§ 4280.131 Credit quality.**

Except for § 4279.131(d) of this chapter, the credit quality provisions of § 4279.131 of this chapter apply to this

subpart. Instead of complying with § 4279.131(d), borrowers must demonstrate evidence of cash equity injection in the project of not less than 25 percent of total Eligible Project Costs. Cash equity injection must be in the form of cash. For guaranteed loan-only requests, Federal grant funds may be counted as cash equity.

**§ 4280.132 Financial statements.**

All financial statements must be in accordance with § 4279.137 of this chapter except that, for Agricultural Producers, the borrower may provide financial information in the manner that is generally required by agricultural commercial lenders.

**§ 4280.133 [Reserved]**

**§ 4280.134 Personal and corporate guarantees.**

Except for Passive Investors, all personal and corporate guarantees must be in accordance with § 4279.149 of this chapter.

**§ 4280.135 Scoring RES and EEI guaranteed loan-only applications.**

(a) *Evaluation criteria.* The Agency will score each guaranteed loan-only application received using the evaluation criteria specified in § 4280.120, except that, in § 4280.120(b)(1), the calculation will be made on the loan amount requested and not on the grant amount requested.

(b) *Minimum score.* The Agency will establish a minimum score that guaranteed loan-only applications must meet in order to be considered for funding in periodic competitions, as specified in § 4280.139(a). The minimum score is 50 points, and may be adjusted through the publishing of a Notice in the **Federal Register**. Any application that does not meet the applicable minimum score is only eligible to compete in a National competition as specified in § 4280.139(c)(2).

(c) *Notification.* The Agency will notify in writing each lender and borrower whose application does not meet the applicable minimum score.

**§ 4280.136 [Reserved]**

**§ 4280.137 Application and documentation.**

The requirements in this section apply to guaranteed loan applications for RES and EEI projects under this subpart.

(a) *General.* Guaranteed loan applications must be submitted in accordance with the guaranteed loan requirements specified in § 4280.110 and in this section.

(b) *Application content for guaranteed loans greater than \$600,000.* Each guaranteed loan-only application for greater than \$600,000 must contain the information specified in paragraphs (b)(1) and (2) of this section.

(1) *Application content.* Each application submitted under this paragraph must contain the information specified in §§ 4280.117(a)(6) through (9) and (b) through (e) and as specified in paragraph (b)(2) of this section, and must present the information in the same order as shown in § 4280.117.

(2) *Lender forms, certifications, and agreements.* Each application submitted under paragraph (b) of this section must contain applicable forms, certifications, and agreements specified in paragraphs (b)(2)(i) through (xi) of this section instead of the forms and certifications specified in § 4280.117(a).

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

(ii) Form RD 1940-20.

(iii) Identify the ethnicity, race, and gender of the applicant. This information is optional and is not required for a Complete Application.

(iv) A personal credit report from an Agency approved credit reporting company for each owner, partner, officer, director, key employee, and stockholder owning 20 percent or more interest in the borrower's business operation, except Passive Investors and those corporations listed on a major stock exchange.

(v) Appraisals completed in accordance with § 4279.144 of this chapter. Completed appraisals should be submitted when the application is filed. If the appraisal has not been completed when the application is filed, the Lender must submit an estimated appraisal. Agency approval in the form of a Conditional Commitment may be issued subject to receipt of adequate appraisals. In all cases, a completed appraisal must be submitted prior to the loan being closed.

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

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

(viii) Financial information is required on the total operation of the Agricultural Producer/Rural Small Business and its parent, subsidiary, or affiliates. All information submitted under this paragraph must be substantiated by authoritative records.

(A) *Historical financial statements.* Provide historical financial statements, including income statements and balance sheets, according to the Annual Receipts time frames specified in

paragraphs § 4280.117(b)(1)(i)(A) through (C), as applicable to the length of time that Applicant's Rural Small Business or agricultural operation has been in operation. Agricultural Producers may present historical financial information in the format that is generally required by commercial agriculture lenders.

