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7 CFR Part 4280
Renewable Energy Systems and Energy Efficiency Improvements Grant, Guaranteed Loan, and Direct Loan Program; Final Rule

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Part 4280

RIN 0570–AA50

Renewable Energy Systems and Energy Efficiency Improvements Grant, Guaranteed Loan, and Direct Loan Program

AGENCY: Rural Business-Cooperative Services, USDA.

ACTION: Final rule.

SUMMARY: The Rural Business-Cooperative Service (RBS) is establishing a program 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. The Farm Security and Rural Investment Act of 2002 (2002 Act) established the Renewable Energy Systems and Energy Efficiency Improvements Program under Title IX, Section 9006. This program will help farmers, ranchers, and rural small businesses to reduce energy costs and consumption.

EFFECTIVE DATE: This rule is effective July 18, 2005.

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SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

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I. Authority

The Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) (2002 Act) established the Renewable Energy Systems and Energy Efficiency Improvements Program under Title IX, Section 9006 (7 U.S.C. 8106). The 2002 Act mandates that the Secretary of Agriculture create a program to make loans, loan guarantees, and grants to ''a farmer, rancher, or rural small business'' to purchase renewable energy systems and make energy efficiency improvements. This program implements this mandate.

II. Background

On October 5, 2004, USDA proposed a loan and grant program for renewable energy systems and energy efficiency improvements under Section 9006 of the 2002 Farm Bill.

In response to the Nation's immediate need for a reduction in reliance on foreign oil, and to address the increasing demand for readily available energy, the Agency is waiving the 30-day waiting period between publication of the rule and when it will take effect. Since publication of the proposed rule, energy prices have continued to rise at an aggressive rate, affecting the Nation at every level, due to international events, increasing demand, and low domestic inventories and refinery capacities. Allowing the earliest possible investment in renewable energy production systems and energy efficiency improvements will help the Nation address the current situation. Effecting the rule without the 30-day waiting period will provide maximum application time prior to the end of the fiscal year to ensure the greatest level of investment possible.

The 9006 Grant Program has been operational since the 2003 fiscal year and the final rule makes only minor changes to the proposed rule and how the 9006 Grant Program has been operated before. As a result, grant applications are not expected to be disadvantaged by this rule's earlier implementation. Likewise, because the 9006 Guaranteed Loan Program is substantially modeled after the Business and Industry Guaranteed Loan Program and because the Final Rule makes only minor changes to the Proposed Rule, guaranteed loan applications are not expected to be disadvantaged by this rule's earlier implementation.

For these reasons, the Agency finds that good cause exists for this rule's immediate implementation.

III. Summary of Changes Since Proposal

The following paragraphs summarize the major changes in the final rule from the rule proposed on October 5, 2004.

A. Applicant Eligibility

Under the final rule, a provision has been added that an applicant must have made satisfactory progress, as determined by the Agency, towards the completion of a previously funded project before it will be considered for subsequent funding.

Small business headquarters may be in either a rural or non-rural area at the time of application and at the time of grant disbursement. Because the headquarters may be in either location, the proposed rule does not need to address this.

B. Project Eligibility

A condition has been added to project eligibility that sites must be controlled by the agricultural producer or small business for the proposed financing term of any associated Federal loans or loan guarantees. This concept was in the proposed rule as part of the technical report requirements. The language has been modified concerning control of the system and the role of third parties for clarification, and concerning satisfactory sources of revenues.

For guaranteed loans only, we have added capital improvements to an existing renewable energy system as an eligible project.

C. Funding, Matching Funds, and Terms of Loan

Minimum Funding Levels. Under the final rule, minimum funding level for grants for energy efficiency improvement projects only has been reduced from $2,500 to $1,500. For guaranteed loans, the minimum funding level for all projects has been increased from $2,500 to $5,000 (less any program grant amounts).

Maximum Funding Levels. For grants, the final rule clarifies that the $750,000 maximum applied on a per Federal fiscal year basis.

Matching funds. Under the final rule, passive third-party contributions are acceptable matching funds for renewable energy system projects eligible for Federal production tax credits, provided the applicant meets the applicant eligibility requirements. The proposed rule did not address passive third-party contributions.

Terms of Loan. The maximum term of a loan for equipment has been increased from 15 years to 20 years.

The conditions used to determine whether a loan is sound have been modified to add renewable energy subsidies, incentives, tax credits, etc., and the borrower's overall credit quality.

A principal plus interest repayment schedule is now permissible.

D. Eligible Project Costs

The final rule includes the Technical Reports as an eligible cost. Modifications were made concerning the construction of a new facility.

E. Application

Simplified Application Procedures. Under the final rule, for grants and direct loans, projects with total eligible project costs of $200,000 or less are eligible to submit simplified applications. The final rule provides specific criteria to determine if a project is eligible and certain conditions that must be agreed to by the applicant.

For guaranteed loans, the final rule adopts the ''short form'' (Form RD 4279–1A) used in the Business and Industry Guaranteed Loan (B&I) Program. This form can be used by lenders for projects with total eligible project costs equal to or less than $600,000.

Self-Scoring. Applicants are now required to conduct a self-evaluation of their project using the same evaluation criteria that the Agency will use.

F. Documentation

Technical Reports. The final rule incorporates a new set of technical reports for projects that qualify for simplified applications (see paragraph III E). These technical reports require less information than the technical reports presented in the proposed rule. For projects that do not qualify for simplified applications, the more detailed technical reports are required.

Financial Information. For projects that qualify for and use simplified applications, there is much less financial information being requested.

Interconnection Agreements. Applicants are not required to submit interconnection agreements with their applications, but instead are required to discuss the interconnection agreements, if applicable to their project.

G. Evaluation of Applications

Significant changes were made to the evaluation of applications. These changes can be categorized as changes in the evaluation criteria and changes in the points awarded. The overall scoring was also modified to allow all projects the opportunity to score the same total number of points. The following summarizes most of the changes to the criteria between proposal and promulgation (changes in points are not presented for most criteria).

1. The addition of a scoring criterion for the technical merit of proposed projects.
2. The deletion of the management criterion.
3. The addition of a scoring criterion for very small businesses.
4. Modification of the criterion for small agricultural producers by reducing the gross market values at which points can be awarded.
5. The addition of a scoring criterion for submitting simplified applications.
6. Modification of the environmental benefits criterion by replacing ''health and sanitation'' with ''environmental goals'' as the basis for this criterion.
7. The deletion of the cost-effectiveness criterion, which was incorporated into the new technical merit criterion.
8. Awarding points for energy replacement, energy savings, or energy generation (at proposal, only energy replacement and energy generation were included) and by reducing the points available for energy generation projects from 20 to 10.
9. Modifying the interest rate criterion to be consistent with the B&I program by reducing the rate from 1.75 percent to 1.5 percent above the prime rate.
10. The addition of a scoring criterion that awards 5 points to an applicant's overall score if the applicant has not been approved to receive funds in the 2 previous Federal fiscal years.
11. The replacement of the ''matching funds'' criterion for grants with a ''readiness'' criterion, which looks at the commitments an applicant has received for the matching funds from other sources instead of the amount of the matching funds already received from other sources.

H. Guaranteed Loan Processing and Servicing

For guaranteed loans, the final rule tracks the B&I program more closely. The most important aspects that have changed are: (1) Expanding the universe of eligible lenders and (2) authorizing the use of multi-notes. Other changes included:

Credit Quality. A provision has been added that guaranteed loans made under 7 CFR part 4280, subpart B must have at least parity with guaranteed loans made under the B&I program.

In addition, a provision has been added that the current status of the appropriate renewable energy industry will be considered.

Personal and Corporate Guarantees. Under the final rule, personal and corporate guarantees are not required from passive investors.

I. Construction Planning and Development

In the final rule, 7 CFR 1924, subpart A has been replaced with 7 CFR 1780, subpart C. Similarly, for equipment procurement, 7 CFR 1924, subpart A has been replaced with 7 CFR 3015.

J. Definitions

Small Business. Several changes and modifications were made to this definition to be consistent with the Small Business Administration's (SBA's) definition, deleting the 500 or fewer employees and $20 million or less in total annual receipts cap, and including certain electric utilities. Nonprofit entities that meet SBA's definition of ''small business'' are now allowed.

Demonstrated Financial Need. The major change to this definition was the addition of a ''cashflow'' test.

New Definitions. The final rule adds definitions for each of the renewable technologies and the following terms:

Design/build project development method.
Energy assessment.
Energy assessor.
Energy auditor.
Feasibility study.
Necessary capital improvement.
Passive investor.
Post application.
Qualified consultant.
Qualified party.
Simplified application.
Used equipment.
Very small business.

Modified Definitions. The definitions of some terms were modified slightly to be consistent with the definition for those terms in the B&I program. Definitions that were modified include:

Applicant.
Commercially available.
Energy efficiency improvement.
Interim financing.
Renewable energy.

Renewable energy system.

Deleted Definitions. Several definitions that were identical to the definitions in the B&I program were deleted and are incorporated by reference.

K. Insurance

Projects with total eligible project costs of $200,000 or less are not required to carry business insurance.

L. Feasibility Studies

Under the proposed rule, business-level feasibility studies (referred to as project-specific feasibility studies in the proposed rule) were required for all renewable energy projects exceeding $100,000 in costs. Under the final rule, business-level feasibility studies for renewable energy projects will be required for those projects whose total eligible project costs are greater than $200,000.

M. Energy Audits

Under the proposed rule, energy audits were required for energy efficiency improvement projects with costs greater than $100,000. Under the final rule, energy audits are required for energy efficiency improvement projects with total eligible energy costs greater than $50,000.

IV. Discussion of Comments

Over 60 comment letters were received from a variety of commenters. The most comment letters were received from various trade organizations and industry groups (over 15 letters) and from State agencies and organizations (over 15 letters). Various public interest groups submitted approximately 11 letters, while financial institutions (credit bureaus and banks) submitted 8 letters. Letters were also received from private individuals, towns and cities, and one Congressman.

The following paragraphs summarize the comments and our responses to those comments. Twenty-one responses do not require a response under 5 U.S.C. 553. These responses involve various nonregulatory matters such as expressing support for the program or requesting additional information. Several responses were outside the scope of the regulation and made suggestions that would require changes to other USDA and non-USDA regulations or internal agency administrative matters. For these and similar reasons, these responses are not addressed in this section.

A. Definitions

Applicant

Comment: One commenter stated that the definition of applicant does not include a reference to direct loan applicants and suggested that the definition be amended to include such a reference.

Response: USDA agrees with the commenter and has revised the definition to include reference to direct loan applicants.

In addition, we have revised the term ''applicant'' to apply to agricultural producers and rural small businesses seeking a guaranteed loan rather than to the lender that is actually submitting the loan application to USDA. We did this in order to simplify the terminology throughout the rule. Thus, wherever the term ''applicant'' is used, it is referring to the agricultural producer or rural small business. When the rule applies to the lender, the term ''lender'' is used.

Biomass

Comment: One commenter stated that the definition of biomass needs to be clarified. The commenter pointed out that the biomass definition refers to ''other waste materials.'' The commenter notes that, traditionally, municipal waste for landfill waste has been included in biomass definitions. The commenter believes that, if tires are allowed to be placed in a landfill, they may be deemed municipal waste, biomass, and inevitably renewable. This theory, according to the commenter, appears to be reinforced in the Resource Conservation and Recovery Act of 1976. In addition, the commenter points out that the State of Nevada, Nevada Revised Statute Chapter 704, has classified tires reduced using microwave technology, a very clean process, as renewable because they are part of the municipal waste stream and also because one of the components of all tires is natural rubber coming from trees. The commenter suggests that an administrative bulletin to staff, clarifying the intent of the biomass definition, is needed.

Response: USDA agrees that ''other waste materials'' could lead to confusion. However, due to the nature, scope, and complexity of renewable energy systems using ''other waste materials,'' USDA cannot anticipate all types of ''other waste materials.'' Therefore, new materials and technologies will be considered on a case-by-case basis.

Comment: One commenter requested that clarification be provided as to the interpretation of ''paper that is not commonly recycled.'' The commenter stated that, while they want all paper to be recycled that can be recycled, in many rural settings transportation distances to paper recycling purchase points are simply too distant to allow affordable recycling once transportation costs are figured into the equation. The commenter stated that they have evidence in Missouri of how paper pellets can be beneficially utilized as fuel at Northwest Missouri State University but cannot be affordably recycled due to the distance to any buying center. The commenter asked that USDA clarify that if transportation economics preclude affordable recycling of waste paper that this meets the criteria of ''not commonly recycled.''

Response: USDA agrees that the situation posed by the commenter should meet the criterion of ''not commonly recycled.'' The situation described arises, at least in part, out of the fact that the paper recycling is occurring in a rural area. USDA will consider this issue on a case-by-case basis.

Capacity

Comment: One commenter stated the definition of capacity is technically incorrect (load implies use not production of energy *e.g.*, the electric motor is a three kilowatt load on the system). Capacity should describe energy output in a standard measurement (*e.g.*, British thermal units (BTU's), kilowatt-hours (kWh), Megawatts). The commenter suggested that it be defined as follows:

''The sustainable energy output of a generation or heating unit as rated by the manufacturer or qualified independent energy organization or individual using commonly accepted standard units of measurement.''

Response: The commenter makes three suggestions for revising the definition of ''capacity'' as follows:

First, the commenter suggests that capacity be described as ''energy output'' and not as ''load.'' USDA disagrees with this suggestion. Load is equally applicable as ''energy output.'' Thus, this term has not been changed.

Second, the commenter suggests that the definition should require capacity to express using ''commonly accepted standard units of measurement.'' USDA disagrees with the need to insert this language into the definition. USDA believes that manufacturer ratings will be in the same units of measurement for similar technologies. If not, conversions can be applied.

Third, the commenter suggests that the energy output can also be rated by a ''qualified independent energy organization or individual.'' USDA

disagrees with the third suggestion. The ratings assigned by a manufacturer are based on standards and provide a standardized, consistent baseline for comparisons. Some units eligible for this program could be modified by an individual after purchase to change its rating. In such instances, an individual would likely hire a third party to assign a new rating to the unit. USDA does not believe this is a desirable situation, possibly resulting in subjective assessments of the rating.

Default

Comment: Two commenters pointed out that there is no reference made to grants being in default, and one of the commenters (Flanders 11–04) suggested that ''or grant conditions'' be inserted after ''* * * or more loan covenants * * *'' in the third line of the definition.

Response: USDA agrees with the commenter and has revised the definition of default as suggested.

Demonstrated Financial Need

Comment: One commenter suggested that the definition of demonstrated financial need might benefit from a more specific definition or an example—for example, ''if the project is otherwise unable to achieve at least a 1.20 debt coverage ratio when a loan for the long term liability portion is amortized over the life expectancy of the project.''

Response: USDA disagrees that a more specific definition is needed within the rule. The example offered by the commenter is one way for demonstrating financial need as defined by the regulation.

Energy Efficiency Improvement

Comment: One commenter pointed out that in the definitions section of the proposed rule, ''energy efficiency improvement'' is defined as ''Improvement to a facility or process that reduces energy consumption.'' The commenter then points out that under proposed § 4280.111(d)(10), the definition is expanded to include, ''or reduced amount of energy required per unit of production are regarded as energy efficiency projects.'' The commenter suggested that the definition under proposed § 4280.103 be expanded to include this concept found in proposed § 4280.111(d)(10).

Response: USDA has not revised the definition as requested by the commenter. We have retained the phrase ''that reduces energy consumption,'' which allows an applicant to express the reduction in energy consumption in a number of ways, including, but not necessarily limited to total reduction in energy consumption, energy saved per square foot or energy saved per unit of production.

Comment: One commenter stated that the definition of energy efficiency improvement is not explicit enough and recommended that USDA add language to the existing definition that clarifies that the primary benefit for the improvement must be a reduction in energy consumption. According to the commenter, some applications in 2004 relied on nonenergy benefits, such as increased product quality, as the justification for the project. For some projects, the energy efficiency savings were clearly a secondary benefit and would not have had sufficient payback to pursue on their own. While these additional benefits are valuable and should be factored into the project finances, when nonenergy benefits are the primary benefit of a proposed project, the commenter believes that such projects should not be considered an energy efficiency improvement.

Response: USDA believes that no change is necessary; this issue is addressed in the scoring criteria. Projects saving the most energy will score higher. Therefore, USDA expects the primary benefit of the energy efficiency improvement program will be energy reduction.

Existing Lender Debt

Comment: One commenter asked: What if the same lender had an existing debt to the borrower with a B&I loan guarantee? The commenter suggested striking ''not guaranteed by the Agency'' from the definition of ''existing lender debt.''

Response: The definition of ''existing lender debt'' was removed from this rule because it was not used.

Holder

Comment: One commenter asked: What about in the case where more than the guaranteed portion of the loan is sold to a holder? The commenter suggested striking ''all or'' leave the word part and strike ''of the guaranteed portion.''

Response: As proposed, ''holder'' was defined as ''A person or entity, other than the lender, who owns all or part of the guaranteed portion of the loan, with no servicing responsibilities.'' USDA disagrees that the definition of ''holder'' needs to be revised because only the guaranteed portion of the loan can be sold to a holder; that is, one cannot sell ''more than the guaranteed portion of the loan'' to a holder.

''In-Kind Contributions''

Comment: One commenter suggested that use of existing towers, such as cell phone relay towers, to support wind generators be allowed if the towers are certified to be safe and sturdy enough to support the chosen generator by a professional engineer. The commenter suggested that this could be a standard and specification detail rather than a rule component, but that it needs to be allowed.

Response: USDA does not believe any change is needed to the rule to address the situation posed by the commenter. As written, the rule allows the use of existing towers as an in-kind contribution if they ''directly benefit the project.''

Interim Financing

Comment: One commenter stated that the words ''clear intent'' in the definition of ''interim financing'' in the proposed rule are vague and suggested striking ''clear intent'' and substituting the words ''commitment from a lender that.''

Response: USDA disagrees with the commenter's suggestion and has not revised the definition as suggested by the commenter. USDA believes applicants need flexibility in showing they have permanent financing, and applicants should not be limited to lender commitments. Further, USDA does not wish to limit the concept of interim financing to ''lenders.''

Loan-to-Value

Comment: One commenter stated that the definition of loan-to-value is not consistent with standard industry language and recommended that the term be changed to be consistent. The commenter suggested substituting the term ''Loan-to-value'' with ''Loan to discounted value'' and then revising the content of the proposed rule to substitute ''Loan-to-value'' with ''Loan to discounted value.''

Response: The Agency agrees with the commenter that the rule needs to refer to ''discounted value'' and has incorporated this change by revising the definition of ''loan-to-value'' accordingly. However, the Agency disagrees that the term should be ''Loan to discounted value,'' and has retained the term ''loan to value.''

Renewable Energy

Comment: One commenter suggested adding the word ''biomass'' into the second clause so that it reads ''* * * or hydrogen derived from biomass or water using wind, solar, biomass, or geothermal energy sources.''

Response: USDA agrees with the commenter that the word ''biomass'' needs to be added and has revised the definition for renewable energy as suggested. The lack of the word in the proposed rule was an oversight.

Comment: One commenter asked if the Agency would recognize as ''renewable energy'' that generated from conversion of a renewable fuel into heat, electricity, and/or mechanical power.

Response: Yes, USDA would recognize as ''renewable'' energy generated from the conversion of a renewable fuel into heat, electricity, or mechanical power. USDA revised the definition of ''renewable energy system'' to read as follows: A system that produces or produces and delivers usable energy from a renewable energy source. We believe this revision specifically addresses the commenter's question.

Comment: One commenter asked if a project that manufactures biofuels (biodiesel, ethanol, etc.) from various forms of biomass is eligible, or must that project include energy generation from that renewable fuel to qualify. This commenter also asked if existing on-site energy generation technologies are converted to biofuel usage from diesel or other nonrenewable fuel use, either in part or completely, would this conversion be considered an acceptable ''renewable energy project?''

Response: A project that solely manufactures biofuels from various forms of biomass is eligible under this program. The project does not need to generate energy.

The conversion of existing on-site energy generation technologies to biofuel from diesel or other non-renewable fuel qualifies as a renewable energy project for the purposes of the 9006 program. USDA points out that for purposes of determining the amount of funds available for such conversion, total eligible project costs would be based on the cost of performing the conversion alone, not on the cost of an equivalent replacement unit.

Comment: One commenter asked if a project that qualifies at the State level as ''renewable'', would automatically be acceptable, based on the state-level determination, for meeting minimum eligibility requirements for Agency support. Conversely, the commenter asked, if mandated compliance with State and local permitting (as a nonrenewable project) would obviate Agency funding if a project is not considered renewable under State guidelines but that project satisfies the criteria in this program.

Response: A State-level determination alone would not be acceptable to qualify a project as ''renewable'' under this program. To be judged renewable under this program, the project must meet the requirements of this program.

Any project that is deemed a renewable project under this program is eligible to receive funding under this program regardless of how a State defines the project (*i.e.*, as a nonrenewable project), but the project still must be in compliance with all applicable State and local permitting requirements for that project regardless of how it is defined.

Comment: One commenter noted that State rules permit various maximum percentages (usually around 25 percent) of nonrenewable fuel that can be used to augment and ''firm'' energy generation from renewable sources and asked how this would impact Agency assessment of a proposal. The commenter then asked how a prospective applicant or borrower can ascertain this status prior to commitment of resources.

Response: USDA understands the commenter's position and is amenable to considering such projects for funding under this program. However, the Agency has decided not to revise the rule, but instead will evaluate each proposed project on a case-by-case basis. This will maximize the number of eligible projects the Agency can consider. USDA will rely on the expertise of the technical experts who review the applications to make the determination as to whether the project qualifies as ''renewable'' under this program. This review will evaluate the actual renewable energy usage, energy displacement, and energy saving, as applicable.

Small Business

Comment: A number of commenters suggested making several revisions to the definition of small business. Four commenters suggested that the definition be changed so that the cap of $20 million in annual receipts is removed and a small business is defined only by the number of employees of 500 or less. Two of these commenters believe the $20 million maximum in annual receipts disqualifies and discourages many grain elevators, ethanol producers, biodiesel producers, and other possible business ventures in rural America.

The third commenter stated that the definition of small business provided in the rule was duplicative with SBA guidelines and offered a one-size-fits-all dimension to the program. According to this commenter, this penalizes certain small businesses that meet SBA definitions, but not the specific limits outlined in this definition. The commenter was particularly concerned that Rural Electric Cooperatives would be excluded from participation in the program.

Finally, the fourth commenter stated that capping the annual revenues at $20 million would eliminate the eligibility of a significant number of companies who could benefit and provide substantial value to the renewable energy program, in particular the ethanol industry. The commenter states that the ethanol industry provides benefits on many fronts and should be allowed to participate in the 9006 program, but the cap would exclude this industry because the majority of plants are in excess of this sales limitation.

A fifth commenter recommended that USDA expand eligibility to allow all rural electric utilities to host applications. This commenter pointed out that many rural electric cooperatives and public utility districts fail to meet eligibility requirements because of large annual receipts, even though their profit margins are small and stated that rural utilities are important partners and should be eligible applicants.

Two commenters suggested that more explanation as to the definition of an eligible cooperative is needed. One of these commenters stated that referring to the IRS code is not quick helpful information when prospective applicants are trying to figure out whether they are eligible or not. The other commenter requested more description of what type of cooperative is eligible ''perhaps in the definition portion of the proposed regulations.

Response: USDA agrees that the definition of ''small business'' needs to be revised. USDA believes that the definition needs to be consistent with SBA's definition and by doing so, the revised definition simplifies the application process and eligibility determination, provides for greater consistency in eligibility determinations, and increases program access. Therefore, USDA has revised the definition to remove the caps on annual receipts and on the number of employees.

In addition, USDA has revised the definition to specifically include electric utilities, including Tribal or governmental electric utilities, that provide services to rural consumers on a cost-of-service basis, without support from public funds or subsidy from the Government authority establishing the district, provided that such utilities meet SBA's definition of small business.

Also, the purpose of the parenthetical reference to the IRS code was to minimize the number of questions as to

whether cooperatives qualified under section 501(c)(12) (of the Internal Revenue Code) were eligible for this program (which they are), not to limit this program to only those cooperatives qualified under section 501(c)(12). USDA does not believe that it is necessary to remove the reference to the IRS code, because a cooperative would know if the referenced IRS code applied to it or not. Therefore, we have elected not to remove reference to the IRS code.

Lastly, USDA disagrees that more description of the type of cooperative is needed, especially in light of the revision to the definition of small business, which allows any cooperative to be eligible as long as it meets the definition of a small business.

Comment: One commenter recommended that the receipt and employee ''size'' threshold be applied only to the location being served by the project.

Response: As discussed in the response to the previous comment, USDA has revised the definition of small business to remove the ''size'' threshold. Thus, this comment is now moot.

Qualified Consultant

Comment: One commenter noted that there is no definition for ''qualified consultant.'' The commenter recommended that a ''qualified consultant'' should be established as a party that has demonstrated with past efforts the ability to compile not only a project assessment but also a comprehensive business model and plan for execution.

Response: USDA agrees that a definition of ''qualified consultant'' is needed and has added it to the definitions section.

B. Demonstrated Financial Need

Funding From Other Sources

Comment: A number of commenters were concerned that including the phrase ''other funding sources'' in the definition of ''demonstrated financial need'' would disqualify applicants who can obtain funding elsewhere. One of the commenters recommended that the definition of demonstrated financial need be altered to make clear that State financial assistance for renewable energy systems or energy efficiency improvements will not affect an applicant's eligibility for the 9006 program.

Another commenter stated that the proposed definition appears to disqualify applicants who would combine funding from the 9006 program with private and public loan programs.

One commenter recommended that State program co-funding, such as State Clean Energy Trust Funds, should be encouraged by USDA, and not disallowed.

Response: While USDA does not disagree with the commenters' concerns, we have retained essentially the same concept in the final rule. Specifically, we have replaced the phrase ''or other funding sources'' with ''and commercially available resources.'' The final definition adopted in the rule is in alignment with other Rural Development programs, which have a ''credit elsewhere'' test. Section 9006(b) requires a demonstration of financial need.

Comment: One commenter stated that, although requirements for in-kind contributions were reasonable, strictures against any other Federal co-funding could restrict applications. The commenter observed that an applicant could receive funding from Federal sources other than USDA. Rather than impose a blanket ban on other Federal funding, the commenter recommended that USDA develop a specific list of programmatic funding exclusions. Four other commenters suggested that co-funding from State rebate programs be fully allowed. Another commenter stated that USDA should allow full co-funding from State public benefit rebate programs.

Response: USDA made an administrative determination that the 25 percent limit for grant funding of a project is applicable to funds received under the 9006 program and all other Federal grants, unless there is statutory authorization permitting the other Federal funding to be used for the grantee's match. No changes have been made in the final program.

Financial Need

Comment: One commenter stated that the requirement to demonstrate financial need creates a possible catch-22 for applicants. On the one hand, USDA is seeking to safeguard the public's money by requesting significant assurances that every grant project will be financially viable, yet also requires the applicant to prove financial need. When the grant amount is capped at 25 percent (by law), this creates a rather thin margin to work within. The commenter stated that the grant program should be looked at as analogous to soil conservation cost-share programs where the grant amount is a public provision of assistance to a participant for assuming the risk inherent in adopting a new, and in some cases, early commercial and site specific technology. For this reason, the proof of demonstrated financial need should be understood to include the credibility that government support of a new business investment provides to lenders who would not otherwise provide needed gap financing.

Response: USDA in general concurs with the commenter. It is our hope that by our willingness to fund projects that have undergone and passed the technical review under the 9006 program would, in turn, encourage lenders to see these projects as worthwhile projects, as well and extend funding to them. Further, the change made to the definition of ''demonstrated financial need'' that focuses on the need of the project should help address the concerns raised in this comment.

Comment: One commenter stated that the demonstration of a financial need should not be a threshold factor for applicant eligibility to participate in this program. According to the commenter, this provision anticipates an applicant that cannot afford the project without the assistance, yet it requires a highly engineered project. If an applicant must demonstrate a financial need as defined, the possibility of assembling the highly technical application diminishes.

Response: USDA does not have the discretion to remove the demonstration of financial need as a requirement for receiving a grant under the 9006 program; this is a statutory requirement in section 9006(b). However, USDA has significantly lowered the application requirements for projects with total eligible project costs of $200,000 or less, which significantly reduces the amount of financial information that would be required and by developing less detailed requirements for the Technical Report (see Appendix A). Further, the Agency has added a second component to the definition of ''demonstrated financial need'' that focuses on the need of the project. Therefore, we have addressed this commenter's concerns as much as possible.

Project Versus Applicant Financial Need

Comment: One commenter observed that the proposed rule defines financial need as an applicant's need rather than a project's need, and felt that this wording would penalize applicants with good credit or assets. The commenter recommended that USDA redefine ''demonstrated financial need'' to something like the following: ''The demonstration that the project is not economic or would not occur without the grant assistance.''

Another commenter stated that there is confusion as to whether ''financial need'' refers to the proposed project or

to the actual assets of the applicant. The commenter recommended that this eligibility criteria be clarified and suggested that financial need be determined by looking at the project itself. According to the commenter, the relevant question is whether a grant is necessary to make this project financially feasible and/or successful. In the current language, the commenter asserts that it is unclear whether applicants with sound personal credit and financial portfolios will be penalized or deemed ineligible. The commenter believes that projects where the participants have sound financial histories are more likely to succeed and should not be put at a disadvantage.

Response: The Agency has adopted this suggestion by modifying the definition of ''demonstrated financial need.''

Comment: Five commenters suggested that USDA base financial need criteria on project payback, not the applicant's financial resources and liquidity. If the 9006 grant will materially reduce the project payback period and similar projects are not commonplace in the applicant's area, the commenter believes there is a de facto financial need. One commenter stated that this seems inconsistent with the overall intent of the program, and favors larger scale projects.

Response: USDA disagrees that project payback is a proper criterion for determining financial need. The definition, as proposed, was consistent with USDA policy for a ''credit elsewhere'' test. Maintaining the same definition across its programs simplifies cross-program requirements easing the burden for program participants and end users and establishes a clear, consistent, and objective standard for demonstrating a financial need for Rural Development grant assistance. Therefore, USDA has not incorporated the commenters' suggestion.

In addition, USDA has revised the definition of ''demonstrated financial need'' to include ''that the project proposed by the applicant cannot achieve the income and cashflows to sustain it financially over the long term without grant assistance.'' This was added because the large upfront investment often prevents projects from producing sufficient cash flow at current energy prices without outside support. In addition, the scale of many small projects creates diseconomies of scale that further exacerbate this condition.

Demonstration of Financial Need

Comment: One commenter stated that the subsection 9006(b) of the statute states that a farmer, rancher, or small business shall demonstrate financial need as determined by the Secretary. This provision was included to ensure that assistance is directed to the country's smaller producers and rural small businesses that typically lack the financial resources necessary to purchase renewable energy systems or make energy efficiency improvements.

Section 4280.103 of the proposed rule defines ''demonstrated financial need'' as ''(t)he demonstration by an applicant that the applicant is unable to finance the project from its own resources or other funding sources without grant assistance.'' This definition is vague. Nowhere does the proposed rule describe how the Secretary assesses the applicant's ability or inability to finance the project without grant assistance.

An applicant is required to submit a tremendous amount of financial documentation and, under proposed § 4280.111(a)(3), to describe how it meets the requirement of demonstrated financial need but is given no indication of how need is determined.

The proposed rule must be amended to specify precisely how financial need—and thus eligibility under proposed § 4280.107(f)—shall be demonstrated.

In the absence of a clearly defined system for assessing financial need, USDA should consider establishing an income or revenue limit for grant eligibility. Only those applicants below a certain income or revenue threshold would be eligible to participate in the grant program. A revenue limit for financial need eligibility has the benefit of clarity and would reduce the burdensome volume of financial documentation required of grant applicants, thereby streamlining the application process. Consistent with the statute, all applicants must remain eligible for loans and loan guarantees.

Response: The definition of ''demonstrated financial need'' has been revised to include two tests under which all applicants will be evaluated as to a demonstration of financial need. The first test is a ''creditworthiness'' test—the applicant is unable to finance the project from its own and commercially available resources. The second test is the ''cashflow'' test—the project proposed by the applicant cannot achieve the income and cashflows to sustain it financially over the long term without grant assistance.

Under the creditworthiness test, the applicant must certify that they cannot obtain credit elsewhere and provide sufficient information or documentation to permit the Agency to make an independent determination. The Agency has not limited the information or documentation that can be provided to support the applicant's need in order to give the applicant the greatest degree of flexibility in demonstrating this requirement. If the applicant fails to provide sufficient information to meet this requirement, the Agency will contact them for additional information until it can make its own independent determination. In order to provide uniform Agency determinations, the Agency expects to issue additional guidance to its field offices on what has been approved as acceptable evidence of financial need, which will also be made available to the public.

Financial Need Criterion

Comment: One commenter recommended that applicants for grants not have to demonstrate financial need. According to the commenter, approving and funding a grant application should rest on the quality of the proposal and the scoring criteria and not necessarily on the financial need of the applicant. According to the commenter, it is difficult for applicants to prove that they have enough finances to match 75 percent of the project, but that they financially need the last 25 percent from USDA to get the project off the ground.

Response: The 2002 Farm Bill, Section 9006(b), requires a farmer, rancher, or rural small business to demonstrate financial need in order to be eligible for a grant under this program. Thus, USDA does not have the discretion to eliminate this requirement and has not done so in the final rule.

Comment: Two commenters stated that the authorizing language for Section 9006 makes clear that financial need is a primary condition for any applicant to receive funding under the program. According to the commenters' interpretation of the law, financial need is the only eligibility requirement, and all other conditions in the program are secondary to it. The commenters believe that the proposed rule does not reflect the primacy of financial need as required by statute.

These commenters also expressed the concern that the proposal does not clearly define the extent of the required explanation or its relevance to the application process. The commenters recommended that USDA make it explicit in the rule that demonstrated financial need is an eligibility requirement of the program and create a system by which all applications will be reviewed to confirm that they meet the financial need condition in the statute. The commenters offered examples of possible requirements, including: Requiring all applicants to

demonstrate that they otherwise would not be able to pay for or finance the proposed project; an automatic presumption that there is no demonstrable financial need in projects with a payback of 2 years or less by virtue of the sheer profitability of such a project, or in projects which are requesting funding for less than 10 percent of the project cost; or a presumption of demonstrated financial need when the applicant is a small agricultural producer.

Response: The commenters made three specific recommendations. The first recommendation was to require all applicants to demonstrate financial need. As provided in the statute, financial need is required only of grant applicants. This eligibility criterion was stated in proposed § 4280.107(f). USDA believes this is explicit. USDA does not believe that this grant eligibility requirement needs to be or should be part of the loan program.

The second recommendation was to implement an automatic presumption of no demonstrable financial need for projects with a payback of 2 years or less, or for projects requesting funding of less than 10 percent. As noted in a previous response, USDA does not consider payback to be an adequate measure of financial need. Financial need speaks to having the resources available to put a project in place, not to its projected revenue stream. Therefore, USDA does not consider it appropriate to implement a presumption of financial need on the basis of payback. USDA also does not believe that the amount of a funding request (10 percent or other) is also an adequate measure on which to base a presumption of financial need. Therefore, USDA rejected this suggestion as well.

The third suggestion was to base a presumption of financial need when the applicant is a small agricultural producer. Again, USDA does not believe that this is an appropriate measure.

C. Applicant Eligibility

Comment: One commenter recommended that public-private partnerships be allowed to apply for funds under the 9006 program.

Response: The target of this program is private entities (i.e., farmers, ranchers, and small businesses), as stated in the statute authorizing the 9006 program. USDA cannot expand the statutory scope of applicants to include public entities, including those in public-private partnerships. Therefore, USDA has not revised this criterion of applicant eligibility.

Comment: One commenter stated that the eligibility of some nonprofits for this program is still not clear. The commenter stated that they have had nonprofits apply which were organized for charitable, educational, and scientific purposes. Technically, according to the proposed definition of a small business, they are eligible because they are not formed solely for charitable purposes.

Two other commenters requested that nonprofit organizations be allowed to apply for grants and loans under the 9006 program.

Response: USDA agrees that clarification is required, but disagrees that nonprofits, in general, should be allowed. We have revised the definition of small business to allow any of the entities specifically identified in the definition (*e.g.*, electric utilities) to participate in the 9006 program if they also happen to be nonprofit entities. Otherwise, nonprofit entities remain excluded.

Comment: One commenter encouraged the broadening of the scope of an eligible applicant for loans and guaranteed loans to include a business supplying a service to an agricultural enterprise, such as manure management in the form of an anaerobic digester and power generation plant. Another commenter made a similar comment, recommending that USDA expand eligibility to allow Renewable Energy/Energy Efficiency experts to aggregate projects without ownership requirements.

Response: USDA is authorized by the language in the 2002 Farm Bill to provide grants to farmers, ranchers, and rural small businesses for the purchase of renewable energy systems and energy efficiency improvements. If the new, nonagricultural enterprise as presented by the first commenter meets the definition of a small business, then it would be eligible to apply for a grant.

As to the second comment, the role of an aggregator is more equivalent to a professional service provider who brings together eligible applicants to assist in project development and implementation. The role of an aggregator is anticipated by the Agency, but the aggregator itself is not an eligible entity. The Agency sees no reason to change the ownership requirements just because an aggregator is being used.

Comment: Three commenters requested that USDA consider modifying the rule to allow small business owners who have their headquarters in larger cities to also apply for the program. According to one commenter, the policy of limiting access to renewable energy grants to existing rural companies tends to discourage small businesses that are start-ups or happen to reside outside of a rural area, from using this program to invest, promote renewable energy projects, and create jobs in rural areas. The commenter stated that it is not unreasonable for a company to want to know that it is about to receive a grant before it takes all of the necessary steps to secure its rural location. The commenter requested that, if USDA does not change the rural residency requirement for the applicant, the requirements and the consequences of not meeting it are made clearer in the Notice of Funds Availability (NOFA), which did not clearly require the business headquarters to be in a rural area at the time of application.

Response: USDA agrees with the commenter that the proposed requirement for eligible applicant businesses to be located and have their headquarters in a rural area may limit access to start-up companies that are located in a non-rural area from investing in renewable energy systems or energy efficiency improvements. In the final rule, both the rural small business and the project must be located in a rural area. The business headquarters, however, may be located in either a rural or non-rural area. Thus, we do not believe it is necessary to address the location of the rural small business' headquarters in the rule.

D. Project Eligibility

Comment: Three commenters expressed concern about large commercial wind projects. The commenters provided numerous reasons for their opposition of the use of the proposed program to support large-scale, commercial-wind projects. The comments focused on the commenter's claims of adverse social, environmental, and ecological impacts and the high costs and low economic benefits of wind energy projects.

Response: USDA is bound by the statute to include wind projects in the program and does not see the need to differentiate between wind projects based on size or commercialization.

Comment: One commenter requested that fuel cells that utilize non-renewable fuels be eligible for funds under the proposed program for the short-term. The commenter believes that labeling fuel cells as renewable energy sources will help speed commercialization and will hasten the process by which the industry can achieve further cost reductions in manufacturing. Like many emerging technologies, cost constraints stand in the way of implementing fuel cell technologies. If USDA allows fuel

cell adopters to tap readily existing fuels, farmers will have the ability to demonstrate this technology at a more affordable price, while realizing the tremendous advantages this technology offers.

Response: The statute requires eligible projects to utilize renewable energy. USDA cannot expand this requirement to fuel cells that utilize only nonrenewable fuels. As noted in a previous response, USDA is amendable to considering projects that use nonrenewable fuel to some extent.

Comment: One commenter suggested that hydropower be added to the list of approved technologies associated with this rule. The commenter requested the addition of small hydroelectric power generating facilities (*i.e.* less than 5,000 kW) to the program, perhaps in a manner similar to that included in the proposed HR 6 Energy Policy Act.

Response: The statute authorizing the 9006 program does not include hydropower in the definition of ''renewable energy,'' and, therefore, hydropower projects are not eligible for funds under this program.

Comment: One commenter noted that, as proposed, eligible projects for biomass and bioenergy specifically exclude livestock waste. The commenter points out that there are emerging technologies involving thermochemical conversion of animal waste (for example, from livestock processing facilities) to synthetic oil. The commenter believes that these projects should be eligible for funding.

Response: USDA agrees with the commenter that all animal waste projects fall into the anaerobic digester category. USDA also agrees that the emerging technology described by the commenter would be eligible for funds under the 9006 program. As these emerging technologies become more mainstream (*i.e.*, become pre-commercial or commercial), USDA intends to expand the technical guidance to address new technologies. The final rule incorporates provisions to allow new technologies to apply for funding even if the technology is not addressed in either appendix to the regulation.

Comment: One commenter suggested that the projects for solar water pumping and use of solar for hydrogen fuels for farm-based engine generator sets, and photovoltaics to drive farm and food processing compressors, refrigeration, and motors should be allowed as eligible projects.

Response: Each of the specific applications identified by the commenter is an eligible project under the 9006 program.

Comment: One commenter suggested that for both large and small solar projects, the rule includes as eligible projects those that provide solar air heating and water heating with no active storage. The commenter provided suggested language.

Response: USDA agrees with the commenter that projects that provide solar air heating and water heating with no active storage are eligible under the 9006 program. We have revised the definitions of solar projects such that such technologies are implicitly eligible by not addressing the type of heat transfer mechanism.

Comment: One commenter believes that the proposed program only gives token support for alternative energy developments and that by restricting most grant and loan support for existing commercial alternative energy systems, no real competition with the petroleum industry is offered. The commenter then goes on to claim that the most promising alternative energy programs are not supported or they are sabotaged as in the case of hydrogen fuels development under the proposed program. While there are many cost-effective sources of hydrogen, Federal programs are requiring the use of petroleum for hydrogen fuels.

Response: USDA appreciates the need for alternative energy developments. However, the responsibility for developing and funding such alternative energy systems, including the development of hydrogen-based technologies, does not reside in USDA. The Department of Energy is responsible for bringing research and development opportunities to fruition; that is, to the pre-commercial and commercial stages. Once such technologies reach these phases, there is a high probability of their successful implementation. USDA will use the 9006 programs to fund only those projects for which there is the high probability of success. We believe that this is an appropriate and responsible approach for the distribution of grants and loans under this program.

Wind Projects

Comment: One commenter found the requirements in the small wind section to be overly burdensome for the applicant, as specifically discussed below:

The rules for wind turbines under 100 kW capacity are not clear in regards to the need for use of professional engineers—the proposed rule explicitly states that only projects over $100,000 will require that the services of a professional engineer to be used, yet the description for design and engineering in the proposed rule states:

''Small wind systems must be engineered by either the wind turbine manufacture or other qualified party. Systems must be offered as a complete, integrated system with matched components. The engineering must be comprehensive including turbine design and selection, tower design and selection, specification of guy wire anchors and tower foundation, inverter/controller design and selection, energy storage requirements as applicable, and selection of cabling, disconnects and interconnection equipment as well as the engineering data needed to match the wind system output to the application load if applicable.''

The commenter expressed concern that this language can easily be interpreted to mean that unless a complete component package including the components required by utility rules for interconnection is purchased from a turbine manufacturer, or the applicant or the system dealer must hire their own professional engineer to certify the system, in fact these rules may require hiring two engineers as there are electrical components, as well as civil or mechanical engineering components. Many components, such as the batteries, inverters, and cabling for small projects can be purchased off-the-shelf from a variety of vendors. Individuals with the necessary technical skills and experience (as documented in the project team section) can safely select these standard components. Signoff by utility staff as to the adequacy of interconnection equipment should also be sufficient for approving those components. The commenter is also concerned that the rule language as written will be interpreted to mean that each project requires a professional engineer to sign off on the entire project. Such requirements could certainly add undo costs to projects.

The commenter recommended the following:

''Small wind systems must be designed and engineered to assure safety and reliability of the project. For small wind systems, either the wind turbine manufacturer or other qualified party must design and engineer the turbine, tower and tower foundation (including guy wire anchor specification) as a complete and integrated system. As outlined in the proposed § 4280.111(d)(8)(iv), interconnection design and equipment must be approved by the local utility if the turbine is to be interconnected to the electric power distribution grid. Finally, all other components, including energy storage, must be selected and matched

by a qualified technician as part of a comprehensive system design.''

Response: We agree that for the smaller wind systems, an applicant may purchase certain components off-the-shelf from various vendors. For small wind systems with total eligible project costs equal of $200,000 or less, the rule requires the applicant, in part, to ''certify that their project will be designed and engineered so as to meet the intended purpose'' and to provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose. We believe this addresses the commenter's concern.

For small wind systems with total eligible project costs greater than $200,000, however, we have retained the same language as in the proposed rule. These larger small wind projects are more likely to require complete packages, and applicants are less likely to ''piece together'' such a system.

Finally, under the final rule, for renewable energy projects with total eligible project costs greater than $400,000, the services of a professional engineer are required. We believe this requirement is more in line with the level of complexity associated with the larger renewable energy projects and appropriate for small wind projects that should exceed this level of cost.

Comment: One commenter suggested that, for wind projects, the applicant should also describe whether or not sources of income will include—in addition to annual revenue from electricity sales—the value of Federal or State incentives, such as production tax credits. For methane digesters on dairy farms, the applicant should also state whether or not sources of income will include—in addition to income from sale of electricity—noncash savings from bedding costs, excess bedding sales, carbon and tax credits, heating energy savings (e.g. water), or any other farming efficiencies.

Response: For large wind projects, the proposed rule required a description of ''annual project revenues including, but not limited to, electricity sales, production tax credits, revenues from green tags, and any other production incentive programs throughout the life of the project.'' For small wind projects, the proposed rule required a description of ''applicable investment incentives, productivity incentives, loans, and grants.'' For anaerobic digesters, the proposed rule required a description of ''annual project revenues and expenses'' and of ''applicable investment incentives, productivity incentives, loan, and grants.''

The Agency believes that this language adequately addresses the question of tax credits and production incentive credits. While we have not specifically identified noncash savings from bedding costs, excess bedding sales, heating energy savings, or other farming efficiencies in the final rule, USDA agrees that they can be legitimate ''other sources of revenues'' provided they are directly related to the project and their value is sufficiently documented.

Comment: One commenter referred to the recent General Accounting Office (GAO) report on wind energy (GAO 04–756, Renewable Energy—Wind Power's Contribution to Electric Power Generation and Impact on Farms and Rural Communities, September, 2004), which, according to the commenter, showed that wind energy was not benefiting either the rural economy or farmers in general.

The GAO report described the problems that currently exist but did not define a mechanism to deal with the problems other than to call for an implementation of the authorized Section 9006 program and to establish better coordination between government agencies.

The commenter provided information related to several issues related to wind energy and also provided the following specific recommendations to address the known issues:

- An alternative to large, utility-scale systems that could provide a better strategy would be the use of smaller turbines in ''windsheds'' that could be structured around cooperative ownership. Smaller turbines require less capital per unit and allow greater distribution and more access points on the transmission grid because of lower output. In partnership with or as a subset of traditional rural electric cooperatives and the private utilities serving rural areas, farmers could own and manage the system, offset individual electrical use, and provide power to the grid.
- This approach creates two separate opportunities for diffuse rural networks where the turbine is sized to complement existing grid infrastructure.

(a) Farm-scale horizontal axis turbines mounted on tall, self-erecting towers that do not require special roads or large cranes. Here, smaller swept areas can be more effective because blade forces are reduced, particularly in severe events, making for lower costs and simplifying installation/service.

(b) Farm-scale vertical axis turbines designed to work efficiently at the lower wind speed and more turbulent flow seen at lower altitudes.

- Technical and financial support for these farm-scale systems should be a high priority for a variety of reasons:

(a) Diffuse systems are robust, and definitely not susceptible to terrorist attack.

(b) Boost farm income and utilize a renewable resource.

(c) Enable rural economic development.

(d) Opportunity to symbiotically combine wind energy production with other forms of alternative energy production such as methane production.

- Create an independent third-party evaluation program via a dedicated grant to evaluate wind turbines that are suitable for on-farm use and capable of producing significant electricity for the grid. No single organization has the resources needed for this organization. This program should be independent of existing government evaluation programs focusing on certification and/or technical development. Existing government programs (such as National Renewable Energy Laboratory (NREL) and Sandia) have inherent conflicts-of-interest when it comes to making specific product evaluations and recommendations. This program should utilize existing government expertise and resources whenever reasonable. The primary award should be made to a proactive nonprofit organization with no technology conflicts. Sub-awards for the comprehensive evaluation of specific components should be made to organizations with existing resources and expertise. This program will also conduct one or more random inspections of the production factory(ies) to evaluate production quality control practices. Evaluations will go beyond minimum specifications and safety issues to include projected operating and maintenance costs, ease of installation, installation costs, quality, etc. As part of the demonstration program, this group should coordinate with the Environmental Protection Agency's Office of Air and Radiation (OAR) to link utilities interested in purchasing power from renewable sources with farm-scale, farmshed cooperatives.
- Fund a demonstration project via a dedicated grant which documents the issues and feasibilities associated with actually creating a diffuse, large-scale, regional, on-farm, integrated wind-farm; and which integrates wind energy electricity production with the production of electricity from another form of renewable energy which can be used to offset the inherent variability of wind energy production.

Response: USDA appreciates the findings of the GAO report. This

regulation considered those findings when promulgating this regulation. The commenter then goes on to identify five specific recommendations, which the Agency addresses below.

First, the Agency agrees that use of smaller turbines, rather than large, utility-scale systems, is desirable and encourages applicants to partner with others. Nothing in the proposed rule or in the final rule prohibits the adoption of this type of system or partnership.

Second, the commenter identifies two types of turbines that could be used to implement the smaller turbine approach in the first recommendation. To the extent that such turbines have technical merit, this would be determined during the evaluation of the application. Otherwise, there is nothing that needs to be addressed in the final rule with regard to this second recommendation.

Third, the commenter recommended that the rule give high priority to these farm-scale systems. In the final rule, there are two mechanisms that are likely to give preference to farm-scale systems because such systems are likely to be lower-cost systems (i.e., total eligible project costs of $200,000 or less). First, the effort required to prepare a grant application for such systems has been reduced. Second, more points are now awarded to the smallest agricultural producers and to very small businesses. To the extent that such farm-scale systems are proposed by these applicants, they would be awarded more points than larger-scale systems.

Fourth, the commenter recommended creating an independent third-party evaluation program via a dedicated grant to evaluate wind turbines. The purpose of the 9006 program is to provide funds for the purchase of renewable energy systems and energy efficiency improvement projects. The funding of an independent evaluation program is not part of the scope of the authorizing statute. USDA notes that we are currently working with EPA's OAR to develop assistance in working with utilities on interconnection and power agreements.

Fifth and last, the commenter recommended funding a demonstration project via a dedicated grant. As noted in the previous paragraph, the purpose of the 9006 program is to provide funds for the purchase of renewable energy systems and energy efficiency improvement projects. The funding of demonstration projects for any renewable energy system is not part of the scope of the authorizing statute.

Miscellaneous

Comment: One commenter recommended that specific grants be established to permit the applicant to evaluate local, State, and national regulations and permits and licenses pertaining to the location and construction of facilities producing biofuels, biopower, and biobased products.

Response: As stated in the authorizing statute, the 9006 program is for the purchase of renewable energy systems and energy efficiency improvements. The program was not designed to provide funds to stand-alone studies of requisite permits and licenses or evaluations of applicable regulations. However, USDA recognizes that obtaining such permits and licenses are inherent costs to implementing a renewable energy system or an energy efficiency improvement project. Therefore, USDA included such costs as part of the eligible project costs for which funds can be obtained.

Comment: One commenter noted an apparent contradiction between eligible project costs in proposed § 4280.109(a)(1)(ii) and (ix) and stated that banks would not finance the item specified in proposed § 4280.109(a)(1)(iii) and (vii).

Response: With regard to items specified in proposed § 4280.109(a)(1)(ii) and (ix), the first item refers to construction and project improvement costs that occur after the application has been received by the Agency. The second item refers to costs associated with the construction of a new facility. Projects will incur one or the other of these two costs, not both. This section does not imply that a project would be expected to incur both of the costs or that a project would be expected to incur all of the listed eligible project costs. For example, renewable energy projects would not be expected to incur energy audit or assessment costs. Therefore, we disagree that there is a contradiction.

With regard to the items specified in proposed § 4280.109(a)(1)(iii) and (vii), all of these items can be capitalized and are financeable as part of the project. These items are not ''stand-alone'' items to be individually or collectively financed apart from the project. A lack of interest, on the part of some potential lenders, in financing these costs does not persuade USDA to remove them for the lenders that may be interested.

Comment: One commenter recommended that the rule be clarified that ''remanufactured'' equipment can only qualify where a demonstrated and consistent remanufacturing process is performed on the equipment. The commenter was concerned that USDA not award funding to ''refurbished'' generators that are likely to fail in several years and cease to operate due to lack of parts and expertise. According to the commenter, this is a small but real problem in the used wind turbine market that USDA should be mindful of in determining which projects are eligible for funding.

Response: Under the 9006 program, an applicant may propose to use new, remanufactured, or refurbished parts in their project. Where remanufactured or refurbished parts are proposed to be used, they must be reliable and meet the requirements of their intended application for the project's design life or as would a new piece of equipment. It is USDA's intent that sufficient information is submitted with the Technical Report to allow a thorough evaluation of the project to occur during the technical review to allow the reviewers to assess the likelihood of success for all projects, including those proposing to use refurbished or remanufactured parts. Applicants proposing to use such parts are advised that they may need to provide more information in their Technical Report to justify and support the use of such refurbished or remanufactured parts.

Comment: Several commenters inquired as to whether equipment used for wind projects should be restricted to new and unused equipment only, or whether remanufactured or refurbished equipment could also be used. One commenter specifically noted that used equipment not be allowed.

Response: As noted in the previous response, remanufactured or refurbished equipment is allowed under the 9006 program. However, USDA does not believe that used equipment should be allowed because the quality of used equipment cannot be determined. Therefore, we have added a definition of ''used equipment'' to the rule to distinguish ''used equipment'' from refurbished or remanufactured equipment, which is allowed if such equipment is essentially equivalent to new and unused equipment.

Comment: One commenter requested clarification on the role of third-party operators. The commenter notes that the proposed rule specifies that the applicant must be the owner of the project and control the operation and maintenance of the proposed project, and that a qualified third-party operator may be used to manage the operation and/or maintenance of the project. The commenter stated that, as they understood the section, large wind projects using business models that utilize equity investors to take advantage of the Federal production tax credit are eligible. In this case, the applicant remains the ''general partner''

in the limited liability corporation, while the equity partner is a ''limited partner.'' Some form of this business model is used by most successful farmer-owner large turbine wind projects. As such, the commenter recommends that USDA not limit an applicant's ability to bring in equity partners to take advantage of tax credits. It appears that the current language is sufficient for this purpose, but the commenter believes it is an issue that merits some scrutiny.

Second, some definition or clarification of what constitutes a qualified third-party operator is needed. Clarification of this definition is important because State USDA officials have made different interpretations on what a ''qualified third-party operator'' is.

Response: USDA agrees that the rule should not limit an applicant's ability to bring in equity partners as described by the commenter and has revised the final rule to allow ''passive investors'' to participate in the 9006 program.

The commenter also requested some definition or clarification as to what constitutes a qualified third-party operator, because of the potential for many different interpretations being made by Agency employees. The Agency has included a definition of ''qualified party,'' which provides general guidance.

While this definition has been added, it is USDA's intent that the determination of who actually qualifies as a ''qualified party'' will be made by the technical reviewers and not by State USDA staff. As the pool of technical reviewers will be small (perhaps two or three per technology), USDA anticipates that different interpretations will not be an issue. In addition, what constitutes a qualified party will vary depending on the specific technology being proposed. USDA believes the best place to deal with this determination is at the technical review stage and not in the regulations implementing the 9006 program.

Comment: One commenter suggested that USDA limit loan guarantees (and direct loans, if made available) to farm-scale systems. The commenter referred specifically to wind turbines, where scale should be defined by the ability to provide significant electricity to the grid to meet national needs. The commenter recommended that individual wind turbines should be greater than 50 kW and less than 999kW, but that tower heights should not be limited. According to the commenter, the development of self-erecting towers, which do not require the use of large cranes for installation and maintenance with their specialized infrastructure, make it feasible for farm scale turbines to be deployed on tall towers to efficiently capture the higher speed and less turbulent winds at higher altitudes.

Response: USDA disagrees with the commenter. USDA believes that the loan guarantee program should be available to all renewable energy projects regardless of size if the project and the applicant meet the eligibility criteria. Therefore, USDA has not revised the rule as suggested by the commenter.

Comment: One commenter stated that by restricting grants and loans to existing commercial energy systems, the proposal acts to impede real progress in renewable energy. The commenter recommended that USDA fund innovative/new types of renewable energy projects at the 75 percent level. Referring to U.S. Code Title 18, Part I, Chapter 105, Sections 2151 and 2156, the commenter stated that it is illegal to interfere with national defense preparations, and claimed that the proposed rule acts to prevent the development of innovative renewable energy technologies, helps to sustain the demand for U.S. petroleum imports from the volatile Middle East, and sabotages efforts to reduce dependence on petroleum imports, as well as homeland security efforts.

Response: By statute, USDA is limited to funding projects at the 25 percent level for grants and at the 50 percent level for loans. We cannot increase this to 75 percent as requested. To the extent that the commenter is suggesting that this program be used to fund renewable energy technologies still in the research and development (R&D) stage, as noted in a previous response to this commenter, it is DOE's responsibility, not USDA's, for assisting in the development of innovative and new types of renewable energy projects.

Comment: One commenter objected to provisions requiring the applicant or borrower to be the owner of the system and also to control the operation and maintenance of the project. The commenter felt that this would exclude many energy installers and energy service providers. The commenter recommends that USDA should ''adjust eligibility criteria or modify the program to allow for rural small business with expertise in renewable energy and energy efficiency installation to aggregate projects and submit applications without ownership requirements.'' A second commenter also recommended that rural small businesses with expertise in renewable energy and energy efficiency installation be allowed to aggregate projects and submit applications without being required to retain ownership and control of all systems.

Response: USDA disagrees with the commenters. As noted in a previous response, the 9006 program is for the purchase of renewable energy systems and energy efficiency improvements. By purchasing either, one becomes the owner. USDA, therefore, believes ownership requirement is an inherent part of this program and has not revised the rule as requested.

E. Application and Documentation

General

Comment: One commenter recommended that applicants be encouraged to partner with intermediaries that provide ''full service'' energy assistance, which would include (1) help in applying for Section 9006 awards; (2) conducting energy audits; and (3) project management.

Response: USDA concurs that it would be useful to applicants and USDA if applicants partner with ''intermediaries'' to provide full service energy assistance. However, the approach used by the applicant in developing their application and obtaining other services is a business decision and beyond the scope of the regulation. Therefore, this comment has not been adopted.

Comment: Several commenters suggested that USDA allow applications on-line or on a CD–ROM.

Two commenters recommended that USDA allow applicants to submit proposals electronically, either on-line or on a CD–ROM. This will enable complete technical review and scoring based on full applications.

Three commenters suggested that an on-line application process would reduce redundant and duplicative entries by allowing common information to be populated on required forms. It also would guide applicants through the process and thereby reduce the number of incomplete applications, and it would standardize the final application documents, thereby facilitating application review by Rural Development and NREL staff(s). Rural Development has experience in developing such an online application system for lenders in its B&I Loan Guarantee program.

Another commenter discussed a possible online application process, stating that while this is a great option to have, it should not be the only means by which an applicant can apply for the program. High-speed Internet access is not widely available in rural America and dial-up access can make an on-line application process slow and

tumultuous. Rural America is in the process of transitioning to computer-based records and applications. If USDA made applying for the program an on-line only process, there is a serious risk that many potential applicants would be inappropriately excluded from the program. We would also suggest that USDA develop application forms and templates that can be downloaded and completed off-line. The forms should be available in formats that are accessible for a variety of operating systems (*i.e.*, Mac and Windows) and word processing software (*i.e.*, MS Word™ and WordPerfect™).

Response: USDA policy is to provide electronic application capabilities. This capability will be developed for this program after promulgation of the final regulation. The standard government forms are already available electronically. CD ROMS and faxed information is acceptable at this time. Along with evaluating the possibility of on-line applications, USDA will consider the security of such submittals.

Streamline and Simplify Application Process

Comment: Many commenters recommended that USDA adopt a less burdensome application process for smaller projects. Some of these commenters suggested the development of a short-form. Commenters felt, for example, that the application process was too complex for energy efficiency improvements, the effort to apply too extensive relative to the benefit obtained, the burden was unreasonable for small producers, and the entire application process was discouraging to potential applicants.

Response: USDA agrees with the commenters that a more streamlined approach is needed for smaller projects that will reduce the burden to the applicant, but at the same time provide the Agency with sufficient information to evaluate the merits of the proposed project. To this end, USDA has implemented a simplified application procedure for grant projects with total eligible project costs of $200,000 or less. The simplified application procedure requires significantly less effort on the part of the applicant by requiring less detailed Technical Reports. In addition, the less detailed Technical Reports may also be submitted for guaranteed loans for projects with total eligible project costs of $200,000 or less.

Comment: One commenter recommended that USDA simplify the application process for projects less than 200 kW.

Response: As noted previously, USDA has implemented a simplified application process for grant projects with total eligible project costs of $200,000 or less and for both grants and guaranteed loan applications, a less detailed Technical Report for projects with total eligible project costs of $200,000 or less. USDA elected to do this based on cost rather than capacity because cost cuts across all technologies (not all projects could be described in terms of kilowatts).

Comment: One commenter stated that the burden analysis estimates the annual cost over a 3-year period has been $1.9 million for an estimated 388 applicants. This means an average of about $5,600 per applicant is needed to participate in this program. If a farmer or rancher is netting $25,000 per year, which is generous in many cases, the program is demanding an outlay of 22 percent of annual profits to participate. Also, if the grant received is fairly large, say $25,000 on a $100,000 project, the ''burden amount'' is still 22 percent of the grant received since application costs are not allowable project amounts. This defacto increases the participants match amount to $80,600 or a 76 percent match ($80,600/$105,600 = 0.763). For medium to smaller sized operations, the estimated burden costs are significant.

Response: As noted in an earlier response, USDA is implementing a streamlined application process for projects with total eligible project costs of $200,000 or less. This streamlined application process will result in less burden to those who use it, including the smaller sized operations. Also, USDA cannot accommodate the commenter's request because the statute limits the matching funds for grants to 25 percent and USDA does not have the authority to raise this limit.

Direct Rebate Program

Comment: Many commenters recommended adding a rebate program to the 9006 program to reduce the burden for commercially viable, proven, and environmentally beneficial technologies to help streamline the application process and reduce the administrative burden to USDA. One commenter suggested that a rebate program be a fixed grant amount for specific off-the-shelf technologies installed.

Response: USDA is not authorized to use rebates in implementing this program. In lieu of such a program, USDA is implementing a simplified application process for grants where funds are disbursed at project completion. We believe the simplified application process achieves many of the burden reductions that could be achieved under a direct rebate program.

The simplified application process is only available to projects with total eligible project costs of $200,000 or less. In selecting the $200,000 value, USDA first considered the exposure the Agency would incur if a project was approved, but never built—the higher the total eligible costs, the greater the exposure. For example, if USDA selected a value of $1 million to be funded at the maximum level of 25 percent, the Agency could lose $250,000 if the project was never completed, which USDA considers too high of an exposure. USDA then reviewed the type of projects that were funded under the 2003 and 2004 NOFAs. USDA assessed that projects with total eligible project costs of $200,000 or less tended to be smaller projects with a smaller likelihood of not being completed, thereby lowering the Agency's exposure. A $200,000 total eligible cost project at 25 percent would result in a $50,000 exposure by the Agency. While not an insignificant sum, the types of projects that would be built and the desire to open the project to more applicants led the Agency to select this value for the design build program with reimbursement at completion.

Pre-Applications

Comment: Four commenters suggested that USDA add an optional pre-proposal review step to the application process. They stated that some official department prior review of a one- to three-page Proposal Summary would give applicants an understanding of their eligibility and better guidance, before all of the expenses for a feasibility study are incurred. Pre-proposals are being used in some competitions to minimize the burden on proposal preparer and increase the overall quality of the submitted proposals that the reviewers must process. Pre-proposals are intended to provide intermediate feedback as to whether the applicant is on track in gathering and articulating some of the key information required for a successful project and whether that project would be appropriate for funding.

One commenter suggested that the pre-proposal be structured to minimize inputs by the applicant, while providing evaluators and reviewers key information in determining the approval of the application. The pre-proposal could be structured in such a way to give evaluators enough insight on the project design so that more specific direction on the needs of a full proposal could be given to the applicant. The

commenter provided specific guidelines on how the pre-proposal process could be implemented.

Response: USDA has decided not to formalize a pre-application process within the 9006 program because the Agency does not believe it is the best way to achieve the goals sought by the commenters. Applicants can obtain the same guidance that a pre-application process would provide by contacting their State Offices. USDA advises applicants to work with their State Offices as early in the application process as possible to help assess whether they and their projects are eligible prior to conducting other, more expensive application procedures. USDA will provide implementation and training materials to further help both the State Offices and prospective applicants. By providing this information outside the rulemaking process, USDA maintains greater flexibility in providing assistance to prospective applicants.

Technical Review

Comment: One commenter suggested modifying and/or minimizing the technical reviews by NREL. If an engineer or engineering firm approves technical feasibility of the proposed project for the applicant, accept the information from the engineer. If NREL must perform a technical concurrence or refutation of the project, a system should be established that allows feedback to the applicants. If there is a bias against a particular technology or approach to renewable energy, communicate that with the States so they can perform better outreach.

Response: USDA will review the technical feasibility of any project seeking funds under the 9006 program, regardless of the qualifications of the engineer or engineering firm hired by the applicant. Further, USDA or its designated contractor(s) will conduct the technical reviews in a manner that we deem fit and appropriate to the evaluation of the technical merits of each project. This review will be conducted without any bias on the type of project being proposed. If an applicant believes that his or her project has been unfairly denied, the applicant has the right to appeal that decision to USDA.

Application

Comment: One commenter stated that in the past, technical reviews had been compromised due to missing portions of the application. The commenter recommended that applicants submit two copies, one to the National Office and one to the appropriate USDA State Office, thereby ensuring that both offices have the complete data required to evaluate the application.

Response: USDA agrees with the commenter that two applications should be submitted, and the final rule has been revised to reflect that. However, in the final rule, the two copies will be submitted to the Rural Development State Office, which is the responsible office for implementing the 9006 program, including the scoring of the applications. The State Office will then forward a copy of the application and its score to the National Office, whose role is to establish the procedures for the 9006 program and to rank the applications from all 50 States.

Application Content

Comment: One commenter stated that there is no mention of submitting organizational documents. The proposal only asks for a description of the business, farm, or ranch operation and ownership. The commenter stated that they had encountered applications stating they had a partnership, but when the reviewer asked for a copy of the partnership agreement—the applicants said it was a verbal agreement. Is that acceptable? What assurance is there that the applicants are a legally formed entity? Also, only by examining the Articles of Incorporation can you determine whether nonprofits were organized solely for charitable purposes.

Response: USDA agrees with the comment and the final rule requires applicants, except for sole proprietors, to submit a copy of their legal organizational documents.

Comment: One commenter, commenting on proposed § 4280.111(a)(4)(iii)(A), stated that, because the demonstration of a financial need is not an appropriate threshold factor, the explanation of such a need should not be required in the application.

Response: Section 9006(b) requires a farmer, rancher, or rural small business to demonstrate financial need in order to be eligible for a grant under this program. Therefore, USDA must include this requirement. In the final rule, all grant applicants must submit a statement certifying that they have financial need. Those grant applicants not using the simplified application process must also submit sufficient information to allow the Agency to make its own determination of the applicant's financial need. For those grant applicants using the simplified application process, the Agency may request the applicant to provide supplemental information that will allow the Agency to make its own determination of the applicant's financial need.

Comment: One commenter requested clarification on how USDA intends to use the information provided in the application by agricultural producers on the gross market value of their agricultural products for the calendar year preceding the year in which they submit their application. The commenter stated that if this information is to be used to document a producer as a true agricultural producer for program eligibility, this is fine. However, if a single year's crop gross market value is used by USDA to determine financial need, the commenter stated that this is inappropriate, noting that crop year 2004 is a rare year in which farmers in many States are realizing record yields in concert with steady crop prices. The commenter believes that this rare year of plenty should not be used to restrict eligibility for grants under the 9006 program.

Response: USDA will use this information to determine whether an applicant qualifies as a ''small agricultural producer'' when it scores applications. While it will not be used to determine if an applicant is an agricultural producer, it will be supporting evidence that the applicant is an agricultural producer. Finally, it will not be used to determine an applicant's financial need. USDA does not believe the final rule needs any modification or clarification.

Comment: One commenter asked whether applicants will be required to have a Federal tax ID number at the time of application, along with the DUNS number.

Response: Yes, both are required.

Comment: One commenter made the following points:

- The Table of Contents is superfluous and has not been helpful when it has been included.
- Pro forma balance sheet—only the cashflow statement has provided useful information when the application was for a grant only.
- Business market information is not really needed for renewable energy systems if the applicant has a power purchase agreement or letter of intent to do so.

Response: In the final rule, the Agency has elected to keep the Table of Contents. It assists the applicant in organizing its application materials to its best advantage. It itemizes requested data to ensure complete information at the outset. It acts as an organizer of information for more efficient and timely review.

With regard to the pro forma balance sheet, we have elected not to require it for projects with total eligible project costs equal of $200,000 or less. For very small businesses, pro formas are not always as accurate or helpful as they are for larger projects. Therefore, we have eliminated the requirement for pro forma balance sheets for smaller projects. However, we have retained it for larger projects (*i.e.*, those projects with total eligible project costs greater than $200,000) due to the nature, scope and complexity, and financial risk.

Finally, the specific requirement for business market information from the general application section has been removed, but is still required in the Technical Reports for certain projects where such information is important to the feasibility of the project. In addition, such information would be provided in the business-level feasibility study, if one is required.

Comment: One commenter referred to the credit reports required for those owning more than 20 percent and suggested an exception for nonlocal financial owners making use of Federal tax credits.

Response: USDA has revised the rule to make it easier for passive investors, which would include nonlocal financial owners making use of Federal tax credits, to participate in renewable energy projects. To this end, we have revised the credit report requirement such that credit reports are not required for passive investors (and for those corporations listed on a major stock exchange).

Power Purchase Agreement (PPA) and Interconnection Agreements

Comment: Five commenters recommended that USDA exempt 100 kW or less renewable energy projects from the requirement of having a PPA or interconnection agreement. According to the commenters, renewable generators up to 100 kW are guaranteed the right to interconnect under Section 210 of Public Utilities Regulatory Policies Act (PURPA), 1978. In most States the interconnection rules, including net metering availability, are spelled out. No PPA or, according to one commenter, a project-specific interconnection agreement, is required. One of the commenters stated further that, in most States, the interconnection rules, including net metering availability, are spelled out and that no PPA or project-specific interconnect agreement, which can take considerable time and expense to obtain, is required.

Response: USDA disagrees that projects funded under the 9006 program should not be required to obtain a PPA or an interconnection agreement when the applicant intends to sell power generated by the proposed project. For many of these projects, the ability to sell power makes them financially feasible. If the project is interconnected with an electric power system, it is inherent that an interconnection agreement and a PPA must be made. These agreements and arrangements are covered by different regulations and policies (State, Federal, public utility) that are beyond the scope of the regulation. Agreements with the utility buying the power will help ensure USDA that it is funding projects that will come to fruition.

Comment: One commenter stated that requiring the applicant to provide an interconnection agreement or a letter of intent for an interconnection agreement should not be an application requirement for any project pursuant to this program. The commenter stated that this provision forces the applicant to rely upon the third-party utility to provide assistance or information that may not be required of that utility by law. While all utilities must interconnect in Iowa, the law does not currently provide a time in which the utility must interconnect, and the applicant may not be able to obtain such a letter from the utility in order to meet the requirements of the application process. Second, utilities do not often enter into interconnection agreements until the engineering plans are submitted, potentially amended, and approved by the utility, and the regional transmission operator if necessary; and so unless a project is ready for the installation and construction phase, it is unlikely that the applicant would be able to obtain an interconnection agreement or even a letter of intent.

Response: As noted in the previous response, USDA is still requiring applicants to obtain the necessary PPA and/or interconnection agreements prior to USDA obligating funds to a project. We concur with the commenters that an agreement or letter of intent may be beyond the applicant's ability to obtain at the time of application. Therefore, USDA has revised what is required at the time an application is submitted. Under the final rule, an applicant is required in the application to demonstrate familiarity with the regulations and utility policies. In order to do this, it is necessary that the applicant be knowledgeable of the interconnection and power purchase arrangement available to them, and that they demonstrate to USDA that they have a working knowledge of these requirements for their project. In addition, in the Technical Report, the applicant is required to describe the utility system's interconnection, requirements, power purchase agreements, or licenses where required. USDA advises applicants to provide sufficient information in this regard because the interconnection and PPA are critical elements in determining whether the project has technical merit.

Because USDA considers these agreements to be critical, the scoring of applications for those projects that are proposed for interconnection will receive the maximum available points if the necessary agreements or letters of intent to award these agreements are submitted with the applications.

Comment: One commenter stated that applicants are required to provide an economic impact analysis for their project. The commenter feels this is an additional area to streamline, improve, and simplify the application process by eliminating this requirement for agricultural producers and small businesses.

Response: An economic impact study is part of the business-level feasibility study. As noted in a later response, the business-level feasibility study is mandatory for renewable energy projects with total eligible project costs greater than $200,000 under the 9006 program. When a business-level feasibility study is required, the economic impact study is still a part of such a study.

Comment: One commenter requested that renewable energy systems that the exemption for providing a feasibility study conducted by a professional engineer (PE) be raised to more than $100,000. The commenter observed that his organization had forgone project applications because the feasibility study would have cost more than $25,000.

Response: Business-level feasibility studies prepared by an independent, qualified consultant, not necessarily a PE, will be required for renewable energy projects with total eligible project costs greater than $200,000.

Comment: Several commenters expressed concern regarding consistency with the $100,000 threshold throughout the rule and the units associated with it, as it related to the proposed feasibility studies and other requirements.

One commenter stated that the proposed rule's requirements for a feasibility study were inconsistent. In this section, a feasibility study is required for projects with a total cost above $100,000, while in the **SUPPLEMENTARY INFORMATION** section, a feasibility study is defined as being required for grant requests over $100,000. Commenter stated that these

inconsistencies would confuse the reader and recommended that the wording be changed so that a feasibility study was required when the total project cost was above $250,000.

Another commenter recommended that feasibility studies be required only for projects over 100 kW.

A third commenter stated that the threshold for requiring a feasibility study for renewable energy projects is not consistent between the preamble discussion and the proposed regulation. In the preamble, it refers to projects in excess of $100,000, and in the regulations, it refers to requests in excess of $100,000. As the request cannot exceed 50 percent of the total project, this is a significant difference. The commenter recommended the threshold be based on the size of the project and not the size of the request (this is a more consistent value to base the requirement on); however, the threshold should be increased to $500,000. The Rural Development Office should have the ability to waive this requirement if the application is for an existing business and the renewable energy system does not have a significant impact on their operation (similar to the ability to waive feasibility studies in the current B&I program).

A fourth commenter requested clarification of $100,000 threshold for additional requirements. The multiple references to the $100,000 threshold for ''feasibility study for renewable energy systems,'' ''services of professional engineer,'' and ''energy audits'' is unclear in the proposed rule and needs clarification (i.e., either total project request or total project cost). The commenter recommended a return to the language and requirements as stated in the 2004 NOFA published in the **Federal Register** (69 FR 25234–25259, May 5, 2004) for ''feasibility study for renewable energy systems.''

—Feasibility study for renewable energy systems. Each application for a renewable energy system project, except for requests of $50,000 or less, must include a project-specific feasibility study prepared by a qualified independent consultant.''

If stating thresholds in terms of total project costs, it would read:

—Each application for a renewable energy system project, except for projects costing $200,000 or less, must include a project-specific feasibility study prepared by a qualified independent consultant.''

For the use of the services of a PE, the proposed rules reads: ''Projects costing more than $100,000 require the services of a professional engineer (PE).'' This requirement would no longer fit the above statement on requirements for a feasibility study; thus, we suggest a change of threshold for the requirement of a PE.

The commenter suggested the following language:

''Project requests of more than $50,000 will be required to employ the services of a professional engineer (PE).''

If stating thresholds in terms of total project, costs, it would read:

''Project costing more than $200,000 will be required to employ the services of a professional engineer (PE)''

The energy audit requirement is a good requirement for any energy efficiency project. The commenter suggested the following language if all thresholds are stated in the amount requested:

''For energy efficiency improvement projects with a request in excess of $25,000, an energy audit is required.''

A fifth commenter stated that using the word ''request'' is unclear. A question remains as to whether feasibility studies are required for projects with a total cost of $100,000 or if they are required for those projects in which the Federal share or Federal request will be $100,000. The latter would provide for feasibility studies required for those projects that cost $400,000 or above.

Response: First, an explanation of the thresholds used by USDA is discussed in other comments in this preamble.

Second, as noted previously, the requirement for a stand-alone, business-level feasibility study will be required for renewable energy projects with total eligible project costs greater than $200,000.

Third, in the final rule, with two exceptions, all levels at which certain requirements are incurred (*e.g.*, energy audits, use of a PE) are now consistently expressed in terms of ''total eligible project costs.'' The first exception is under the loan program, where certain requirements are associated with ''loan requests.'' The second exception is under § 4280.115, where certain requirements are based on the cost of the contract.

Business-Level Feasibility Study for Renewable Energy Systems

Comment: One commenter stated that according to the proposed rule, ''because of factors of cost and complexity for renewable energy system projects of more than $100,000 a project-specific feasibility study will be required.'' It is our understanding that feasibility studies that are completed prior to the award are eligible for reimbursement under this program. If feasibility studies completed prior to the award are not eligible for reimbursement, the commenter recommended that two phases of the program be implemented. One phase for the feasibility study/business plan/planning phase and one phase for project implementation. The commenter proposed that this could be similar to the Value-Added Producer Grant program. By allowing applicants to conduct a feasibility study with program funds before implementing their project, USDA can ensure that the implemented projects are of high quality and have a high probability for success.

Response: In the proposed rule, the requirement for a project-specific feasibility study (renamed as a business-level feasibility study in the final rule to better characterize the type of study and to distinguish from the Technical Report) was mandatory for renewable energy projects of more than $100,000. In the final rule, the Agency has revised this position to reflect that a business-level feasibility study will be required for renewable energy projects with total eligible project costs greater than $200,000.

As noted in a previous response, the 9006 program is for the purchase of renewable energy systems and energy efficiency projects. The preparation of the Technical Reports are legitimate project costs and thus, are eligible costs for reimbursement provided the project is awarded a grant or loan. USDA will not pay for the costs of a study that are incurred for a project that is not successful or for ''stand alone'' studies.

Technical Reports

Comment: Two commenters recommended streamlining the application process for small projects by reducing the technical requirements or by incorporating this information into the project narrative. One of the commenters was specifically concerned about the requirements for small wind and small solar projects.

Response: As noted in previous responses, USDA has provided a simplified application process for grants for projects with total eligible project costs of $200,000 or less. The Agency believes most small solar and small wind projects will be eligible for this simplified application process. Part of the simplified application process is the development of a ''reduced'' technical report for these smaller projects. The Agency believes that the reduced technical reports will significantly streamline the application process and reduce the burden to the applicant.

Comment: One commenter recommended including the general requirements in the regulation while developing more specific requirements in a guidance document that can be updated periodically.

Response: USDA, in general, agrees with the commenter on both comments. First, the rule has been revised to include the general requirements for the Technical Report in the body of the rule, but with more specific requirements in the appendices to the regulation, not as guidance documents.

Comment: One commenter suggested that identifying the schedule of utilities and regional transmission operators, where necessary, is not always possible. According to the commenter, the requirement for applicants not interconnecting to identify the interconnection and PPAs and schedules thereof is not necessary for those applicants not interconnecting. The commenter pointed out that many utilities do not require interconnection agreements for projects installed on the customer side of the meter, but the utility may require some safety equipment assurances and so simple proof of that investigation should be appropriate.

Response: USDA agrees with the commenter that such agreements are not applicable to applicants who are not interconnecting. The revised rule language now uses these agreements as an illustration of one of the types of agreements that may be necessary.

Comment: One commenter stated that the last sentence in proposed § 4280.111(d) should be removed or explained further. The proposed rule does not clearly establish a threshold level, beyond those projects that cost more than $100,000, at which projects will require a professional engineer. The proposed rule does not establish who will decide what level of engineering is required or what kind of public safety issues will require the assistance of an engineer.

Response: The sentence the commenter is referring to says: ''Depending on the level of engineering required for the specific project or if necessary to ensure public safety, the services of a PE may be required for smaller projects.'' In general, the level of engineering required for smaller projects can widely vary. It is not practicable within this rulemaking to address each situation that may arise. Each project will have its own specific circumstances—the nature of the project itself, the site where the project is located, and the State and local requirements (*e.g.*, public safety issues) that apply to the project.

It is the proper role of the applicant to ensure public safety. It is the applicant's responsibility to determine what are the proper measures to be put into place. These measures may require the services of a PE. The language is included so as not to transfer the applicant's responsibility to USDA. The Agency will evaluate the technical merit of each project. Certain projects, especially those using pre-commercial technologies or those not pre-engineered, may be determined by USDA to need the services of a PE to assure technical viability.

USDA advises all applicants to work with their State Office and other knowledgeable technical entities to determine whether their project requires the use of a PE and the type of PE. For these reasons, the Agency has not changed this language (although in the final rule the level at which a PE is required has been raised to $200,000 total eligible project costs).

Comment: One commenter also referred to the last sentence in proposed § 4280.111(d). This commenter noted that there could be many engineers involved on one project that oversee many different areas of the project that could hold responsibility for the design (civil, structural, mechanical, process, and electrical).

The commenter believes that the requirement should state something along the lines of: ''Projects costing more than $100,000 will be required to employ the services of a professional engineer (PE), or a team of Professional Engineers that will ensure that all aspects of the project conform to National, State, and local codes.''

Response: USDA agrees that a team of professional engineers can be used, and has revised the wording accordingly.

With regards to referencing national, State, and local codes, compliance with these codes is addressed in the Technical Report requirement and USDA does not believe it necessary to repeat it here. We point out that, as installed, all projects have to meet all applicable national, State, and local codes. If the project is not compliant with applicable codes, it is not eligible for funds under the 9006 program.

Comment: One commenter asked about the use of foreign engineering. Questions raised by the commenter were: What if the project is designed by an engineer in Germany? Other countries do not have the same licensing requirements for engineers as the United States does, so there cannot be a ''PE'' certifying the technology. How are foreign engineers going to be able to ensure their technology meets or exceeds U.S. regulations when they are not even able to review documents without the use of an interpreter?

Response: There is nothing in the rule that prohibits an applicant from employing the services of a foreign engineer, as long as the foreign engineer is licensed in the area in which the project will be built. This is required of any engineer, American or foreign—the engineer must be licensed in the jurisdiction in which the project is located regardless of where the person resides or what country the engineer is a citizen of. USDA notes, however, that an applicant does not need a PE to certify the technology. If an applicant uses foreign engineers who are not appropriately licensed, then someone who is properly licensed will have to be employed. USDA expects that most foreign engineers that an applicant would use for renewable technologies have done business in the United States and are familiar with the necessary licensing requirements. Thus, we do not expect the use of foreign engineers on projects under this program will be a major issue.

Comment: One commenter stated that applicants not planning to sell the excess energy generated should not be required to provide data identifying existing demand, supply, and the market niche for the energy produced.

Response: USDA agrees with the commenter. Further, the Agency believes that these data are not required of any applicant, except as they would be needed when a business-level feasibility study is required. The final rule has been revised accordingly.

Comment: One commenter, commenting on proposed § 4280.111(d)(1)(i), suggested removing the first sentence completely or providing some parameters as to how USDA will qualify project teams.

Response: The sentence referred to by the commenter states ''The biomass project team will vary according to the complexity and scale of the project.'' While USDA has removed this sentence in the main body of the rule, we have retained it for the Technical Reports in Appendix B. We point out that it is the applicant's responsibility to assemble a qualified project team, the exact composition of which will vary from project to project. If an applicant is unsure of what constitutes a qualified project team, USDA advises the applicant to contact their State Office, trade associations, and other knowledgeable persons in the renewable technology field. It is our intent to ensure that applicants adopt good engineering and business practices in developing their projects; it is not our intent to define what those practices are.

Once an application has been received, it will be reviewed by experts in the technology for that project. These experts will be able to assess the qualifications of the proposed project team.

Comment: One commenter, commenting on several sections of the rule (*e.g.*, proposed §§ 4280.111(d)(1)(ii)(A), (C), and (F) and (d)(2)(ii)(F)) suggested inserting the word ''anticipated'' before ''schedule.'' According to the commenter, identifying the schedule of local zoning boards or other governing or adjudicatory councils is not always possible.

Response: USDA agrees with the commenter that there are activities outside the control of the applicant and that the addition of the word ''anticipated'' schedule is acceptable. Therefore, the change has been made.

Comment: One commenter referred to proposed § 4280.111(d)(2)(ii), which states: ''Anaerobic digesters must also be designed and constructed in accordance with USDA anaerobic digester standards.'' The commenter could not locate the standards being referred to and recommended that the actual required USDA standards be listed in the regulation so that the standards are clearly defined.

Response: The standards USDA is referring to are in the process of being developed by USDA's Natural Resources Conservation Service (NRCS) and are not yet available. Because of this, the Agency has elected to remove this requirement from the rule. USDA may revisit this issue once the NRCS standards are available.

Comment: One commenter recommended that applications identify all the major equipment that is proprietary equipment and justify how this unique equipment is needed to meet the requirements of the proposed design. The reviewing team can then determine if the use of this equipment is justified and therefore meets the test of free and open competition prior to the award of grant or loan. In the case of limited competition, the applicant would be required to provide information as to the pre-selection process used to select the designer/manufacturer for their proposal.

The commenter states that the application process addresses the need to provide very specific and detailed information on equipment (many times this involves proprietary equipment), technology, availability of equipment, and vender servicing of equipment information. As stated in proposed § 4280.111(d)(1)(i)(A), ''The applicant must also provide authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life.''

From a procurement side, this many times conflicts with the Federal requirements to comply with ''maximum free and open competition.'' These free and open competition requirements have their roots in OMB Circular A–110 and the Grants Management Common Rule and are passed along to individual agencies via 7 CFR parts 3019 and 3016. One way to minimize problems is to have the applicant pre-qualify equipment, such as outlined in 40 CFR 33.230 (FR 3/28/83) or to utilize the RUS policy statement dated March 28, 2002, as it related to the preselection of equipment:

- Sometimes the selection of a major equipment item can significantly impact the remainder of the project. It is still important to maintain an environment of free and open competition in these circumstances. In cases like this, it may be best to conduct a ''preselection'' process. Two preselection methods can be used. The first method is simply a pre-bid type of competitive negotiation in which manufacturers are requested to submit proposals to the owner on technical merit and prices. The owner and engineer analyze the pre-bids and select the equipment based on price and other factors. The name and price of the major equipment item is included in the construction contract documents used for the competitive bidding of the general contracts. The price of the pre-selected equipment is included in the general contract bid documents to prevent this ''preselection'' process from turning into a sole-source specification.''
- The second preselection method is a phased-bid approach in which the major equipment bid is conducted before the general contracts are bid. The first phase would be a competitive bid for the major equipment item based on technical requirements. One of the selection criteria in this phase may include a pilot test to confirm the equipment can perform as required. After the major equipment item manufacturer is selected, the project design can be finalized, and the remaining contracts bid competitively. Any first-phase contracts are bid with a hold period sufficient to allow for completing design of the remainder of the project and bidding the remaining contracts with the understanding that the first-phase contract(s) will be assigned to a general contractor when the second-phase contract is awarded. The owner discloses the name and price of the first-phase preselected contractor in the second-phase contract bidding documents.''