(B) *Current balance sheet and income statement.* Provide a current balance sheet and income statement presented in accordance with GAAP and dated within 90 days of the application submittal. Agricultural Producers may present financial information in the format that is generally required by commercial agriculture lenders or in a similar format used when submitting the same information in support of the borrower's Federal income tax returns.

(C) *Pro forma financial statements.* Provide pro forma balance sheet at start-up of the borrower's business operation that reflects the use of the loan proceeds or grant award; 3 additional years of financial statements, indicating the necessary start-up capital, operating capital, and short-term credit; and projected cash flow and income statements for 3 years supported by a list of assumptions showing the basis for the projections.

(ix) Lender's complete comprehensive written analysis in accordance with § 4280.131.

(x) A certification by the lender that the borrower is eligible, the loan is for authorized purposes, and there is reasonable assurance of repayment ability based on the borrower's history, projections, equity, and the collateral to be obtained.

(xi) A proposed loan agreement or a sample loan agreement with an attached list of the proposed loan agreement provisions. The following requirements must be addressed in the proposed or sample loan agreement:

(A) Prohibition against assuming liabilities or obligations of others;

(B) Restriction on dividend payments;

(C) Limitation on the purchase or sale of equipment and fixed assets;

(D) Limitation on compensation of officers and owners;

(E) Minimum working capital or current ratio requirement;

(F) Maximum debt-to-net worth ratio;

(G) Restrictions concerning consolidations, mergers, or other circumstances;

(H) Limitations on selling the business without the concurrence of the lender;

(I) Repayment and amortization provisions of the loan;

(J) List of collateral and lien priority for the loan, including a list of persons

and corporations guaranteeing the loan with a schedule for providing the lender with personal and corporate financial statements. Financial statements for corporate and personal guarantors must be updated at least annually once the guarantee is provided;

(K) Type and frequency of financial statements to be required from the borrower for the duration of the loan;

(L) The addition of any requirements imposed by the Agency in its Conditional Commitment;

(M) A reserved section for any Agency environmental requirements; and

(N) A provision for the lender or the Agency to have reasonable access to the project and its performance information during its useful life or the term of the loan, whichever is longer, including the periodic inspection of the project by a representative of the lender or the Agency.

(c) *Application content for guaranteed loans of \$600,000 or Less.* Each guaranteed loan-only application for \$600,000 or less must contain the information specified in paragraphs (c)(1) and (2) of this section.

(1) *Application contents.* If the application is for less than \$200,000, but more than \$80,000, the application must contain the information specified in § 4280.118(b), except as specified in paragraph (c)(2) of this section (e.g., the grant forms under § 4280.117(a) are not required to be submitted), and must present the information in the same order as shown in § 4280.118(b). If the application is for \$200,000 and greater, the application must contain the information specified in § 4280.117, except as specified in paragraph (c)(2) of this section, and must present the information in the same order as shown in § 4280.117.

(2) *Lender forms, certifications, and agreements.* Each application submitted under paragraph (c) of this section must use Form RD 4279-1A, "Application for Loan Guarantee, Short Form," and the forms and certifications specified in paragraphs (b)(2)(ii), (iii) (if not previously submitted), (v), (viii), (ix), (x), and (xi) of this section. The lender must have the documentation contained in paragraphs (b)(2)(iv), (vi), and (vii) available in its files for the Agency's review.

#### **§ 4280.138 Evaluation of RES and EEI guaranteed loan applications.**

The provisions of § 4279.165 of this chapter apply to this subpart, although the Agency will determine borrower and project eligibility in accordance with the provisions of this subpart.

**§ 4280.139 Selecting RES and EEI guaranteed loan-only applications for award.**

Complete and eligible guaranteed loan-only applications that are ready to be approved will be processed according to this section, unless otherwise modified by the Agency in a notice published in the **Federal Register**. Guaranteed loan applications that are part of a grant-guaranteed loan combination request will be processed according to § 4280.165(d).

(a) *Competing applications.* On a periodic basis, the Agency will compete each eligible application that is ready to be funded and that has a priority score, as determined under § 4280.135, that meets or exceeds the applicable minimum score. Higher scoring applications will receive first consideration. An application that does not meet the minimum score will be competed as provided in paragraph (c)(2) of this section.

(b) *Funding selected applications.* As applications are funded, the remaining guaranteed funding authority may be insufficient to fund the next highest scoring application or applications in those cases where two or more applications receive the same priority score. The procedures described in paragraphs (b)(1) and (2) of this section may be repeated as necessary in order to consider all applications as appropriate.

(1) If the remaining funds are insufficient to fund the next highest scoring project completely, the Agency will notify the lender and offer the lender the opportunity to accept the level of funds available. If the lender does not accept the offer, the Agency will process the next highest scoring application.

(2) If the remaining funds are insufficient to fund each project that receives the same priority score, the Agency will notify each lender and offer the lenders the opportunity to accept the level of funds available and the level of funds the Agency offers to each such lender will be proportional to the amount of the lenders' requests. If funds are still remaining, the Agency may consider funding the next highest scoring project.

(3) Any lender offered less than the full amount requested under either paragraph (b)(1) or (2) of this section may either accept the funds available or can request to compete in the next competition. Under no circumstances would there be an assurance that the project(s) would be funded in subsequent competitions.

(4) If a lender agrees to the lower loan funding offered by the Agency under

either paragraph (b)(1) or (2) of this section, the lender must certify that the purpose(s) of the project can still be met at the lower funding level and must provide documentation that the borrower has obtained the remaining total funds needed to complete the project.

(c) *Handling of ranked applications not funded.* How the Agency disposes of ranked applications that have not received funding depends on whether the application's priority score is equal to or greater than the minimum score or is less than the minimum score.

(1) An application with a priority score equal to or greater than the minimum score that is not funded in a periodic competition will be retained by the Agency for consideration in subsequent competitions. If an application is not selected for funding after 12 months, including the first month in which the application was competed, the application will be withdrawn by the Agency from further funding consideration.

(2) An application with a priority score less than the applicable minimum priority score will be competed against all other guaranteed loan-only applications in a National competition on the first business day of September of the Federal Fiscal Year in which the application is ready for funding. If the application is not funded, the application will be withdrawn by the Agency from further funding consideration.

(d) *Unused funding.* After each periodic competition, the Agency will roll any remaining guaranteed funding authority into the next competition. At the end of each Federal Fiscal Year, the Agency may elect at its discretion to allow any remaining multi-year funds to be carried over to the next Federal Fiscal Year rather than selecting a lower scoring application.

(e) *Commencement of the project.* The Applicant assumes all risks if the choice is made to purchase the technology proposed or start construction of the project to be financed in the guaranteed loan-only application after the Complete Application has been received by the Agency, but prior to award announcement.

**§ 4280.140 [Reserved]**

**§ 4280.141 Changes in borrower.**

All changes in borrowers must be in accordance with § 4279.180 of this chapter, but the eligibility requirements of this subpart apply.

**§ 4280.142 Conditions precedent to issuance of loan note guarantee.**

The provisions of § 4279.181 of this chapter apply except for § 4279.181(b).

In addition, paragraphs (a) and (b) of this section must be met.

(a) The project has been performing at a steady state operating level in accordance with the technical requirements, plans, and specifications, conforms with applicable Federal, State, and local codes, and costs have not exceeded the amount approved by the lender and the Agency.

(b) Where applicable, the lender must provide to the Agency a copy of the executed Power Purchase Agreement.

**§ 4280.143 Requirements after project construction.**

Once the project has been constructed, the lender must provide the Agency reports from the borrower in accordance with § 4280.123(j)(3), as applicable.

**§§ 4280.144–4280.151 [Reserved]**

**§ 4280.152 Servicing guaranteed loans.**

Except as specified in paragraphs (a) and (b) of this section, all loans guaranteed under this subpart must be in compliance with the provisions found in § 4287.101(b) and in §§ 4287.107 through 4287.199 of this chapter.

(a) *Documentation of request.* In complying with § 4287.134(a) of this chapter, all transfers and assumptions must be to eligible borrowers in accordance with § 4280.127.

(b) *Additional loan funds.* In complying with § 4287.134(e) of this chapter, loans to provide additional funds in connection with a transfer and assumption must be considered as a new loan application under § 4280.137.