A proprietary specification is not consistent with free and open competition and should be used only when project requirements are unique, as documented by the design engineer and concurred in by Rural Development, or needed for interchangeability of parts or equipment.

Response: USDA agrees that the application should identify all the major equipment that is proprietary equipment and justify how this unique equipment is needed to meet the requirements of the proposed design. USDA has revised the rule to reflect this for Technical Reports prepared in accordance with Appendix B. In addition, the Agency has made it clear that applicants will use ''open and free'' competition for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

Energy Audits and Assessments

Comment: Four commenters requested that a minimum project size requirement for an energy audit be $50,000. Commenters were in general agreement that energy audits are valuable at projects at this level of costs. One of the commenters suggested that USDA consider lowering the project cost for which an energy audit is required to below $50,000. Two commenters felt that the proposed rule did not clearly state when an energy audit and an energy assessment were required.

Response: USDA agrees with the majority of commenters and is requiring projects with total eligible project costs greater than $50,000 to conduct an energy audit. In addition, these energy audits must be conducted or reviewed by an energy auditor. This requirement is being implemented for all applications. USDA is not lowering it further under this program, but will encourage applicants to utilize an energy audit on all such projects when implementing this program.

The energy audit is a useful tool regardless of the size of the project. USDA believes that, given its cost, it should be required only for projects with total eligible project costs greater than $50,000. Energy audits on lower cost projects are still useful and USDA does not want to discourage applicants of lower cost projects from conducting an energy audit. Therefore, USDA is not requiring energy audits for projects with total eligible project costs of $50,000 or less, but wants to allow those projects the option of using an energy

assessment in lieu of an energy audit. In summary, the sections have been rephrased to make clear our intent—that an applicant is required to conduct an energy audit for projects with total eligible project costs greater than $50,000 and that, for projects with total eligible project costs of $50,000 or less, the applicant is required to conduct either an energy audit or an energy assessment.

Comment: One commenter stated that rule needs to clearly state that an energy audit is required on all energy efficiency projects under the documentation portion of the regulations.

Response: As noted in the previous response, energy audits are not required for all energy efficiency projects. The rule has been clarified to clearly indicate when energy audits are required and when they or energy assessments may be used.

Comment: One commenter stated that USDA may wish to consider the requirements of the project team for energy efficiency improvement projects. The commenter points out that, in the technical report for energy efficiency improvement projects, an energy auditor is a required part of the project team, but an energy audit is not required for projects under $100,000. The commenter recommended that the title of energy auditor be changed to energy auditor/assessor in order to be clear as to how the requirements of an energy audit or assessment for energy efficiency improvement projects would be affected.

Response: USDA has revised the rule to reflect that, for energy efficiency improvement projects with total eligible project cost greater than $200,000, the project team should include ''an energy auditor or other service provider,'' where other service provider can include an energy assessor. For energy efficiency improvement projects with total eligible project costs of $200,000 or less, the final rule requires the applicant to list ''all key service providers,'' which would include an energy auditor or assessor.

The final rule requires either an energy assessment or an energy audit for energy efficiency improvement projects. For energy efficiency improvement projects with total eligible project costs greater than $50,000, an energy audit must be conducted by or reviewed and certified by an energy auditor. For energy efficiency improvement projects with total eligible project costs equal to or less than $50,000, an energy assessment or an energy audit may be conducted by either an energy assessor or an energy auditor.

Self-Scoring

Comment: One commenter recommended that USDA allow applicants to provide preliminary self-scoring to enable complete technical review and scoring based on full applications. Another commenter felt that self-evaluations in which the applicant would review which aspects of their projects needed the most attention and to understand the funding projects would be helpful both to USDA and the applicant. The commenter stated that USDA could then compare their score calculations to the applicant's self-evaluation and confer with the applicant if they differ significantly.

Response: USDA agrees with both commenters. The final rule requires applicants to submit a self-score.

F. Funding

Distribution of Funds

Comment: Several commenters made suggestions on how funds should be distributed between the grant and loan programs. One commenter recommended that a portion of the funds be specifically set aside for grants initially, to be transferred to the loan programs if there are not enough high scoring grant projects available to use all set-aside funding. The commenter recommended that a loose guideline be added to the regulations regarding the amount of money allotted for each type of program. The commenter wants to ensure that the comparatively small energy efficiency project proposals have equal access to funding as larger renewable energy projects. Because of their lower cost, energy efficiency projects are most likely to apply for grant funding, instead of the loan guarantee or (in the future) a direct loan program. The commenter believes that available funds should be distributed evenly between the programs sections.

Another commenter suggested a split of funds between renewable energy and energy efficiency projects. The commenter pointed out that the proposed rule did not elaborate on the policy used in the last two NOFAs of setting aside 50 percent of the funds for energy efficiency projects until all proposals were reviewed. The commenter recommended including the same language from the past two NOFAs in the final rule.

Response: First, this comment is outside the scope of the 9006 program regulation specifically. This comment deals with how USDA will allocate the funds provided to the program by Congress each year. USDA believes that all projects eligible under the 9006 program should have equal access to funds. Each year, USDA will determine what percentage of funds will be allocated to each of the funding programs. In making this determination, USDA will consider these comments and other similar comments with regard to allocations. It is USDA's intent that, if the funds set aside for either grants or guaranteed loans are not entirely obligated, the remaining funds will be made available to the other program.

Comment: One commenter requested that USDA reserve at least 50 percent of the available funds in a program year for direct grants. While loans and loan guarantees provide leverage of Federal dollars, the commenter believes that these will have limited appeal to smaller agricultural producers and rural small businesses and wants to ensure that there are sufficient funds available to support smaller applicants and smaller projects.

Response: As noted in the previous response, USDA will consider this comment each year when we make the initial allocation of funds between the various funding programs. USDA points out that the scoring criteria will result in higher scores for those applications from smaller agricultural producers, which will assist in directing funds to these producers. USDA does not believe we should specifically set aside funds for smaller projects.

Comment: One commenter stated that ''in the alternative, loan guarantees and grants under the proposed rule should be allowed to cover up to 80 percent of the cost of a qualified System.'' The availability of long-term, low interest Federal loans and project suitable grants would significantly increase the number of agricultural-based energy systems and encourage economic development and diversity within the agricultural community.

Response: With regard to the percentage of the loan or grant to be made available to the applicant, the statute sets the limits and USDA cannot increase it to either the requested 80 percent or 100 percent. Therefore, no change to the rule has been made in this regard.

Comment: Five commenters stated that USDA should set aside 10 percent of available 9006 funds, or approximately $2.3 million, for the grant program and allow applications to be made throughout the year until funds are exhausted. Any unused funds could be rolled over to the next year with a corresponding reduction in replenishment funding.

Response: As noted in previous responses, USDA will issue an announcement each year identifying the

amount of funds available and the initial allocation of those funds among grants, guaranteed loans, and direct loans. USDA will consider this and other comments when making those allocations. If funds initially allocated for one funding type (*e.g.,* grants) are not obligated within the fiscal year, USDA may make those funds available to one of the other funding types (*e.g.,* guaranteed loans) within the 9006 program. USDA does not plan to otherwise ''set aside'' any specific amount of funds for any of the funding programs.

Lastly, the commenters suggested that any unused funds be rolled over to the next year. While USDA would like to have this flexibility, Congress determines whether the 9006 program funds must be spent in a given year or can be carried forward.

Comment: One commenter suggested that more of the money be allocated to small farmers and not just large corporations.

Response: The scoring system awards extra points to small agricultural producers and to very small rural businesses, providing the applicants with the opportunity to score higher than larger agricultural producers. USDA believes this is the appropriate method for directing funds to smaller applicants rather than allocating a specific level of funds to small farmers.

Comment: One commenter suggested that grants for emerging applications should be raised up to 50 percent of the installed application of up to 5.0 megawatts (MW) for renewable energy distributed applications.

Response: USDA cannot accommodate the commenter's request because the statute limits the matching funds for grants to 25 percent and USDA does not have the authority to raise this limit.

Comment: One commenter asked why energy audits or assessments, feasibility studies, and business plans are included in this listing of eligible project costs and whether these activities need to be completed before the application is submitted and therefore becomes ineligible. The commenter stated that if these activities do not need to be completed, their applicability needs to be more clearly explained.

Response: The final rule requires energy audits or assessments and Technical Reports. Business-level feasibility studies will be required for renewable energy projects with total eligible project costs greater than $200,000. (In the proposed rule, business-level feasibility studies were required for renewable energy projects with total eligible project costs greater than $100,000.) These activities are included in the list of eligible project costs because they are clearly part of normal project development. Further, these activities must be completed prior to submitting the application because the technical evaluation and scoring of the application cannot be made without this information. Failure to supply this information at the time of the application makes the application incomplete, not necessarily ineligible. USDA will not evaluate or score applications that are not essentially complete. Therefore, applicants are advised not to submit applications without these items, as applicable.

Comment: Two commenters stated that, in FY 2003 and FY 2004, anaerobic digesters were awarded disproportionately funds compared to other renewable energy systems during the same funding periods. A total of $43 million in grant awards were made in FY 03 and FY 04. However, during the same time period, anaerobic digesters were awarded $16 million in grant funds out of the total $43 million over 2 years. A reason contributing to the higher portion of grant funds awarded to anaerobic digesters is due to the high capital costs inherent to the technology.

Anaerobic digesters systems are not solely renewable energy systems in and of themselves. It is only after the investment is made in generator sets, that an anaerobic digester serves the purpose of generating electricity. The main benefits provided for by an anaerobic digester are more effective onfarm manure management and odor control, especially for facilities with large numbers of animal units. Not until the investment is made in the electrical generation equipment does a digester become a renewable energy system. Therefore, awarding one-quarter of a total project cost for a system that serves multiple purposes besides renewable energy generation is not consistent with the intent of the statute.

Commenter recommended considering total project costs associated with the anaerobic digester and energy recovery systems when determining total project costs, but to allow as eligible only those costs directly associated with energy use or production, such as engines, boilers, generators, fuel preparation and delivery systems, electrical interconnections, etc.

Response: The commenter refers to the distribution of funds to the various technologies made under the 2003 and 2004 NOFAs and states that anaerobic digesters were awarded a disproportionate share of the funds. USDA points out that all projects for which funds were sought under these two NOFAs were accepted. Thus, to the extent any one technology received more funds than another reflects the types of applications received and not any bias on the part of USDA to fund one technology over another. In addition, the scoring in the final rule is intended to be technology ''neutral.''

Finally, USDA disagrees with the commenter's recommendation that only those costs associated with the energy use or production be eligible costs. It is USDA's intent that all costs associated with the development of any renewable energy technology project, from the ''ground up,'' and as specified in the rule are eligible costs.

Post-Application

Comment: One commenter noted that project funding is allowed for post application construction or project improvements, except residential. The commenter suggested that USDA add in parentheses after residential (single family or multi-family) or simply say housing landlords are not eligible for assistance.

Response: USDA does not agree that further clarification is needed within the regulation. USDA believes that the phrase ''residential'' plainly includes single family and multi-family residences. If additional clarification is needed, USDA will revise its regulations.

Comment: One commenter expressed concerns that grant funding could not be used for residential projects. The commenter stated that residential and business areas are inseparable on many farms and that forcing farmers to separate such activities would be an undue burden. The commenter recommended that the rule be changed to allow residential-related expenditures when they are clearly business-related expenses or when they cannot be distinguished from business expenses.

Three other commenters recommended that farm-based systems sharing a single meter for residential and business purposes should be allowed.

Response: USDA recognizes that there will be instances where it is impossible to distinguish between residential and business areas. The decision to exclude residential projects was a policy decision on the part of USDA, and we have decided not to make a change as requested by the commenter. USDA made this decision, in part, on the basis of the availability of other Federal programs for residential projects and the availability of numerous State programs for residential projects. USDA believes that it is an unnecessary duplication to

include residential projects under the 9006 program. In conclusion, if an applicant cannot separate residential from business, the project will not be eligible under the 9006 program. Therefore, a single meter measuring residential and business usage is not allowed.

Comment: Two commenters requested that the ''post-application'' period be better defined. One of the commenters stated that it is not entirely clear exactly when the ''post-application'' period begins. The commenter recommended that ''post-application'' be defined as after the date when the USDA officer receives the completed application.

The other commenter believes that there needs to be a clarification of when the project is considered post-application purchase and post-application construction. The commenter questioned whether the applicant cannot initiate any construction until the application is filed, or if the applicant is expected to wait to initiate construction until the application is filed and approved by the Agency (even if the project will move forward regardless if it receives funding). This commenter also suggested using the term ''post-award'' rather than post-application to further clarify and reinforce the concept that the project should not start until funding has been awarded and the necessary environmental review has been done.

Response: USDA agrees that the date the post-application period begins needs to be better defined and further agrees with the commenter that the post-application period begins when the Agency receives an ''essentially'' complete application. An ''essentially'' complete application is one that has all parts necessary for USDA to determine applicant and project eligibility, to score the application, and to conduct the technical evaluation. USDA has incorporated this concept in the definition of ''post-application.''

With the date of the post-application period beginning when the Agency has received the completed application, the rule allows an applicant to incur costs once an essentially complete application has been received by the Agency. The applicant does not have to wait until the application is approved to begin construction. However, if the applicant takes any action that would limit the range of environmental alternatives to be considered or that would have an adverse effect on the environment, the project will be ineligible. Also, if the applicant begins construction prior to submitting a completed application, those costs are not eligible.

Finally, USDA does not see the need to substitute the term ''post-award'' for ''post-application.'' The main difference is that environmental clearance would have been completed by the Agency post-award. Therefore, the applicant would not have to guess, as they do post-application and pre-award, whether their construction would potentially limit the range of environmental alternatives to be considered or have an adverse impact on the environment and thereby make the project ineligible. USDA believes that education of those implementing the program and clarification of this point here is sufficient. Therefore, USDA has not revised the terminology as suggested.

New Construction

Comment: One commenter recommended that the proposed rule, which currently excludes new building construction, unless it replaces a virtually identical facility, be changed such that the incremental cost of energy efficiency and renewable energy relative to standard new building construction could be considered an eligible expense.

Response: USDA believes that there is no objective way to implement the commenter's suggestion and is concerned that to try to implement the commenter's suggestion could lead to abuse. Therefore, USDA has not revised the regulation per the commenter's suggestion.

In-Kind Contributions

Comment: Several commenters were concerned about limiting the in-kind contribution to 10 percent, with most suggesting that it be raised to 25 percent. Commenters generally felt that limiting in-kind contributions would unnecessarily hamper collaboration efforts with such entities as universities, private foundations, and research partners.

Response: USDA believes that 10 percent is a large enough ''window'' to allow universities and other parties to provide the type of assistance they are capable of providing. Nothing in the rule precludes such entities from assisting applicants, and the applicant still benefits at the 10 percent limit. Therefore, USDA has retained the 10 percent limit on in-kind contributions in the final rule.

Comment: One commenter felt that provisions within these sections did not make it easy for the farmer or small business to serve as contractor. The commenter felt that USDA should allow in-kind contributions by farmers or small businesses and should allow farmers and small businesses to serve as contractors ''without so much red tape to save cost and to help leverage Federal funds.''

Response: The scope and complexity of many of the projects that would be funded under the 9006 program would require the use of third-party entities that possess the requisite expertise to construct renewable energy projects and make energy efficiency improvements. Further, if a project is not properly constructed and installed, the applicant can hold the contractor responsible for completing the project satisfactorily. This level of accountability is lost if the applicant is also the contractor. Therefore, except as discussed below, USDA has decided that it is in the best interest of the 9006 program as a whole to prohibit applicants from also being the contractor.

Under the final rule, applicants will be allowed to perform part of the work themselves provided they meet the expertise requirements contained in § 1780.67. As noted above, however, the applicant's in-kind service will not be counted towards the matching fund requirement and will reduce the total eligible costs associated with the project (thereby reducing the maximum amount of funds that could be requested).

Comment: One commenter stated that, although requirements for in-kind contributions were reasonable, strictures against any other Federal co-funding could restrict applications. The commenter observed that an applicant could receive funding from Federal sources other than USDA. Rather than impose a blanket ban on other Federal funding, the commenter recommended that USDA develop a specific list of programmatic funding exclusions.

Four other commenters suggested that co-funding from State rebate programs be fully allowed. Another commenter stated that USDA should allow full co-funding from State public benefit rebate programs.

Response: USDA made an administrative determination that the 25 percent limit for grant funding of a project is applicable to funds received under the 9006 program and all other Federal grants. No changes have been made in the final program. State funding, regardless of source, is an acceptable source of matching funds.

Funding Levels

Comment: One commenter requested clarification of the $750,000 grant limitation per entity. The commenter asked if the limit applies to a single fiscal year. The commenter also asked if the same individual or entity can apply

for that amount the following year as well.

Response: USDA has clarified in the regulation that the $750,000 grant limitation applies to the Federal fiscal year. Applicants may apply for grants (or loans) in successive years, with no limitation. However, if a grantee (or borrower) has not made satisfactory progress towards the completion of projects previously funded under the 9006 program, as determined by USDA, USDA will deny further grant or loan assistance.

Comment: One commenter requested clarification on the relationship of the B&I program and the proposed rule. The commenter asked whether the B&I program guaranteed 50 percent of the loan or 80 percent to 100 percent.

Response: Under the 9006 program, an applicant may request guaranteed loans under both the 9006 program and the B&I program for the same project. In this instance, two loans would be established—one under the 9006 program and the other under the B&I program. The percent guarantee for each loan would be determined based on the respective program. For the 9006 program loan, the percent of guarantee would range from 70 to 85 percent depending on the amount of funds being requested for the 9006 program loan (see § 4280.123(c)). For the B&I program loan, the percent guarantee would range from 60 to 80 percent, unless the Administrator grants an exception in which case the loan guarantee could be as high as 90 percent (see § 4279.119(b)).

Comment: Two commenters suggested that the grants be limited to certain size (kilowatt) restrictions. One of the commenter suggested that grants be limited to systems of 10 kW or less, with the 25 percent grants capped at $15,000. The other commenter suggested that grants would be limited to systems of 200 kW or less, with the 25 percent grants capped at $50,000.

Response: USDA believes there should be an emphasis on small projects. However, USDA believes it is important for the program to be available to as many eligible projects as possible. Consequently, USDA disagrees with the approach used in this comment to place emphasis on small projects. Instead of adopting the size limitations suggested by the commenter, USDA has decided to emphasize small projects by awarding them priority points. Although the approach is different, we believe this captures the concern of the commenter.

Comment: Several commenters commented on the minimum funding level proposed for grant applications.

Several of the commenters supported the minimum funding amount of $2,500. In general, these commenters stated that this level will encourage small agricultural producers or rural small businesses to apply for funding, that projects requiring additional assistance under $2,500 are not likely to benefit in any sustainable way from the additional assistance, and that the $2,500 amount also potentially allows additional leverage for a larger number of projects to be funded.

Two commenters, on the other hand, requested that USDA lower the minimum funding level. One of these commenters stated that the majority of their company's audit reports recommend installing a mix of equipment that costs between $6,000 and $10,000. Since there is a $10,000 minimum equipment cost that farmers must reach in order to be eligible for Section 9006 grants, many small farms that can achieve significant energy savings are not eligible to apply for any assistance. These small farmers comprise the group targeted by Section 9006 as needing the most assistance, yet with the proposed rule they are left out. One of the commenters recommends that, in order to best serve the small, possibly struggling farms, USDA consider lowering the minimum equipment cost.

The other of the two commenters requested USDA to clarify these criteria to allow applications that combine small energy efficiency projects. Although energy-efficiency projects can take the form of large capital projects, they are often improvements and upgrades to existing equipment and facilities. As such, energy-efficiency projects do not always involve large capital expenditures. Given that small farms and other rural small businesses are a major target audience, it is likely that total project costs for many individual energy-efficiency projects will fall under $10,000 (making them ineligible for grants assuming a minimum grant of $2,500 with a 75 percent cost-share) or even $5,000 (making them ineligible for guaranteed loans, assuming a minimum loan of $2,500 with a 50 percent cost-share).

Response: USDA proposed the $2,500 minimum funding level because the Agency recognized the application process, as proposed, was such that it would be unlikely that projects costing less than $10,000 would apply for funds under this program. However, with the simplified application process that allows applicants to submit a less detailed application, we believe that the minimum funding level can be reduced to help attract additional, worthwhile projects. Based on the commenters' suggestions, we have set the minimum funding level at $1,500 (equivalent to $6,000 in total eligible project costs at the 25 percent funding level) for energy efficiency improvement projects.

Comment: Two commenters expressed concern over the minimum funding amount of $2,500 for guaranteed loans. Both commenters stated that it is not practical or economical to complete the paperwork process for that small of a loan. One of the commenters recommended that the minimum funding level be raised to $100,000. The other commenter recommended at least $50,000. According to this commenter, it is generally not worth anyone's effort for the documentation and costs associated with a guaranteed loan to look at anything less than $100,000.

Response: In the final rule, USDA has raised the minimum amount for a guaranteed loan from $2,500 to $5,000. If the new minimum amount is still not practical or economical to complete the paperwork process for that size loan, then a lender is not required to participate in that loan.

Comment: One commenter requested additional clarification to determine the collateral positions/requirements if the maximum loan request was applied for under this rule and another loan was requested under the regular B&I program.

Response: Where joint financing is being secured by the same assets, a parity lien position will be taken.

Other Funding Mechanisms

Comment: One commenter suggested that commercialized systems should also be eligible for the USDA loan program either under Section 9006 or Farmers Loans or via the Rural Utility Service (RUS).

Response: Commercialized renewable systems are eligible under the 9006 program. Commercial systems producing electricity are eligible for funding under the RUS programs. However, the Farmers Home Administration is no longer in existence. To determine whether or not RUS programs are of interest to an entity, that entity should contact RUS directly.

G. Evaluation/Scoring of Applications

General

Comment: Three commenters stated that, in FY 04, USDA awarded several grants to applicants who also received grants in FY 03. The commenters recommended that the rules discourage multiple applications by the same

entities by awarding 5 points to applicants that have not been previous funding recipients and by limiting funding for all project phases at a single site to 2 years. According to the commenters, these two conditions would help to spread the Section 9006 funding resources among the broadest possible number of applicants and in broader geographic areas.

Response: USDA has revised the regulation to award 10 points to applicants who have not received funding in the 2 previous Federal fiscal years. USDA, however, disagrees that funding at a single site should be limited to 2 years or to any number of years. USDA believes that each application should be evaluated on its own merit without regard to previous applications made for projects at the same site. By evaluating each application on its own merit, USDA ensures that funds will only go to projects with significant merit.

Comment: One commenter felt that the evaluation criteria were not detailed enough and did not account for the noneconomic benefits of any particular project. The commenter recommended incorporating the following weighted considerations into evaluation criteria:

- Business Impact, 25 percent.
- Technical Merit, 35 percent.
- Environmental Benefits, 10 percent.
- Replicability, 10 percent.
- Small Applicant, 10 percent.
- Rural Economic Development, 10 percent.

The commenter also provided extensive justification for his recommendations.

Response: USDA has modified the criteria for scoring in the final rule, taking into account this comment and others. In terms of this commenter's suggestions, we have added or modified the criteria for technical merit, environmental benefits, commercial availability (replicability), and small applicants. We have not added a criterion for business impact, although within the technical merit criterion we have included a subcategory on financial and market assessment. Lastly, we have not included a rural economic criterion. Eligible projects must be located in rural areas and thus, we did not see this suggested criterion as adding value to the scoring process.

With regard to the weighting suggestions, USDA has re-scored the criteria as we deemed appropriate, to give higher weighting to applications from smaller agricultural producers, very small businesses, and small projects. We think this is appropriate to further the goals of the authorizing statute.

Comment: One commenter expressed two concerns with the evaluation of grant applications: Inconsistencies in how the evaluation criteria are applied; and a disconnect between the kinds of projects that score well based on these criteria and projects that have a good chance for success or even being built. The commenter provided suggestions for procedures and language to address the scoring inconsistencies and ways that the evaluation criteria can be improved in order to better reward stronger projects, including ensuring that State Offices submit the entire application along with the assigned scores, providing more training to State Offices responsible for administering the program, and implementing a system to compare scores between renewable energy and energy efficiency projects. With regard to the last suggestion, the commenter stated that because the evaluation criteria for the two categories of grant applications are different, it is important that USDA have the ability to compare the projects to each other when distributing the last bit of funding each year. The commenter believes that a low-scoring energy efficiency project should not be funded over a relatively higher scoring renewable energy project if funds for renewable energy projects are exhausted more quickly (and vice versa). The commenter suggested one possible method for comparing scores: calculate a percentage of points earned by an applicant by dividing points awarded by the total points possible. This percentage could be used to compare renewable energy and energy efficiency projects when allocating the last of the funds available each year.

Response: In order to ensure consistent results, USDA is standardizing its evaluation materials and providing for a review of all initial scoring. With regard to the assertion that there is a ''disconnect'' between projects that score well and those that have a good chance for success or even being built, USDA has implemented in the final rule a scoring criterion on technical merit. This should alleviate the asserted disconnect for projects ''that have a good chance for success.'' However, it is nearly impossible to establish within a regulation whether or not a funded project will actually be built by an applicant. USDA believes that only applicants who actually intend to build their projects will expend the effort to submit an application.

Finally, with regard to scoring between renewable energy projects and energy efficiency improvement projects, in the final rule, USDA has revised the points to equalize the maximum points that can be scored by the two project types. This change puts all projects on equal footing and allows a direct comparison of scores. USDA notes that an applicant is allowed to submit applications for a combined renewable energy project and energy efficiency improvement, and each application will be evaluated separately based on its own merit.

Comment: One commenter suggested that innovative projects leveraging different sources of funding (loans, guarantees, and grants) should receive the highest priority eligible for grants.

Response: USDA disagrees that different types of funding should serve as a criterion for scoring applications. USDA does not believe that combining different sources of funding is important in determining which projects receive funding, and therefore has not adopted the commenter's suggestion.

Comment: One commenter recommended that USDA recognize and utilize existing support infrastructure to assist in grant and loan evaluations. Existing programs within USDA could be tapped to promote prequalification screening, build grants-response assistance, and supply project development workshops with necessary materials.

Response: USDA plans to develop training and assistance material to help applicants utilize the 9006 program. However, we have not included pre-qualification screening to the program because applicants can and are encouraged to seek advice from their State Office prior to beginning the application process to assess their project.

Comment: One commenter noted that, as proposed, the applicant is required to create financial projections for a proposed project. In doing this, there are no required formats and no checks on whether a given set of projections is reasonable. As a result, two similar projects could have very different financial projections and paybacks. For example, one wind project might have a realistic assumption for maintenance and insurance costs while another might have underestimated these. The State Rural Development staffs do not have the knowledge to catch these inconsistencies. Similarly, the technical reviewers at NREL might only catch these discrepancies if they were way out of line, for example, by a factor of two or more for significant expenses.

To address this evaluation problem, the commenter recommends that USDA, with the assistance of NREL, develop standard industry metrics and financial templates for the most common project types. Based on the first 2 years of the

program, these project types should be small wind, utility-scale wind, and anaerobic digesters. By having these metrics and templates, a project with unrealistic assumptions would be easily 'red flagged' by reviewing staffs and, potentially, receiving either a revised score or a qualified evaluation by reviewing staffs.

Response: The Agency agrees with the concept put forward by the commenter. We do not believe, however, it is necessary to have these incorporated into the rule implementing the 9006 program. We believe that such industry metrics and financial template would be better developed by experts in the industry with input from the U.S. Department of Energy (DOE), the U.S. Environmental Protection Agency (EPA), and USDA. Such material could then become part of the implementation tools being developed to assist in the implementation of the 9006 program.

Comment: One commenter stated that, currently, State Rural Development staffs score an application based solely on information provided by the applicant. It is our understanding that Rural Development staffs then document how these scores were derived and forward this annotated score sheet to DOE/EPA technical reviewers, along with the technical feasibility study. They do not, however, forward the complete application package including financial pro formas. As a result, technical reviewers must rely on State staffs to evaluate the projects on financial grounds. The commenter recommended that USDA State Offices forward the complete application packet to technical reviewers so that financial information can be evaluated in more detail.

This same commenter stated that Rural Development staffs assigned to this program are, for the most part, not trained to evaluate renewable energy and energy efficiency projects, either on technical or financial grounds. Yet they are being asked to provide preliminary scoring for these projects before forwarding applications on to NREL and then USDA headquarters. The commenter believes that the role of the State Offices in reviewing applications should be solely to verify that applications are complete, applicants and projects are eligible for funding, and additional sources of funding, interconnection agreements, and other qualifying conditions have been documented. At that point, complete applications should be forwarded to NREL or other assisting agencies for technical and financial review, as well as project scoring. In addition, NREL should be provided discretion to adjust scoring up or down from what an applicant claims based on their expert judgment of realistic energy and financial performance of the proposed project.

Response: Under the 9006 program, it is the Agency's intent that State Office staffs review the application to determine applicant eligibility, project eligibility, application completeness, environmental assessment, and other qualifying conditions, and to assign a preliminary score to the project. The Agency believes that State Office staffs are competent to provide preliminary scoring of the applications.

The State Office will then forward the entire application, including financial information, to the technical reviewers (*e.g.*, NREL, DOE). The technical reviewers will evaluate financial and technical information separately and in tandem. The technical reviewers will be responsible for scoring the project on their own. Under this process, the technical reviewers will not adjust the State Office's preliminary scoring, but will provide USDA with a recommendation based on a comprehensive evaluation.

Once the technical reviewers have completed their review of the application, they will return the entire application with their recommended score for the application to the State Office. The State Office will then forward the entire application to the National Office. The National Office will make the final determination of the score to be assigned to each application. The National Office will use a committee composed of experienced business and financial people to make adjustments to the score. USDA is the Agency responsible for the 9006 program and its allocation of funds to projects.

Comment: One commenter stated that the regulation language was unclear as to how the technical review would be conducted. The commenter did not feel that traditional lenders would be capable of performing a technical review and recommended that USDA retain the technical review function.

Response: While it is unclear to the Agency as to why the commenter thought this would be conducted by a lender, as stated in the previous response, USDA intends to retain the technical review function for all proposed projects.

Comment: One commenter asked USDA to clarify whether the criteria to be ''* * * individually addressed in narrative form on a separate sheet of paper'' are to be addressed by the Agency or the applicant.

Response: The sentence referenced by the commenter should have referred to the applicant. In the final rule, this has been replaced with the requirement for the applicant to self-score the project.

Comment: One commenter suggested that scoring be geared toward capturing measures that are easily replicated.

Response: We agree with the commenter that scoring should be geared toward measures that are easily replicated because this provides for objective scoring. We have changed some of the scoring criteria significantly since the proposal. We believe that the scoring criteria included in the final rule are necessary from both a statutory perspective and an evaluative perspective. We have tried to make each measure as replicable as possible, but recognize that for some criteria (*e.g.,* technical merit), this is essentially not practicable.

Ineligible or Incomplete Applications

Comment: One commenter stated that as written, it leads to the conclusion that a decision that an application is incomplete can be appealed when in fact it may be a decision subject to review rather than appeal. The commenter, therefore, suggested that between the words ''any'' and ''appeal'' add the phrase ''applicable review or.''

Response: A determination by USDA that an application is incomplete is subject to 7 CFR part 11, and we believe this is sufficiently clear so that no change is necessary.

Energy Efficiency Techniques and Practices

Comment: One commenter suggested that additional points be given to applications for renewable energy systems that specify energy-efficient procedures and behaviors in their management plans. The commenter believes that energy-efficient techniques and practices developed with today's farming equipment can improve a farm's receptiveness to new technologies and, therefore, improve the eventual payback of renewable energy projects. The commenter further maintains that behavioral and procedural project elements require no capital investment, and can be incorporated into project management plans for renewable energy systems.

Response: While USDA agrees that management plans that incorporate specific energy-efficient procedures and behaviors are to be applauded, such measures cannot be measured at the time an application is submitted. It is possible that a management plan incorporating specific energy-efficient procedures and behavior is never fully

implemented, while a management plan that does not address these items is implemented in a fashion that incorporates these measures. USDA does not believe, in the end, that these measures can be objectively evaluated at the time of application scoring and, therefore, has decided not to incorporate this suggestion in the final rule.

Energy Replacement and Generation

Comment: One commenter pointed out that producers who seek to provide energy directly to their operators can earn at most 20 points for the quantity of energy produced. According to the commenter, the program was written to benefit both larger and smaller systems. The commenter urged the Department to increase the opportunity for smaller systems to compete by reducing the points awarded to systems intended primarily for sale to no more than 10.

Another commenter recommended that USDA adjust the scoring system to reward higher value on-site generation, which offsets retail energy costs, rather than commercial generation of electricity sold at wholesale rates.

Response: USDA agrees with the commenters and has reduced the points associated with the generation of energy.

Comment: One commenter requested that case-based optimization and integration be used and be better developed in this rule. According to the commenter, the proposed point weightings arbitrarily establish an ''either-or'' condition not stemming from the 2002 Act. The commenter states that, for most onsite energy projects, strict dedication to electric generation may be only marginally economical as stand-alone applications, while economies and efficiencies can be improved through better combined heat and power (CHP) integration to serve both facility thermal and electric loads. This ''case-optimized'' level of project improvement couples design-based energy efficiency with installation of a renewable energy generation package but requires a different weighting of criteria.

Response: USDA generally agrees with the commenter and the revisions we have made to the final rule should address most of the commenter's concern. In the final rule, applicants can receive points based on one of three scenarios—energy replacement, energy saving, or energy generation. These scenarios are not focused on electric generation. CHP projects that are installed primarily for self-use by the agricultural producer or small business should score well under the energy replacement scenario compared to projects that are strictly electric generation projects.

Comment: One commenter asked if a renewable energy project can be shown to offer significant increases in energy efficiency through optimal use of thermal energy in addition to electrical energy, will preference for CHP integration be given over ''electric-only'' project design.

Response: While USDA acknowledges that CHP integration projects are inherently more efficient than electric-only project designs (producing more energy per unit input), we have not given direct preference to CHP integration projects in the final rule. Instead, because they are inherently more efficient, such projects will score higher than electric-only projects during the scoring of applications. USDA believes this is the best way of encouraging such designs within the overall framework of the 9006 program.

Comment: One commenter suggested changing the last two words in proposed § 4280.112(d)(1)(i)(A) from ''utility company'' to ''current energy supplier'' because some projects may be replacing propane and the propane company will not necessarily be a ''utility company.''

Response: USDA has deleted the last sentence in the referenced paragraph, because we deemed it to be only guidance and, thus, not necessary to the final rule. USDA notes that we agree with the commenter's point that some projects may be replacing propane, but with the elimination of the sentence, we do not need to further address this comment.

Comment: Four commenters stated that USDA should clarify whether ''energy replacement'' refers to total use for the farm/business or replacement of just one source of energy consumption (*e.g.*, hot water or irrigation pumping). This is important, as a potential project could significantly replace the energy used in one farm or business activity while having less of an impact on the enterprise's overall energy use. As long as the renewable energy project is related to a measurable use and specified application of energy (*e.g.*, propane consumption for hot water or electricity consumed for irrigation), then the applicant should not have to measure energy replacement against overall energy use but just against that specified source of energy consumption.

Another commenter stated that clarification is needed regarding the base of energy use against which the energy replacement will be measured. That is, if a farmer is planning on generating electricity, is the base amount the energy bill for the entire farm enterprise, for only the farmstead, or for only one grain elevator? This commenter felt that either of these could be a legitimate base.

Response: USDA agrees with the commenters that energy replacement should be measured against the energy consumption of the specific source being replaced and not against the overall energy consumption of the business. USDA, therefore, has reworded this criterion to reflect the commenters' suggestion. In the final rule, we have indicated that the base is the: ''estimated quantity of energy consumed over the same 12-month period during the previous year by the applicable energy application.''

Comment: One commenter suggested that a definition of what constitutes the ''baseline'' for baseline energy usage as discussed in proposed § 4280.111(d)(10)(iii)(A), may be helpful to applicants and reviewers in evaluating a project. The commenter asked if the ''baseline'' is considered as the current energy usage and if the baseline can be considered for a production improvement project. In many cases, according to the commenter, energy efficiency projects are implemented in conjunction with production increases. This may result in a net increase of energy usage but allows for a reduced amount of energy required per unit of production. The commenter suggested that ''baseline'' be defined as: Total energy consumption during production by a process or facility.

Response: While we have not added a specific definition to the rule for ''baseline'' energy usage, we have clarified in the evaluation criterion, as noted in the previous response for energy replacement, that the baseline is the ''estimated quantity of energy consumed over the same 12-month period during the previous year by the applicable energy application.'' We believe this provides sufficient guidance for determining baseline energy usage for energy efficiency improvement projects.

As noted in a previous response, while we have not revised the definition of energy efficiency improvement, we have retained the phrase ''that reduces energy consumption.'' This allows an applicant to express the reduction in energy consumption in a number of ways, including, but not necessarily limited to, energy saved per unit of production.

Environmental Benefits Criterion

Comment: Several commenters suggested that this criterion specifically identify environmental standards (in addition to health and sanitation standards) and that additional points be

given to projects that exceed applicable environmental, health, and sanitation standards. Some commenters objected to the awarding of points to applicants whose projects end up just meeting the applicable standards.

Response: USDA has determined that this criterion should focus on environmental goals, as suggested by the commenters, but should not address health and sanitary standards. Therefore, USDA has revised this criterion to address only environmental goals, which awards points to those projects that contribute to the environmental goals and objectives of other Federal, State, or local programs.

Comment: One commenter stated that the criteria listed in the proposed rule, ''to upgrade an existing facility or construct a new facility required to meet sanitary standards,'' limits greatly the amount of environmental benefit that could be reported as required by the statute. Some suggestions would be to report the amount of nitrogen oxides, sulfur oxides, hydrogen sulfide, and other pollutants prevented, as well as the reduction of fossil fuels consumed due to the installation of the system. Other environmental criteria may also examine the potential impact on local water quality and wildlife.

Response: As noted in the previous response, USDA has revised this criterion to only address ''environmental goals.'' The environmental goals are intentionally worded broadly to allow applicants the flexibility of determining which goals and objectives can be considered, including emission reductions. In order to obtain the points associated with ''environmental goals,'' the applicant must provide documentation from an appropriate authority supporting the applicant's claim.

Comment: Three commenters pointed out that Congress specified that USDA should take into account ''the expected environmental benefits of the renewable energy system'' in considering the amount of a grant or a loan. The Department proposes to assign points for environmental benefits only if the project is helping an operator to comply with an existing law or regulation (''to upgrade an existing facility or construct a new facility to meet applicable health or sanitary standards''). The commenters suggested that the Department should reconsider this criterion in the proposed rules. Since everyone is subject to the same laws, we believe the Section 9006 program should not subsidize compliance with the laws. The commenters believe that the government should not be in the business of paying entities to comply with the law. To resolve these concerns, the Department should make clear that the term ''environmental benefits'' in the statute means the expected or likely quantifiable pollution reduction or other environmental gains by a particular project.

Response: In revising this criterion, USDA believes that projects that ''contribute'' to environmental goals and objectives should receive points. USDA does not believe this contribution needs to be limited to exceeding such goals and objectives.

Comment: One commenter recommended changing the end of the last sentence from ''is needed and required to meet the standard'' to read ''will result in the standard being met.'' Many environmental regulatory agencies will not proscribe a single means to attain a standard so the suggested wording allows for the ''more than one way to skin a cat'' approach to be allowed.

Response: Because of the change in this criterion, as noted in previous responses, this suggestion is no longer valid.

Commercial Availability Criterion

Comment: One commenter asked why the project would gain an additional 10 points when a project is not even eligible for the 9006 program if it is not replicable and commercially available. The commenter also asked what the appropriate way would be to address the use of foreign technology. For example, the commenter asked if a renewable energy system in use in Germany, but never has been utilized in the United States, is considered commercially available and replicable for the 9006 program. Lastly, the commenter asked if there any regulations restricting the use of foreign technology, engineering, and imported products.

Response: The project eligibility criteria include the requirement that a project be either pre-commercially available or commercially available. This criterion provides points for those projects that are commercially available, whereas a pre-commercial project would not receive any points under this criterion. USDA has decided to keep this criterion in the final program.

Commercial availability and replicability of technology in a foreign country does not translate to commercial availability and replicability in the United States. To meet these requirements in the United States it will be necessary for the foreign firm to have a business presence in the United States to support the applicant in the design, purchase, operation, and maintenance of the technology provided, and there will need to be sufficient operating experience by U.S. operators. If there are no operating units in the United States, the technology will normally be considered pre-commercial without adequate and serviceable performance and service guarantees from the foreign supplier. Otherwise, there are no restrictions in this regulation on the use of foreign technology, engineering, or imported products.

Small Agricultural Producer

Comment: Several commenters stated that the criterion for small agricultural producers needed to be revised to provide more points and to reduce the gross market value associated with this criterion.

Response: USDA agrees with the commenters that more points need to be given to small agricultural producers and that the threshold for obtaining the points needs to be adjusted. In the proposed rule, agricultural producers with less than $1 million in gross market value would have received 10 points. In the final rule, we have reduced the gross market value to $600,000 and the awarded points to 5. In addition, we have added one additional condition under which additional points can be awarded. Specifically, if the gross market value is less than $200,000, the applicant will be awarded 10 points. In the final rule, we also award 10 points to rural small businesses that meet the definition of ''very small business'' (*i.e.*, a business with fewer than 15 employees and less than $1 million in annual receipts).

Cost Effectiveness Criterion

Comment: One commenter recommended considering simple payback and simple payback periods when granting loans. The payback considers the initial investment costs and the resulting annual cashflow. The payback time (period) is the length of time needed before an investment makes enough to recoup the initial investment. But the payback method does not account for savings after the initial investment is paid back from the profits (cashflow) generated by the investment (project). This method is a ''first-cut'' analysis to evaluate the viability of investment.

Response: The Agency agrees with the commenter and has retained the simply pay-back criterion under return on investment in the final rule. In addition, applicants are required to provide in their Technical Report an analysis of the proposed project's financial performance, including the calculation

of simple payback. This financial performance analysis includes, but is not limited to, investment and production incentives, loans, grants, expected energy offsets, and ''other information necessary to assess the project's cost effectiveness.'' Thus, the applicant has the opportunity in the financial performance analysis to address savings after the initial investment is paid back.

Comment: One commenter recommended altering the evaluation points system for cost effectiveness to give greatest priority to energy-efficiency projects with payback of 2 to 5 years. The commenter states that projects with payback under 2 years are financially strong inherently, and, therefore, may not require subsidy. The commenter points out that many energy-efficiency projects display 2 to 5 year paybacks, yet sustain savings well beyond year 5, with a large potential for energy savings.

Response: USDA agrees that the length of payback is important. In fact, USDA is encouraged by the 9006 statute to focus on payback. USDA also agrees that projects with different paybacks should be treated differently. However, USDA differs on how those with different paybacks should be treated. In the final rule, USDA gives higher priority points to projects with the paybacks of less than 4 years, a lesser priority to projects with paybacks of between 4 and 7 years, and even less priority to projects with an 8 to 11 year payback. USDA believes that projects with very short paybacks will not likely need to participate in this program and consequently the concern raised by the commenter will be reduced, if not eliminated.

Matching Funds Criterion

Comment: One of the commenters suggested that USDA should correct the apparent discrepancy in requiring applicants to exhibit financial need while awarding higher points if the applicant is able to provide greater than 85 percent of the total project cost.

Two other commenters also believe that the rule seems to discriminate against applicants with financial need because applicants receive more points for requesting a smaller share of total project costs.

Response: The availability of matching funds is a key indicator of an applicant's readiness to proceed with the proposed project. However, USDA agrees with the commenters that the approach used in the proposed rule seemed inconsistent and discriminatory as described by the commenters. Therefore, we have made two significant changes to this criterion in the final rule. (**Note:** In the final rule, this criterion has been renamed ''Readiness.'')

First, in the proposed rule, this criterion awarded points based on the matching funds provided by the agricultural producer or the small business. In the final rule, this criterion awards points based on matching funds to be provided by sources other than the agricultural producer or small business.

Second, in the proposed rule, this criterion awarded points based on the amount of matching funds being provided by the applicant. In the final rule, points will be awarded on the basis of the percentage of the matching funds for which an applicant has received commitments from the sources providing those funds prior to receipt of the complete application by the Agency. For example, an applicant who has received commitments for 100 percent of the matching funds is awarded more points than an applicant who has received commitments for 75 percent of the matching funds.

Note that the revised criterion does not address the percent of matching funds as in the proposed rule. Thus, for example, an applicant providing 50 percent of the matching funds and an applicant providing 85 percent of the matching funds both receive the same number of points if they both demonstrate they have 100 percent commitments of the sources providing the matching funds.

Management Criterion

Comment: Several commenters expressed concern with this criterion and recommended that USDA eliminate it. One of the commenters pointed out that it is important for USDA to focus funding on projects with a high likelihood of success, but awarding points to professionally managed projects is misguided and unnecessary to further this objective. Providing additional points to projects utilizing professional managers favor larger projects for which such management is a necessity. This goes against a program goal to support modestly sized projects and discourages the active participation of individual farmers and small businesses in managing their systems. Farmers who are active in the management of their own systems see the benefits first-hand and serve as a vital conduit for communicating the benefits of such systems to other farmers, thus helping to increase their adoption. The commenter urges USDA to remove the management criterion for the evaluation criteria, and suggests that the likelihood of success of an application can be adequately determined from other criteria.

Three of the commenters stated that the Department proposes to award 10 points to renewable energy projects managed by third-party operators. The commenters recommended that the Department eliminate this criterion. First, this proposal penalizes applications for smaller modular systems (for example, solar hot water and photovoltaic systems, small wind turbines) that may require occasional third-party maintenance but which certainly do not require ongoing outside management. Second, this evaluation criterion is contrary to the Section 45 Federal Production Tax Credit rules which require a renewable energy project owner to be ''actively involved'' in day-to-day management of the project (or have sufficient passive income) in order to be eligible to utilize the credits. Third, only the largest projects are likely to involve outside contractors or managers. The commenters feel this criterion is a ''one size fits all'' condition that discriminates against good projects that do not require outside management.

Another of the commenters stated that he would not give 10 points here. The commenter's experience over 2 years of applications shows that almost all applicants are given these points, if for no other reason than by merely stating they will have a third party do the monitoring. This criterion does not distinguish one application from another, and the quality of the management team is not something one could easily evaluate in a review of these applications anyway.

Two other commenters expressed concern with awarding 10 points if a renewable energy system will be monitored and managed by a qualified third-party operator. One commenter stated that they had a wind farm application last year that was not funded. The applicant has owned, operated, and maintained wind turbines for about 10 years, and they are qualified to monitor and manage their own wind turbines. However, they lost 10 points because they did not hire a third party. The other commenter stated that this stipulation will penalize applications for smaller projects that may require occasional third-party maintenance, but do not need ongoing outside project management. Only the largest projects are likely to have third-party management, and third-party management is no guarantee for a more effective, efficient run project compared to a farm operator or small business owner. This criterion is also contrary to the Section 45 Federal Production Tax

Credit rules which require a renewable energy project owner to be ''actively involved'' in the day-to-day management of the project.

Response: USDA agrees with the commenters and has removed this criterion.

Comment: One commenter stated that management is another evaluation criterion that was subject to the interpretation of the scorer as to what constitutes a ''qualified third-party operator.'' For example: The best option for providing construction, operations, and maintenance services for large wind turbines is often the company that manufactures the wind turbine. In FY 2004, there was at least one case where an application received zero points for using the turbine manufacturer as a third-party operator. In at least two other States, very similar applications using this same management plan (and the same turbine manufacturer) received the full 10 points. The commenter recommends that for wind energy proposals, the turbine manufacturer should be considered a ''qualified third-party operator.'' More direction on which entities can be considered a ''qualified third-party operator'' is necessary. This section also does not specify how long of a contract the applicant needs to have with the third-party operator, which could be a source of some confusion. The commenter suggested requiring 5 years in order to qualify for full points.

The commenter also expressed concern that this category seems to penalize smaller projects where third-party management might not have any particular benefit or even be available. The commenter recommends that this category at least be clarified so that points are awarded for projects with well-qualified third-party managers appropriate for their technology. This category should award points for any project that presents a good management plan as determined by the technical review committee. If a fair system for awarding points across technologies is not practical, USDA should consider eliminating it altogether. The goal of awarding projects with a high probability for success might be better served by a category based on technical merit.

Response: As noted in the previous response, USDA has eliminated this criterion from the final rule. Therefore, there is no need to address the specific comments raised by this commenter.

Comment: One commenter suggested that the ''project management'' criterion should be applicable to energy efficiency activities that support renewable energy projects.

Response: As noted above, USDA has elected to drop this criterion for renewable energy projects and, therefore, does not deem it reasonable to include it now for energy efficiency improvement projects. Therefore, USDA has not included project management as a criterion in the final program for energy efficiency improvement projects.

Interest Rate Criterion

Comment: Three commenters recommended deleting this evaluation criterion. According to the commenters, assigning points based on lower loan rates disadvantages applicants who are not able to get these terms from their lenders. While an inability to get these favorable interest rates may reflect the perceived underlying risk of a borrower or project, the commenters point out that it may also reflect the unfamiliarity with renewable energy and energy efficiency systems by rural lenders. Because the borrower is already paying these higher rates, commenters do not believe that the borrower should also be handicapped by not qualifying for these points in USDA's evaluation criteria.

Response: USDA has retained this criterion because it provides some incentive to lenders to keep their rates low. In addition, we have revised the threshold for receiving points for a low interest rate from 1.75 to 1.5 points above the prime rate (to be consistent with the B&I program).

Comment: One commenter noted that, in evaluating loans, the proposal recommended giving the same number of points (5) for rates below the prime rate plus 1.75 percent and for rates below the prime rate plus 1 percent.

Response: The commenter is not correct. A total of 10 points was possible under the proposed rule—5 points if the first condition is met plus an additional 5 points if both conditions are met. While this is still the case, we have revised the language in the final rule to make this clearer.

New Criteria

Comment: Several commenters suggested USDA adopt additional scoring criteria.

One commenter suggested that USDA award bonus points for projects which use wind turbine designs evaluated by an independent third-party program.

One commenter suggested that USDA award bonus points for programs which integrate dispatchable energy generating schemes with wind energy generation to increase total reliability and value and for programs which create diffuse, large-scale, regional, on-farm, integrated wind-farms. The bonus points should be sufficient to ensure that farmers choose to collaborate in a ''cooperative'' program.

Three commenters suggested that USDA consider adding scoring provisions that consider geographic diversity to assist the Agency in cases of otherwise equal application scores.

One commenter recommended that projects which benefit low-income families should be awarded additional points.

Response: As discussed below, USDA does not consider it necessary to include these criteria in the scoring of an application.

USDA does not believe that scoring criteria should favor one technology or design over another, but each project should be evaluated based on its own technical merit; therefore, USDA has decided not to award points for projects that use wind turbine designs evaluated by an independent third-party program. However, project designs with strong technical merit will receive additional priority points.

USDA agrees with the second commenter's first comment that proposals that integrate interruptible energy generating schemes with wind energy generation to increase total reliability and value are desirable. However, USDA has decided that such schemes are adequately addressed when evaluating the overall technical merit of a proposed project and has decided not to award points strictly on the commenter's suggested basis.

USDA agrees that the model suggested by the second comment of the second commenter can be a successful business model. However, USDA does not believe that it should be the purpose of the 9006 program to favor one business model over another and, therefore, the suggested criterion has not been adopted.

USDA does not believe the scoring criteria for applications should favor one region of the country over another, but should remain focused on the quality of the proposed projects. Therefore, the suggested criterion has not been adopted.

USDA has not incorporated a specific criterion for low-income families. The criterion that provides points for small agricultural producers and very small businesses addresses, to some extent, the income level of the applicant.

Comment: Three commenters suggested that USDA include a criterion that considers the technical or overall merit of the project, which would help further USDA's goal of funding projects with a high likelihood of success. One of the commenters provided a sample of how this category could be

quantitatively scored by the technical review team.

Response: USDA agrees with the commenters and has included a ''technical merit'' criterion in the scoring for both renewable energy projects and energy efficiency improvement projects.

Comment: One commenter suggested that criteria be expanded to encourage diversity of awardees in terms of the type of farm operation and scale of operation.

Response: USDA does not believe the scoring criteria for applications should favor one type of farm operation over another, but should remain focused on the quality of the proposed projects. Therefore, the suggested criterion has not been adopted.

With regard to the scale of operation, the rule already takes scale into consideration by awarding additional points to small agricultural producers and to very small businesses.

Comment: One commenter noted that the proposed rule makes no distinction between applicants who have received previous funds through the 9006 program and those seeking funds for the first time. To achieve the program goal of assisting the greatest number of farmers and small businesses in need, the commenter suggested that points be awarded to applicants who have not received prior funding through the 9006 program.

Response: USDA agrees with the commenter that one of the goals of the 9006 program is to provide access to as many different applicants as possible. As noted previously, USDA has revised the regulation by awarding 10 points to applicants who have not received a grant award (or loan) within the previous 2 Federal fiscal years.

Comment: One commenter noted that States with local expertise have received a disproportionate number of grants. To help correct this, the commenter recommended that USDA encourage participation from regions that have received limited funding by awarding 5 points for applications from an underrepresented State.

Response: USDA has not incorporated this commenter's suggestion. As noted previously, USDA will work with State Offices to help them implement this program and conduct outreach. USDA believes this will correct any ''underrepresentation'' and that it is not appropriate for the scoring criteria to assume that responsibility.

Comment: One commenter suggested that USDA award bonus points for projects which use wind turbine designs evaluated by an independent third-party program. The bonus points should be sufficient to ensure that farmers choose the best options available.

Response: USDA does not consider it necessary to include this criterion in the scoring of application and has not adopted it. USDA will score the Technical Merit of each proposed project on the basis of the proposed technology and the information in the application, not on the basis of who has reviewed the proposed project prior to USDA receiving the application. To ensure the highest technical merit score, USDA encourages all applicants to select the best available technologies in the marketplace and to the extent an applicant believes it is necessary to use technical experts to review the project to ensure the applicant has not overlooked any elements that would affect the technical merit of the project. However, USDA will not award points on the basis of a third-party review.

H. Guaranteed Loans

General

Comment: Several commenters questioned whether the B&I guaranteed loan program was a good model for the 9006 program.

Response: The commenters did not specify why they felt that the B&I program was not a good model. Without specific reasons, USDA cannot further respond other than to say we disagree and have continued to model much of the 9006 Guaranteed Loan program on the B&I program. While there are programmatic and policy differences, the 9006 program is designed to complement, not compete with, the B&I program.

Comment: Two commenters stated that they believe that the Section 9006 Guaranteed Loan program imposes review, application, and reporting burdens on the lender well above those for the B&I program or the Guaranteed Loan programs offered by SBA. The commenters maintained that few lenders would be willing to go through this effort in order to close loans through this program and are more likely to use the B&I program, which does not exclude guarantees for renewable energy systems and still has capacity for additional loan guarantees.

Response: USDA disagrees with the commenters that the requirements associated with the Guaranteed Loan program under the 9006 program are more onerous than those under the B&I program. For the final rule, we reviewed the requirements associated with the guaranteed loan portion of the 9006 program and have included those elements from the B&I program that are the minimum necessary to ensure technically feasible renewable energy projects and energy efficiency improvement projects are funded. We have modified the B&I program requirements only to the extent necessary to make the 9006 program statutorily consistent and to address the requirements associated with the particular technologies to be funded under the 9006 program. As noted in the previous response, the 9006 Guaranteed Loan program is meant to complement, not compete with, the B&I program.

Comment: One commenter recommended that the application process under the 9006 program be more streamlined than the B&I program to make them worthwhile and encouraged USDA to look at patterning the rules on the SBA loan guarantee program. This commenter encouraged the Department to retain the guaranteed loan section in the final rule because such a program might encourage lenders to add renewable energy projects to their portfolios but without the risks and uncertainty of the market that would otherwise discourage their involvement.

Response: We have retained the guaranteed loan program. In addition, the 9006 program has simplified the application process for applications for guaranteed loans of $600,000 or less, by incorporating the use of Form RD 4279–1A and, for those applications for projects with total eligible project costs of $200,000 or less, by allowing the use of a ''reduced'' Technical Report. No other streamlining has been done because any further streamlining would jeopardize USDA's ability to ensure project viability and compliance.

Comment: One commenter suggested that only those exceptions to the B&I program be noted in this section in order to keep the rule short.

Response: USDA agrees with the commenter and has revised this section, and others, to identify which sections of the B&I program are applicable and any and all differences.

Comment: Three commenters stated that many of the application, documentation, loan structure, and loan servicing requirements applicable to the FSA guaranteed loan program could also apply to the renewable energy loan program and continue to protect the Government's interests.

Response: USDA has not adopted this comment. USDA felt that it is more important for the 9006 program to be consistent with other Rural Development programs for ease of administration. This consistency should help borrowers and applicants become familiar with and meet Rural

Development requirements across multiple Rural Development programs.

Comment: Two commenters suggested that the rule allow for a streamlined and simplified process for lenders that have been approved as preferred lenders by the USDA Farm Services Agency (FSA).

Response: USDA has not incorporated this suggestion in the final rule. The types of projects funded under the 9006 program are likely to be significantly different than those under FSA programs. FSA programs address agricultural production, while the 9006 program addresses commercial energy production projects. Lenders approved under the FSA program may not be experienced with the nature and scope of the technologies associated with the projects that would be funded under the 9006 program. Therefore, we have not incorporated the commenters' suggestion.

Comment: Several commenters were concerned about the inclusion of the guaranteed loan program in the Renewable Energy Systems and Energy Efficiency Improvements Program. Two of the commenters were concerned that the inclusion of the loan guarantees will reduce funding available for the grant and direct loan elements of the program. One of these commenters pointed out that the 9006 program is one of the few Federal assistance grant programs (versus guaranteed loans) that provides money to individuals to install renewable energy or energy efficiency systems. Without information on how USDA will distribute the funds (what percentage goes to grants and what percentage goes to guaranteed loans), this commenter stated that his office cannot support the guaranteed loan aspect of the program. The other commenter stated that a loan default could put the grant program at risk and recommended the use of direct loans rather than guaranteed loans.

Another commenter stated they have significant concerns about the proposed loan guarantee program and urged USDA to postpone implementation until higher levels of funding can be appropriated, or else substantially restrict the amount of funding available for loan guarantees compared to grants. This commenter asserted that implementing the loan guarantee program without additional funding may put the successful grant program in jeopardy. Adding the administrative responsibilities of a loan guarantee program to the already demanding grant program in the early years of implementation may prove to be too much for the overstretched USDA staffs, likely requiring resources to be diverted from limited project funds to cover administrative costs. Loans and loan guarantees will not accomplish the program's intended goal of offsetting the high initial capital costs of renewable energy technologies for rural communities as effectively as grants, and we respectfully request that USDA allow another comment period before a loan guarantee program is tested to further examine its efficacy. Section 9006 is the sole direct grant program for renewable energy and energy efficiency installations, but these projects are already eligible for other USDA loan programs such as the B&I loan guarantees.

Response: USDA believes that the guaranteed loan program will complement, not compete with, the grant program by guaranteeing loans made by commercial lenders to agricultural producers and rural small businesses to support renewable energy systems and energy efficiency improvements. Therefore, we are maintaining the guaranteed loan program in the rule.

Comment: One commenter claimed that the guaranteed loan program, as written, provides the lender with too much control of the project. The commenter maintains that the purpose of rural development is lost when the lender, which may be a large financial institution headquartered far from the actual project, is responsible for the oversight of the construction and operation of the system.

Response: The Agency feels the regulations provide sufficient oversight to ensure regulatory compliance and prudent servicing by lenders. Under the 9006 Guaranteed Loan program, lenders must demonstrate they have the capacity and expertise to effectively underwrite, process, and service all loans in a prudent manner. In addition, the lenders are required to provide to the Agency periodic loan status and financial reports on the borrower's operation, including trends, strengths, weaknesses, extraordinary transactions, and other indications of the financial condition of the borrower. Lastly, the Agency will meet with the lender periodically to ascertain how the guaranteed loan is being serviced and that the conditions and covenants of the Loan Agreement are being enforced.

Comment: One commenter stated that they believe that a loan guarantee program will not be overwhelmingly successful with regard to energy efficiency projects because of the small funding requests for energy efficiency projects. For this reason, the commenter supports both the grant program and the direct loan program (while also supporting the loan guarantee program for larger, often renewable projects).

Response: While the commenter may be right in terms of the types of funding that will be most likely utilized by the various types of projects, there is no need to change the structure of the 9006 program as proposed. Adjustments can be made in 9006 grant or loan allocations to respond to unexpected demand.

Comment: One commenter recommended that, with the exception of direct, intermediary or nontraditional lender guaranteed loans, USDA should utilize grants rather than loans because the B&I program already allows renewable energy and energy efficiency projects.

Response: As noted in previous responses, the 9006 program is designed to complement the B&I program, and the guaranteed loan program within the 9006 program is one of the funding mechanisms required by the 2002 Farm Bill. For these reasons, USDA is maintaining the guaranteed loan program in the 9006 program.

Comment: One commenter presented summaries of conversations with two lenders experienced with wind energy projects who questioned how effective a loan guarantee program would be. The lenders, in general, indicated that the amount of funding currently available for the loan guarantee program would not warrant all the work and risk of applying for this loan guarantee. The lenders pointed out that banks would do their own due diligence for a loan and projects qualifying for a loan would receive the loan with or without the USDA loan guarantee. One of the lenders indicated that his bank does not collateralize a farmer's land. He said, ''A 50 percent loan guarantee would not bring anything further to the table.'' Lastly, this lender described how his bank's past usage of loan guarantees has been more as ''a last ditch effort'' to keep a farmer around rather than as a new business prospect. In summary, the commenter believes that the loan guarantee program, as presented, does not appear to offer much to the current business models being used for farmer-owned large wind projects in Minnesota. The commenter does acknowledge that this program may have something to offer different kinds of banks or as yet undeveloped business models for farmer-owned renewable energy projects. However, the commenter is concerned about how well this program will be used given this assessment from representatives that are already ''up to speed'' on wind energy.

Response: As noted in previous responses, the guaranteed loan program

within the 9006 program is one of the funding mechanisms required by the 2002 Farm Bill. Therefore, USDA is maintaining the guaranteed loan program in the 9006 program. Also as previously noted, the 9006 program is designed to complement, not compete with, the B&I program. Thus, funds from both programs can be used.

Comment: One commenter stated that they are concerned about the potential cost and returns that a lender would experience under the guaranteed program making it less attractive as proposed. The commenter states that the expenses lenders would incur relative to the application and servicing requirements, especially as it concerns engaging outside technical experts and monitoring construction activities, could be significant when the loan is originated, especially for projects an individual producer could utilize in his/her operation on a small scale. According to the commenter, the regulations and requirements are geared toward large scale, multi-million dollar projects undertaken by alliances of producers. The commenter illustrates his concern by noting that, for a lender with a net interest margin of 3.0 percent, each $100,000 guarantee commitment ($200,000 loan funds) results in $6,000 available to pay for the origination and first year servicing of the loan. The fee, if not passed on to the borrower, would reduce this amount to $5,000 in this scenario. The expenses related to engaging technical experts to review the project requirements and environmental impacts, supervising and monitoring the construction of any facilities, and ongoing reporting to the Agency could greatly exceed the net interest income available to cover these expenses. Lenders with low net interest margins will lose money unless the project is of sufficient size to be profitable for the lender. Such a break-even size may represent too large of a project for moderate-sized producers to develop, and they would not be able to benefit from the program.

This commenter was also concerned that, as written, the guaranteed loan program would discourage lenders from participating. Specifically, the commenter made two recommendations to encourage lender participation. First, the commenter recommended that USDA relax its underwriting requirements in order to encourage lender participation in the program. Due to the limited guarantee percentage for any given project, lenders have a significant exposure in a project and this should provide Rural Development staff with sufficient flexibility to relax its requirements and still protect the government's interest. The preamble states that smaller projects, or projects with a mature technology, will require less information. The apparent threshold for a ''small'' project is less than $100,000 in project costs. The commenter recommended that USDA raise this threshold significantly in order to encourage lenders to utilize the program and be able to benefit small operations.

Second, the commenter recommended that USDA require customary loan analysis and documentation relative to projects under $1,000,000 (a $500,000 guarantee), especially for lenders with FSA preferred lender status, and that loan servicing be prudent and at all times protect the Government's interest in the loan.

The commenter believes that having these two requirements for originating and servicing loans would greatly simplify the regulations that lenders are required to follow for small projects. While this would result in differences between loan guarantee applications and lenders, according to the commenter, the burdensome expenses would be minimized and the returns to lenders from participating in the program could be sufficient to encourage participation.

Response: USDA has not adopted these recommendations because the various requirements in the 9006 program are consistent with other Federal guaranteed loan programs' commercial underwriting and servicing standards. Therefore, we have not revised the final rule with regards to these aspects. On the other hand, as noted previously, small projects (*i.e.*, those with total eligible project costs of $200,000 or less) now have less burden associated with their applications by being able to submit less detailed Technical Reports. In addition, applications for guaranteed loans of $600,000 or less may submit the short application form for guaranteed loans (*i.e.*, Form RD 4279–1a).]

Comment: One commenter stated that little effort had been made to develop a guaranteed loan program tailored to individual farmers and rural small businesses. The commenter stated that the level of documentation required in the proposed rule is too cumbersome for most applicants. The commenter stated that while the B&I program on which the proposed program is modeled is a good program, it is intended for larger businesses, with loan levels often in the tens of millions of dollars. The level of financial screening for these large loan guarantees is excessive if applied to the smaller loans that should be offered under the 9006 program. The commenter also noted that potential lenders have indicated that they are reasonably unlikely to participate in such a cumbersome application approval and lending process. The commenter then pointed to the SBA and the FSA guaranteed loan programs as potential models for the 9006 guaranteed loan program and urged USDA to reconfigure the 9006 guaranteed loan program along these lines. For example, applications could be modeled on SBA's LowDoc program for small guaranteed loans, which are substantially streamlined relative to the proposed 9006 application.

Response: Based on the commenter's concerns, we have adopted a reduced Technical Report for guaranteed loan applications for projects with total eligible project costs of $200,000 or less. We believe that this will facilitate access to the guaranteed loan program for small agricultural producers and small rural businesses.

Term of Loan

Comment: Two commenters recommended increasing the term of the loan. One of the commenters stated that, for some projects, an equipment lending term of 15 years may be low. This commenter requested expanding the term of loan for at least some technologies to 25–30 years. The other commenter stated that ''it is our belief that the USDA would be most helpful to farmers and agricultural producers if it would offer long-term (20 to 30 year), low interest loans for up to 100 percent of the equipment cost of farm-sited thermophilic anaerobic digester based renewable energy systems that produce electrical energy for export to the local power grid or biogas available for heating, cooling, drying or other agricultural processed on the farm.''

Response: USDA agrees with the commenter that the term of loan needs to be lengthened because of the nature of the technologies being funded under the 9006 program and, therefore, has increased for equipment and machinery the maximum term of loan to 20 years. By statute (9006(c)(1)(B)), USDA cannot offer loans in excess of 50 percent of the cost of the activity.

Guarantee/Annual Renewal Fee Percentages

Comment: One commenter noted that, as proposed, the initial guarantee fee is 1 percent and in subsequent years it is 0.5 percent per year. The commenter recommended deleting the use of a guarantee fee in subsequent years because having this fee will discourage any lenders from participating in this program.

Response: USDA has retained these provisions in the final rule. USDA does not have to charge the annual renewal fee. We will identify if the annual renewal fee will be charged when we issue the announcements for each fiscal year.

Lien Priority

Comment: One commenter, referring to the list of collateral and lien priority, stated that perhaps some suggestions could be made as to the appropriate relative lien priority (*e.g.* first, second, parity) between two USDA guaranteed loans—one under this program, the other under the B&I program.

Response: At minimum, the 9006 program must have parity. USDA will not accept a junior lien position under the 9006 program. Section 4280.139(b) has been revised to indicate this.

Eligible Lenders

Nontraditional Lenders

Comment: Commenters recommended allowing non-traditional lenders to participate in the guaranteed loan portion of the program and made suggestions for allowing certain entities to be eligible lenders. Some of the commenters suggested that nontraditional lenders may have more ''expertise'' with the renewable energy industry. Commenters identified energy service companies and rural electric cooperatives as two potential ''nontraditional'' lenders who should be allowed to participate in the 9006 program. One of the commenters recommended allowing non-traditional lenders for loans of up to $250,000. According to this commenter, this will allow some State lending authorities and Catalogue of Domestic Federal Assistance (CDFA) organizations access to the program, and many of these groups are targeting energy efficiency/renewable projects.

Response: USDA agrees with the commenters that nontraditional lenders should be allowed. Therefore, USDA has revised the regulation to allow lenders as they are allowed under the Agency's B&I program, except for mortgage companies that are part of a holding company.

Comment: One commenter noted that the USDA should allow intermediaries and recommended that USDA consider a loan program like the Intermediary Relending Loan Program for States who use their renewable energy or energy efficiency funds to make USDA guaranteed loans.

Response: The Agency has no statutory authority to implement an intermediary relending program (revolved loan funds) under this program.

Lender's Functions and Responsibilities

Environmental Information

Comment: One commenter felt that this section put too much responsibility on the lender for the environmental compliance and notification for the project. The commenter recommended changing the responsible party to the applicant (borrower). If the lender must be responsible for alerting the Agency about environmental problems with the project, the commenter contends that lenders will likely not want to be involved with the loan guarantee program. According to the commenter, most lenders, for example, would balk at the idea of being responsible for a large wind turbine harming an endangered species.

Response: USDA does not agree with this comment. The 9006 program is using the same procedures as specified in the B&I program. USDA believes that this responsibility is appropriately placed with the lender and has not revised it in the final rule.

Construction, Planning, and Performing Development

Comment: One commenter believes that proposed § 4280.131(d), which requires that all projects are designed according to accepted practices, needs clarification on what the intent is. The commenter maintains that this should be the responsibility of the engineer or project designer and not the lender.

Response: The 9006 program is simply requiring the same level of performance from a lender as is currently being required under the B&I program. USDA sees no reason to change that level of performance.

Comment: One commenter felt that the following requirement put too much responsibility on the lender: ''The lender must monitor the progress and construction and undertake the reviews and inspections necessary to ensure that construction conforms to applicable Federal, state and local code requirements. * * *'' The commenter recommended amending the language such that the applicant would provide project oversight and provide the information for the lenders' records.

Response: Under the guaranteed lending portion of the 9006 program, USDA must rely on the lender to make prudent lending decisions and monitor the progress of the project. The lenders' proximity to the project, its interest in the collateral aspect of the project, and its knowledge of the interested parties are invaluable in ensuring appropriate oversight of progress. Additionally, as with the B&I program, the 9006 program requires the lender to ensure that all project facilities are designed utilizing accepted architectural and engineering practices that conform to the requirements of this subpart. USDA believes that this responsibility is appropriately placed with the lender and has not revised it in the final rule.

Replacement of Document

Comment: One commenter noted that, under the proposed § 4280.138, USDA may issue a replacement Loan Note Guarantee or Assignment Guarantee Agreement that was ''lost, stolen, destroyed, mutilated or defaced.'' Along with a certificate of loss, the party seeking the replacement document must provide an indemnity bond that holds the USDA harmless from damage or loss incurred by reason of replacing the document. The bond must be in an amount not less than the unpaid principal and interest. The bond must be underwritten by a qualified surety company listed in Treasury Department Circular 570 only when the principal balance and interest due on the note is $1 million or more. Therefore, bonds with amounts of less than $1 million may be provided by other than a corporate surety.

The commenter encouraged USDA to reconsider this approach. Corporate sureties, with extensive financial resources supporting them, provide USDA the best assurance that the financial obligations under the bond will be fulfilled. At a threshold of $1 million, USDA is exposed to the risk that noncorporate sureties, such as an individual surety, will have insufficient resources to protect the government from significant loss. Because of the financial reporting requirements established by the Treasury Department for corporate sureties, the government knows that the surety has the financial ability to perform. There are no such reporting requirements for individual sureties. In light of the increased risk, we recommend that the proposed regulation should be revised to require that all indemnity bonds provided under § 4280.138 must be provided by a surety company listed on the Treasury Department Circular 570.

If USDA were to maintain the current $1 million threshold for the corporate surety requirement, we recommend that it adopt requirements similar to those in the Federal Acquisition Regulations (FAR) regarding acceptable types of alternate security. The FAR sets forth the acceptable types of security that may be posted by individual sureties (see FAR § 28–203–2). These include:

• Cash, or certificates of deposit, or other cash equivalents with a federally insured financial institution;
• United States Government securities at market value;
• Stocks and bonds actively traded on a national U.S. security;
• Real property owned in fee simple by the surety and located within the United States or its outlying areas; and
• Irrevocable letters of credit (ILC) issued by a federally insured financial institution.

Thus, USDA is assured that quality assets are supporting the guarantee.

Response: USDA agrees that it is essential to protect the interests of the taxpayer. The practice of issuing replacement documentation under specified circumstances is consistent with other Agency lending programs, and broadens the scope by including ''defacement'' and ''mutilation'' as circumstances necessitating replacement.

Indemnity bond requirements are also consistent with other Agency lending programs. We believe the 9006 program is not sufficiently different to warrant a different approach. USDA requires corporate bonding for larger projects without excluding noncorporate sureties from smaller projects, providing the broadest range of opportunity for the greatest number of potential sureties.

Credit Quality

Comment: One commenter asked how cash equity is defined. The commenter is not concerned with the source of the asset, but with the nature of how it's booked on the balance sheet. The commenter would prefer the phrase ''tangible balance sheet equity.''

Response: Cash equity must be in the form of cash and should be on deposit in a federally insured depository account. Cash differs from ''tangible balance sheet equity'' in that cash only includes liquid funds. Tangible balance sheet equity may include other items of value that are not cash. The final rule has not been revised.

Appraisals

Comment: One commenter requested clarification on what appraisals USDA would require because the commenter believes the rule does not clearly define what is to be appraised. The commenter suggested that, if the applicant is a rural small business (*i.e.*, an LLC), newly formed for this project, the appraisal would be limited to the equipment they wish to purchase. To illustrate, the commenter stated that in a case where only a generator and associated equipment need to be appraised, a simple formula might be useful. The formula could determine the value of equipment that could be reused later to be worth 70 percent of the equipment new.

Response: Under the 9006 program, appraisals for loans greater than $600,000 are to be conducted in the same manner as for loans under the B&I program. For loans of $600,000 or less, self-appraisals may be used. In neither case are we addressing the appraisal process itself. This provides the borrower/grantee with the greatest level of flexibility in determining that level of investment it will request of the Government. A specific formula, or series thereof, is not included in the Regulation. However, guidance will be provided in support training documentation that is outside the regulatory process. Therefore, we have not revised the rule with regards to the manner in which appraisals are to be conducted.

Personal and Corporate Guarantees

Comment: Several commenters recommended removing the provisions for unconditional personal and corporate guarantees because of the potential to discourage investors and applicants. For example, one of the commenters noted that many applicants do not want to have to put themselves or their farm up for collateral for their loan because the farmer does not want to lose the farm if the project defaults on the loan. Another commenter noted that investors in wind projects were willing to invest money in such projects due to the production tax credits available and the accelerated depreciation benefits. Such investors would have no say in management or the operation of the company. But such investors are not willing to guarantee the transaction—their desire to be involved with the project is driven by tax benefit reasons only. Finally, another commenter recommended that a personal guarantee should not be required for those non-local investors who are only buying tax credits and recommended an exception to the requirement for a personal guarantee for non-local financial owners of renewable energy projects, such as wind turbines.

Response: While USDA is sensitive to those who are concerned about their personal liability and, for instance, using their farms as collateral, nevertheless it is customary credit practice to require the borrower to pledge personal and corporate guarantees sufficient to protect the lender's and the Agency's interest. The situations noted by the commenters involve ''passive'' investors; that is, those who only invest in a project without any active participation in the management or operation decisions. USDA agrees that to further promote renewable energy projects, the rule should not discourage such investors. Therefore, we have revised the rule to exclude passive investors from the requirement to provide personal or corporate guarantees. However, to the extent that investors and applicants have solely a nonpassive, beneficial interest in the project, USDA believes it is necessary to protect the public fisc to continue requiring unconditional personal and corporate guarantees.

Requirements After Project Construction

Comment: Two commenters remarked on the reporting requirement for energy efficiency improvement projects after project construction. One of the commenters encouraged USDA to structure post-project reporting requirements to collect data that will enhance industry understanding of energy efficiency performance impacts. The other commenter stated that the requirement to report the actual amount of energy produced by the renewable energy system would be onerous for smaller projects that lack metering. This commenter recommended exempting smaller projects from this requirement and allowing qualitative system performance reporting.

Response: The energy audit or assessment required for energy efficiency improvement projects will provide most of the information identified by the first commenter, including an estimate of energy savings. While difficult, USDA believes it is necessary to keep this reporting requirement for energy efficiency improvement projects, in part to help evaluate the program's success.

Exception Authority

Comment: One commenter requested that, at a minimum, a lender with an FSA preferred lender status be granted additional preference and discretion under proposed § 4280.104 with respect to loan guarantee applications and servicing. The commenter stated that this could also be allowed under Section 9006(c)(2)(G) of the 2002 Farm Bill where the Secretary shall take into consideration ''other factors as appropriate'' relative to application requirements. According to the commenter, this would provide some separation between the loan and grant programs since the grant program is a direct relationship with a producer and the loan guarantee program is a direct relationship with a lender. In addition, the commenter believes that this approach would help to ''ensure that

loan programs are based on sound financial principles'' as stated in the preamble relative to one of the main components for developing the proposed regulations.

Response: USDA disagrees with the commenter's request. USDA believes that all lenders must be treated equally and, therefore, has not revised the rule as requested.

I. Direct Loans

Need for Program

Comment: A number of commenters objected, for a number of reasons, to USDA not offering a direct loan program and urged USDA to institutionalize a loan program as part of the final rule for Section 9006.

Commenters, for example, pointed out that the statute authorizing the 9006 program calls for a direct loan program, that USDA has the in-house capability for underwriting and servicing direct loans, that a direct loan program would help leverage the available funds, and that USDA in conjunction with the DOE has expertise and ability to evaluate the financial and technical feasibility of these projects.

Two of the commenters further suggested that a direct loan program would be easier to manage than a guaranteed loan program. One commenter suggested that it would also be less costly to manage.

One of the commenters stated that if USDA is unable to issue a final rule that includes the direct loan program for FY 2005, it should include a supplemental rulemaking for the direct loan program later in 2005.

Response: USDA is still evaluating the resources necessary for implementing a direct loan program. Assuming a positive evaluation, USDA would expect to issue a rule proposing a direct loan program to complement the grant and guaranteed loan program. In this final rule, USDA has not modified the direct loan process that was in the proposed rule.

Comment: One commenter stated that they agree with the Agency's decision to not promulgate a regulation for the direct loan program under Section 9006 at this time. This will allow for consideration of changes in both program demand and technical innovation over time while not unduly restricting the Agency's options in the short run.

Response: As noted in the previous response, USDA is still evaluating the resources necessary for implementing a direct loan program. USDA will also take into consideration the experience it gains in implementing the grant and guaranteed loan program in developing any direct loan program.

J. Laws That Contain Other Compliance Requirements

Environmental

Comment: Many commenters recommended that USDA either eliminate the requirement for an environmental impact assessment or significantly reduce the requirement for environmental assessments. One of the commenters stated that because small projects by definition have a very limited impact on the local environment and local government siting and permitting processes are sufficient to ensure environmental protection. Another of the commenters recommended removing specific environmental requirements from the rule and instead issuing requirements annually.

Response: Projects funded under the 9006 program must comply with all environmental requirements, including Federal, State, and local requirements. All applicants must comply with the environmental requirements applicable to their project. Funding a grant or loan or providing a loan guarantee is a Federal action requiring compliance with the National Environmental Policy Act (NEPA). While small projects are likely to have fewer adverse environmental impacts than similar larger projects, USDA cannot predetermine that all small projects will have very limited impacts. USDA believes it is appropriate for environmental evaluations prepared for projects to analyze the nature and extent of a project's environmental impact. For these reasons, USDA is not able to accommodate the commenter's request.

Comment: One commenter stated that the language ''identify all environmental issues'' in the technical reports is not specific. The commenter suggested that USDA make references to central environmental review requirements for all types of energy systems such as proposed § 4280.114(d) and/or reference 7 CFR part 1940, subpart G, of this title. Describe requirements for Class I or Class II environmental reviews.

Response: As revised, the Technical Report requirements address the need to identify environmental issues through Form RD 1940–20. However, we have not made reference to other requirements (*e.g.*, Class I or II environmental reviews) because such requirements will be specific to individual projects and cannot be addressed fully through specific language in the rule. USDA advises all applicants to consult experts in the development of their proposed project's technology to identify all environmental issues that are associated with the applicant's proposed project so that the Agency can make its environmental evaluation.

Comment: Two commenters were concerned that these requirements placed an undue burden on the applicant. One of the commenters stated that conducting an environmental impact assessment and initiating consultation with other State agencies placed an undue burden on the applicant. This commenter, therefore, recommended assigning the responsibility for conducting the environmental assessment and informal consultation with other agencies to the USDA State Offices. The other commenter noted that applicants are asked to initiate the environmental review process with such contacts as their State historical preservation agencies on their own and, according to the commenter, without having project funding in place, this shifts a substantial burden to the applicants.

Response: Ultimately, the responsibility for environmental evaluations rests on the Agency. Some applicants make arrangements to assist the Agency with supporting documentation to speed the process. USDA appreciates that this effort can be significant. Because such efforts can be costly, USDA has included environmental assessment as an eligible project cost (as part of professional services). USDA cannot provide funds to applicants prior to a project being evaluated and selected for an award.

Comment: One commenter stated that Rural Development Program Support Staff have issued guidance that predetermines the level of environmental review based on technology type, and that this ''one-size-fits-all'' pre-classification places undue burdens on specific projects. Instead, the commenter recommended that USDA draft a programmatic environmental assessment and use that to develop pre-classifications.

Another commenter stated that the environmental review process should be simplified. According to the commenter, many of the approved project activities, especially with energy efficiency projects, could be categorically excluded from environmental review.

Response: Although not a part of this rule, USDA has identified classes of action and established a minimum level of environmental review for each category of action. For example, energy efficiency projects are classified as categorical exclusions.

Comment: Several commenters felt that the environmental assessment has been a particularly confusing area for applicants, who are often unsure of the level of environmental review required and underestimate the effort needed to complete the assessment. The commenters, therefore, recommended that USDA place extensive, complete, and clear information either in the final rule or on its Web site so that applicants have a better understanding of what is required based on the type and scope of their project. One of the commenters recommended that, rather than referring applicants to Form RD 1940–20 or regulations, USDA place extensive information either in the final rule or on its Web site explaining the requirements.

Another commenter recommended that USDA provide a more clear explanation of what is needed for the National Environmental Policy Act approval including example completed checklists for various project configurations, and should not require the applicant to initiate consultation with State agencies and prepare a full environmental impact analysis, unless a USDA review determines these steps are necessary.

Response: USDA agrees with the commenters that the requirement for environmental information can be confusing because it involves numerous laws, regulations, and Executive Orders. The majority of these requirements exist in 7 CFR part 1901, subpart F, 7 CFR part 1940, subpart G, and 7 CFR part 3015, subpart V, and associated Administrative Notices and Procedural Notices. USDA strongly advises all potential applicants to seek assistance in this area when preparing their applications.

USDA continues to refer to Form RD 1940–20 in the final rule because that is the tool the Agency uses to collect the necessary environmental information. USDA cannot in this rulemaking set forth conditions to cover every potential circumstance under which full environmental reviews and analyses are or are not required. Further, it is not the intent of this program to usurp the requirements for such assessments.

Comment: One commenter stated that somewhere in the rule, USDA should allow for operational policies to be implemented and updated without revisiting the rule. The commenter referred to the National Environmental Policy Act (NEPA) requirements for projects as an area that might be covered outside the rule. EPA allows categorical exclusions from NEPA requirements. USDA does not at this time have a complete list of technologies and energy efficiency improvements that will fit under a categorical exclusion, but many probably will. By authorizing in the rule the development of such a list as a legitimate Agency policy responsibility, USDA can remove a significant disincentive to applicants. The commenter claimed that farmers are accustomed to going into their county USDA offices, whether Natural Resources Conservation Service, Farm Service Agency or Rural Development, and having the county office staff be able to refer to their respective standards and specifications manuals and transparently provide service and approval in a relatively short amount of time. Such reference materials do not yet exist for the Renewable Energy Systems and Energy Efficiency Improvements Program. At this time, the program implementation process is transferring this technical requirement to the farmer/rancher/rural small business. The commenter urged USDA not to create a rule that precludes development of field office technical guides that will be able to reduce the paperwork load on future program participants.

Response: While not a formal comment on the rule, USDA responds by stating it evaluated the proposed rule to identify which, if any, portions could be implemented other than as a rule, in order to facilitate updating. As noted previously, USDA intends to develop implementation tools and training materials for the State Offices to facilitate the implementation of the 9006 program.

However, as noted earlier, there are some aspects to the 9006 program which USDA cannot change. For example, projects are required to comply with NEPA and other regulations, which are outside of the scope of the 9006 program. USDA has provided for the development of various forms of environmental reviews, which will serve as documentation of environmental compliance.

Civil Rights Compliance

Comment: One commenter asked when the compliance reviews required under Civil Rights (Title VI) compliance stop. The commenter points out that the proposed regulation states ''Initial reviews will be conducted after Form RD 400–4 is signed and all subsequent reviews every 3 years after.'' The commenter then notes that the grant agreement states that a compliance review will be done initially and the final will be done 3 years from the date of loan closing or when final disbursement of grant funds has occurred.

Response: We agree with the commenter that the rule needs to identify when compliance reviews stop. We have revised the rule language based on the language in the grant agreement.

Comment: One commenter asked whether energy grants are subject to Title VI.

Response: Energy grants are subject to Title VI, which was indicated in the proposed rule, and the final rule retains the language.

Insurance Requirements

Comment: One commenter stated that the insurance required may preclude those seeking smaller awards from applying, as these premiums may ultimately be more than the grant award. The commenter points out that the proposed provisions allow for this requirement to be modified or waived by USDA. The commenter, however, believes that these provisions would be clearer if the regulation indicated those situations to which those waivers or modifications applied.

Response: While USDA agrees with the commenter that insurance requirements may be an obstacle to those seeking smaller awards, these requirements are necessary to ensure the stability of the 9006 program and to protect the Agency's interest and the public funding being made available under this program. USDA believes that, given the variety of circumstances that could present themselves, applying the waiver on a case-by-case basis will be more equitable that establishing rigid parameters for the use of waivers.

Comment: One commenter stated that they have a strong objection from a member of the public to the insurance requirement of business interruption insurance.