**§§ 4280.153–4280.164 [Reserved]**

**Combined Funding for Renewable Energy Systems and Energy Efficiency Improvements**

**§ 4280.165 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 grant, the Applicant must also meet the Applicant eligibility requirements specified in § 4280.112. If the Applicant is seeking a loan, the Applicant must also meet the borrower eligibility requirements specified in § 4280.127. Projects must meet the project eligibility requirements specified in §§ 4280.113 and 4280.128, as applicable.

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

(1) The amount of any combined grant and guaranteed loan shall not exceed 75 percent of Eligible Project Costs and the grant portion shall not exceed 25 percent of Eligible Project Costs. For purposes of combined funding requests, Eligible Project Costs are based on the total costs associated with those items specified in §§ 4280.114(c) and 4280.129(e). The Applicant must provide the remaining total funds needed to complete the project.

(2) The minimum combined funding 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) *Application and documentation.* When applying for combined funding, the Applicant must submit separate applications for both types of assistance (grant and guaranteed loan). The separate applications must be submitted simultaneously by the lender.

(1) Each application must meet the requirements, including the requisite forms and certifications, specified in §§ 4280.117, 4280.118, 4280.119, and 4280.137, as applicable, and as follows:

(i) Notwithstanding Form RD 4279–1, the SAM number and its expiration date must be provided prior to obligation of funds;

(ii) A combined funding request for a guaranteed loan greater than \$600,000 must contain the information specified in § 4280.137(b)(1); and

(iii) A combined funding request for a guaranteed loan of \$600,000 or less must contain the information specified in § 4280.137(c)(1) and (2).

(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; that is, the combined application does not need to contain duplicate documentation, forms, and certifications.

(d) *Evaluation.* The Agency will evaluate each application according to § 4280.115(c). The Agency will select applications according to applicable procedures specified in § 4280.121(a) unless modified by this section. A combination loan and grant request will be selected based upon the grant score of the project.

(e) *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 §§ 4279.125 and 4279.126 of this chapter for guaranteed loans.

(f) *Other provisions.* In addition to the requirements specified in paragraphs (a) through (e) 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 (f)(1) through (6) of this section.

(1) All other provisions of §§ 4280.101 through 4280.111 apply to the combined funding request.

(2) All other provisions of §§ 4280.112 through 4280.123 apply to the grant portion of the combined funding request and § 4280.124 applies if the project for which the grant is sought has a Total Project Cost of \$200,000 and greater.

(3) All other provisions of §§ 4280.125 through 4280.152, as applicable, apply to the guaranteed loan portion of the combined funding request.

(4) All guarantee loan and grant combination applications that are ranked, but not funded, will be processed in accordance with provisions found in § 4280.121(d), (e), and (f).

(5) 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.

(6) Compliance reviews will be conducted on a combined grant and guaranteed loan request. The compliance review will encompass the entire operation, program, or activity to be funded with Agency assistance.

#### §§ 4280.166–4280.185 [Reserved]

### Energy Audit and Renewable Energy Development Assistance (REDA) Grants

#### § 4280.186 Applicant eligibility.

To be eligible for an Energy Audit 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.

(b) The Applicant must have sufficient capacity to perform the Energy Audit 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 during which it has an active Federal award or an application under consideration by the Agency; and

(3) Provide its DUNS number in each application it submits to the Agency. Generally, the DUNS number is included on Standard Form–424.

#### § 4280.187 Project eligibility.

To be eligible for an Energy Audit 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 or both 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.

(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 their operations and to use Renewable Energy technologies and resources in their operations.

(c) Energy Audit 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. If the Agricultural Producer's project is in a non-Rural Area, then the Energy Audit or REDA can only be for an EEI or RES on components that are directly related to and their use and purpose is limited to the Agricultural Producer's project, such as vertically integrated operations, that are part of and co-located with the agricultural production operation.

(d) The Energy Audit 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.

**§ 4280.188 Grant funding for Energy Audit and Renewable Energy Development Assistance.**

(a) *Maximum grant amount.* The maximum aggregate amount of Energy Audit and REDA grants awarded to any one recipient under this subpart cannot exceed \$100,000 in a Federal Fiscal Year. Grant funds awarded for Energy Audit 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.