Response: USDA believes that business interruption insurance is necessary for most projects, and is a requirement consistent with other Federal grant and loan programs (*e.g.*, the B&I program). USDA also believes, however, that for smaller projects ($200,000 or less in total eligible project costs), the cost of business interruption insurance outweighs the benefit so it is not necessary. Therefore, USDA has retained the requirement of business interruption insurance for all projects with total eligible project costs greater than $200,000 and has exempted this requirement for all projects with total eligible project costs of $200,000 or less.

K. Construction Funding and Management

Comment: One commenter stated that the proposed rule disallows applicants from any involvement in construction of

the system (in § 4280.109(a)(2)—second sentence and in 4280.115(b)). The commenter recommended that the program be modified to allow applicant construction, if ''the project has a third-party contractor with principal responsibility for the design, installation and construction of the system and where the applicant's ability to perform the task is validated by the technical review team.''

A second commenter recommended that, provided applicants are working under the supervision of a qualified installer, construction services provided by the project owner be allowed, particularly trenching, foundation digging and pouring, and other site preparation activities with which many farmers are familiar.

Response: Under the final rule, an applicant is allowed to serve as the prime contractor for projects built under the simplified application process, which uses the reimbursement method, provided a qualified consultant certifies the work performed. USDA notes that any work performed by the applicant does not qualify as an in-kind contribution and will lead to a reduction in eligible project costs for that project.

Comment: A number of commenters questioned the use of 7 CFR part 1924 for the 9006 program, pointing out that 7 CFR part 1924 was developed for residential construction and, thus, was not appropriate for the 9006 program. Other comments were made concerning how the proposed rule for the 9006 program intended to incorporate 7 CFR part 1924. The commenter pointed out that 7 CFR part 1924 is designed for multi-family housing projects in which the Agency is the primary lender. One of the commenters recommended reducing procurement requirements to only what is required in 7 CFR parts 3015, 3016, and 3019.

Response: USDA agrees with the commenters that 7 CFR part 1924 is not the best standard to use, and has replaced 7 CFR part 1924 with 7 CFR part 1780, while equipment procurement must be made in compliance with 7 CFR part 3015.

Comment: One commenter stated that the procurement regulations are excessive for an Agency participation of 25 to 50 percent in any given project.

Response: As stewards of Federal funds, the Agency must determine that program funds are used prudently. To meet this goal, all Federal supported procurement must meet open and free competition procurement standards. The final rule outlines project development and procurement requirements based on the nature, scope, and complexity of the project to allow the appropriate standards to be applied.

Comment: One commenter raised numerous issues on how the proposed rule would implement 7 CFR part 1924. The commenter states that 7 CFR part 1924, subpart A fails to address procedures and requirements for the design/build method, the most common form of proposed procurement being requested in the renewable energy and energy efficiency projects. The commenter stated that procedures need to be developed to address this situation and pointed out that RUS currently has a draft regulation to cover this issue. The commenter, therefore, recommended that the modified draft RUS requirements be incorporated into 7 CFR 1924, subpart A, under proposed § 4280.115 along with utilizing the Engineering Joint Contract Documents Committee (EJCDC) design-build document set with the addition of the Federal Requirements section of EJCDC, Funding Agency Edition, General Conditions C–710.

The commenter stated that proposed § 4280.115(a)(5) should not delete the applicability of 1924.5.(d)(4)(iv) to this rule. The commenter noted that effective January 10, 1997, FSA, RHS, RBS, and RUS amended their regulations regarding construction and other development for farm, housing, community, and business programs to comply with the National Earthquake Hazard Reduction Program's (NEHRP) Recommended Provisions for the Development of Seismic Regulations for New Buildings. According to the commenter, a PN was issued January 10, 1997, which amended the following sections of the regulations: 1924–A, 1942–A, 1948–C, and 1980–A. These regulations require that all new building construction shall be designed and constructed in accordance with earthquake (seismic) provisions of the codes listed in the appropriate regulations.

The commenter stated that proposed § 4280.115(a)(5) should not delete the applicability of § 1924.5(d)(4)(i) through (iv). According to the commenter, 7 CFR part 1924, subpart A requires the ''Acknowledgment of compliance with the applicable seismic safety requirements for new construction will be contained in the certification of final plans and specification on the appropriate Agency form.'' The commenter further states that these requirements must remain to be in compliance with building safety provisions of the Earthquake Hazards Reduction Act of 1977, (42 U.S.C. 7701 *et seq.*) as implemented pursuant to Executive Order 12699.

The commenter stated that the deletion of the applicability of § 1924.13(e)(1) appears to be in error. According to the commenter, § 1924.13(e)(1) is for complex contracts requiring performance and payment bonds. By deleting this section, the commenter points out, the only complex contracting method that remains is § 1924.13(e)(2), which the commenter claims would be in violation of proposed § 4280.115(b) which states: ''Recipients of grants under this subpart are not authorized to construct the facility, project, or improvement in total, or in part, or utilize their own personnel and/or equipment.'' Therefore the commenter recommended that, while § 1924.13(e)(2) should not apply and § 1924.13(e)(1) should remain and that, based on the types of projects being proposed, the EJCDC Funding Agency 2002 Edition (as outlined in RUS Bulletin 1780–26) needs to be added as an alternative option to the American Institute of Architects (AIA) documents.

Response: As noted in the previous response, the revised rule no longer references 7 CFR part 1924. Thus, the issues and concerns raised by this commenter are moot.

Comment: Two commenters expressed concern over the requirement to use AIA documents.

According to one of the commenters, 7 CFR part 1924, subpart A, requires the use of AIA documents, which are very seldom if ever used in industrial construction. In addition, these documents are all copyrighted and require originals to be purchased either in minimum orders or bulk use licenses which must be renewed every year by the designers. This commenter noted that USDA's Rural Development RUS has done extensive work and development with EJCDC to develop a funding Agency Edition of selected standard documents. These documents, according to the commenter, were developed to provide information and guidance to applicants and professional consultants in developing engineering agreements and construction contracts that are legally sufficient, ensure appropriate services are provided for a reasonable fee, and expedite the achievement of the applicant's goals. These documents are used for the construction of Wastewater Treatment Plants, Water Treatment Plants, and related site utilities, including water and sewer transmission lines and electric power lines. In all reality these documents, according to the commenter, should replace the references to the AIA documents in 7

CFR part 1924, subpart A but, at the least, the EJCDC Funding Agency 2002 Edition as outlined in RUS Bulletin 1780–26 need to be added as an alternative option to the AIA documents. The commenter, therefore, suggested that these requirements be incorporated under proposed § 4280.115.

The other commenter stated that it does not seem appropriate to use AIA documents for this program because there are few items in the energy program that would utilize the services of an architect. According to the commenter, the National Office is encouraging the use of EJCDC documents for other programs for engineering and construction contracts. The engineers have purchased these, and it does not make sense to make them also purchase the AIA documents. In addition, the use of EJCDC documents allows the engineer to pay a subscription fee to use the documents, not a fee for every project that the documents are used for. The AIA documents require a fee for each project that the documents are used for.

Response: As noted in the previous responses in this section, the final rule has been revised considerably regarding the basis for construction planning and performing development. The final rule retains reference to the use of selected AIA forms, but also allows other contract documents as provided in the final rule.

Comment: Three commenters recommended that performance bonds should not be required for projects below 100 kW.

Response: USDA agrees that performance bonds should not be required for smaller projects. As such, surety (performance) bonds are not required in the final rule for projects with total eligible costs of $200,000 or less. If total eligible project costs are greater than $200,000, performance bonds are required regardless of the capacity of the project.

L. Miscellaneous

Comment: One commenter noted that Section 9006 of the Farm Bill was intended to benefit independent family farms and ranches and their rural communities, to increase energy security and to promote a healthy environment for years to come. The commenter stated that USDA should change the proposed rules to better reflect these benefits. The commenter pointed out that sustainable agriculture and community development is very important to Missouri Farmers Union and stated that any incentives in this section should help family farmers and ranchers conserve fuel, fertilizer, and other resources. The commenter also stated that incentive projects should be farmer and community controlled.

Response: USDA believes the 9006 program, as proposed, met the goals set out for it in the authorizing statute. Under the final rule, we have further increased meeting these goals by modifying the scoring criteria to award more points than at proposal to smaller agricultural producers and to include points for very small businesses.

With regard to ''incentive'' projects, USDA believes that the commenter is referring to demonstration projects. The 9006 program is not authorized to fund such types of projects, whether they are farmer controlled or community controlled. Furthermore, the 9006 program is available, by statute, only to agricultural producers and rural small businesses. Community-controlled projects would be ''publicly owned'' projects and such projects are not eligible for funds under the 9006 program.

Timing of the Program

Comment: Many commenters expressed concern over the lack of amount of time available to apply for funds and the timing of when the applications were due, often recommending a year-round application process or a late spring period. A sixth commenter also suggested extending the duration of the application period.

Several other commenters stated that applicants have a very narrow time window after receiving a provisional award to complete all outstanding environmental and historical preservation reviews. Two of these commenters expressed concern over the ''relatively short'' period of time allowed to complete a full environmental assessment once the project is selected to receive financial assistance. According to one of the commenters, it has proven difficult for successful applicants to accomplish the public input process and other required reviews before the end of USDA's fiscal year. This commenter felt that moving the program release date to the fall would help alleviate timing issues associated with this review process. One of the commenters felt that USDA did not make the requirements available early enough in the process.

Response: The 9006 program in itself does not have deadlines associated with the filing of applications. Application deadlines and timeframes are identified in the announcements that USDA issues. It is USDA's intent to issue future announcements earlier in the fiscal year to allow applicants greater opportunity to prepare their applications and to provide longer timeframes for application submittal.

Comment: One commenter stated that the time period for completing the environmental assessment is very short and could result in otherwise eligible projects being denied funding. The commenter recommended adopting one of the following possible solutions:

- Define the disbursement of funds as a major (irreversible) Federal Action, rather than obligation, allowing funds to be obligated prior to environmental assessment determination, while putting a maximum time limit before funds were de-obligated.
- Decouple extra-agency determinations and public hearing and comment periods with obligation required by September 30 (the end of the Federal fiscal year).
- Make 9006 program funds no year money.

Response: USDA is not able to implement any of the commenter's suggestions because we do not have the authority to implement them. USDA cannot make the funds appropriated for the 9006 program ''no year money;'' only Congress can do that. In addition, we cannot override the requirements associated with the National Environmental Protection Act. On the other hand, as noted in the previous response, USDA plans to issue its announcements for the 9006 program in a more timely manner to provide applicants more opportunity to prepare and submit their applications.

Program Implementation, Awareness, and Tools

Comment: Several commenters recommended that USDA implement tools to provide instruction to State and local offices to ensure consistent implementation of the 9006 program and to conduct outreach to offices and applicants concerning this program and other similar programs. For example, one commenter stated that to the extent possible, USDA should develop guidance documents for preparing information for small wind, solar, biomass, and geothermal projects.

Response: While this is not a formal comment on the proposed rule, USDA responds by agreeing with the commenters and is developing implementation tools and programs to ensure consistency in the implementation of the 9006 program and to conduct outreach to offices and applicants.

Other

Comment: One commenter stated that USDA should focus all of its financial

resources on diffuse, large-scale, regional, on-farm, integrated windsheds. Within a windshed, individual wind turbines and complementary biomass energy systems must be large enough that they can contribute significant electricity to the regional/national grid but small enough so that they do not require the development of a dedicated electricity transmission infrastructure.

The commenter supported the recommendation by stating that, in general, loan guarantees are preferred because loan guarantees maximize the creation of production capacity. However, the loan guarantee conditions (percentage of loan and percentage of guarantee) may need to be modified initially during the first year or two until there is an established pattern which can be used by lenders for loan evaluation.

Response: The model presented by the commenter is an acceptable business model. However, the statute authorizing the 9006 program is to be applied to more than just wind energy technologies. USDA does not have authority to change the loan limits provided in the statute. Therefore, USDA has rejected the commenter's suggestion.

Comment: Several commenters stated that currently very few potential beneficiaries have been able to secure funding for solar or small wind turbine projects. The USDA has also noted the very limited number of small renewable energy projects. The commenters believe that to provide maximum economic benefit to rural America, the program should aim for a better balance of small and large projects and that achieving this objective will require a radical departure from the current NOFA procurement structure.

One commenter recommended that USDA streamline the administrative compliance requirements for projects less than 200 kW in size. This commenter also stated that they know there were many other potential project applicants who were intimidated by the application process and did not apply for funds even though their sites were well suited for wind energy production from a technical, regulatory, and resource perspective.

Points raised concerning the NOFA process by these commenters were:

- Complex proposal requirements, cumbersome length and redundancy, and preparation time burden discouraged numerous potential small project applicants from applying;
- An application and approval schedule that lacked the flexibility needed to coordinate with the State rebate programs and grant opportunities also needed to make the projects economically attractive (*i.e.*, some farmers did not want to apply for 9006 funds until they were assured of also receiving additional subsidies, but they would not get that answer until after the 9006 submission deadline). For most small scale renewable energy projects the USDA grants are necessary, but not sufficient;
- Scoring that favored shorter payback period projects;
- Scoring that favored applications in which 9006 funds were a smaller percentage of total project cost;
- Scoring that favored ''managed'' systems over owner-operated systems;
- Scoring that favored projects using renewable energy and energy efficiency to help with environmental compliance, including pre-existing compliance issues;
- Scoring that favored energy sales over higher value on-site consumption;
- Requiring an interconnect agreement (or PPA) in advance of project implementation, when most net metered projects do not require such agreements. Two of the commenters noted that some State program managers require an interconnect agreement (or PPA) in advance of project implementation, when most net metered projects do not require such agreements;
- Allowing used or rebuilt equipment. One commenter suggested that used equipment be allowed with no standards for remanufacturing. One of the commenters pointed out that there were no guidelines concerning the use of remanufactured equipment; and
- Limiting in-kind match allowance. One of the commenters also noted that the program did not allow the value of construction work performed by project owners to count as match.

The combined effects of these problems discourage participation in a program that should have much higher participation from small renewable energy systems. For 2004, there were just 13 awards to small wind and solar projects with combined funding of $590,226 or 2.6 percent of total funds awarded.

Response: All of the points raised by these commenters as shortcomings of the NOFA process and to the extent they were carried over into the proposed 9006 program have been addressed earlier in this document.

Most of the commenter's concerns, which for the most part we agree with, have been addressed in a ''favorable'' fashion. A simplified application process is now available, the scoring criteria have been adjusted to address the concerns raised by the commenters, interconnection agreements have been addressed, streamlining (although based on project size) has been addressed and the rule specifically addresses used, remanufactured, and rebuilt equipment. The final rule, however, does not differ with regard to in-kind contributions. In addition, USDA plans to publish its announcements for grants and loan applications in a more timely fashion.

In summary, the 9006 program has been revised from the proposed rule and contains differences from the NOFA procurement procedures that we believe will encourage applications for small projects, including solar and wind, by awarding points for such projects. We believe the revised scoring criteria bring about a better balance among projects of all sizes.

Comment: One commenter, commenting on proposed § 4280.111(d)(3)(ix)(D), suggested that the use of the word unanticipated in the third line is a non sequitur. The purpose of the risk plan is to anticipate potential major component failure. The commenter suggested substituting ''unanticipated'' with ''potential.''

Response: USDA agrees with the commenter and has revised the rule, here and elsewhere, accordingly.

Comment: One commenter, commenting on proposed § 4280.111(d)(5)(i)(C), suggested striking the term ''bodies.''

Response: USDA agrees with the commenter and has revised the rule, here and elsewhere, accordingly.

V. Regulatory Information

A. Paperwork Reduction Act

The information collection and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and were assigned OMB control number 0570–0050 in accordance with the Paperwork Reduction Act of 1995. Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB number. The revisions in this rulemaking for part 4280 required an amendment to the burden package and this modification has been approved by OMB.

B. Intergovernmental Review

The Rural Development Grant, Guaranteed Loan, and Direct Loan Program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. Rural Development will conduct intergovernmental consultation in the

manner delineated in RD Instruction 1940–J, ''Intergovernmental Review of Department of Agriculture Programs and Activities,'' in 7 CFR part 3015, subpart V.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute, unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governments. The major purpose of the RFA is to keep paperwork and regulatory requirements from getting out of proportion to the scale of the entities being regulated, without compromising the objectives of the Act.

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–602), the undersigned has determined and certified by signature of this document that this final rule would not have a significant economic impact on a substantial number of small entities. This action impacts those who choose to participate in the grant, guaranteed loan, and direct loan program and requires only minimum information/paperwork to evaluate an application. Therefore, a regulatory flexibility analysis was not performed.

Although a regulatory flexibility analysis was not performed, the Agency conducted a cost-benefit analysis and an initial regulatory flexibility analysis (IRFA) that examines the impact on small entities. The cost-benefit analysis and the IRFA (referred to as the Unified Analysis) are available for review in the docket and the results are summarized below.

The program targets rural small businesses and agricultural producers. The vast majority of these agricultural producers also qualify as small businesses. Based on data compiled by the USDA Economic Research Service and the SBA, approximately 3 million entities would qualify under this program.

The cost-benefit analysis reflects a large net beneficial impact. The expenditure of slightly less than $100 million in nominal USDA funds over 5 years (approximately $23 million per year for FY 2003 through FY 2005 and approximately $11 million per year for FY 2006 and FY 2007) from FY 2003 through FY 2007 represents a present value cost in constant year 2000 dollars of approximately $69 million. This sum in turn supports total program funding (USDA funds and private funds) of over $1 billion. The cumulative cashflow benefits through 2007 are $261 million in comparison to the $69 million cost. The cashflow benefits based upon life-cycle analysis are $1.4 billion, again based upon this $69 million cost.

Given that almost the entire program is directed at small businesses, the burden analysis is a representative measure for small businesses of the reporting, recordkeeping, and other compliance costs. The burden analysis estimated an annual (3-year average) cost of $1.8 million for an estimated 469 applicants per year.

As noted above, the rule is directed almost entirely at small businesses. Therefore, the cost-benefit analysis represents the results as it affects small businesses.

D. Civil Justice Reform

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

E. National Environmental Policy Act

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

F. Unfunded Mandates Reform Act

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

G. Executive Order 13132, Federalism

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

H. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866, this final rule has been determined to be ''significant'' and, therefore, has been reviewed by the OMB. The Order defines ''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 in 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 the Executive Order.

List of Subjects in 7 CFR Part 4280

Business and industry, Economic development, Energy, Direct loan programs, Grant programs, Guaranteed loan programs, Renewable energy systems, Energy efficiency improvements, Rural areas.

■ For the reasons stated in the preamble, chapter XLII, title 7, of the Code of Federal Regulations is amended as follows:

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

■ 1. Part 4280 is added to read as follows:

PART 4280—LOANS AND GRANTS

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Subpart B—Renewable Energy Systems and Energy Efficiency Improvements Program

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4280.200 OMB control number.
Appendix A to Part 4280—Technical Reports for Projects with Total Eligible Project Costs of $200,000 or Less
Appendix B to Part 4280—Technical Reports for Projects with Total Eligible Project Costs of Greater than $200,000

Subpart A—[Reserved]

Subpart B—Renewable Energy Systems and Energy Efficiency Improvements Program

§ 4280.101 Purpose.

(a) The purpose of this subpart is to provide financial assistance to agricultural producers and rural small businesses for the purpose of purchasing and installing renewable energy systems and energy efficiency improvements in rural areas. Financial assistance to any single entity may be provided as a direct loan, guaranteed loan or grant, or a combination of a loan and grant. This subpart contains the procedures and requirements for providing such financial assistance.

(b) The Agency will allocate funds between the direct, guaranteed, and grant programs each year, including any other terms such as the transfer of funds between these allocations.

§ 4280.102 General.

(a) Sections 4280.103 through 4280.106 discuss definitions, exception authority, appeals, and conflict of interest, which are applicable to all of the funding programs under this subpart.

(b) Eligibility is discussed in terms of both applicants and projects. Section 4280.107 contains the eligibility requirements for applicants and § 4280.108 contains the eligibility requirements for projects.

(c) Section A, §§ 4280.109 through 4280.117, discusses grants. Section 4280.109 discusses the circumstances under which an applicant may qualify to submit a simplified application for a grant. Sections 4280.110 through 4280.114 address grant funding, grant application procedures, required documentation, the evaluation process, and post-grant Federal requirements for both the simplified and full application processes. Sections 4280.115 through 4280.117 address project planning, development, and completion as related to grant servicing.

(d) Section B, §§ 4280.121 through 4280.160, discusses guaranteed loans. Sections 4280.121 through 4280.126 discuss procedures and requirements for making and processing loans guaranteed by the Agency. Section 4280.128 addresses the application and documentation requirements, separating the requirements for loans over $600,000 and for loans of $600,000 or less. Section 4280.129 addresses the evaluation of guaranteed loan applications. Sections 4280.130 through 4280.160 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.

(e) Section D presents the process by which the Agency will make direct loans.

(f) Section E presents the process by which the Agency will make combined loan and grant funding available.

(g) Appendix A contains the Technical Report requirements for projects with total eligible project costs of $200,000 or less and Appendix B contains the Technical Report requirements for projects with total eligible project costs greater than $200,000.

§ 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.

Agency. The Rural Business-Cooperative Service or successor Agency assigned by the Secretary of Agriculture to administer the 9006 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 the operations.

Anaerobic digester project. A renewable energy system that uses animal waste and other organic substrates to produce thermal or electrical energy via anaerobic digestion.

Annual receipts. The total income or gross income (sole proprietorship) plus cost of goods sold.

Applicant. The agricultural producer or rural small business that is seeking a grant, guaranteed loan, or direct loan, or a combination of a grant and loan, under this subpart.

Assignment guarantee agreement (Form RD 4279–6) or successor form. A 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.

Bioenergy project. A renewable energy system that produces fuel, thermal energy, or electric power from a biomass source, other than an anaerobic digester project.

Biogas. Biomass converted to gaseous fuels.

Biomass. Any organic material that is available on a renewable or recurring basis, including agricultural crops; trees grown for energy production; wood waste and wood residues; plants, including aquatic plants and grasses; fibers; animal waste and other waste materials; and fats, oils, and greases, including recycled fats, oils, and greases. It does not include paper that is commonly recycled or unsegregated solid waste.

Borrower. Any party or parties liable for a direct or guaranteed loan made under this subpart except guarantors.

Capacity. The maximum load that an apparatus or heating unit is able to meet on a sustained basis as rated by the manufacturer.

Commercially available. A system that has a proven operating history specific to the proposed application. Such a system is based on established design, and installation procedures and practices. Professional service providers, trades, large construction equipment providers, and labor are familiar with installation procedures and practices. Proprietary and balance of system equipment and spare parts are readily available. Service is readily available to properly maintain and operate the system. An established warranty exists for parts, labor, and performance.

Conditional Commitment (Form RD 4279–3) or successor form. Agency notice to the lender that the loan guarantee is approved subject to the completion of all conditions and requirements set forth by the Agency.

Default. The condition where a borrower or grantee is not in compliance with one or more loan covenants or grant conditions as stipulated in the Letter of Conditions, Conditional Commitment, or Loan or Grant Agreement.

Delinquent loan. A loan for which a scheduled loan payment has not been received by the due date or within any grace period as stipulated in the promissory note and loan agreement.

Demonstrated financial need. The demonstration by an applicant that the applicant is unable to finance the project from its own and commercially available resources without grant assistance, or that the project proposed by the applicant cannot achieve the income and cashflows to sustain it financially over the long term without grant assistance.

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 prime contractor is solely responsible and accountable for successful delivery of the project to the owner.

Eligible project costs. The total project costs that are eligible to be paid with program funds.

Energy assessment. A report conducted by an experienced energy assessor, certified energy manager or professional engineer assessing energy cost and efficiency by analyzing energy bills and briefly surveying the target building, machinery, or system. The report identifies and provides a savings and cost analysis of low-cost/no-cost measures. The report will estimate the overall costs and expected energy savings from these improvements, and dollars saved per year. The report will estimate weighted-average payback period in years.

Energy assessor. An individual or entity that conducts an energy assessment.

Energy audit. A report conducted by a Certified Energy Manager or Professional Engineer that focuses on potential capital-intensive projects and involves detailed gathering of field data and engineering analysis. The report will provide detailed project costs and savings information with a high level of confidence sufficient for major capital investment decisions. It will estimate costs, expected energy savings from the subject improvements, and dollars saved per year. The report will estimate weighted-average payback period in years.

Energy auditor. An individual or entity that conducts an energy audit.

Energy efficiency improvement. Improvements to a facility, building, or process that reduces energy consumption, or reduces energy consumed per square foot.

Existing business. A business that has completed at least one full business cycle.

Fair market value of equity in real property. Fair market value of real property, as established by appraisal, less the outstanding balance of any mortgages, liens, or encumbrances.

Feasibility study. An analysis of the economic, market, technical, financial, and management feasibility of a proposed project or business.

Financial feasibility. The ability of a project or business to achieve the income, credit, and cashflows 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, and the adequacy of raw materials and supplies.

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

Geothermal, electric generation. A system that uses geothermal energy to produce high pressure steam for electric power production.

Holder. A person or entity, other than the lender, who owns all or part of the guaranteed portion of the loan with no servicing responsibilities. When the single note option is used and the lender assigns a part of the guaranteed note to an assignee, the assignee becomes a holder only when the Agency receives notice and the transaction is completed through the use of Form RD 4279–6.

Hydrogen project. A renewable energy system that produces hydrogen or, a renewable energy system that uses mechanical or electric power or thermal energy from a renewable resource using hydrogen as an energy transport medium.

In-kind contributions. Applicant or third-party real or personal property or services benefiting the Federally assisted project or program that are contributed by the applicant or a third-party entity. The identifiable value of goods and services must directly benefit the project.

Interconnection agreement. 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.

Interim financing. A temporary or short-term loan made with the clear intent that it will be repaid through another loan, cash, or other financing mechanism. Interim financing is frequently used to pay construction and other costs associated with a planned project, with permanent financing to be obtained after project completion.

Large solar, electric. Large solar electric systems are those for which the rated power of the system is larger than 10 kilowatts (kW). Large solar electric systems are either stand-alone (off grid) or interconnected to the grid (on grid).

Large solar, thermal. Large solar thermal systems are those for which the rated storage volume of the system is greater than 240 gallons or that have a collector area of more than 1,000 square feet.

Large wind system. A wind energy project for which the rated power of the individual wind turbine(s) is larger than 100kW.

Lender. The organization making, servicing, and collecting the loan that is guaranteed under the provisions of this subpart.

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. Issued and executed by the Agency containing the terms and conditions of the guarantee.

Loan-to-value. The ratio of the dollar amount of a loan to the dollar value of the discounted collateral pledged as security for the loan.

Matching funds. The funds needed to pay for the portion of the eligible project costs not funded or guaranteed by the Agency through a grant, direct loan, or guaranteed loan under this program. Unless authorized by statute, matching funds cannot include grants from any Federal grant program.

Necessary capital improvement. A capital improvement required to keep an existing system in compliance with regulations or to maintain technical or operational feasibility.

Parity. A lien position whereby two or more lenders share a security interest of equal priority in collateral. In the event of default, each lender is affected on a pro rata basis.

Participation. The sale of interest in a loan by the lender wherein the lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

Passive investor. An equity investor that does not actively participate in management and operation decisions of the business entity as evidenced by a contractual arrangement.

Post-application. The date that the Agency receives an essentially completed application. An ''essentially completed'' application is an application that contains all parts necessary for the Department of Agriculture (USDA) to determine applicant and project eligibility, to score the application, and to conduct the technical evaluation.

Power purchase arrangement. The terms and conditions governing the sale and transportation of electricity produced by the grantee or borrower to another party.

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.

Promissory Note. Evidence of debt. A note that a borrower signs promising to pay a specific amount of money at a stated time or on demand.

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

Qualified party. An entity possessing the knowledge, expertise, and experience to perform a specific task.

Renewable energy. Energy derived from a wind, solar, biomass, or geothermal source; or hydrogen derived from biomass or water using wind, solar, biomass, or geothermal energy sources.

Renewable energy system. A system that produces or produces and delivers usable energy from a renewable energy source.

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

Simplified application. An application that conforms to the criteria and procedures specified in § 4280.109.

Small business. An entity is considered a small business in accordance with the Small Business Administration's (SBA) small business size standards by the North American Industry Classification System (NAICS) found in Title 13 CFR part 121. A private entity, including a sole proprietorship, partnership, corporation, cooperative (including a cooperative qualified under section 501(c)(12) of the Internal Revenue Code), and an electric utility, including a Tribal or governmental electric utility, that provides service to rural consumers on a cost-of-service basis without support from public funds or subsidy from the Government authority establishing the district, provided such utilities meet SBA's definition of small business. These entities must operate independent of direct Government control. With the exception of the entities described above, all other non-profit entities are excluded.

Small solar, electric. Small solar electric projects are those for which the rated power of the system is 10kW or smaller. Small solar electric projects are either stand-alone (off grid) or interconnected to the grid at less than 600 volts (on grid).

Small solar, thermal. Small solar thermal projects are those for which the rated storage volume of the system is 240 gallons or smaller or that have a collector area of 1,000 square feet or less.

Small wind system. Wind energy system for which the rated power of the wind turbine is 100kW or smaller and with a generator hub height of 120 feet or less. A small wind system is either stand-alone or connected to the local electrical system at less than 600 volts.

Spreadsheet. A table containing data from a series of financial statements of a business over a period of time. Financial statement analysis normally contains spreadsheets for balance sheets and income statements and may include cashflow statement data and commonly used ratios. The spreadsheets enable a reviewer to easily scan the data, spot trends, and make comparisons.

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

Total project cost. 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.

Very small business. A business with fewer than 15 employees and less than $1 million in annual receipts.

§ 4280.104 Exception authority.

The Administrator may, on a case-by-case basis, make an exception 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 USDA's interest.

§ 4280.105 Appeals.

Only the grantee, borrower, lender, or holder can appeal an Agency decision made under this subpart. 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. An adverse decision regarding a grant or direct loan application may be appealed by the applicant only. Appeals will be handled in accordance with 7 CFR part 11 of this title. Any party adversely affected by an Agency decision under this subpart may request a determination of appealability from the Director, National Appeals Division, USDA, within 30 days of the adverse decision.

§ 4280.106 Conflict of interest.

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, loan, and guaranteed loan funds or award of project contracts to an individual owner, partner, stockholder, or beneficiary of the applicant or borrower or a close relative of such an individual when such individual will retain any portion of the ownership of the applicant or borrower.

§ 4280.107 Applicant eligibility.

(a) To receive a grant or loan under this subpart, an applicant must meet each of the criteria, as applicable, as set forth in paragraphs (a)(1) through (5) of this section.

(1) The applicant must be an agricultural producer or rural small business.

(2) Individuals must be citizens of the United States (U.S.) or reside in the U.S. after being legally admitted for permanent residence.

(3) Entities must be at least 51 percent owned, directly or indirectly, by individuals who are either citizens of the U.S. or reside in the U.S. after being legally admitted for permanent residence.

(4) Applicants and owners will be ineligible to receive funds under this subpart as discussed in paragraphs (a)(4)(i) and (ii) of this section.

(i) If an applicant 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 is not eligible to receive a grant, direct loan, or guaranteed loan until the judgment is paid in full or otherwise satisfied or the delinquency is resolved.

(ii) If an applicant has been debarred from receiving Federal assistance, the applicant is not eligible to receive a grant, direct loan, or guaranteed loan under this subpart.

(5) A grant applicant must have demonstrated financial need.

(b) An applicant that has received one or more grants and/or loans under this program must make satisfactory progress, as determined by the Agency, toward completion of any previously funded projects before it will be considered for subsequent funding.

§ 4280.108 Project eligibility.

For a renewable energy system or energy efficiency improvement project to be eligible to receive a grant or loan under this subpart, the proposed project must meet each of the criteria, as applicable, in paragraphs (a) through (g) of this section.

(a) The project must be for the purchase of a renewable energy system or to make energy efficiency improvements.

(b) The project must be for a pre-commercial or commercially available, and replicable technology.

(c) The project must have technical merit, as determined using the procedures specified in § 4280.112(d).

(d) The project must be located in a rural area, as defined in § 4280.103.

(e) The applicant must be the owner of the project and control the revenues and expenses of the project, including operation and maintenance. A third-party under contract to the owner may be used to control revenues and expenses and manage the operation and/or maintenance of the project.

(f) Sites must be controlled by the agricultural producer or small business for the financing term of any associated Federal loans or loan guarantees.

(g) Satisfactory sources of revenue in an amount sufficient to provide for the operation, management, maintenance, and debt service of the project must be available for the life of the project.

Section A. Grants

§ 4280.109 Qualification for simplified applications.

When applying for a grant, applicants may qualify for the simplified application process. In order to use the simplified application process, each of the conditions specified in paragraphs (a)(1) through (8) of this section must be met.

(a) *Simplified application criteria.* (1) The applicant must be eligible in accordance with § 4280.107.

(2) The project must be eligible in accordance with § 4280.108.

(3) Total eligible project costs must be $200,000 or less.

(4) The proposed project must use commercially available renewable energy systems or energy efficiency improvements.

(5) Construction planning and performing development must be performed in compliance with § 4280.115. The applicant or the applicant's prime contractor must assume all risks and responsibilities of project development.

(6) The applicant or the applicant's prime contractor is responsible for all interim financing.

(7) The proposed project is scheduled to be completed within 24 months after entering into a grant agreement. The Agency may extend this period if the Agency determines, at its sole discretion, that the applicant is unable to complete the project for reasons beyond the applicant's control.

(8) The applicant agrees not to request reimbursement from funds obligated under this program until after project completion, including all operational testing and certifications acceptable to the Agency.

(b) *Application processing and administration.* (1) *Application documents.* Application documents shall be submitted in accordance with § 4280.111 or, if applying for a combined grant and loan, also in accordance with § 4280.193(c).

(2) *Demonstrated financial need.* The applicant must certify that it meets the definition of demonstrated financial need, as defined in § 4280.103. The Agency may require the applicant to provide supplemental information that will allow the Agency to make its own determination of the applicant's financial need.

(3) *Project development.* Section 4280.115 applies, except as follows:

(i) Any grantee may participate in project development without direct compensation subject to the approval in writing by the prime contractor, provided that all applicable construction practices, manufacturer instructions, and all safety codes and standards are followed during construction and testing, and the work product meets all applicable manufacture specifications, and all applicable codes and standards. The prime contractor remains responsible for all the overall successful completion of the project, including any work done by the grantee, or

(ii) A grantee who can demonstrate to the Agency that the grantee has the necessary experience and other resources to successfully complete the project may serve as the prime contractor/installer. Projects where the grantee serves as the prime contractor will need to secure the services of an independent, professionally responsible, qualified consultant to certify testing specifications, procedures, and testing results.

(4) *Project completion.* The project is complete when the applicant has provided a written final project development, testing, and performance report acceptable to the Agency. Upon notification of receipt of an acceptable project completion report, the applicant may request grant reimbursement. The Agency reserves the right to observe the testing.

(5) *Insurance.* Section 4280.113 applies, except business interruption insurance is not required.

§ 4280.110 Grant funding.

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

(b) The applicant is responsible in securing the remainder of the total eligible project costs not covered by grant funds. The amount secured by the applicant must be the remainder of total eligible project costs.

(1) Without specific statutory authority, other Federal grant funds and applicant in-kind contributions cannot be used to meet the matching fund requirement. Third-party, in-kind contributions are limited to 10 percent of the matching fund requirement of the grant. The Agency will advise if the proposed third-party, in-kind contributions are acceptable in accordance with 7 CFR part 3015 of this title.

(2) Passive third-party equity contributions are acceptable for renewable energy system projects, including those that are eligible for Federal production tax credits, provided the applicant meets the requirements of § 4280.107.

(c) Eligible project costs are only those costs associated with the items identified in paragraphs (c)(1) through (9) of this section, as long as the items are an integral and necessary part of the renewable energy system or energy efficiency improvement.

(1) Post-application purchase and installation of equipment (new, refurbished, or remanufactured), except agricultural tillage equipment, used equipment, and vehicles.

(2) Post-application construction or improvements, except residential.

(3) Energy audits or assessments.

(4) Permit and license fees.

(5) Professional service fees, except for application preparation.

(6) Feasibility studies and Technical Reports.

(7) Business plans.

(8) Retrofitting.

(9) Construction of a new energy efficient facility only when the facility is used for the same purpose, is approximately the same size, and based on the energy audit will provide more energy savings than improving an existing facility. Only costs identified in the energy audit for energy efficiency improvements are allowed.

(d) The maximum amount of grant assistance to one individual or entity will not exceed $750,000 per Federal fiscal year. For those applicants that have not received a grant award during the previous 2 Federal fiscal years, additional points will be added to their priority score.

(e) Applications for renewable energy system grants will be accepted for a minimum grant request of $2,500 up to a maximum of $500,000.

(f) Applications for energy efficiency improvement grants will be accepted for a minimum grant request of $1,500 up to a maximum of $250,000.

(g) In determining the amount of a grant awarded, the Agency will take into consideration the following six criteria:

(1) The type of renewable energy system to be purchased;

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

(3) The expected environmental benefits of the renewable energy system;

(4) The extent to which the renewable energy system will be replicable;

(5) The amount of energy savings expected to be derived from the activity, as demonstrated by an energy audit comparable to an energy audit under 7 U.S.C. 8105; and

(6) The estimated length of time it would take for the energy savings generated by the activity to equal the cost of the activity.

§ 4280.111 Application and documentation.

The requirements in this section apply to grant applications under this subpart.

(a) *General.* Separate applications must be submitted for renewable energy system and energy efficiency improvement projects. Applicants may only submit one application for each type of project per Federal fiscal year. An original and one complete copy of each application are required that follow the outline below. Each application must include a Table of Contents with clear pagination and chapter identification.

(b) *Grant application content.* Applications and documentation for projects using the simplified application process, as described in § 4280.109, must provide the required information organized pursuant to the Table of Contents in a chapter format presented in the order shown in paragraphs (b)(1) through (3) and (b)(5) through (7) of this section; paragraph (b)(4) of this section does not apply for projects using the simplified application process. Applications and documentation for projects not using the simplified application process must provide the required information organized pursuant to the Table of Contents in a chapter format presented in the order shown in paragraphs (b)(1) through (8) of this section.

(1) *Forms, certifications, and organizational documents.* Each application must contain the items identified in paragraphs (b)(1)(i) through (iii) in this section.

(i) *Project specific forms.*

(A) Form SF–424, ''Application for Federal Assistance.''

(B) Form SF–424C, ''Budget Information—Construction Programs.'' A more detailed budget breakdown is required in the Technical Report.

(C) Form SF–424D, ''Assurances—Construction Programs.''

(D) Form RD 1940–20, ''Request for Environmental Information.''

(ii) *Certifications.*

(A) AD–1049, ''Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative 1—For Grantees Other than Individuals.''

(B) AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tiered Covered Transactions.''

(C) Exhibit A–1 of RD Instruction 1940–Q, ''Certification for Contracts, Grants and Loans,'' required by 7 CFR 3018.110 if the grant exceeds $100,000.

(D) Form SF–LLL, ''Disclosure of Lobbying Activities,'' must be completed if the applicant or borrower 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.

(E) AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions.''

(F) Form RD 400–1, ''Equal Opportunity Agreement.''

(G) Form RD 400–4, ''Assurance Agreement.''

(H) Intergovernmental consultation comments in accordance with 7 CFR part 3015, subpart V, of this title.

(I) Applicants and borrowers must provide a certification indicating whether or not there is a known relationship or association with an Agency employee.

(J) Applicants must provide certification that they meet the definition of demonstrated financial need, as defined in § 4280.103.

(iii) *Organizational documents.* Except for sole proprietors, each applicant must submit, with the application, a copy of the legal organizational documents.

(2) *Table of Contents.* Include page numbers for each component of the application in the table of contents. Begin pagination immediately following the Table of Contents.

(3) *Project Summary.* Provide a concise summary of the project proposal and applicant information, project purpose and need, and project goals that includes the following:

(i) *Title.* Provide a descriptive title of the project (identified on SF 424).

(ii) *Applicant eligibility.* Describe how each of the applicable criteria identified in § 4280.107(a)(1) through (5) is met.

(iii) *Project eligibility.* Describe how each of the criteria, as applicable, in § 4280.108(a) through (g) is met. Clearly state whether the application is for the purchase of a renewable energy system or to make energy efficiency improvements. The response to § 4280.108(a) must include a brief description of the system or improvement. This description must be sufficient to provide the reader with a frame of reference when reviewing the rest of the application. Additional project description information may be needed later in the application.

(iv) *Operation description.* Describe the applicant's total farm/ranch/business operation and the relationship of the proposed project to the applicant's total farm/ranch/business operation. Provide a description of the ownership of the applicant, including a list of individuals and/or entities with ownership interest, names of any corporate parents, affiliates, and subsidiaries, as well as a description of the relationship, including products, between these entities.

(v) *Financial information for size determination.* Provide financial information to allow the Agency to determine the applicant's size. All information submitted under this paragraph must be substantiated by authoritative records.

(A) *Rural small businesses.* Provide sufficient information to determine total annual receipts for and number of employees of the business and any parent, subsidiary, or affiliates at other locations. Voluntarily providing tax returns is one means of satisfying this requirement. The information provided must be sufficient for the Agency to make a determination of business size as defined by SBA.

(B) *Agricultural producers.* Provide the gross market value of your agricultural products, gross agricultural income, and gross nonfarm income of the applicant for the calendar year preceding the year in which you submit your application.

(4) *Financial information.* Financial information is required on the total operation of the agricultural producer/rural small business and its parent, subsidiary, or affiliates at other locations. 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 for the past years in the format that is generally required by commercial agriculture lenders.

(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 should 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 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 cashflow and income statements for 3 years supported by a list of assumptions showing the basis for the projections.

(iv) *Demonstration of Financial Need.* Provide sufficient information or documentation that allows the Agency to make its own determination of the applicant's financial need.

(5) *Matching funds.* Submit a spreadsheet identifying sources of matching funds, amounts, and status of matching funds. The spreadsheet must also include a directory of matching funds source contact information. Attach any applications, correspondence, or other written communication between applicant and matching fund source.

(6) *Self-Evaluation Score.* Self-score the project using the evaluation criteria in § 4280.112(e). To justify the score, submit the total score along with appropriate calculations and attached documentation, or specific cross-references to information elsewhere in the application.

(7) *Renewable Energy and Energy Efficiency Improvements Technical Report.* A Technical Report must be submitted as part of the application to allow the Agency to determine the overall technical merit of the renewable energy system or energy efficiency improvement project.

(i) *Simplified applications.* Simplified applications, which are submitted for renewable energy projects or energy efficiency improvement projects with total eligible project costs of $200,000 or less, must include a Technical Report prepared in accordance with the requirements specified in paragraphs (b)(7)(i)(A) through (C) of this section.

(A) The Technical Report must be prepared in accordance with Appendix A of this subpart. If a renewable energy project does not fit one of the technologies identified in Appendix A, the applicant must submit a Technical Report in accordance with paragraph (b)(7)(ii) of this section. The information in all Technical Reports must be of sufficient detail to allow the Agency to score the project and evaluate its technical feasibility.

(B) Either an energy assessment or an energy audit is required for energy efficiency improvement projects. For energy efficiency improvement projects with total eligible project costs greater than $50,000, an energy audit must be conducted; it must be conducted by or reviewed and certified by an energy auditor. For energy efficiency improvement projects with total eligible project costs of $50,000 or less, an energy assessment or an energy audit may be conducted by either an energy assessor or an energy auditor.

(C) Technical Reports prepared prior to the applicant's selection of a prime contractor may be modified after selection, pursuant to input from the prime contractor, and submitted to the Agency, provided the overall scope of the project is not materially changed as determined by the Agency. Changes in the report must be accompanied by an updated Form RD 1940–20.

(ii) *Full applications.* Full applications, which must be submitted for applications for renewable energy projects or energy efficiency improvement projects with total eligible project costs greater than $200,000, must include a full Technical Report prepared in accordance with Appendix B of this subpart and with paragraphs (b)(7)(ii)(A) through (G) of this section, as applicable.

(A) The Technical Report must demonstrate that the renewable energy system or energy efficiency improvement project can be installed and perform as intended in a reliable, safe, cost-effective, and legally compliant manner.

(B) Either an energy assessment or an energy audit is required for energy efficiency improvement projects. For energy efficiency improvement projects with total eligible project costs greater than $50,000, an energy audit must be conducted; it must be conducted by or reviewed and certified by an energy auditor. For energy efficiency improvement projects with total eligible project costs of $50,000 or less, an energy assessment or an energy audit may be conducted by either an energy assessor or an energy auditor.

(C) For renewable energy projects with total eligible project costs greater than $400,000 and for energy efficiency improvement projects with total eligible project costs greater than $200,000, the design review, installation monitoring, testing prior to commercial operation, and project completion certification will require the services of a licensed professional engineer (PE) or team of licensed PEs.

(D) For projects with total eligible project costs greater than $1,200,000, the Technical Report must be reviewed and include an opinion and recommendation by an independent qualified consultant.

(E) Technical Reports prepared prior to the applicant's selection of a final design, equipment vendor, or prime contractor, or other significant decision may be modified and resubmitted to the Agency, provided the overall scope of the project is not materially changed as determined by the Agency. Changes in the Technical Report must be accompanied by an updated Form RD 1940–20.

(F) All information provided in the Technical Report will be evaluated against the requirements provided in Appendix B of this subpart. Any Technical Report not prepared in the following format and in accordance with Appendix B, where applicable, will be penalized under scoring for technical merit.

(G) All Technical Reports shall follow the outline presented below and shall contain the information described in paragraphs (b)(7)(ii)(G)(*1*) through (*10*) of this section and Appendix B, if the technology is identified in Appendix B for the particular project. If none of the Technical Reports in Appendix B apply to the proposed technology, the applicant may submit a Technical Report that conforms to the overall outline and subjects specified in paragraph (b)(7)(ii)(G) of this section. For Technical Reports prepared for technologies not identified in Appendix B, the Agency will review the reports and notify, in writing, the applicant of the changes to the report required in order for the Agency to accept the report.

(*1*) *Qualifications of the project team.* Describe the project team, their professional credentials, and relevant experience. The description must support that the project team service, equipment, and installation providers have the necessary professional credentials, licenses, certifications, or relevant experience to develop the proposed project.

(*2*) *Agreements and permits.* Describe the necessary agreements and permits required for the project and the anticipated schedule for securing those agreements and permits. For example, interconnection agreements and purchase power arrangements are necessary for all renewable energy projects electrically interconnected to the utility grid. The applicant must demonstrate that the applicant is familiar with the regulations and utility policies and that these arrangements will be secured in a reasonable timeframe.

(*3*) *Energy or resource assessment.* Describe the quality and availability of the renewable resource, and an assessment of expected energy savings through the deployment of the proposed system or increased production created by the system.

(*4*) *Design and engineering.* Describe the intended purpose of the project and the design, engineering, testing, and monitoring needed for the proposed project. The description must 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, the applicant must identify all the major equipment that is proprietary equipment and justify how this unique equipment is needed to meet the requirements of the proposed design.

(*5*) *Project development.* Describe the overall project development method, including the key project development activities and the proposed schedule for each activity. The description must 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 must address applicant project development cashflow requirements. Details for equipment procurement and installation shall be addressed in paragraphs (b)(7)(ii)(G)(*7*) and *(8*) of this section.

(*6*) *Project economic assessment.* Describe the financial performance of the proposed project. The description must address project costs, energy savings, and revenues, including applicable investment and production incentives. Cost centers include, but are not limited to, administrative and general, fuel supply, operations and maintenance, product delivery and debt service. Revenues to be considered must accrue from the sale of energy, offset or savings in energy costs, byproducts, and green tags. Incentives to be considered must accrue from government entities.

(*7*) *Equipment procurement.* Describe the availability of the equipment required by the system. The description must support that the required equipment is available and can be procured and delivered within the proposed project development schedule.

(*8*) *Equipment installation.* Describe the plan for site development and system installation, including any special equipment requirements. In all cases, the system or improvement must be installed in conformance with manufacturer's specifications and design requirements, and comply with applicable laws, regulations, agreements, permits, codes, and standards.

(*9*) *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 the design life. All systems or improvements must have a warranty. The warranty must cover and provide protection against both breakdown and a degradation of performance. The performance of the renewable energy system or energy efficiency improvement must be monitored and recorded as appropriate to the specific technology.

(*10*) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at

the end of their useful lives. The budget for and any unique concerns associated with the dismantling and disposal of project components and their wastes must also be described.

(8) *Business-level feasibility study for renewable energy systems.* For each application for a renewable energy system project, with total eligible project costs greater than $200,000, a business-level feasibility study by an independent, qualified consultant will be required by the Agency for start-up businesses or existing businesses. An acceptable business-level feasibility study must at least include an evaluation of economic, market, technical, financial, and management feasibility.

§ 4280.112 Evaluation of grant applications.

(a) *General review.* The Agency will evaluate each application and make a determination as to whether the applicant is eligible, the proposed grant is for an eligible project, and the proposed grant complies with all applicable statutes and regulations.

(b) *Ineligible applications.* If either the applicant or the project is ineligible, the Agency will inform the applicant in writing of the decision, reasons therefore, and any appeal rights. No further evaluation of the application will occur.

(c) *Incomplete applications.* If the application is incomplete, the Agency will return it to the applicant to provide the applicant the opportunity to resubmit the application. The Agency will identify those parts of the application that are incomplete. Upon receipt of a complete application, the Agency will complete its evaluation of the application.

(d) *Technical merit.* The Agency's determination of a project's technical merit will be based on the information provided by the applicant. 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 application. The Agency may use this evaluation and rating to determine the level of technical merit of the proposed project. Projects that the Agency determines are without technical merit shall be deemed ineligible.

(e) *Evaluation criteria.* Agency personnel will score and fund each application based on the evaluation criteria specified in paragraphs (e)(1) through (9) of this section.

(1) *Quantity of energy replaced, produced, or saved.* 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 renewable energy system 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 a 12-month period by the estimated quantity of energy consumed over the same 12-month period during the previous year by the applicable energy application. The estimated quantities of energy must be converted to either British thermal units (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 by the installation of the energy efficiency improvements will be from 20 percent up to, but not including 30 percent, 5 points will be awarded; 30 percent up to, but not including 35 percent, 10 points will be awarded; or, 35 percent or greater, 15 points will be awarded. Energy savings will be determined by the projections in an energy assessment or audit. Projects with total eligible project costs of $50,000 or less that opt to obtain a professional energy audit will be awarded an additional 5 points.

(iii) *Energy generation.* If the proposed renewable energy system is intended primarily for production of energy for sale, 10 points will be awarded.

(2) *Environmental benefits.* If the purpose of the proposed system contributes to the environmental goals and objectives of other Federal, State, or local programs, 10 points will be awarded. Points will only be awarded for this paragraph if the applicant is able to provide documentation from an appropriate authority supporting this claim.

(3) *Commercial availability.* If the proposed system or improvement is currently commercially available and replicable, 5 points will be awarded. If the proposed system or improvement is commercially available and replicable and is also provided with a 5-year or longer warranty providing the purchaser protection against system degradation or breakdown or component breakdown, 10 points will be awarded.

(4) *Technical merit score.* The Technical Merit of each project will be determined using the procedures specified in paragraphs (e)(4)(i) and (ii) of this section. The procedures specified in paragraph (e)(4)(i) will be used to score paragraphs (e)(4)(i)(A) through (J) of this section. The final score awarded will be calculated using the procedures described in paragraph (e)(4)(ii) of this section.

(i) *Technical merit.* Each subparagraph has its own maximum possible score and will be scored according to the following criteria: If the description in the subparagraph has no significant weaknesses and exceeds the requirements of the subparagraph, 100 percent of the total possible score for the subparagraph will be awarded. If the description has one or more significant strengths and meets the requirements of the subparagraph, 80 percent of the total possible score will be awarded for the subparagraph. If the description meets the basic requirements of the subparagraph, but also has several weaknesses, 60 percent of the points will be awarded. If the description is lacking in one or more critical aspects, key issues have not been addressed, but the description demonstrates some merit or strengths, 40 percent of the total possible score will be awarded. If the description has serious deficiencies, internal inconsistencies, or is missing information, 20 percent of the total possible score will be awarded. If the description has no merit in this area, 0 percent of the total possible score will be awarded. The total possible points for Technical Merit is 35 points.

(A) *Qualifications of the project team (maximum score of 10 points).* The applicant has described the project team service providers, their professional credentials, and relevant experience. The description supports that the project team service, equipment, and installation providers have the necessary professional credentials, licenses, certifications, or relevant experience to develop the proposed project.

(B) *Agreements and permits (maximum score of 5 points).* The applicant has described the necessary agreements and permits required for the project and the schedule for securing those agreements and permits.

(C) *Energy or resource assessment (maximum score of 10 points).* The applicant has described the quality and availability of a suitable renewable resource or an assessment of expected energy savings for the proposed system.

(D) *Design and engineering (maximum score of 30 points).* The applicant has described the design, engineering, and testing needed for the proposed project. The description supports that the system will be designed, engineered, and tested so as to meet its intended purpose, ensure public safety, and comply with applicable laws, regulations, agreements, permits, codes, and standards.

(E) *Project development schedule (maximum score of 5 points).* The applicant has described the development method, including the key project development activities and the proposed schedule for each activity. The description identifies each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through to successful completion. The description addresses grantee or borrower project development cashflow requirements.

(F) *Project economic assessment (maximum score of 20 points).* The applicant has described the financial performance of the proposed project, including the calculation of simple payback. The description addresses project costs and revenues, such as applicable investment and production incentives, and other information to allow the assessment of the project's cost effectiveness.

(G) *Equipment procurement (maximum score of 5 points).* The applicant has described the availability of the equipment required by the system. The description supports that the required equipment is available, and can be procured and delivered within the proposed project development schedule.

(H) *Equipment installation (maximum score of 5 points).* The applicant has described the plan for site development and system installation.

(I) *Operation and maintenance (maximum score of 5 points).* The applicant has described the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life.

(J) *Dismantling and disposal of project components (maximum score of 5 points).* The applicant has described the requirements for dismantling and disposing of project components at the end of their useful life and associated wastes.

(ii) *Calculation of Technical Merit Score.* To determine the actual points awarded a project for Technical Merit, the following procedure will be used: The score awarded for paragraphs (e)(4)(i)(A) through (J) of this section will be added together and then divided by 100, the maximum possible score, to achieve a percentage. This percentage will then be multiplied by the total possible points of 35 to achieve the points awarded for the proposed project for Technical Merit.

(5) *Readiness.* If the applicant has written commitments from the source(s) confirming commitment of 50 percent up to but not including 75 percent of the matching funds prior to the Agency receiving the complete application, 5 points will be awarded. If the applicant has written commitments from the source(s) confirming commitment of 75 percent up to but not including 100 percent of the matching funds prior to the Agency receiving the complete application, 10 points will be awarded. If the applicant has written commitments from the source(s) of matching funds confirming commitment of 100 percent of the matching funds prior to the Agency receiving the complete application, 15 points will be awarded.

(6) *Small agricultural producer/very small business.* If the applicant is an agricultural producer producing agricultural products with a gross market value of less than $600,000 in the preceding year, 5 points will be awarded. If the applicant is an agricultural producer producing agricultural products with a gross market value of less than $200,000 in the preceding year or is a very small business, as defined in § 4280.103, 10 points will be awarded.

(7) *Simplified application/low cost projects.* If the applicant is eligible for and uses the simplified application process or the project has total eligible project costs of $200,000 or less, 5 points will be awarded.

(8) *Previous grantees and borrowers.* If an applicant has not been awarded a grant or loan under this program within the 2 previous Federal fiscal years, 5 points will be awarded.

(9) *Return on investment.* If the proposed project will return the cost of the investment in less than 4 years, 10 points will be awarded; 4 years up to but not including 8 years, 4 points will be awarded; or 8 years up to 11 years, 2 point will be awarded.

§ 4280.113 Insurance requirements.

Agency approved insurance coverage must be maintained for the life of the grant unless this requirement is waived or modified by the Agency in writing.

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

(b) Business interruption insurance is required except for projects with total eligible project costs of $200,000 or less.

§ 4280.114 Laws that contain other compliance requirements.

(a) *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 as supplemented by applicable Department of Labor regulations (41 CFR part 60). The applicant is responsible for ensuring that the contractor complies with these requirements.

(b) *Equal opportunity and nondiscrimination.* The Agency will ensure that equal opportunity and nondiscriminatory requirements are met in accordance with the Equal Credit Opportunity Act and 7 CFR 15d, Nondiscrimination in Programs and Activities, conducted by USDA. 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); to the fact that all or part of the applicant's income derives from public assistance program; or to the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

(c) *Civil rights compliance.* Recipients of grants must comply with the Americans with Disabilities Act of 1990, Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973. This may include 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 part 1901, subpart E, § 1901.204 of this title. Initial reviews will be conducted after Form RD 400–4 is signed and all subsequent reviews every 3 years thereafter for loans. The last review shall occur 3 years after the date of loan closing. Grants will require one subsequent compliance review after the last disbursement of grant funds have been made, and the facility has been in full operation for 90 days.

(d) *Environmental analysis.* Subpart G of part 1940 of this title 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.

(4) The applicant taking any actions or incurring any obligations during the time of application or application review and processing 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, will result in project ineligibility.

(e) *Executive Order 12898.* When a project is proposed and financial assistance requested, the Agency will conduct a Civil Rights Impact Analysis (CRIA) with regards to environmental justice. The CRIA must be conducted and the analysis documented utilizing Form RD 2006–38, ''Civil Rights Impact Analysis Certification.'' This certification must be done prior to loan approval, obligation of funds, or other commitments of Agency resources, including issuance of a Letter of Conditions or Form RD 4279–3 of guarantee, whichever occurs first.

(f) *Uniform Federal assistance regulations.* Grants will be administered in accordance with 7 CFR part 3015 of this title.

§ 4280.115 Construction planning and performing development.

The requirements of this section apply for planning, designing, bidding, contracting, and constructing renewable energy systems and energy efficiency improvement projects as applicable. For contracts of $200,000 or less, the simple contract method, as specified in paragraph (e) of this section, may be used. Contracts greater than $200,000 shall use the contract method specified in paragraph (g) of this section.

(a) *Technical services.* Applicants are responsible for providing the engineering, architectural, and environmental services necessary for planning, designing, bidding, contracting, inspecting, and constructing their facilities. Services may be provided by the applicant's ''in-house'' engineer or architect or through contract, subject to Agency concurrence. Engineers and architects must be licensed in the State where the facility is to be constructed.

(b) *Design policies.* Facilities funded by the Agency will meet the requirements of 7 CFR subpart C of part 1780, § 1780.57(b), (c), (d), and (o) of this title. Final plans and specifications must be reviewed by the Agency and approved prior to the start of construction.

(c) *Owners accomplishing work.* In some instances, owners may wish to perform a part of the work themselves. For an owner to perform project development work, the owner must meet the experience requirements of 7 CFR subpart C of part 1780, § 1780.67 of this title. For an owner to provide a portion of the work, with the remainder to be completed by a contractor, a clear understanding of the division of work must be established and delineated in the contract. In such cases, the contractor will be required to inspect the owner's work and accept it. Owners are not eligible for payment for their own work as it is not an eligible project cost. See § 4280.110(c) of this subpart for further details on eligible project costs.

(d) *Equipment purchases.* Equipment purchases of less than $200,000 will not require a performance and payment bond, unless required by the applicant, as long as the contract purchase is a lump sum payment and the manufacturer provides the required warranties on the equipment as outlined in paragraph (i) in the applicable section found in Appendices A and B of this subpart. Payment shall be certified by copies of the Manufacturer's paid invoices and warranty documents.

(e) *Simple contract method.* The simple contract method may be used for small projects with a contract not greater than $200,000. In smaller projects, Agency funds will typically be used to reimburse project costs upon completion of the work as a lump sum payment. Partial payments will be made in accordance with Form RD 4280–2, ''Grant Agreement,'' and Form RD 1924–6, ''Construction Contract,'' or other Agency approved contract. All construction work will be performed under a written contract, as described below. A design/build method, where the same person or entity provides design and engineering work, as well as construction or installation, may be used under this method.

(1) *Contracting requirements threshold.* For contracts above $100,000, certain Federal requirements, including surety, must be met. An attachment to the contract may be used to incorporate language for these requirements.

(2) *Forms used.* Form RD 1924–6 or other Agency approved contract must be used. Other contracts 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 shall become effective until concurred in writing by the Agency. Such concurrence statement shall be attached to and made a part of the contract.

(3) *Contract provisions.* 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. If not, a latent defects bond may be required, as described in paragraph (e)(4) of this section;

(vi) The requirement that changes or additions must have prior written approval of the Agency; and

(vii) The warranty period to be provided in accordance with Appendices A and B, sections 1 through 10, paragraph (i)(1).

(4) *Surety.* Surety per 7 CFR subpart C of part 1780, § 1780.75(c) of this title will be required, and made a part of the contract, if the applicant requests it, or if the contractor requests partial payments for construction work. If the contractor will receive a lump sum payment at the end of work, the Agency will not require surety. In such cases where no surety is provided and the project involves pre-commercial technology, first of its type in the U.S., or new designs without sufficient operating hours to prove their merit, a latent defects bond may be required to cover the work.

(5) *Equal opportunity.* Section 1901.205 of subpart E of part 1901 of this title applies to all financial assistance involving construction contracts and subcontracts in excess of $10,000. Language for this requirement is included in Form RD 1924–6. If this form is not used, such language must be made a part of the Agency approved contract.

(6) *Obtaining bids and selecting a contractor.* (i) The applicant may select

a contractor and negotiate a contract or contact several contractors and request each to submit a bid. The applicant will provide a statement to the Agency describing the process for obtaining the bid(s) and what alternatives were considered.

(ii) When a price has already been negotiated by an applicant and a contractor, the Agency will review the proposed contract. If the contractor is qualified to perform the development and provide a warranty of the work and the price compares favorably with the cost of similar construction in the area, further negotiation is unnecessary. If the Agency determines the price is too high or otherwise unreasonable, the applicant will be required to negotiate further with the contractor. If a reasonable price cannot be negotiated or if the contractor is not qualified, the applicant will be required to negotiate with another contractor.

(iii) When an applicant has proposed development with no contractor in mind, competition will be required. The applicant must obtain bids from as many qualified contractors, dealers, or trades people as feasible depending on the method and type of construction.

(iv) If the award of the contract is by competitive bidding, Form RD 1924–5, ''Invitation for Bid (Construction Contract),'' or another similar Agency approved invitation bid form containing the requirements of subpart E of part 1901 of this title may be used. All contractors from whom bids are requested should be informed of all conditions of the contract, including the time and place of opening bids. Conditions shall not be established which would give preference to a specific bidder or type of bidder. When applicable, copies of Forms RD 1924–6 and RD 400–6, ''Compliance Statement,'' also should be provided to the prospective bidders.

(7) *Awarding the contract.* 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 Form RD 1924–6 or similar Agency approved document as described in this section.

(8) *Final payments.* Prior to making final payment on the contract when a surety bond is not used, the Agency will be provided with Form RD 1924–9, ''Certificate of Contractor's Release,'' and Form RD 1924–10, ''Release by Claimants,'' executed by all persons who furnished materials or labor in connection with the contract. The applicant should furnish the contractor with a copy of Form RD 1924–10 at the beginning of the work in order that the contractor may obtain these releases as the work progresses.

(f) *Design/build contracts.* 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. If the design/build contract amount is $200,000 or less, development and contracting will follow paragraph (e) of this section. If the design/build contract amount is greater than $200,000, Agency prior concurrence must be obtained as described below, and the remaining requirements of this section apply.

(1) *Concurrence information.* The applicant will request Agency concurrence by providing the Agency at least the information specified in paragraphs (f)(1)(i) through (viii) of this section.

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

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

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

(iv) Where noncompetitive negotiation is proposed, an evaluation of the contractor's performance on previous similar projects in which the contractor acted in a similar capacity.

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

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

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

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

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

(3) *Forms used.* The American Institute of Architects (AIA) Form A191, ''Standard Form of Agreement Between Owner and Design/Builder,'' should be used. Other Agency approved contract documents may 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 shall be attached to and made a part of the contract.

(4) *Contract provisions.* Contracts will have a listing of attachments and shall meet the following requirements:

(i) The contract sum;

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

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

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

(v) Surety provisions that meet the requirements of 7 CFR subpart C of part 1780, § 1780.75(c) of this title;

(vi) The requirement that changes or additions must have prior written approval of the Agency;

(vii) The warranty period to be provided in accordance with Appendices A and B, sections 1 through 10, paragraph (i);

(viii) Contract review and concurrence in accordance with 7 CFR subpart C of part 1780, § 1780.61(b) of this title;

(ix) Owner's contractual responsibility in accordance with 7 CFR subpart C of part 1780, § 1780.68 of this title; and

(x) Further contract provisions concerning remedies, termination, surety, equal employment opportunity, anti-kickback, records, State energy conservation plan, change orders, Agency concurrence, retainage, and other compliance requirements must be met in accordance with 7 CFR subpart C of part 1780, § 1780.75 of this title.

(5) *Obtaining bids and selecting a contractor.* The applicant may select a contractor based on competitive sealed bids, competitive negotiation, or noncompetitive negotiation as described in 7 CFR subpart C of part 1780, § 1780.72(b), (c), or (d) of this title.

(g) *Contract method.* If the contract amount is greater than $200,000 and is not of the design/build method, the following conditions must be met:

(1) *Procurement method.* Procurement method shall comply with the requirements of 7 CFR subpart C of part 1780, §§ 1780.72, 1780.75, and 1780.76 of this title.

(2) *Forms used.* The AIA Form A101, ''Standard Form of Agreement Between Owner/Contractor,'' or Engineering Joint Counsel Document Committee (EJCDC) Form C–521, ''Suggested Form of Agreement Between Owner and Contractor (Stipulated Price) Funding Agency Edition,'' should be used. Other Agency approved contract documents may 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 shall be attached to and made a part of the contract.

(3) *Contract provisions.* Contracts will have a listing of attachments and shall meet the requirements of 7 CFR subpart C of part 1780, § 1780.75 of this title and the following requirements:

(i) The contract sum;

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

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

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

(v) Surety provisions that meet the requirements of 7 CFR subpart C of part 1780, § 1780.75(c) of this title;

(vi) The requirement that changes or additions must have prior written approval of the Agency;

(vii) The warranty period to be provided in accordance with Appendices A and B, sections 1 through 10, paragraph (i);

(viii) Contract review and concurrence in accordance with 7 CFR subpart C of part 1780, § 1780.61(b) of this title;

(ix) Owner's contractual responsibility in accordance with 7 CFR subpart C of part 1780, § 1780.68 of this title; and

(x) Further contract provisions concerning remedies, termination, surety, equal employment opportunity, anti-kickback, records, State energy conservation plan, change orders, Agency concurrence, retainage, and other compliance requirements must be met in accordance with 7 CFR subpart C of part 1780, § 1780.75 of this title.

(4) *Obtaining bids and selecting a contractor.* The applicant may select a contractor based on competitive sealed bids, competitive negotiation, or noncompetitive negotiation as described in 7 CFR subpart C of part 1780, § 1780.72(b), (c), or (d) of this title.

(5) *Contract award.* Applicants awarding contracts must comply with 7 CFR subpart C of part 1780, § 1780.70(h) of this title.

(6) *Contracts awarded prior to applications.* Applicants awarding contracts prior to filing an application must comply with 7 CFR subpart C of part 1780, § 1780.74 of this title.

(7) *Contract administration.* Contract administration must comply with 7 CFR subpart C of part 1780, § 1780.76 of this title. If another authority, such as a Federal or State Agency, is providing funding and requires oversight of inspections, change orders, and pay requests, the Agency may accept copies of their reports or forms as meeting oversight requirements of the Agency.

§ 4280.116 Grantee requirements.

(a) A Letter of Conditions will be prepared by the Agency, establishing conditions that must be understood and agreed to by the applicant before any obligation of funds can occur. The applicant must sign a ''Letter of Intent to Meet Conditions'' and Form RD 1940–1, ''Request for Obligation of Funds,'' if they accept the conditions of the grant.

(b) The grantee must sign and abide by all requirements contained in Form RD 4280–2 and this subpart.

§ 4280.117 Servicing grants.

Grants will be serviced in accordance with subparts E and O of part 1951 of this title and Form RD 4280–2.

§§ 4280.118—4280.120 [Reserved]

Section B. Guaranteed Loans

§ 4280.121 Borrower eligibility.

To receive a guaranteed loan under this subpart, a borrower must meet each of the criteria, as applicable, identified in § 4280.107(a)(1) through (4).

§ 4280.122 Project eligibility.

For a project to be eligible to receive a guaranteed loan under this subpart, the project must meet each of the criteria, as applicable, in § 4280.108(a) through (g). In addition, guaranteed loan funds may be used for necessary capital improvements to an existing renewable energy system.

§ 4280.123 Guaranteed loan funding.

(a) The amount of the loan that will be made available to an eligible project under this subpart will not exceed 50 percent of total eligible project costs. Eligible project costs are specified in paragraph (e) 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 $10 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 85 percent for loans of $600,000 or less; 80 percent for loans greater than $600,000 up to and including $5 million; and 70 percent for loans greater than $5 million up to and including $10 million.

(d) The total amount of the loans guaranteed by the Agency under this program to one borrower, including the outstanding principal and interest balance of any existing loans guaranteed by the Agency under this program, and new loan request, must not exceed $10 million.

(e) Eligible project costs are only those costs associated with the items identified in paragraphs (e)(1) through (11) of this section, as long as the items are an integral and necessary part of the renewable energy system or energy efficiency improvement.

(1) Post-application purchase and installation of equipment (new, refurbished, or remanufactured), except agricultural tillage equipment, used equipment, and vehicles.

(2) Post-application construction or improvements, except residential.

(3) Energy audits or assessments.

(4) Permit and license fees.

(5) Professional service fees, except for application preparation.

(6) Feasibility studies and technical reports.

(7) Business plans.

(8) Retrofitting.

(9) Construction of a new energy efficient facility only when the facility is used for the same purpose, is approximately the same size, and based on the energy audit will provide more energy savings than improving an existing facility. Only costs identified in the energy audit for energy efficiency improvements are allowed.

(10) Working capital.

(11) Land acquisition.

(f) In determining the amount of a loan awarded, the Agency will take into consideration the following six criteria:

(1) The type of renewable energy system to be purchased;

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

(3) The expected environmental benefits of the renewable energy system;

(4) The extent to which the renewable energy system will be replicable;

(5) The amount of energy savings expected to be derived from the activity, as demonstrated by an energy audit comparable to an energy audit under 7 U.S.C. 8105; and

(6) The estimated length of time it would take for the energy savings generated by the activity to equal the cost of the activity.

§ 4280.124 Interest rates.

(a) The interest rate for the guaranteed loan will be negotiated between the lender and the applicant and may be either fixed or variable as long as it is a legal rate. The variable rate must be based on published indices, such as money market indices. In no case, however, shall the rate be more than the rate customarily charged borrowers in similar circumstances in the ordinary course of business. The interest rate charged is subject to Agency review and approval.

(b) Comply with § 4279.125(a), (b), and (d) of this chapter.

§ 4280.125 Terms of loan.

(a) The repayment term for a loan for:

(1) Real estate must not exceed 30 years;

(2) Machinery and equipment must not exceed 20 years, or the useful life, including major rebuilds and component replacement, whichever is less;

(3) Combined loans on real estate and equipment must not exceed 30 years; and

(4) Working capital loans must not exceed 7 years.

(b) The first installment of principal and interest will, if possible, be scheduled for payment after the project is operational and has begun to generate income.

(c) Payment terms must comply with § 4279.126(c) of this chapter.

(d) The maturity of a loan will be based on the use of proceeds, the useful life of the assets being financed, and the borrower's ability to repay.

(e) All loans guaranteed through this program must be sound, with reasonably assured repayment.

(f) Guarantees must be provided only after consideration is given to the borrower's overall credit quality and to the terms and conditions of renewable energy and energy efficiency subsidies, tax credits, and other such incentives.

(g) A principal plus interest repayment schedule is permissible.

§ 4280.126 Guarantee/annual renewal fee percentages.

(a) *Fee ceilings.* The maximum guarantee fee that may be charged is 1 percent. The maximum annual renewal fee that may be charged is 0.5 percent. The Agency will establish each year the guarantee fee and annual renewal fee and a notice will be published in the **Federal Register**.

(b) *Guarantee fee.* The guarantee fee will be paid to the Agency by the lender and is nonrefundable. The guarantee fee may be passed on to the borrower. The guarantee fee must be paid at the time the Loan Note Guarantee is issued.

(c) *Annual renewal fee.* The annual renewal fee will be calculated on the unpaid principal balance as of close of business on December 31 of each year. It will be calculated by multiplying the outstanding principal balance times the percent of guarantee times the annual renewal fee. The fee will be billed to the lender in accordance with the **Federal Register** publication. The annual renewal fee may not be passed on to the borrower.

§ 4280.127 [Reserved]

§ 4280.128 Application and documentation.

The requirements in this section apply to guaranteed loan applications under this subpart.

(a) *General.* Applications must be submitted in accordance with the requirements specified in § 4280.111(a).

(b) *Application content for guaranteed loans greater than $600,000.* Applications and documentation for guaranteed loans greater than $600,000 must provide the required information organized pursuant to a Table of Contents in a chapter format presented in the order shown in paragraphs (b)(1) and (2) of this section.

(1) *Guaranteed loan application content.* (i) *Table of Contents.* Include page numbers for each component of the application in the table of contents. Begin pagination immediately following the Table of Contents.

(ii) *Project Summary.* Provide a concise summary of the proposed project and applicant information, project purpose and need, and project goals, including the following:

(A) *Title.* Provide a descriptive title of the project (identified on SF 424).

(B) *Borrower eligibility.* Describe how each of the criteria, identified in § 4280.107(a)(1) through (4), is met.

(C) *Project eligibility.* Describe how each of the criteria, as applicable in § 4280.108(a) through (g), is met. Clearly state whether the application is for the purchase of a renewable energy system (including making necessary capital improvements to an existing renewable energy system) or to make energy efficiency improvements. The response to § 4280.108(a) must include a brief description of the system or improvement. This description is to provide the reader with a frame of reference for reviewing the rest of application. Additional project description information will be needed later in the application.

(D) *Operation description.* Describe the applicant's total farm/ranch/business operation and the relationship of the proposed project to the applicant's total farm/ranch/business operation as specified in § 4280.111(b)(3)(iv).

(iii) *Financial information for size determination.* Provide financial information to allow the Agency to determine the applicant's size as specified in § 4280.111(b)(3)(v).

(iv) *Matching funds.* Submit a spreadsheet identifying sources, amounts, and status of matching funds as specified in § 4280.111(b)(5).

(v) *Self-evaluation score.* Self-score the project using the evaluation criteria in § 4280.112(e) as specified in § 4280.111(b)(6).

(vi) *Renewable energy and energy efficiency technical report.* For both renewable energy projects and energy efficiency improvement projects, submit a Technical Report in accordance with applicable provisions of Appendix B of this subpart and as specified in § 4280.111(b)(7)(ii). For loan requests in excess of $600,000, the services of a licensed professional engineer (P.E.) or a team of licensed P.E.'s is required. If none of the Technology Reports in Appendix B apply to the proposed technology, the applicant may submit a Technical Report that conforms to the overall outline and subjects specified in applicable provisions of § 4280.111(b)(7)(ii)(A) through (G).

(vii) *Business-level feasibility study for renewable energy systems.* For each application for a renewable energy system project submitted by a start-up or existing business, a business-level feasibility study by an independent qualified consultant will be required by the Agency. An acceptable business-level feasibility study must at least include an evaluation of economic,

market, technical, financial, and management feasibility.

(2) *Lender forms, certifications, and agreements.* Each application submitted under paragraph (b)(1) of this section must contain applicable items described in paragraphs (b)(2)(i) through (xii) of this section.

(i) A completed Form RD 4279–1, ''Application for Loan Guarantee.''

(ii) Form RD 1940–20.

(iii) 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, except passive investors and those corporations listed on a major stock exchange.

(iv) Appraisals completed in accordance with § 4280.141. Completed appraisals should be submitted when the application is filed. If the appraisal has not been completed when the application is filed, the applicant must submit an estimated appraisal. In all cases, a completed appraisal must be submitted prior to the loan being closed.

(v) Commercial credit reports obtained by the lender on the borrower and any parent, affiliate, and subsidiary firms.

(vi) Current personal and corporate financial statements of any guarantors.

(vii) Intergovernmental consultation comments in accordance with 7 CFR part 3015, subpart V, of this title.

(viii) Financial statements as specified in § 4280.111(b)(4)(i) through (iii). Financial information is required on the total operation of the agricultural producer/rural small business and its parent, subsidiary, or affiliates at other locations. All information submitted under this paragraph must be substantiated by authoritative records.

(ix) Business-level feasibility study.

(x) Lender's complete comprehensive written analysis in accordance with § 4280.139.

(xi) A certification by the lender that it has completed a comprehensive written analysis of the proposal, the borrower is eligible, the loan is for authorized purposes with technical merit, and there is reasonable assurance of repayment ability based on the borrower's history, projections, equity, and the collateral to be obtained.

(xii) 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 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 Form RD 4279–3;

(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.* Applications and documentation for guaranteed loans $600,000 or less must comply with paragraphs (c)(1) and (2) of this section.

(1) *Application Contents.* Applications and documentation for guaranteed loans $600,000 or less must provide the required information organized pursuant to a Table of Contents in a chapter format presented in the order shown in § 4280.111(b)(2) through (8), except as specified in paragraphs (c)(1)(i) through (iii) of this section.

(i) Section 4280.111(b)(7)(i) does not apply.

(ii) Technical Reports must be submitted according to paragraph (c)(1)(ii)(A) or (B) of this section, as applicable.

(A) For renewable energy projects and energy efficiency projects utilizing commercially available systems or improvements and with total eligible project costs of $200,000 or less, submit a Technical Report as described in Appendix A of this subpart. If a renewable energy project does not fit on of the technologies identified in Appendix A, the applicant must submit a Technical Report that conforms to the overall outline and subjects specified in § 4280.111(b)(7)(ii)(G).

(B) For renewable energy projects and energy efficiency projects utilizing pre-commercial technology or with total eligible project costs greater than $200,000, submit a Technical Report as described in Appendix B of this subpart and as specified in § 4280.111(b)(7)(ii)(G)(*1*) through (*10*), as applicable.

(iii) *Business-level feasibility study for renewable energy systems.* For each application for a renewable energy system project submitted by a start-up or existing business, a business-level feasibility study by an independent qualified consultant will be required by the Agency. An acceptable business-level feasibility study must at least include an evaluation of economic, market, technical, financial, and management feasibility. Renewable energy projects with total eligible project costs of $200,000 or less are exempt from the feasibility study requirement.

(2) *Lender forms, certifications, and agreements.* Applications submitted under paragraph (c) of this section must use Form RD 4279–1A, ''Application for Loan Guarantee, Short Form,'' and include the documentation contained in paragraphs (b)(2)(ii), (vii), (viii), (ix), (x), and (xii) of this section. The lender must have the documentation contained in paragraphs (b)(2)(iii), (iv), (v), (vi), and (xi) available in its files for the Agency's review.

§ 4280.129 Evaluation of guaranteed loan applications.

(a) *General review.* The Agency will evaluate each application to confirm that both the borrower and project are eligible, the project has technical merit, there is reasonable assurance of repayment, there is sufficient collateral and equity, and the proposed loan complies with all applicable statutes and regulations. If the Agency determines it is unable to guarantee the loan, the lender will be informed in writing. Such notification will include the reasons for denial of the guarantee.

(b) *Ineligible applications.* If either the borrower or the project is ineligible, the Agency will inform the lender in writing of the reasons and provide any appeal rights. No further evaluation of the application will occur.

(c) *Incomplete applications.* If the application is incomplete, the Agency will identify those parts of the application that are incomplete and return it, with a written explanation, to

the lender for possible future resubmission. Upon receipt of a complete application, the Agency will complete its evaluation.

(d) *Technical merit determination.* The Agency's determination of a project's technical merit will be based on the information provided by the applicant. The Agency may engage the services of other government agencies or recognized industry experts in the applicable technology field, at its discretion, to evaluate and rate the application. The Agency may use this evaluation and rating to determine the level of technical merit of the proposed project. Projects determined by the Agency to be without technical merit shall be deemed ineligible.

(e) *Evaluation criteria.* The Agency will score each application based on the evaluation criteria specified in § 4280.112(e) (except for the criteria specified in § 4280.112(e)(5)) and in paragraphs (e)(1) and (2) of this section. Points will be awarded for either paragraph (e)(1) or (2) of this section, but not both.

(1) If the interest rate on the loan is to be below the prime rate (as published in The Wall Street Journal) plus 1.5 percent, 5 points will be awarded.

(2) If the interest rate on the loan is to be below the prime rate (as published in The Wall Street Journal) plus 1 percent, 10 points will be awarded.

§ 4280.130 Eligible lenders.

Eligible lenders are those identified in § 4279.29 of this chapter, excluding mortgage companies that are part of a bank-holding company.

§ 4280.131 Lender's functions and responsibilities.

(a) *General.* Lenders are responsible for implementing the guaranteed loan program under this subpart. All lenders requesting or obtaining a loan guarantee must comply with § 4279.30(a)(1)(i) through (ix) of this chapter.

(b) *Credit evaluation.* The lender's credit evaluation must comply with § 4279.30(b) of this chapter.

(c) *Environmental information.* Lenders must ensure that borrowers furnish all environmental information required under 7 CFR part 1940, subpart G, of this title and must comply with § 4279.30(c) of this chapter.

(d) *Construction planning and performing development.* The lender must comply with § 4279.156(a) and (b) of this chapter, except under paragraph § 4279.156(a) of this chapter, the lender must also ensure that all project facilities are designed utilizing accepted architectural and engineering practices that conform to the requirements of this subpart.

(e) *Loan closing.* The loan closing must be in compliance with § 4279.30(d) of this chapter.

§ 4280.132 Access to records.

Both the lender and borrower must permit representatives of the Agency (or other agencies of the U.S.) to inspect and make copies of any records pertaining to any Agency guaranteed loan during regular office hours of the lender or borrower or at any other time upon agreement between the lender, the borrower, and the Agency, as appropriate.

§ 4280.133 Conditions of guarantee.

All loan guarantees will be subject to § 4279.72 of this chapter.

§ 4280.134 Sale or assignment of guaranteed loan.

Any sale or assignment of the guaranteed loan must be in accordance with § 4279.75 of this chapter.

§ 4280.135 Participation.

All participation must be in accordance with § 4279.76 of this chapter.

§ 4280.136 Minimum retention.

Minimum retention must be in accordance with § 4279.77 of this chapter.

§ 4280.137 Repurchase from holder.

Any repurchase from a holder must be in accordance with § 4279.78 of this chapter.

§ 4280.138 Replacement of document.

Documents must be replaced in accordance with § 4279.84 of this chapter, except, in § 4279.84(b)(1)(v), a full statement of the circumstances of any defacement or mutilation of the Loan Note Guarantee or Assignment Guarantee Agreement would also need to be provided.

§ 4280.139 Credit quality.

The lender must determine credit quality and must address all of the elements of credit quality in a written credit analysis, including adequacy of equity, cashflow, collateral, history, management, and the current status of the industry for which credit is to be extended.

(a) *Cashflow.* All efforts will be made to structure debt so that the business has adequate debt coverage and the ability to accommodate expansion.

(b) *Collateral.* Collateral must have documented value sufficient to protect the interest of the lender and the Agency. The discounted collateral value will normally be at least equal to the loan amount. Lenders will discount collateral consistent with sound loan-to-value policy. Guaranteed loans made under this subpart shall have at least parity position with guaranteed loans made under subpart B of part 4279 of this title.

(c) *Industry.* The current status of the industry will be considered. Borrowers developing well established commercially available renewable energy systems with significant support infrastructure may be considered for better terms and conditions than those borrowers developing systems with limited infrastructure.

(d) *Equity.* In determining the adequacy of equity, the lender must meet the criteria specified in paragraph (d)(1) of this section for loans over $600,000 and the criteria in paragraph (d)(2) of this section for loans of $600,000 or less. Cash equity injection, as discussed in paragraphs (d)(1) and (2) of this section, must be in the form of cash. Federal grant funds may be counted as cash equity.

(1) For loans over $600,000, borrowers shall demonstrate evidence of cash equity injection in the project of not less than 25 percent of eligible project costs. The fair market value of equity in real property that is to be pledged as collateral for the loan may be substituted in whole or in part to meet the cash equity requirement. However, the appraisal completed to establish the fair market value of the real property must not be more than 1 year old and must meet Agency appraisal standards.

(2) For loans of $600,000 or less, borrowers shall demonstrate evidence of cash equity injection in the project of not less than 15 percent of eligible project costs. The fair market value of equity in real property that is to be pledged as collateral for the loan may be substituted in whole or in part to meet the cash equity requirement. However, the appraisal completed to establish the fair market value of the real property must not be more than 1 year old and must meet Agency appraisal standards.

(e) *Lien priorities.* The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of the loan will neither be paid first nor given any preference or priority over the guaranteed portion. A parity or junior position may be considered provided that discounted collateral values are adequate to secure the loan in accordance with paragraph (b) of this section after considering prior liens.

§ 4280.140 Financial statements.

(a) The financial information required in § 4280.111(b)(3)(v) and (b)(4) is

required for the guaranteed loan program.

(b) If the proposed guaranteed loan exceeds $3 million, the Agency may require annual audited financial statements, at its sole discretion when the Agency is concerned about the applicant's credit risk.

§ 4280.141 Appraisals.

(a) *Conduct of appraisals.* All appraisals must be in accordance with § 4279.144 of this chapter.

(1) For loans of $600,000 or more, a complete self-contained appraisal must be conducted. Lenders must complete at least a Transaction Screen Questionnaire for any undeveloped sites and a Phase I environmental site assessment on existing business sites, which should be provided to the appraiser for completion of the self-contained appraisal.

(2) For loans for less than $600,000, a complete summary appraisal may be conducted in lieu of a complete self-contained appraisal as required under paragraph (a)(1) of this section. Summary appraisals must be conducted in accordance with Uniform Standards of Professional Appraisal Practice (USPAP).

(b) *Specialized appraisers.* Specialized appraisers will be required to complete appraisals in accordance with paragraphs (a)(1) and (2) of this section. The Agency may approve a waiver of this requirement only if a specialized appraiser does not exist in a specific industry or hiring one would cause an undue financial burden to the borrower.

§ 4280.142 Personal and corporate guarantees.

(a) All personal and corporate guarantees must be in accordance with § 4279.149(a) of this chapter.

(b) Except for passive investors, unconditional personal and corporate guarantees for those owners with a beneficial interest greater than 20 percent of the borrower will be required where legally permissible.

§ 4280.143 Loan approval and obligation of funds.

The lender and applicant must comply with § 4279.173 of this chapter, except that either or both parties may also propose alternate conditions to the Conditional Commitment if certain conditions cannot be met.

§ 4280.144 Transfer of lenders.

All transfers of lenders must be in accordance with § 4279.174 of this chapter, except that it will be the Agency rather than the loan approval official who may approve the substitution of a new eligible lender.

§ 4280.145 Changes in borrower.

All changes in borrowers must be in accordance with § 4279.180 of this chapter, but the eligibility requirements of this program apply.

§ 4280.146 Conditions precedent to issuance of Loan Note Guarantee.

(a) The Loan Note Guarantee will not be issued until the lender certifies to the conditions identified in paragraphs § 4279.181(a) through (o) of this chapter and paragraph (b) of this section.

(b) All planned property acquisitions and development have 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.

§ 4280.147 Issuance of the guarantee.