(b) *Eligible project costs.* Eligible Project Costs for Energy Audits and Renewable Energy Development Assistance 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 Energy Audits 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 Energy Audit 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.

(d) *Energy audits.* A grantee that conducts an Energy Audit must require that, as a condition of providing the Energy Audit, 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 Energy Audit services offered during the grant period in accordance with Departmental Regulations.

**§ 4280.189 [Reserved]**

**§ 4280.190 Energy Audit and REDA grant applications—content.**

(a) Unless otherwise specified in a **Federal Register** notice, Applicants may only submit one Energy Audit grant application and one REDA grant application each Federal Fiscal Year. No combination (Energy Audit 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)(4), is optional.

- (1) Form SF-424.
- (2) Form SF-424A.
- (3) Form SF-424B.

(4) Identify the ethnicity, race, and gender of the applicant. This information is optional and is not required for a Complete Application.

(5) 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.

(6) 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.

(7) 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, 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 Energy Audit grant, the number of energy audits and energy assessments 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 Energy Audit, 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; and

(viii) 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, the Applicant must submit documentation in the form of 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 and identify the dollar amount being provided.

**§ 4280.191 Evaluation of Energy Audit and REDA grant applications.**

Section 4280.115(c) applies to Energy Audit and REDA grants, except for § 4280.115(c)(4).

**§ 4280.192 Scoring Energy Audit and REDA grant applications.**

The Agency will score each Energy Audit and REDA application using the criteria specified in paragraphs (a) through (f) of this section, with a maximum score of 100 points possible.

(a) *Applicant's organizational experience in completing the Energy Audit or REDA proposed activity.* A maximum of 25 points will be awarded for this criterion based on the experience of the organization in providing energy audits or renewable energy development assistance 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.

(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.

(b) *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.

(c) *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 Energy Audits 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 of ultimate recipients, including their

name and contact information, that are ready to be assisted, an additional 10 points may be awarded.

(d) *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 (d)(1) and (2) of this section

(1) If the Applicant 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 provides evidence that it has received one or more 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.

(e) *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.

(f) *Commitment of funds for the total project cost.* 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.

(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.

**§ 4280.193 Selecting Energy Audit and REDA grant applications for award.**

Unless otherwise provided for in a Federal Register notice, Energy Audit and REDA grant applications will be processed in accordance with this section.

(a) *Application competition.* Complete Energy Audit 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 § 4280.192, will compete for funding.

(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 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 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 Energy Audit and/or REDA funds may not be funded. Such ranked applications will not be carried forward into the next Federal Fiscal Year's competition.

**§ 4280.194 [Reserved]****§ 4280.195 Awarding and administering Energy Audit and REDA grants.**

The Agency will award and administer Energy Audit and REDA grants in accordance with Departmental Regulations and with the procedures and requirements specified in § 4280.122, except as specified in paragraphs (a) through (c) of this section.

(a) Instead of complying with § 4280.122(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) Form RD 400–1 specified in § 4280.122(c)(6) is not required.

(c) The Power Purchase Agreement specified in § 4280.122(h) is not required.

#### **§ 4280.196 Servicing Energy Audit and REDA grants.**

The Agency will service Energy Audit and REDA grants in accordance with the requirements specified in Departmental Regulations, the Grant Agreement, 7 CFR part 1951, subparts E and O, other than 7 CFR 1951.709(d)(1)(i)(B)(iv), and the requirements in § 4280.123, 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 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 Energy Audits 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)(2)(i) or (ii), as applicable, of this section.

(1) For Energy Audit 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 Energy Audit 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.

#### **§§ 4280.197–4280.199 [Reserved]**

#### **§ 4280.200 OMB control number.**

The information collection requirements contained in this subpart have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0570–0067. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

#### **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 § 4280.119(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 EA, 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 individual or entity 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 paragraphs 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 individual or entity 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 individual or entity 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 § 4280.119(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, 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.

*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 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.* 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.

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.

*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.

Dated: December 17, 2014.

**Lisa Mensah,**

*Under Secretary, Rural Development.*

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