(a) When loan closing plans are established, the lender must notify the Agency in writing. At the same time, or immediately after loan closing, the lender must provide the following to the Agency:

(1) Lender's certifications as required by § 4280.146;

(2) An executed Form RD 4279–4; and

(3) An executed Form RD 1980–19, ''Guaranteed Loan Closing Report,'' and appropriate guarantee fee.

(b) When the Agency is satisfied that all conditions for the guarantee have been met, the Loan Note Guarantee and the following documents, as appropriate, will be issued:

(1) *Assignment Guarantee Agreement.* If the lender assigns the guaranteed portion of the loan to a holder, the lender, holder, and the Agency must execute the Assignment Guarantee Agreement;

(2) *Certificate of Incumbency.* If requested by the lender, the Agency will provide the lender with a copy of Form RD 4279–7, ''Certificate of Incumbency and Signature,'' with the signature and title of the Agency official responsible for signing the Loan Note Guarantee, Lender's Agreement, and Assignment Guarantee Agreement;

(3) Copies of legal loan documents; and

(4) Disbursement plan, if working capital is a purpose of the project.

§ 4280.148 Refusal to execute Loan Note Guarantee.

If the Agency determines that it cannot execute the Loan Note Guarantee, § 4279.187 of this chapter will apply.

§ 4280.149 Requirements after project construction.

Once the project has been constructed, the lender must provide the Agency periodic reports from the borrower. The borrower's reports will include the information specified in paragraphs (a) and (b) of this section, as applicable.

(a) *Renewable energy projects.* For renewable energy 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 (a)(1) through (7) of this section.

(1) The actual amount of energy produced in BTUs, kilowatt-hours, or similar energy equivalents.

(2) If applicable, documentation that any identified health and/or sanitation problem has been solved.

(3) The annual income and/or energy savings of the renewable energy system.

(4) A summary of the cost of operating and maintaining the facility.

(5) A description of any maintenance or operational problems associated with the facility.

(6) Recommendations for development of future similar projects.

(7) Actual jobs created or saved.

(b) *Energy efficiency improvement projects.* For energy efficiency improvement 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 the actual amount of energy saved due to the energy efficiency improvements.

§ 4280.150 Insurance requirements.

Each borrower must obtain the insurance required in § 4280.113. The coverage required by this section must be maintained for the life of the loan unless this requirement is waived or modified by the Agency in writing.

§ 4280.151 Laws that contain other compliance requirements.

Each lender and borrower must comply with the requirements specified in § 4280.114(d), §§ 4279.58, and 4279.156(c) and (d) of this chapter.

§ 4280.152 Servicing guaranteed loans.

The lender must service the entire loan and must remain mortgagee and secured party of record notwithstanding the fact that another party may hold a portion of the loan. The entire loan must be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of a loan will neither be paid first nor given any

preference or priority over the guaranteed portion of the loan.

(a) *Routine servicing.* Comply with § 4287.107 of this chapter, except that all notifications from the lender to the Agency shall be in writing and all actions by the lender in servicing the entire loan must be consistent with the servicing actions that a reasonable, prudent lender would perform in servicing its own portfolio.

(b) *Interest rate adjustments.* Comply with § 4287.112 of this chapter, except that under § 4287.112(a)(3) of this chapter the interest rates, after adjustments, must comply with the requirements for interest rates on new loans as established by § 4280.124.

(c) *Release of collateral.* (1) Collateral may only be released in accordance with § 4287.113(a) and (b) of this chapter and paragraph (c)(2) of this section.

(2) Within the parameters of paragraph (c)(1) of this section, lenders may, over the life of the loan, release collateral (other than personal and corporate guarantees) with a cumulative value of up to 20 percent of the original loan amount without Agency concurrence, if the proceeds generated are used to reduce the guaranteed loan or to buy replacement collateral or real estate equal to or greater than the collateral being replaced.

(d) *Subordination of lien position.* All subordinations of the lender's lien position must comply with § 4287.123 of this chapter.

(e) *Alterations of loan instruments.* All alterations of loan instruments must comply with § 4287.124 of this chapter.

(f) *Loan transfer and assumption.* All loan transfers and assumptions must comply with § 4287.134(c), (d), (f), (g), and (i) through (k) of this chapter in addition to the following:

(1) *Documentation of request.* All transfers and assumptions must be approved in writing by the Agency and must be to eligible applicants in accordance with § 4280.121. An individual credit report must be provided for transferee proprietors, partners, offices, directors, and stockholders with 20 percent or more interest in the business, along with such other documentation as the Agency may request to determine eligibility.

(2) *Terms.* Loan terms must not be changed unless the change is approved in writing by the Agency with the concurrence of any holder and the transferor (including guarantors), if they have not been or will not be released from liability. Any new loan terms must be within the terms authorized by § 4280.125. The lender's request for approval of new loan terms will be supported by an explanation of the reasons for the proposed change in loan terms.

(3) *Additional loans.* Loans to provide additional funds in connection with a transfer and assumption must be considered as a new loan application under § 4280.128.

(4) *Loss resulting from transfer.* If a loss should occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor (including personal guarantors) is released from liability, the lender, if it holds the guaranteed portion, may file Form RD 449–30, ''Loan Note Guaranteed Loss of Report,'' to recover its pro rata share of the actual loss. If a holder owns any of the guaranteed portion, such portion must be repurchased by the lender or the Agency in accordance with § 4279.78(c) of this chapter. In completing the report of loss, the amount of the debt assumed will be entered as net collateral (recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption will be included in the calculations.

§ 4280.153 Substitution of lender.

(a) All substitutions of lenders must comply with § 4287.135(a)(2) and (b) of this chapter and paragraph (b) of this section.

(b) The Agency may approve the substitution of a new lender if the proposed substitute lender:

(1) Is an eligible lender in accordance with § 4280.130;

(2) Is able to service the loan in accordance with the original loan documents; and

(3) Acquires title to the unguaranteed portion of the loan held by the original lender and assumes all original loan requirements, including liabilities and servicing responsibilities.

§ 4280.154 Default by borrower.

If the loan goes into default, the lender must comply with § 4287.145 of this chapter.

§ 4280.155 Protective advances.

All protective advances made by the lender must comply with § 4287.156 of this chapter.

§ 4280.156 Liquidation.

All liquidations must comply with § 4287.157 of this chapter, except as follows:

(a) Under § 4287.157(d)(13) of this chapter, whenever $200,000 is used substitute $100,000; and

(b) Under § 4287.157(d)(13) of this chapter, replace the sentence ''The appraisal shall consider this aspect'' with ''Both the estimate and the appraisal shall consider this aspect.''

§ 4280.157 Determination of loss and payment.

Loss and payments will be determined in accordance with § 4287.158 of this chapter.

§ 4280.158 Future recovery.

Future recoveries will be conducted in accordance with § 4287.169 of this chapter.

§ 4280.159 Bankruptcy.

Bankruptcies will be handled in accordance with § 4287.170 of this chapter, except that the notification required under § 4287.170(b)(4) of this chapter shall be made in writing.

§ 4280.160 Termination of guarantee.

Guarantees will be terminated in accordance with § 4287.180 of this chapter.

Section C. Direct Loans

§ 4280.161 Direct Loan Process.

(a) The Agency will determine each year whether or not direct loan funds are available. For each year in which direct loan funds are available, the Agency will publish a Notice of Funds Availability (NOFA) in the **Federal Register**.

(b) In each direct loan NOFA, the Agency will identify the following:

(1) The amount of funds available for direct loans;

(2) Applicant and project eligibility criteria;

(3) Minimum and maximum loan amounts;

(4) Interest rates;

(5) Terms of loan;

(6) Application and documentation requirements;

(7) Evaluation of applications;

(8) Actions required of the applicant/borrower (*e.g.*, appraisals, land and property acquisition);

(9) Insurance requirements;

(10) Laws that contain other compliance requirements;

(11) Construction planning and performing development;

(12) Requirements after project construction;

(13) Letter of Conditions, loan agreement, and loan closing process;

(14) Processing and servicing of direct loans by the Agency; and

(15) Any applicable definitions.

§ 4280.162–4280.192 [Reserved]

Section D. Combined Funding

§ 4280.193 Combined funding.

The requirements for a project for which an applicant is seeking a

combined grant and guaranteed loan are defined as follows:

(a) *Eligibility*. Applicants must meet the applicant eligibility requirements specified in § 4280.107 and the borrower eligibility requirements specified in § 4280.121. Projects must meet the project eligibility requirements specified in §§ 4280.108 and 4280.122. Applicants may submit simplified applications if the project meets the requirements specified in § 4280.109.

(b) *Funding*. Funding provided under this section is subject to the limits described in paragraphs (b)(1) through (3) of this section.

(1) The amount of any combined grant and guaranteed loan must not exceed 50 percent of total eligible project costs. For purposes of combined funding requests, total eligible project costs are based on the total costs associated with those items specified in §§ 4280.110(c) and 4280.123(e). The applicant must provide the remaining total funds needed to complete the project.

(2) Third-party, in-kind contributions will be limited to 10 percent of the matching fund requirement of any financial assistance provided to the applicant.

(3) The minimum combined funding request allowed is $5,000, with the grant portion of the funding request being at least $1,500.

(c) *Application and documentation*. When applying for combined funding, the applicant must submit separate applications for both types of assistance (grant and guaranteed loan). Each application must meet the requirements, including the requisite forms and certifications, specified in §§ 4280.111 and 4280.128. The separate applications must be submitted simultaneously. The applicant must submit at least one set of documentation, but does not need to submit duplicate forms or certifications.

(d) *Evaluation*. The Agency will evaluate each application according to applicable procedures specified in §§ 4280.112 and 4280.129.

(e) *Interest rate and terms of loan*. The interest rate and terms of the loan for the loan portion of the combined funding request will be determined based on the procedures specified in §§ 4280.124 and 4280.125 for guaranteed loans.

(f) *Other provisions*. In addition to the requirements specified in paragraphs (a) through (e) of this section, the combined funding request shall be 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) and (2) of this section.

(1) All other provisions of Section A of this subpart shall apply to the grant portion of the combined funding request.

(2) All other provisions of Section B of this subpart shall apply to the guaranteed loan portion of the combined funding request.

§§ 4280.194–4280.199 [Reserved]

§ 4280.200 OMB control number.

The information collection requirements contained in the regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0570–0050. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Appendix A to Part 4280

Technical Reports for Projects With Total Eligible Project Costs of $200,000 or Less

The Technical Report for projects with total eligible project costs of $200,000 or less must demonstrate that the project design, procurement, installation, startup, operation, and maintenance of the renewable energy system or energy efficiency improvement will operate or perform as specified over its design life in a reliable and a cost-effective manner. The Technical Report must also identify all necessary project agreements, demonstrate that those agreements will be in place, and that necessary project equipment and services are available over the design life.

All technical information provided must follow the format specified in Sections 1 through 10 of this appendix. Supporting information may be submitted in other formats. Design drawings and process flowcharts are encouraged as exhibits. A discussion of each topic is not necessary if the topic is not applicable to the specific project. Questions identified in the Agency's technical review of the project must be answered to the Agency's satisfaction before the application will be approved. The applicant must submit the original technical report plus one copy to the Rural Development State Office. Depending on the level of engineering required for the specific project or if necessary to ensure public safety, the services of a licensed professional engineer or a team of licensed professional engineers may be required.

Section 1. Bioenergy

The technical requirements specified in this section apply to bioenergy projects, which are, as defined in § 4280.103, renewable energy systems that produce fuel, thermal energy, or electric power from a biomass source, other than an anaerobic digester project.

(a) *Qualifications of key project service providers.* List all key project service providers. If one or more licensed professionals are involved in the project, provide the credentials for each professional.

(b) *Agreements, permits, and certifications.*

(1) Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits.

(2) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase arrangements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(3) Identify all environmental issues, including any compliance issues associated with or expected as a result of the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G, of this title.

(c) *Resource assessment.* Provide adequate and appropriate evidence of the availability of the renewable resource required for the system to operate as designed. Indicate the type, quantity, quality, and seasonality of the biomass resource, including harvest and storage, where applicable. Where applicable, indicate shipping or receiving method and required infrastructure for shipping. For proposed projects with an established resource, provide a summary of the resource.

(d) *Design and engineering.* Applicants must submit a statement certifying that their project will be designed and engineered so as to meet the intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, applicants must:

(1) Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose;

(2) List possible suppliers and models of major pieces of equipment;

(3) Provide a description of the components, materials, or systems to be installed. Include the location of the project;

(4) Provide a one-line diagram for the electrical interconnection. Provide diagrams or schematics as required showing all major installed structural, mechanical, and electrical components of the system;

(5) Describe the expected electric power, fuel production, or thermal energy production of the proposed system as rated and as expected in actual field conditions. For systems with a capacity of more than 20 tons per day of biomass, address performance on a monthly and annual basis. For small projects such as a commercial biomass furnace or pelletizer of up to 5 tons daily capacity, proven, commercially available devices need not be addressed in detail. Describe the uses of or the market for electricity, heat, or fuel produced by the system;

(6) Discuss the impact of reduced or interrupted biomass availability on the system process; and

(7) Describe the project site and address issues such as proximity to the load or the electrical grid, unique safety concerns, and whether special circumstances exist.

(e) *Project development schedule.* Provide a project schedule in an appropriate level of detail that will demonstrate that the project can be adequately managed and be able to identify impacts of any delays on the project completion. The applicant must submit a statement certifying that the project will be completed within 2 years from the date of approval.

(f) *Project economic assessment.* Provide an analysis of the proposed project to demonstrate its financial performance, including the calculation of simple payback. The analysis should include applicable investment incentives, productivity incentives, loans and grants, and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* The project must be installed in accordance with applicable local, State, and national building and electrical codes and regulations. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules. Upon successful system installation and following established operation, the successful applicant must deliver invoices and evidence of payment.

(i) *Operations and maintenance.* Identify any unique operations and maintenance requirements of the project necessary for the system to operate as designed over the design life. State the design life of the system.

(1) Provide information on all system warranties. A minimum 3-year warranty for equipment and a 10-year warranty on design are expected.

(2) If the project has any unique operation and maintenance issues, describe them.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives.

Section 2. Anaerobic Digester Projects

The technical requirements specified in this section apply to anaerobic digester projects, which are, as defined in § 4280.103, renewable energy systems that use animal waste and other organic substrates to produce thermal or electrical energy via anaerobic digestion.

(a) *Qualifications of key project service providers.* List all key project service providers. If one or more licensed professionals are involved in the project, provide the credentials for each professional.

(b) *Agreements, permits, and certifications.*

(1) Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits.

(2) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase arrangements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(3) Identify all environmental issues, including any compliance issues associated with or expected as a result of the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G, of this title.

(c) *Resource assessment.* Provide adequate and appropriate data to demonstrate the amount of digestible substrate resource available. Indicate the source of the data and assumptions. Indicate the substrates used as digester inputs, including animal wastes, food-processing wastes, or other organic wastes 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. Show the digestion conversion factors and calculations used to estimate biogas production and heat or power production.

(d) *Design and engineering.* Applicants must submit a statement certifying that their project will be designed and engineered so as to meet the intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, applicants must:

(1) Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose;

(2) List possible suppliers and models of major pieces of equipment;

(3) Provide a description of the components, materials, or systems to be installed. Include the location of the project;

(4) Provide a one-line diagram for the electrical interconnection. Provide diagrams or schematics as required showing all major installed structural, mechanical, and electrical components of the system;

(5) Describe the expected electric power, fuel production, or thermal energy production of the proposed system as rated and as expected in actual field conditions. Describe the uses of or the market for electricity, heat, or fuel produced by the system; and

(6) Describe the project site and address issues such as proximity to the load or the electrical grid, unique safety concerns, and whether special circumstances exist.

(e) *Project development schedule.* Provide a project schedule in an appropriate level of detail that will demonstrate the project can be adequately managed and be able to identify impacts of any delays on the project completion. The applicant must submit a statement certifying that the project will be completed within 2 years from the date of approval.

(f) *Project economic assessment.* Provide an analysis of the proposed project to demonstrate its financial performance, including the calculation of simple payback. The analysis should include applicable investment incentives, productivity incentives, loans and grants, and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Include a statement from the applicant certifying ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* The project must be installed in accordance with applicable local, State, and national building and electrical codes and regulations. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules. Upon successful system installation and following established operation, the successful applicant must deliver invoices and evidence of payment.

(i) *Operations and maintenance.* Identify any unique operations and maintenance requirements of the project necessary for the system to operate as designed over the design life. State the design life of the system.

(1) Provide information on all system warranties. A minimum 3-year warranty for equipment and a 10-year warranty on design are expected.

(2) If the project has any unique operation and maintenance issues, describe them.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives.

Section 3. Geothermal, Electric Generation

The technical requirements specified in this section apply to electric generation geothermal projects, which are, as defined in § 4280.103, systems that use geothermal energy to produce high pressure steam for electric power production.

(a) *Qualifications of key project service providers.* List all key project service providers. If one or more licensed professionals are involved in the project, provide the credential for each professional.

(b) *Agreements, permits, and certifications.*

(1) Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including any permits or agreements required for well construction and for disposal or re-injection of cooled geothermal waters and the schedule for securing those agreements and permits.

(2) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase arrangements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(3) Identify all environmental issues, including any compliance issues associated with or expected as a result of the project on

Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G, of this title.

(c) *Resource assessment.* Provide adequate and appropriate evidence of the availability of the renewable resource required for the system to operate as designed. 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.

(d) *Design and engineering.* Applicants must submit a statement certifying that their project will be designed and engineered so as to meet the intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, applicants must:

(1) Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose;

(2) List possible suppliers and models of major pieces of equipment;

(3) Provide a description of the components, materials, or systems to be installed. Include the location of the project;

(4) Provide a one-line diagram for the electrical interconnection. Provide diagrams or schematics as required showing all major installed structural, mechanical, and electrical components of the system;

(5) Describe the expected electric power, fuel production, or thermal energy production of the proposed system as rated and as expected in actual field conditions. Describe the uses of or the market for electricity, heat, or fuel produced by the system; and

(6) Describe the project site and address issues such as proximity to the load or the electrical grid, unique safety concerns, and whether special circumstances exist.

(e) *Project development schedule.* Provide a project schedule in an appropriate level of detail that will demonstrate that the project can be adequately managed and be able to identify impacts of any delays on the project completion. The applicant must submit a statement certifying that the project will be completed within 2 years from the date of approval.

(f) *Project economic assessment.* Provide an analysis of the proposed project to demonstrate its financial performance, including the calculation of simple payback. The analysis should include applicable investment incentives, productivity incentives, loans and grants, and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* The project must be installed in accordance with applicable local, State, and national building and electrical codes and regulations. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules. Upon successful system installation and following established operation, the successful applicant must deliver invoices and evidence of payment.

(i) *Operations and maintenance.* Identify any unique operations and maintenance requirements of the project necessary for the system to operate as designed over the design life. State the design life of the system.

(1) Provide information on all system warranties. A minimum 3-year warranty for equipment and a 10-year warranty on design are expected.

(2) If the project has any unique operation and maintenance issues, describe them.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives.

Section 4. Geothermal, Direct Use

The technical requirements specified in this section apply to direct use geothermal projects, which are, as defined in § 4280.103, systems that use thermal energy directly from a geothermal source.

(a) *Qualifications of key project service providers.* List all key project service providers. If one or more licensed professionals are involved in the project, provide the credentials for each professional.

(b) *Agreements, permits, and certifications.*

(1) Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including any permits or agreements required for well construction and for disposal or re-injection of cooled geothermal waters and the schedule for securing those agreements and permits.

(2) Identify all environmental issues, including any compliance issues associated with or expected as a result of the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G, of this title.

(c) *Resource assessment.* Provide adequate and appropriate evidence of the availability of the renewable resource required for the system to operate as designed. 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.

(d) *Design and engineering.* Applicants must submit a statement certifying that their project will be designed and engineered so as to meet the intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, applicants must:

(1) Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose;

(2) List possible suppliers and models of major pieces of equipment;

(3) Provide a description of the components, materials, or systems to be installed. Include the location of the project;

(4) Provide one-line diagram for the electrical interconnection. Provide diagrams or schematics as required showing all major installed structural, mechanical, and electrical components of the system;

(5) Describe the expected thermal energy production of the proposed system as rated and as expected in actual field conditions. Describe the uses of, or the market for, heat produced by the system; and

(6) Describe the project site and address issues such as proximity to the load, unique safety concerns, and whether special circumstances exist.

(e) *Project development schedule.* Provide a project schedule in an appropriate level of detail that will demonstrate the project can be adequately managed and be able to identify impacts of any delays on the project completion. The applicant must submit a statement certifying that the project will be completed within 2 years from the date of approval.

(f) *Project economic assessment.* Provide an analysis of the proposed project to demonstrate its financial performance, including the calculation of simple payback. The analysis should include applicable investment incentives, productivity incentives, loans and grants, and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* The project must be installed in accordance with applicable local, State, and national building and electrical codes and regulations. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules. Upon successful system installation and following established operation, the successful applicant must deliver invoices and evidence of payment.

(i) *Operations and maintenance.* Identify any unique operations and maintenance requirements of the project necessary for the system to operate as designed over the design life. State the design life of the system.

(1) Provide information on all system warranties. A minimum 3-year warranty for equipment and a 10-year warranty on design are expected.

(2) If the project has any unique operation and maintenance issues, describe them.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling

and disposing of project components and associated wastes at the end of their useful lives.

Section 5. Hydrogen

The technical requirements specified in this section apply to hydrogen projects, which are, as defined in § 4280.103, renewable energy systems that produce hydrogen, or a renewable energy system that uses mechanical or electric power or thermal energy from a renewable resource using hydrogen as an energy transport medium.

(a) *Qualifications of key project service providers.* List all key project service providers. If one or more licensed professionals are involved in the project, provide the credentials for each professional.

(b) *Agreements, permits, and certifications.*

(1) Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits.

(2) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase arrangements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(3) Identify all environmental issues, including any compliance issues associated with or expected as a result of the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G, of this title.

(c) *Resource assessment.* Provide adequate and appropriate data to demonstrate the type, quantity, quality, and seasonality of the local renewable resource that will be used to produce the hydrogen.

(d) *Design and engineering.* Applicants must submit a statement certifying that their project will be designed and engineered so as to meet the intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, applicants must:

(1) Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose;

(2) List possible suppliers and models of major pieces of equipment;

(3) Provide a description of the components, materials, or systems to be installed. Include the location of the project;

(4) Provide a one-line diagram for the electrical interconnection. Provide diagrams or schematics as required showing all major installed structural, mechanical, and electrical components of the system; and

(5) Describe the project site and address issues such as proximity to the load or the electrical grid, unique safety concerns, and whether special circumstances exist.

(e) *Project development schedule.* Provide a project schedule in an appropriate level of detail that will demonstrate the project can be adequately managed and be able to identify impacts of any delays on the project completion. The applicant must submit a statement certifying that the project will be completed within 2 years from the date of approval.

(f) *Project economic assessment.* Provide an analysis of the proposed project to demonstrate its financial performance, including the calculation of simple payback. The analysis should include applicable investment incentives, productivity incentives, loans and grants, and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* The project must be installed in accordance with applicable local, State, and national building and electrical codes and regulations. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules. Upon successful system installation and following established operation, the successful applicant must deliver invoices and evidence of payment.

(i) *Operations and maintenance.* Identify any unique operations and maintenance requirements of the project necessary for the system to operate as designed over the design life. State the design life of the system.

(1) Provide information on all system warranties. A minimum 3-year warranty for equipment and a 10-year warranty on design are expected.

(2) If the project has any unique operation and maintenance issues, describe them.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives.

Section 6. Solar, Small

The technical requirements specified in this section apply to small solar electric projects and small solar thermal projects, as defined in § 4280.103.

Small solar electric projects are those for which the rated power of the system is 10kW or smaller. Small solar electric projects are either stand-alone (off grid) or interconnected to the grid at less than 600 volts (on grid).

Small solar thermal projects are those for which the rated storage volume of the system is 240 gallons or smaller, or which have a collector area of 1,000 square feet or less.

(a) *Qualifications of key project service providers.* List all key project service providers. If one or more licensed professionals are involved in the project, provide the credentials for each professional.

(b) *Agreements, permits, and certifications.*

(1) Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits.

(2) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase arrangements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(3) Identify all environmental issues, including any compliance issues associated with or expected as a result of the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G, of this title.

(c) *Resource assessment.* Provide adequate and appropriate data to demonstrate the amount of solar resource available. Indicate the source of the solar data and assumptions.

(d) *Design and engineering.* Applicants must submit a statement certifying that their project will be designed and engineered so as to meet the intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, applicants must:

(1) Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose;

(2) List possible suppliers and models of major pieces of equipment;

(3) Provide a description of the components, materials, or systems to be installed. Include the location of the project;

(4) Provide a one-line diagram for the electrical interconnection. Provide diagrams or schematics as required showing all major installed structural, mechanical, and electrical components of the system; and

(5) Describe the project site and address issues such as solar access, orientation, proximity to the load or the electrical grid, unique safety concerns, and whether special circumstances exist.

(e) *Project development schedule.* Provide a project schedule in an appropriate level of detail that will demonstrate that the project can be adequately managed and be able to identify impacts of any delays on the project completion. The applicant must submit a statement certifying that the project will be completed within 2 years from the date of approval.

(f) *Project economic assessment.* Provide an analysis of the proposed project to demonstrate its financial performance, including the calculation of simple payback. The analysis should include applicable investment incentives, productivity incentives, loans and grants, and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* The project must be installed in accordance with applicable local, State, and national building

and electrical codes and regulations. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules. Upon successful system installation and following established operation, the successful applicant must deliver invoices and evidence of payment.

(i) *Operations and maintenance.* Identify any unique operations and maintenance requirements of the project necessary for the system to operate as designed over the design life. State the design life of the system.

(1) Provide information on all system warranties. A minimum 3-year warranty for equipment and a 10-year warranty on design are expected.

(2) If the project has any unique operation and maintenance issues, describe them.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives.

Section 7. Solar, Large

The technical requirements specified in this section apply to large solar electric projects and large solar thermal projects, as defined in § 4280.103.

Large solar electric systems are those for which the rated power of the system is larger than 10kW. Large solar electric systems are either stand-alone (off grid) or interconnected to the grid (on grid).

Large solar thermal systems are those for which the rated storage volume of the system is greater than 240 gallons or that have a collector area of more than 1,000 square feet.

(a) *Qualifications of key project service providers.* List all key project service providers. If one or more licensed professionals are involved in the project, provide the credential for each professional.

(b) *Agreements, permits, and certifications.*

(1) Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits.

(2) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase arrangements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(3) Identify all environmental issues, including any compliance issues associated with or expected as a result of the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G, of this title.

(c) *Resource assessment.* Provide adequate and appropriate data to demonstrate the amount of solar resource available. Indicate the source of the solar data and assumptions.

(d) *Design and engineering.* Applicants must submit a statement certifying that their project will be designed and engineered so as to meet the intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, applicants must:

(1) Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose;

(2) List possible suppliers and models of major pieces of equipment;

(3) Provide a description of the components, materials, or systems to be installed. Include the location of the project;

(4) Provide a one-line diagram for the electrical interconnection. Provide diagrams or schematics as required showing all major installed structural, mechanical, and electrical components of the system; and

(5) Describe the project site and address issues such as solar access, orientation, proximity to the load or the electrical grid, unique safety concerns, and whether special circumstances exist.

(e) *Project development schedule.* Provide a project schedule in an appropriate level of detail that will demonstrate the project can be adequately managed and be able to identify impacts of any delays on the project completion. The applicant must submit a statement certifying that the project will be completed within 2 years from the date of approval.

(f) *Project economic assessment.* Provide an analysis of the proposed project to demonstrate its financial performance, including the calculation of simple payback. The analysis should include applicable investment incentives, productivity incentives, loans and grants, and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* The project must be installed in accordance with applicable local, State, and national building and electrical codes and regulations. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules. Upon successful system installation and following established operation, the successful applicant must deliver invoices and evidence of payment.

(i) *Operations and maintenance.* Identify any unique operations and maintenance requirements of the project necessary for the system to operate as designed over the design life. State the design life of the system.

(1) Provide information on all system warranties. A minimum 3-year warranty for equipment and a 10-year warranty on design are expected.

(2) If the project has any unique operation and maintenance issues, describe them.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives.

Section 8. Wind, Small

The technical requirements specified in this section apply to small wind systems, which are, as defined in § 4280.103, wind energy systems for which the rated power of the wind turbine is 100kW or smaller and with a generator hub height of 120 feet or less. Small wind systems are either stand-alone or connected to the local electrical system at less than 600 volts.

(a) *Qualifications of key project service providers.* List all key project service providers. If one or more licensed professionals are involved in the project, provide the credentials for each professional.

(b) *Agreements, permits, and certifications.*

(1) Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits.

(2) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase arrangements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(3) Identify all environmental issues, including any compliance issues associated with or expected as a result of the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G, of this title.

(c) *Resource assessment.* Provide adequate and appropriate data to demonstrate the amount of local wind resource where the small wind turbine is to be installed. Indicate the source of the wind data and assumptions.

(d) *Design and engineering.* Applicants must certify that their project will be designed and engineered so as to meet the intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, applicants must:

(1) Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose;

(2) List possible suppliers and models of major pieces of equipment;

(3) Provide a description of the components, materials, or systems to be installed. Include the location of the project;

(4) Provide a one-line diagram for the electrical interconnection. Provide diagrams or schematics as required showing all major installed structural, mechanical, and electrical components of the system; and

(5) Describe the project site and address issues such as proximity to the load or the electrical grid, unique safety concerns, and whether special circumstances exist.

(e) *Project development schedule.* Provide a project schedule in an appropriate level of detail that will demonstrate the project can be adequately managed and be able to identify impacts of any delays on the project completion. The applicant must submit a statement certifying that the project will be completed within 2 years from the date of approval.

(f) *Project economic assessment.* Provide an analysis of the proposed project to demonstrate its financial performance, including the calculation of simple payback. The analysis should include applicable investment incentives, productivity incentives, loans and grants, and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* The project must be installed in accordance with applicable local, State, and national building and electrical codes and regulations. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules. Upon successful system installation and following established operation, the successful applicant must deliver invoices and evidence of payment.

(i) *Operations and maintenance.* Identify any unique operations and maintenance requirements of the project necessary for the system to operate as designed over the design life. State the design life of the system.

(1) Provide information on all system warranties. A minimum 3-year warranty for equipment and a 10-year warranty on design are expected.

(2) If the project has any unique operation and maintenance issues, describe them.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives.

Section 9. Wind, Large

The technical requirements specified in this section apply to large wind systems, which are, as defined in § 4280.103, wind energy projects for which the rated power of the individual wind turbine(s) is larger than 100kW.

(a) *Qualifications of key project service providers.* List all key project service providers. If one or more licensed professionals are involved in the project, provide the credentials for each professional.

(b) *Agreements, permits, and certifications.*

(1) Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits.

(2) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase arrangements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(3) Identify all environmental issues, including any compliance issues associated with or expected as a result of the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G, of this title.

(c) *Resource assessment.* Provide adequate and appropriate data to demonstrate the amount of local wind resource where the large wind turbine is to be installed. Indicate the source of the wind data and assumptions. Projects greater than 500kW must obtain wind data from the proposed project site. For such projects, describe the proposed measurement setup for the collection of the wind resource data. For proposed projects with an established wind resource, provide a summary of the wind resource and the specifications of the measurement setup. Large wind systems larger than 500kW in size will typically require at least 1 year of on-site monitoring. If less than 1 year of data is used, the qualified meteorological consultant must provide a detailed analysis of correlation between the site data and a nearby long-term measurement site.

(d) *Design and engineering.* Applicants must submit a statement certifying that their project will be designed and engineered so as to meet the intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, applicants must:

(1) Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose;

(2) List possible suppliers and models of major pieces of equipment;

(3) Provide a description of the components, materials, or systems to be installed. Include the location of the project;

(4) Provide one-line diagram for the electrical interconnection. Provide diagrams or schematics as required showing all major installed structural, mechanical, and electrical components of the system; and

(5) Describe the project site and address issues such as proximity to the load or the electrical grid, unique safety concerns, and whether special circumstances exist.

(e) *Project development schedule.* Provide a project schedule in an appropriate level of detail that will demonstrate the project can be adequately managed and be able to identify impacts of any delays on the project completion. The applicant must submit a statement certifying that the project will be completed within 3 years from the date of approval.

(f) *Project economic assessment.* Provide an analysis of the proposed project to demonstrate its financial performance, including the calculation of simple payback. The analysis should include applicable investment incentives, productivity incentives, loans and grants, and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* The project must be installed in accordance with applicable local, State, and national building and electrical codes and regulations. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules. Upon successful system installation and following established operation, the successful applicant must deliver invoices and evidence of payment.

(i) *Operations and maintenance.* Identify any unique operations and maintenance requirements of the project necessary for the system to operate as designed over the design life. State the design life of the system.

(1) Provide information on all system warranties. A minimum 3-year warranty for equipment and a 10-year warranty on design are expected.

(2) If the project has any unique operation and maintenance issues, describe them.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives.

Section 10. Energy Efficiency Improvements

The technical requirements specified in this section apply to energy efficiency improvement projects, which are, as defined in § 4280.103, improvements to a facility, building, or process that reduces energy consumption.

(a) *Qualifications of key project service providers.* List all key project service providers. If one or more licensed professionals are involved in the project, provide the credentials for each professional. For projects with total eligible project costs greater than $50,000, also discuss the qualifications of the energy auditor, including any relevant certifications by recognized organizations or bodies.

(b) *Agreements, permits, and certifications.*

(1) The applicant must certify that they will comply with all necessary agreements and permits required for the project. Indicate the status and schedule for securing those agreements and permits.

(2) Identify all environmental issues, including any compliance issues associated with or expected as a result of the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G, of this title.

(c) *Energy assessment.*

(1) For all energy efficiency improvement projects, provide adequate and appropriate evidence of energy savings expected when the system is operated as designed.

(2) For energy efficiency improvement projects with total eligible project costs greater than $50,000, an energy audit must be conducted. An energy audit is a written report by an independent, qualified party that documents current energy usage, recommended potential improvements and their costs, energy savings from these improvements, dollars saved per year, and simple payback period in years (total costs divided by annual dollars of energy savings). The methodology of the energy audit must meet professional and industry standards. The energy audit must cover the following:

(i) *Situation report.* Provide a narrative description of the facility or process, its energy system(s) and usage, and activity profile. Also include price per unit of energy (electricity, natural gas, propane, fuel oil, renewable energy, etc.,) paid by the customer on the date of the audit. Any energy conversion should be based on use rather than source.

(ii) *Potential improvements.* List specific information on all potential energy-saving opportunities and their costs.

(iii) *Technical analysis.* Discuss the interactions among the potential improvements and other energy systems.

(A) Estimate the annual energy and energy costs savings expected from each improvement identified in the potential project.

(B) Calculate all direct and attendant indirect costs of each improvement.

(C) Rank potential improvement measures by cost-effectiveness.

(iv) *Potential improvement description.* Provide a narrative summary of the potential improvement and its ability to provide needed benefits, including a discussion of nonenergy benefits such as project reliability and durability.

(A) Provide preliminary specifications for critical components.

(B) Provide preliminary drawings of project layout, including any related structural changes.

(C) Document baseline data compared to projected consumption, together with any explanatory notes. When appropriate, show before-and-after data in terms of consumption per unit of production, time or area. Include at least 1 year's bills for those energy sources/fuel types affected by this project. Also submit utility rate schedules, if appropriate.

(D) Identify significant changes in future related operations and maintenance costs.

(E) Describe explicitly how outcomes will be measured.

(d) *Design and engineering.* The applicant must submit a statement certifying that their project will be designed and engineered so as to meet the intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards.

(1) Identify possible suppliers and models of major pieces of equipment.

(2) Describe the components, materials, or systems to be installed. Include the location of the project.

(e) *Project development schedule.* Provide a project schedule in an appropriate level of detail that will demonstrate the project can be adequately managed. The applicant must submit a statement certifying that the project will be completed within 2 years from the date of approval.

(f) *Project economic assessment.* For projects with total eligible project costs greater than $50,000, provide an analysis of the proposed project to demonstrate its financial performance, including the calculation of simple payback. The analysis should include applicable investment incentives, productivity incentives, loans and grants, and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* The project must be installed in accordance with applicable local, State, and national building and electrical codes and regulations. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules. Upon successful system installation and following established operation, the successful applicant must deliver invoices and evidence of payment.

(i) *Operations and maintenance.* Identify any unique operations and maintenance requirements of the project necessary for the improvement(s) to perform as designed over the design life. State the design life of the improvement(s). Provide information regarding component warranties.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and proper disposal of the project components and associated wastes at the end of their useful lives.

Appendix B to Part 4280

Technical Reports for Projects With Total Eligible Project Costs Greater Than $200,000

The Technical Report for projects with total eligible project costs greater than $200,000 (and for any other project that must submit a Technical Report under this appendix) must demonstrate that the project design, procurement, installation, startup, operation, and maintenance of the renewable energy system or energy efficiency improvement will operate or perform as specified over its design life in a reliable and a cost-effective manner. The Technical Report must also identify all necessary project agreements, demonstrate that those agreements will be in place, and that necessary project equipment and services are available over the design life.

All technical information provided must follow the format specified in Sections 1 through 10 of this appendix. Supporting information may be submitted in other formats. Design drawings and process flowcharts are encouraged as exhibits. A discussion of each topic is not necessary if the topic is not applicable to the specific project. Questions identified in the Agency's technical review of the project must be answered to the Agency's satisfaction before the application will be approved. The applicant must submit the original technical report plus one copy to the Rural Development State Office. Renewable energy projects with total eligible project costs greater than $400,000 and for energy efficiency improvement projects with total eligible project costs greater than $200,000 require the services of a licensed professional engineer (PE) or team of PEs. Depending on the level of engineering required for the specific project or if necessary to ensure public safety, the services of a licensed PE or a team of licensed PEs may be required for smaller projects.

Section 1. Bioenergy

The technical requirements specified in this section apply to bioenergy projects, which are, as defined in § 4280.103, renewable energy systems that produce fuel, thermal energy, or electric power from a biomass source, other than an anaerobic digester project.

(a) *Qualifications of project team.* The bioenergy project team will vary according to the complexity and scale of the project. For engineered systems, the project team should consist of a system designer, a project manager, an equipment supplier, a project engineer, a construction contractor or system installer, and a system operator and maintainer. One individual or entity may serve more than one role. The project team must have demonstrated expertise in similar bioenergy systems development, engineering, installation, and maintenance. Authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services must be provided. Authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life must also be provided. The application must:

(1) Discuss the proposed project delivery method. Such methods include a design, bid, build where a separate engineering firm may design the project and prepare a request for bids and the successful bidder constructs the project at the applicant's risk, and a design/build method, often referred to as turnkey, where the applicant establishes the specifications for the project and secures the services of a developer who will design and build the project at the developer's risk;

(2) Discuss the bioenergy system equipment manufacturers of major components being considered in terms of the length of time in business and the number of units installed at the capacity and scale being considered;

(3) Discuss the project manager, equipment supplier, system designer, project engineer, and construction contractor qualifications for engineering, designing, and installing bioenergy systems, including any relevant certifications by recognized organizations. Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available; and

(4) Describe the system operator's qualifications and experience for servicing, operating, and maintaining bioenergy renewable energy equipment or projects. Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available.

(b) *Agreements, permits, and certifications.* Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (b)(1) through (8).

(1) Identify zoning and code issues, and required permits and the anticipated schedule for meeting those requirements and securing those permits.

(2) Identify licenses where required and the schedule for obtaining those licenses.

(3) Identify land use agreements required for the project and the anticipated schedule for securing the agreements and the term of those agreements.

(4) Identify any permits or agreements required for solid, liquid, and gaseous emissions or effluents and the schedule for securing those permits and agreements.

(5) Identify available component warranties for the specific project location and size.

(6) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase arrangements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(7) Identify all environmental issues, including environmental compliance issues, associated with the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G, of this title.

(8) Submit a statement certifying that the project will be installed in accordance with applicable local, State, and national codes and regulations.

(c) *Resource assessment.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the type, quantity, quality, and seasonality of the 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.

(d) *Design and engineering.* Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. Projects shall be engineered by a qualified party. Systems must be engineered as a complete, integrated system with matched components. The engineering must be comprehensive, including site selection, system and component selections, and system monitoring equipment. Systems must be constructed by a qualified party.

(1) Provide a concise but complete description of the bioenergy project, including location of the project, resource characteristics, system specifications, electric power system interconnection, and monitoring equipment. Identify possible vendors and models of major system components. Describe the expected electric power, fuel production, or thermal energy production of the proposed system as rated and as expected in actual field conditions. For systems with a capacity of more than 20 tons per day of biomass, address performance on a monthly and annual basis. For small projects such as a commercial biomass furnace or pelletizer of up to 5 tons daily capacity, proven, commercially available devices need not be addressed in detail. Describe the uses of or the market for electricity, heat, or fuel produced by the system. Discuss the impact of reduced or interrupted biomass availability on the system process.

(2) Describe the project site and address issues such as site access, foundations, backup equipment when applicable, and environmental concerns with emphasis on land use, air quality, water quality, soil degradation, habitat fragmentation, land use, visibility, odor, noise, construction, and installation issues. Identify any unique construction and installation issues.

(e) *Project development schedule.* Identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline, including resource assessment, system and site design, permits and agreements, equipment procurement, and system installation from excavation through startup and shakedown.

(f) *Project economic assessment.* Provide a study that describes the costs and revenues of the proposed project to demonstrate the financial performance of the project, including the calculation of simple payback. Provide a detailed analysis and description of project costs, including project management, resource assessment, project design, project permitting, land agreements, equipment, site preparation, system installation, startup and shakedown, warranties, insurance, financing, professional services, and operations and maintenance costs. Provide a detailed analysis and description of annual project revenues and expenses. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Bioenergy systems may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Identify all the major equipment that is proprietary and justify how this unique equipment is needed to meet the requirements of the proposed design. Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* Fully describe the management of and plan for site development and system installation, provide details regarding the scheduling of major installation equipment needed for project construction, and provide a description of the startup and shakedown specifications and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules.

(i) *Operations and maintenance.* Identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. In addition:

(1) Provide information regarding available system and component warranties and availability of spare parts;

(2) Describe the routine operations and maintenance requirements of the proposed system, including maintenance schedule for the mechanical, piping, and electrical systems and system monitoring and control requirements. Provide information that supports expected design life of the system and timing of major component replacement or rebuilds. Discuss the costs and labor associated with the operation and maintenance of the system, and plans for in-sourcing or out-sourcing. Describe opportunities for technology transfer for long-term project operations and maintenance by a local entity or owner/operator; and

(3) For systems having a biomass input capacity exceeding 10 tons of biomass per day, provide and discuss the risk management plan for handling large, potential failures of major components.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives. Describe the budget for and any unique concerns associated with the dismantling and disposal of project components and their wastes.

Section 2. Anaerobic Digester Projects

The technical requirements specified in this section apply to anaerobic digester projects, which are, as defined in § 4280.103, renewable energy systems that use animal waste and other organic substrates to produce thermal or electrical energy via anaerobic digestion.

(a) *Qualifications of project team.* The anaerobic digester project team should consist of a system designer, a project manager, an equipment supplier, a project engineer, a construction contractor, and a system operator or maintainer. One individual or entity may serve more than one role. The project team must have demonstrated commercial-scale expertise in anaerobic digester systems development, engineering, installation, and maintenance as related to the organic materials and operating mode of the system. Authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services must be provided. Authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life must also be provided. The application must:

(1) Discuss the proposed project delivery method. Such methods include a design, bid, build where a separate engineering firm may design the project and prepare a request for bids and the successful bidder constructs the

project at the applicant's risk, and a design/build method, often referred to as turnkey, where the applicant establishes the specifications for the project and secures the services of a developer who will design and build the project at the developer's risk;

(2) Discuss the anaerobic digester system equipment manufacturers of major components being considered in terms of the length of time in business and the number of units installed at the capacity and scale being considered;

(3) Discuss the project manager, equipment supplier, system designer, project engineer, and construction contractor qualifications for engineering, designing, and installing anaerobic digester systems, including any relevant certifications by recognized organizations. Provide a list of the same or similar projects designed, installed, or supplied and currently operating consistent with the substrate material with references, if available; and

(4) For regional or centralized digester plants, describe the system operator's qualifications and experience for servicing, operating, and maintaining similar projects. Farm scale systems may not require operator experience as the developer is typically required to provide operational training during system startup and shakedown. Provide a list of the same or similar projects designed, installed, or supplied and currently operating consistent with the substrate material with references, if available.

(b) *Agreements, permits, and certifications.* Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (b)(1) through (8).

(1) Identify zoning and code issues, and required permits and the anticipated schedule for meeting those requirements and securing those permits.

(2) Identify licenses where required and the schedule for obtaining those licenses.

(3) For regional or centralized digester plants, identify feedstock access agreements required for the project and the anticipated schedule for securing those agreements and the term of those agreements.

(4) Identify any permits or agreements required for transport and ultimate waste disposal and the schedule for securing those agreements and permits.

(5) Identify available component warranties for the specific project location and size.

(6) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase arrangements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(7) Identify all environmental issues, including environmental compliance issues, associated with the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G, of this title.

(8) Submit a statement certifying that the project will be installed in accordance with applicable local, State, and national codes and regulations.

(c) *Resource assessment.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the substrates used as digester inputs, including animal wastes, food processing wastes, or other organic wastes 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.

(d) *Design and engineering.* Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. Projects shall be engineered by a qualified party. Systems must be engineered as a complete, integrated system with matched components. The engineering must be comprehensive, including site selection, digester component selection, gas handling component selection, and gas use component selection. Systems must be constructed by a qualified party.

(1) Provide a concise but complete description of the anaerobic digester project, including location of the project, farm description, feedstock characteristics, a step-by-step flowchart of unit operations, electric power system interconnection equipment, and any required monitoring equipment. Identify possible vendors and models of major system components. Provide the expected system energy production, heat balances, and material balances as part of the unit operations flowchart.

(2) Describe the project site and address issues such as site access, foundations, backup equipment when applicable, and environmental concerns with emphasis on land use, air quality, water quality, soil degradation, habitat degradation, land use, visibility, odor, noise, construction, and installation issues. Identify any unique construction and installation issues.

(e) *Project development schedule.* Identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline, including feedstock assessment, system and site designs, permits and agreements, equipment procurement, system installation from excavation through startup and shakedown, and operator training.

(f) *Project economic assessment.* Provide a study that describes the costs and revenues of the proposed project to demonstrate the financial performance of the project, including the calculation of simple payback. Provide a detailed analysis and description of project costs, including project management, feedstock assessment, project design, project permitting, land agreements, equipment, site preparation, system installation, startup and shakedown, warranties, insurance, financing, professional services, training and operations, and maintenance costs of both the digester and the gas use systems. Provide a detailed analysis and description of annual project revenues and expenses. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Anaerobic digester systems may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Identify all the major equipment that is proprietary and justify how this unique equipment is needed to meet the requirements of the proposed design. Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* Describe fully the management of and plan for site development and system installation, provide details regarding the scheduling of major installation equipment needed for project construction, and provide a description of the startup and shakedown specifications and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules.

(i) *Operations and maintenance.* Identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The application must:

(1) Ensure that systems must have at least a 3-year warranty for equipment and a 10-year warranty on design. Provide information regarding system warranties and availability of spare parts;

(2) Describe the routine operations and maintenance requirements of the proposed project, including maintenance for the digester, the gas handling equipment, and the gas use systems. Describe any maintenance requirements for system monitoring and control equipment;

(3) Provide information that supports the expected design life of the system and the timing of major component replacement or rebuilds;

(4) Provide and discuss the risk management plan for handling large, potential failures of major components. Include in the discussion, costs and labor associated with the operation and maintenance of the system, and plans for in-sourcing or out-sourcing; and

(5) Describe opportunities for technology transfer for long-term project operations and

maintenance by a local entity or owner/operator.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives. Describe the budget for and any unique concerns associated with the dismantling and disposal of project components and their wastes.

Section 3. Geothermal, Electric Generation

The technical requirements specified in this section apply to electric generation geothermal projects, which are, as defined in § 4280.103, systems that use geothermal energy to produce high pressure steam for electric power production.

(a) *Qualifications of project team.* The electric generating geothermal plant project team should consist of a system designer, a project manager, an equipment supplier, a project engineer, a construction contractor, and a system operator and maintainer. One individual or entity may serve more than one role. The project team must have demonstrated expertise in geothermal electric generation systems development, engineering, installation, and maintenance. Authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services must be provided. Authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life must also be provided. The application must:

(1) Discuss the proposed project delivery method. Such methods include a design, bid, build where a separate engineering firm may design the project and prepare a request for bids and the successful bidder constructs the project at the applicant's risk, and a design/build method, often referred to as turnkey, where the applicant establishes the specifications for the project and secures the services of a developer who will design and build the project at the developer's risk;

(2) Discuss the geothermal plant equipment manufacturers of major components being considered in terms of the length of time in business and the number of units installed at the capacity and scale being considered;

(3) Discuss the project manager, equipment supplier, system designer, project engineer, and construction contractor qualifications for engineering, designing, and installing geothermal electric generation systems, including any relevant certifications by recognized organizations. Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available; and

(4) Describe the system operator's qualifications and experience for servicing, operating, and maintaining electric generating geothermal projects. Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available.

(b) *Agreements, permits, and certifications.* Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (b)(1) through (7).

(1) Identify zoning and code issues and required permits and the anticipated schedule for meeting those requirements and securing those permits.

(2) Identify any permits or agreements required for well construction and for disposal or re-injection of cooled geothermal waters and the schedule for securing those agreements and permits.

(3) Identify land use or access to the resource agreements required for the project and the anticipated schedule for securing the agreements and the term of those agreements.

(4) Identify available component warranties for the specific project location and size.

(5) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase arrangements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements.

(6) Identify all environmental issues, including environmental compliance issues, associated with the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G, of this title.

(7) Submit a statement certifying that the project will be installed in accordance with applicable local, State, and national codes and regulations.

(c) *Resource assessment.* 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.

(d) *Design and engineering.* Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. Projects shall be engineered by a qualified party. Systems must be engineered as a complete, integrated system with matched components. The engineering must be comprehensive, including site selection, system and component selection, conversion system component and selection, design of the local collection grid, interconnection equipment selection, and system monitoring equipment. Systems must be constructed by a qualified party.

(1) Provide a concise but complete description of the geothermal project, including location of the project, resource characteristics, thermal system specifications, electric power system interconnection equipment and project monitoring equipment. Identify possible vendors and models of major system components. Provide the expected system energy production on a monthly and annual basis.

(2) Describe the project site and address issues such as site access, proximity to the electrical grid, environmental concerns with emphasis on land use, air quality, water quality, habitat fragmentation, visibility, noise, construction, and installation issues. Identify any unique construction and installation issues.

(e) *Project development schedule.* Identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline, including resource assessment, system and site design, permits and agreements, equipment procurement, and system installation from excavation through startup and shakedown.

(f) *Project economic assessment.* Provide a study that describes the costs and revenues of the proposed project to demonstrate the financial performance of the project, including the calculation of simple payback. Provide a detailed analysis and description of project costs, including project management, resource assessment, project design, project permitting, land agreements, equipment, site preparation, system installation, startup and shakedown, warranties, insurance, financing, professional services, and operations and maintenance costs. Provide a detailed analysis and description of annual project revenues, including electricity sales, production tax credits, revenues from green tags, and any other production incentive programs throughout the life of the project. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Geothermal systems may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Identify all the major equipment that is proprietary and justify how this unique equipment is needed to meet the requirements of the proposed design. Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* Describe fully the management of and plan for site development and system installation, provide details regarding the scheduling of major installation equipment needed for project construction, and provide a description of the startup and shakedown specifications and process and the conditions required for startup or shakedown for each equipment item individually and for the system as a whole. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules.

(i) *Operations and maintenance.* Identify the operations and maintenance

requirements of the system necessary for the system to operate as designed over the design life. The application must:

(1) Ensure that systems must have at least a 3-year warranty for equipment. Provide information regarding turbine warranties and availability of spare parts;

(2) Describe the routine operations and maintenance requirements of the proposed project, including maintenance for the mechanical and electrical systems and system monitoring and control requirements;

(3) Provide information that supports expected design life of the system and timing of major component replacement or rebuilds;

(4) Provide and discuss the risk management plan for handling large, potential failures of major components such as the turbine. Include in the discussion, costs and labor associated with the operation and maintenance of the system, and plans for in-sourcing or out-sourcing; and

(5) Describe opportunities for technology transfer for long-term project operations and maintenance by a local entity or owner/operator.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives. Describe the budget for and any unique concerns associated with the dismantling and disposal of project components and their wastes.

Section 4. Geothermal, Direct Use

The technical requirements specified in this section apply to direct use geothermal projects, which are, as defined in § 4280.103, systems that use thermal energy directly from a geothermal source.

(a) *Qualifications of project team.* The geothermal project team should consist of a system designer, a project manager, an equipment supplier, a project engineer, a construction contractor, and a system operator and maintainer. One individual or entity may serve more than one role. The project team must have demonstrated expertise in geothermal heating systems development, engineering, installation, and maintenance. Authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services must be provided. Authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life must also be provided. The application must:

(1) Discuss the proposed project delivery method. Such methods include a design, bid, build where a separate engineering firm may design the project and prepare a request for bids and the successful bidder constructs the project at the applicant's risk, and a design/build method, often referred to as turnkey, where the applicant establishes the specifications for the project and secures the services of a developer who will design and build the project at the developer's risk;

(2) Discuss the geothermal system equipment manufacturers of major components being considered in terms of the length of time in business and the number of units installed at the capacity and scale being considered;

(3) Discuss the project manager, equipment supplier, system designer, project engineer, and construction contractor qualifications for engineering, designing, and installing direct use geothermal systems, including any relevant certifications by recognized organizations. Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available; and

(4) Describe system operator's qualifications and experience for servicing, operating, and maintaining direct use generating geothermal projects. Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available.

(b) *Agreements, permits, and certifications.* Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (b)(1) through (7).

(1) Identify zoning and code issues, and required permits and the anticipated schedule for meeting those requirements and securing those permits.

(2) Identify licenses where required and the schedule for obtaining those licenses.

(3) Identify land use or access to the resource agreements required for the project and the anticipated schedule for securing the agreements and the term of those agreements.

(4) Identify any permits or agreements required for well construction and for disposal or re-injection of cooled geothermal waters and the anticipated schedule for securing those permits and agreements.

(5) Identify available component warranties for the specific project location and size.

(6) Identify all environmental issues, including environmental compliance issues, associated with the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G, of this title.

(7) Submit a statement certifying that the project will be installed in accordance with applicable local, State, and national codes and regulations.

(c) *Resource assessment.* 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.

(d) *Design and engineering.* Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. Projects shall be engineered by a qualified party. Systems must be engineered as a complete, integrated system with matched components. The engineering must be comprehensive, including site selection, system and component selection, thermal system component selection, and system monitoring equipment. Systems must be constructed by a qualified party.

(1) Provide a concise but complete description of the geothermal project, including location of the project, resource characteristics, thermal system specifications, and monitoring equipment. Identify possible vendors and models of major system components. Provide the expected system energy production on a monthly and annual basis.

(2) Describe the project site and address issues such as site access, thermal backup equipment, environmental concerns with emphasis on land use, air quality, water quality, habitat fragmentation, visibility, noise, construction, and installation issues. Identify any unique construction and installation issues.

(e) *Project development schedule.* Identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline, including resource assessment, system and site design, permits and agreements, equipment procurement, and system installation from excavation through startup and shakedown.

(f) *Project economic assessment.* Provide a study that describes the costs and revenues of the proposed project to demonstrate the financial performance of the project, including the calculation of simple payback. Provide a detailed analysis and description of project costs, including project management, resource assessment, project design, project permitting, land agreements, equipment, site preparation, system installation, startup and shakedown, warranties, insurance, financing, professional services, and operations and maintenance costs. Provide a detailed analysis and description of annual project revenues and expenses. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Geothermal systems may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Identify all the major equipment that is proprietary and justify how this unique equipment is needed to meet the requirements of the proposed design. Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* Describe fully the management of and plan for site development and system installation,

provide details regarding the scheduling of major installation equipment needed for project construction, and provide a description of the startup and shakedownspecifications and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules.

(i) *Operations and maintenance.* Identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The application must:

(1) Ensure that systems must have at least a 3-year warranty for equipment. Provide information regarding system warranties and availability of spare parts;

(2) Describe the routine operations and maintenance requirements of the proposed project, including maintenance for the mechanical and electrical systems and system monitoring and control requirements;

(3) Provide information that supports expected design life of the system and timing of major component replacement or rebuilds;

(4) Provide and discuss the risk management plan for handling large, potential failures of major components. Include in the discussion, costs and labor associated with the operation and maintenance of the system, and plans for in-sourcing or out-sourcing; and

(5) Describe opportunities for technology transfer for long-term project operations and maintenance by a local entity or owner/operator.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives. Describe the budget for and any unique concerns associated with the dismantling and disposal of project components and their wastes.

Section 5. Hydrogen Projects

The technical requirements specified in this section apply to hydrogen projects, which are, as defined in § 4280.103, renewable energy systems that produce hydrogen or, a renewable energy system that uses mechanical or electric power or thermal energy from a renewable resource using hydrogen as an energy transport medium.

(a) *Qualifications of project team.* The hydrogen project team will vary according to the complexity and scale of the project. For engineered systems, the project team should consist of a system designer, a project manager, an equipment supplier, a project engineer, a construction contractor or system installer, and a system operator and maintainer. One individual or entity may serve more than one role. The project team must have demonstrated expertise in similar hydrogen systems development, engineering, installation, and maintenance. Authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services must be provided. Authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life must also be provided. The application must:

(1) Discuss the proposed project delivery method. Such methods include a design, bid, build where a separate engineering firm may design the project and prepare a request for bids and the successful bidder constructs the project at the applicant's risk, and a design/build method, often referred to as turnkey, where the applicant establishes the specifications for the project and secures the services of a developer who will design and build the project at the developer's risk;

(2) Discuss the hydrogen system equipment manufacturers of major components for the hydrogen system being considered in terms of the length of time in the business and the number of units installed at the capacity and scale being considered;

(3) Discuss the project manager, equipment supplier, system designer, project engineer, and construction contractor qualifications for engineering, designing, and installing hydrogen systems, including any relevant certifications by recognized organizations. Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available; and

(4) Describe the system operator's qualifications and experience for servicing, operating, and maintaining hydrogen system equipment or projects. Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available.

(b) *Agreements, permits, and certifications.* Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (b)(1) through (8).

(1) Identify zoning and building code issues, and required permits and the anticipated schedule for meeting those requirements and securing those permits.

(2) Identify licenses where required and the schedule for obtaining those licenses.

(3) Identify land use agreements required for the project and the anticipated schedule for securing the agreements and the term of those agreements.

(4) Identify any permits or agreements required for solid, liquid, and gaseous emissions or effluents and the anticipated schedule for securing those permits and agreements.

(5) Identify available component warranties for the specific project location and size.

(6) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase arrangements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(7) Identify all environmental issues, including environmental compliance issues, associated with the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G, of this title.

(8) Submit a statement certifying that the project will be installed in accordance with applicable local, State, and national codes and regulations.

(c) *Resource assessment.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the type, quantity, quality, and seasonality of the biomass resource. For solar, wind, or geothermal sources of energy used to generate hydrogen, indicate the local 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.

(d) *Design and engineering.* Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. Projects shall be engineered by a qualified party. Systems must be engineered as a complete, integrated system with matched components. The engineering must be comprehensive, including site selection, system and component selection, and system monitoring equipment. Systems must be constructed by a qualified party.

(1) Provide a concise but complete description of the hydrogen project, including location of the project, resource characteristics, system specifications, electric power system interconnection equipment, and monitoring equipment. Identify possible vendors and models of major system components. Describe the expected electric power, fuel production, or thermal energy production of the proposed system. Address performance on a monthly and annual basis. Describe the uses of or the market for electricity, heat, or fuel produced by the system. Discuss the impact of reduced or interrupted resource availability on the system process.

(2) Describe the project site and address issues such as site access, foundations, backup equipment when applicable, and any environmental and safety concerns with emphasis on land use, air quality, water quality, and safety hazards. Identify any unique construction and installation issues.

(e) *Project development schedule.* Identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline, including resource assessment, system and site design, permits and agreements, equipment procurement, and system installation from excavation through startup and shakedown.

(f) *Project economic assessment.* Provide a study that describes the costs and revenues of the proposed project to demonstrate the financial performance of the project, including the calculation of simple payback. Provide a detailed analysis and description of project costs, including project management, resource assessment, project design and

engineering, project permitting, land agreements, equipment, site preparation, system installation, startup and shakedown, warranties, insurance, financing, professional services, and operations and maintenance costs. Provide a detailed analysis and description of annual project revenues and expenses. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Hydrogen systems may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues, such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, and receiving, and on-site storage or inventory. Identify all the major equipment that is proprietary and justify how this unique equipment is needed to meet the requirements of the proposed design. Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* Describe fully the management of and plan for site development and system installation, provide details regarding the scheduling of major installation equipment needed for project construction, and provide a description of the startup and shakedown specifications and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules.

(i) *Operations and maintenance.* Identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The application must:

(1) Provide information regarding system warranties and availability of spare parts;

(2) Describe the routine operations and maintenance requirements of the proposed project, including maintenance of the reformer, electrolyzer, or fuel cell as appropriate, and other mechanical, piping, and electrical systems and system monitoring and control requirements;

(3) Provide information that supports expected design life of the system and timing of major component replacement or rebuilds;

(4) Provide and discuss the risk management plan for handling large, potential failures of major components. Include in the discussion, costs and labor associated with the operation and maintenance of the system, and plans for in-sourcing or out-sourcing; and

(5) Describe opportunities for technology transfer for long-term project operations and maintenance by a local entity or owner/operator.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives. Describe the budget for and any unique concerns associated with the dismantling and disposal of project components and their wastes.

Section 6. Solar, Small

The technical requirements specified in this section apply to small solar electric projects and small solar thermal projects, as defined in § 4280.103.

Small solar electric projects are those for which the rated power of the system is 10kW or smaller. Small solar electric projects are either stand-alone (off grid) or interconnected to the grid at less than 600 volts (on grid).

Small solar thermal projects are those for which the rated storage volume of the system is 240 gallons or smaller, or which have a collector area of 1,000 square feet or less.

(a) *Qualifications of project team.* The small solar project team should consist of a system designer, a project manager or general contractor, an equipment supplier of major components, a system installer, a system maintainer, and, in some cases, the owner of the application or load served by the system. One individual or entity may serve more than one role. Authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services must be provided. Authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life must also be provided. The application must:

(1) Discuss the qualifications of the suppliers of major components being considered;

(2) Describe the knowledge, skills, and abilities needed to service, operate, and maintain the system for the proposed application; and

(3) Discuss the project manager, system designer, and system installer qualifications for engineering, designing, and installing small solar systems, including any relevant certifications by recognized organizations. Provide a list of the same or similar systems designed or installed by the design and installation team and currently operating with references, if available.

(b) *Agreements, permits, and certifications.* Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (b)(1) through (5).

(1) Identify zoning, building, and electrical code issues, and required permits and the anticipated schedule for meeting those requirements and securing those permits.

(2) Identify available component warranties for the specific project location and size.

(3) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase arrangements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(4) Identify all environmental issues, including environmental compliance issues, associated with the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G, of this title.

(5) Submit a statement certifying that the project will be installed in accordance with applicable local, State, and national codes and regulations.

(c) *Resource assessment.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the source of the solar data and assumptions.

(d) *Design and engineering.* Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. For small solar electric systems, the engineering must be comprehensive, including solar collector design and selection, support structure design and selection, power conditioning design and selection, surface or submersible water pumps and energy storage requirements as applicable, and selection of cabling, disconnects and interconnection equipment. For small solar thermal systems, the engineering must be comprehensive, including solar collector design and selection, support structure design and selection, pump and piping design and selection, and energy storage design and selection.

(1) Provide a concise but complete description of the small solar system, including location of the project and proposed equipment specifications. Identify possible vendors and models of major system components. Provide the expected system energy production based on available solar resource data on a monthly (when possible) and annual basis and how the energy produced by the system will be used.

(2) Describe the project site and address issues such as solar access, orientation, proximity to the load or the electrical grid, environmental concerns such as water quality and land use, unique safety concerns such as hazardous materials handling, construction, and installation issues, and whether special circumstances exist.

(e) *Project development schedule.* Identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline, including system and site design, permits and agreements, equipment procurement, and system installation from excavation through startup and shakedown.

(f) *Project economic assessment.* Provide a study that describes the costs and revenues of the proposed project to demonstrate the financial performance of the project, including the calculation of simple payback. Provide a detailed analysis and description of

project costs, including design, permitting, equipment, site preparation, system installation, system startup and shakedown, warranties, insurance, financing, professional services, and operations and maintenance costs. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants. Provide a detailed description of historic or expected energy use and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Small solar systems may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Provide a detailed description of equipment certification. Identify all the major equipment that is proprietary and justify how this unique equipment is needed to meet the requirements of the proposed design. Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* Describe fully the management of and plan for site development and system installation, provide details regarding the scheduling of major installation equipment needed for project construction, and provide a description of the startup and shakedown specifications and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules.

(i) *Operations and maintenance.* Identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The application must:

(1) Ensure that systems must have at least a 5-year warranty for equipment. Provide information regarding system warranty and availability of spare parts;

(2) Describe the routine operations and maintenance requirements of the proposed system, including maintenance schedules for the mechanical and electrical and software systems;

(3) For owner maintained portions of the system, describe any unique knowledge, skills, or abilities needed for service operations or maintenance; and

(4) Provide information regarding expected system design life and timing of major component replacement or rebuilds. Include in the discussion, costs and labor associated with the operation and maintenance of the system, and plans for in-sourcing or out-sourcing.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives. Describe the budget for and any unique concerns associated with the dismantling and disposal of project components and their wastes. Describe any environmental compliance requirements such as proper disposal or recycling procedures to reduce potential impact from any hazardous chemicals.

Section 7. Solar, Large

The technical requirements specified in this section apply to large solar electric projects and large solar thermal projects, as defined in § 4280.103.

Large solar electric systems are those for which the rated power of the system is larger than 10kW. Large solar electric systems are either stand-alone (off grid) or interconnected to the grid (on grid).

Large solar thermal systems are those for which the rated storage volume of the system is greater than 240 gallons or that have a collector area of more than 1,000 square feet.

(a) *Qualifications of project team.* The large solar project team should consist of an equipment supplier of major components, a project manager, general contractor, system engineer, system installer, and system maintainer. One individual or entity may serve more than one role. Authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services must be provided. Authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life must also be provided. The application must:

(1) Discuss the proposed project delivery method. Such methods include a design, bid, build where a separate engineering firm may design the project and prepare a request for bids and the successful bidder constructs the project at the applicant's risk, and a design/build method, often referred to as turnkey, where the applicant establishes the specifications for the project and secures the services of a developer who will design and build the project at the developer's risk;

(2) Discuss the qualifications of the suppliers of major components being considered;

(3) Discuss the project manager, general contractor, system engineer, and system installer qualifications for engineering, designing, and installing large solar systems, including any relevant certifications by recognized organizations. Provide a list of the same or similar systems designed or installed by the design, engineering, and installation team and currently operating with references, if available; and

(4) Describe the system operator's qualifications and experience for servicing, operating, and maintaining the system for the proposed application. Provide a list of the same or similar systems designed or installed by the design, engineering, and installation team and currently operating with references, if available.

(b) *Agreements, permits, and certifications.* Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (b)(1) through (5).

(1) Identify zoning, building, and electrical code issues, and required permits and the anticipated schedule for meeting those requirements and securing those permits.

(2) Identify available component warranties for the specific project location and size.

(3) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase arrangements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(4) Identify all environmental issues, including environmental compliance issues, associated with the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G, of this title.

(5) Submit a statement certifying that the project will be installed in accordance with applicable local, State, and national codes and regulations.

(c) *Resource assessment.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the source of the solar data and assumptions.

(d) *Design and engineering.* Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards.

(1) For large solar electric systems, the engineering must be comprehensive, including solar collector design and selection, support structure design and selection, power conditioning design and selection, surface or submersible water pumps and energy storage requirements as applicable, and selection of cabling, disconnects, and interconnection equipment. A complete set of engineering drawings, stamped by a professional engineer, must be provided.

(2) For large solar thermal systems, the engineering must be comprehensive, including solar collector design and selection, support structure design and selection, pump and piping design and selection, and energy storage design and selection. Provide a complete set of engineering drawings stamped by a professional engineer.

(3) For either type of system, provide a concise but complete description of the large solar system, including location of the project and proposed equipment and system specifications. Identify possible vendors and models of major system components. Provide the expected system energy production based on available solar resource data on a monthly (when possible) and annual basis and how the energy produced by the system will be used.

(4) For either type of system, provide a description of the project site and address issues such as solar access, orientation, proximity to the load or the electrical grid, environmental concerns such as land use, water quality, habitat fragmentation, and aesthetics, unique safety concerns, construction, and installation issues, and whether special circumstances exist.

(e) *Project development schedule.* Identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline, including system and site design, permits and agreements, equipment procurement, and system installation from excavation through startup and shakedown.

(f) *Project economic assessment.* Provide a study that describes the costs and revenues of the proposed project to demonstrate the financial performance of the project, including the calculation of simple payback. Provide a detailed analysis and description of project costs, including design and engineering, permitting, equipment, site preparation, system installation, system startup and shakedown, warranties, insurance, financing, professional services, and operations and maintenance costs. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants. Provide a detailed description of historic or expected energy use and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Large solar systems may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Provide a detailed description of equipment certification. Identify all the major equipment that is proprietary and justify how this unique equipment is needed to meet the requirements of the proposed design. Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* Describe fully the management of and plan for site development and system installation, provide details regarding the scheduling of major installation equipment, including cranes and other devices needed for project construction, and provide a description of the startup and shakedown specifications and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules.

(i) *Operations and maintenance.* Identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The application must:

(1) Ensure that systems must have at least a 5-year warranty for equipment. Provide information regarding system warranty and availability of spare parts;

(2) Describe the routine operations and maintenance requirements of the proposed system, including maintenance schedules for the mechanical, electrical, and software systems;

(3) For owner maintained portions of the system, describe any unique knowledge, skills, or abilities needed for service operations or maintenance; and

(4) Provide information regarding expected system design life and timing of major component replacement or rebuilds. Include in the discussion, costs and labor associated with the operation and maintenance of the system, and plans for in-sourcing or out-sourcing.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives. Describe the budget for and any unique concerns associated with the dismantling and disposal of project components and their wastes. Describe any environmental compliance requirements such as proper disposal or recycling procedures to reduce any potential impact from hazardous chemicals.

Section 8. Wind, Small

The technical requirements specified in this section apply to small wind systems, which are, as defined in § 4280.103, wind energy systems for which the rated power of the wind turbine is 100kW or smaller and with a generator hub height of 120 ft or less. Small wind systems are either stand-alone or connected to the local electrical system at less than 600 volts.

(a) *Qualifications of project team.* The small wind project team should consist of a system designer, a project manager or general contractor, an equipment supplier of major components, a system installer, a system maintainer, and, in some cases, the owner of the application or load served by the system. One individual or entity may serve more than one role. Authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services must be provided. Authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life must also be provided. The application must:

(1) Discuss the small wind turbine manufacturers and other equipment suppliers of major components being considered in terms of their length of time in business and the number of units installed at the capacity and scale being considered;

(2) Describe the knowledge, skills, and abilities needed to service, operate, and maintain the system for the proposed application; and

(3) Discuss the project manager, system designer, and system installer qualifications for engineering, designing, and installing small wind systems, including any relevant certifications by recognized organizations. Provide a list of the same or similar systems designed, installed, or supplied and currently operating with references, if available.

(b) *Agreements, permits, and certifications.* Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (b)(1) through (5).

(1) Identify zoning, building, and electrical code issues, and required permits and the anticipated schedule for meeting those requirements and securing those permits.

(2) Identify available component warranties for the specific project location and size.

(3) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase arrangements, or licenses, where required, and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(4) Identify all environmental issues, including environmental compliance issues, associated with the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G, of this title.

(5) Submit a statement certifying that the project will be installed in accordance with applicable local, State, and national codes and regulations.

(c) *Resource assessment.* 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.

(d) *Design and engineering.* Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. Small wind systems must be engineered by either the wind turbine manufacturer or other qualified party. Systems must be offered as a complete, integrated system with matched components. The engineering must be comprehensive, including turbine design and selection, tower design and selection, specification of guy wire anchors and tower foundation, inverter/controller design and selection, energy storage requirements as applicable, and selection of cabling, disconnects, and interconnection equipment, as well as the engineering data needed to match the wind system output to the application load, if applicable.

(1) Provide a concise but complete description of the small wind system, including location of the project, proposed turbine specifications, tower height and type of tower, type of energy storage and location of storage if applicable, proposed inverter

manufacturer and model, electric power system interconnection equipment, and application load and load interconnection equipment as applicable. Identify possible vendors and models of major system components. Provide the expected system energy production based on available wind resource data on a monthly (when possible) and annual basis and how the energy produced by the system will be used.

(2) Describe the project site and address issues such as access to the wind resource, proximity to the electrical grid or application load, environmental concerns with emphasis on historic properties, visibility, noise, bird and bat populations, and wildlife habitat destruction and/or fragmentation, construction, and installation issues and whether special circumstances such as proximity to airports exist. Provide a 360-degree panoramic photograph of the proposed site, including indication of prevailing winds when possible.

(e) *Project development schedule.* Identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline, including system and site design, permits and agreements, equipment procurement, and system installation from excavation through startup and shakedown.

(f) *Project economic assessment.* Provide a study that describes the costs and revenues of the proposed project to demonstrate the financial performance of the project, including the calculation of simple payback. Provide a detailed analysis and description of project costs, including design, permitting, equipment, site preparation, system installation, system startup and shakedown, warranties, insurance, financing, professional services, and operations and maintenance costs. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants. Provide a detailed description of historic or expected energy use and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Small wind systems may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Provide a detailed description of equipment certification. Identify all the major equipment that is proprietary and justify how this unique equipment is needed to meet the requirements of the proposed design. Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* Describe fully the management of and plan for site development and system installation, provide details regarding the scheduling of major installation equipment, including cranes and other devices needed for project construction, and provide a description of the startup and shakedown specifications and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules.

(i) *Operations and maintenance.* Identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The application must:

(1) Ensure that systems must have at least a 5-year warranty for equipment and a commitment from the supplier to have spare parts available. Provide information regarding system warranty and availability of spare parts;

(2) Describe the routine operations and maintenance requirements of the proposed system, including maintenance schedules for the mechanical, electrical, and software systems;

(3) Provide historical or engineering information that supports expected design life of the system and timing of major component replacement or rebuilds. Include in the discussion, costs and labor associated with the operation and maintenance of the system, and plans for in-sourcing or out-sourcing; and

(4) For owner maintained portions of the system, describe any unique knowledge, skills, or abilities needed for service operations or maintenance.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives. Describe the budget for and any unique concerns associated with the dismantling and disposal of project components and their wastes.

Section 9. Wind, Large

The technical requirements specified in this section apply to wind energy systems, which are, as defined in § 4280.103, wind energy projects for which the rated power of the individual wind turbine(s) is larger than 100kW.

(a) *Qualifications of project team.* The large wind project team should consist of a project manager, a meteorologist, an equipment supplier, a project engineer, a primary or general contractor, construction contractor, and a system operator and maintainer, and in some cases, the owner of the application or load served by the system. One individual or entity may serve more than one role. Authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services must be provided. Authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life must also be provided. The application must:

(1) Discuss the proposed project delivery method. Such methods include a design, bid, build where a separate engineering firm may design the project and prepare a request for bids and the successful bidder constructs the project at the applicant's risk, and a design/build method, often referred to as turnkey, where the applicant establishes the specifications for the project and secures the services of a developer who will design and build the project at the developers risk;

(2) Discuss the large wind turbine manufacturers and other equipment suppliers of major components being considered in terms of the length of time in business and the number of units installed at the capacity and scale being considered;

(3) Discuss the project manager, equipment supplier, project engineer, and construction contractor qualifications for engineering, designing, and installing large wind systems, including any relevant certifications by recognized organizations. Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available;

(4) Discuss the qualifications of the meteorologist, including references; and

(5) Describe system operator's qualifications and experience for servicing, operating, and maintaining the system for the proposed application. Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available.

(b) *Agreements, permits, and certifications.* Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (b)(1) through (6).

(1) Identify zoning, building, and electrical code issues, and required permits and the anticipated schedule for meeting those requirements and securing those permits.

(2) Identify land use agreements required for the project and the anticipated schedule for securing the agreements and the term of those agreements.

(3) Identify available component warranties for the specific project location and size.

(4) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase arrangements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements.

(5) Identify all environmental issues, including environmental compliance issues, associated with the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G, of this title.

(6) Submit a statement certifying that the project will be installed in accordance with applicable local, State, and national codes and regulations.

(c) *Resource assessment.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Projects greater than 500kW must obtain wind data from the proposed project site. For such projects, describe the proposed measurement setup for the collection of the wind resource data. For proposed projects with an established wind resource, provide a

summary of the wind resource and the specifications of the measurement setup. Large wind systems larger than 500kW in size will typically require at least 1 year of on-site monitoring. If less than 1 year of data is used, the qualified meteorological consultant must provide a detailed analysis of the correlation between the site data and a nearby, long-term measurement site.

(d) *Design and engineering.* Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. Large wind systems must be engineered by a qualified party. Systems must be engineered as complete, integrated systems with matched components. The engineering must be comprehensive, including site selection, turbine selection, tower selection, tower foundation, design of the local collection grid, interconnection equipment selection, and system monitoring equipment. For stand-alone, non-grid applications, engineering information must be provided that demonstrates appropriate matching of wind turbine and load.

(1) Provide a concise, but complete, description of the large wind project, including location of the project, proposed turbine specifications, tower height and type of tower, the collection grid, interconnection equipment, and monitoring equipment. Identify possible vendors and models of major system components. Provide the expected system energy production based on available wind resource data on a monthly and annual basis. For wind projects larger than 500kW in size, provide the expected system energy production over the life of the project, including a discussion on inter-annual variation using a comparison of the on-site monitoring data with long-term meteorological data from a nearby monitored site.

(2) Describe the project site and address issues such as site access, proximity to the electrical grid or application load, environmental concerns with emphasis on historic properties, visibility, noise, bird and bat populations, and wildlife habitat destruction and/or fragmentation, construction, and installation issues and whether special circumstances such as proximity to airports exist.

(e) *Project development schedule.* Identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline, including resource assessment, system and site design, permits and agreements, equipment procurement, and system installation from excavation through startup and shakedown.

(f) *Project economic assessment.* Provide a study that describes the costs and revenues of the proposed project to demonstrate the financial performance of the proposed project. Provide a detailed analysis and description of project costs, including project management, resource assessment, project design, project permitting, land agreements, equipment, site preparation, system installation, startup and shakedown, warranties, insurance, financing, professional services, and operations and maintenance costs. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants. Provide a detailed analysis and description of annual project revenues, including electricity sales, production tax credits, revenues from green tags, and any other production incentive programs throughout the life of the project. Provide a description of planned contingency fees or reserve funds to be used for unexpected large component replacement or repairs and for low productivity periods. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Large wind turbines may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Provide a detailed description of equipment certification. Identify all the major equipment that is proprietary and justify how this unique equipment is needed to meet the requirements of the proposed design. Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* Describe fully the management of and plan for site development and system installation, provide details regarding the scheduling of major installation equipment, including cranes or other devices, needed for project construction, and provide a description of the startup and shakedown specifications and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules.

(i) *Operations and maintenance.* Identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The application must:

(1) Ensure that systems must have at least a 3-year warranty for equipment. Provide information regarding turbine warranties and availability of spare parts;

(2) Describe the routine operations and maintenance requirements of the proposed project, including maintenance schedules for the mechanical and electrical systems and system monitoring and control requirements;

(3) Provide information that supports expected design life of the system and timing of major component replacement or rebuilds;

(4) Provide and discuss the risk management plan for handling large, potential failures of major components such as the turbine gearbox or rotor. Include in the discussion, costs and labor associated with the operation and maintenance of the system, and plans for in-sourcing or out-sourcing;

(5) Describe opportunities for technology transfer for long-term project operations and maintenance by a local entity or owner/operator; and

(6) For owner maintained portions of the system, describe any unique knowledge, skills, or abilities needed for service operations or maintenance.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives. Describe the budget for and any unique concerns associated with the dismantling and disposal of project components and their wastes.

Section 10. Energy Efficiency Improvements

The technical requirements specified in this section apply to projects that involve energy efficiency improvements, which are, as defined in § 4280.103, improvements to a facility, building, or process that reduces energy consumption. The system engineering for such projects must be performed by a qualified party or certified Professional Engineer.

(a) *Qualifications of project team.* The energy efficiency project team is expected to consist of an energy auditor or other service provider, a project manager, an equipment supplier of major components, a project engineer, and a construction contractor or system installer. One individual or entity may serve more than one role. Authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services must be provided. Authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life must also be provided. The application must:

(1) Discuss the qualifications of the various project team members, including any relevant certifications by recognized organizations;

(2) Describe qualifications or experience of the team as related to installation, service, operation and maintenance of the project;

(3) Provide a list of the same or similarly engineered projects designed, installed, or supplied by the team or by team members and currently operating. Provide references if available; and

(4) Discuss the manufacturers of major energy efficiency equipment being considered, including length of time in business.

(b) *Agreements, permits, and certifications.* Identify all necessary agreements and permits required for the energy efficiency improvement(s) and the status and anticipated schedule for securing those agreements and permits, including the items specified in paragraphs (b)(1) through (4). The applicant must also submit a statement certifying that the applicant will comply with all necessary agreements and permits for the energy efficiency improvement(s).

(1) Identify building code, electrical code, and zoning issues and required permits, and the anticipated schedule for meeting those requirements and securing those permits.

(2) Identify available component warranties for the specific project location and size.

(3) Identify all environmental issues, including environmental compliance issues, associated with the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G, of this title.

(4) Submit a statement certifying that the project will be installed in accordance with applicable local, State, and national codes and regulations.

(c) *Energy assessment.* Provide adequate and appropriate evidence of energy savings expected when the system is operated as designed.

(1) Provide information on baseline energy usage (preferably including energy bills for at least 1 year), expected energy savings based on manufacturers specifications or other estimates, estimated dollars saved per year, and payback period in years (total investment cost equal to cumulative total dollars of energy savings). Calculation of energy savings should follow accepted methodology and practices. System interactions should be considered and discussed.

(2) For energy efficiency improvement projects with total eligible project costs greater than $50,000, an energy audit is required. An energy audit is a written report by an independent, qualified party that documents current energy usage, recommended potential improvements and their costs, energy savings from these improvements, dollars saved per year, and simple payback period in years (total costs divided by annual dollars of energy savings). The methodology of the energy audit must meet professional and industry standards. The energy audit must cover the following:

(i) *Situation report.* Provide a narrative description of the facility or process, its energy system(s) and usage, and activity profile. Also include price per unit of energy (electricity, natural gas, propane, fuel oil, renewable energy, etc.,) paid by the customer on the date of the audit. Any energy conversion should be based on use rather than source.

(ii) *Potential improvements.* List specific information on all potential energy-saving opportunities and their costs.

(iii) *Technical analysis.* Give consideration to the interactions among the potential improvements and other energy systems:

(A) Estimate the annual energy and energy costs savings expected from each improvement identified in the potential project;

(B) Calculate all direct and attendant indirect costs of each improvement; and

(C) Rank potential improvements measures by cost-effectiveness.

(iv) *Potential improvement description.* Provide a narrative summary of the potential improvement and its ability to provide needed benefits, including a discussion of nonenergy benefits such as project reliability and durability.

(A) Provide preliminary specifications for critical components.

(B) Provide preliminary drawings of project layout, including any related structural changes.

(C) Document baseline data compared to projected consumption, together with any explanatory notes. When appropriate, show before-and-after data in terms of consumption per unit of production, time or area. Include at least 1 year's bills for those energy sources/fuel types affected by this project. Also submit utility rate schedules, if appropriate.

(D) Identify significant changes in future related operations and maintenance costs.

(E) Describe explicitly how outcomes will be measured.

(3) For energy efficiency improvement projects with total eligible project costs equal to or less than $50,000, an energy assessment or energy audit is required. If an energy assessment is performed, provide adequate and appropriate evidence of energy savings expected when the system is operated as designed. If an energy audit is performed, it must follow the requirements specified in paragraph (c)(2).

(d) *Design and engineering.* Provide authoritative evidence that the energy efficiency improvement(s) will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards.

(1) Energy efficiency improvement projects in excess of $50,000 must be engineered by a qualified party. Systems must be engineered as a complete, integrated system with matched components.

(2) For all energy efficiency improvement projects, identify and itemize major energy efficiency improvements, including associated project costs. Specifically delineate which costs of the project are directly associated with energy efficiency improvements. Describe the components, materials or systems to be installed and how they improve the energy efficiency of the process or facility being modified. Discuss passive improvements that reduce energy loads, such as improving the thermal efficiency of a storage facility, and active improvements that directly reduce energy consumption, such as replacing existing energy consuming equipment with high efficiency equipment, as separate topics. Discuss any anticipated synergy between active and passive improvements or other energy systems. Include in the discussion any change in on-site effluents, pollutants, or other by-products.

(3) Identify possible suppliers and models of major pieces of equipment.

(e) *Project development schedule.* Identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline, including energy audit (if applicable), system and site design, permits and agreements, equipment procurement, and system installation from site preparation through startup and shakedown.

(f) *Project economic assessment.* For projects whose total eligible costs are greater than $50,000, provide an analysis of the proposed project to demonstrate its financial performance, including the calculation of simple payback. The analysis should include applicable investment incentives, productivity incentives, loans and grants, and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Demonstrate that equipment required for the energy efficiency improvement(s) is available and can be procured and delivered within the proposed project development schedule. Energy efficiency improvements may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Provide a detailed description of equipment certification. Identify all the major equipment that is proprietary and justify how this unique equipment is needed to meet the requirements of the proposed design. Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* Describe fully the management of and plan for installation of the energy efficiency improvement(s), identify specific issues associated with installation, provide details regarding the scheduling of major installation equipment needed for project discussion, and provide a description of the startup and shakedown specifications and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole. Include in this discussion any unique concerns, such as the effects of energy efficiency improvements on system power quality. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules.

(i) *Operations and maintenance.* Identify the operations and maintenance requirements of the energy efficiency improvement(s) necessary for the energy efficiency improvement(s) to perform as designed over the design life. The application must:

(1) Provide information regarding component warranties and the availability of spare parts;

(2) Describe the routine operation and maintenance requirements of the proposed project, including maintenance schedules for the mechanical and electrical systems and system monitoring and control requirements;

(3) Provide information that supports expected design life of the improvement(s) and timing of major component replacement or rebuilds;

(4) Provide and discuss the risk management plan for handling large, potential failures of major components. Include in the discussion, costs and labor associated with the operation and maintenance of the improvement(s), and plans for in-sourcing or out-sourcing; and

(5) For owner maintained portions of the improvement(s), describe any unique knowledge, skills, or abilities needed for service operations or maintenance.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives. Describe the budget for and any unique concerns associated with the dismantling and disposal of project components and their wastes.

Dated: July 6, 2005.

Gilbert G. Gonzalez, Jr.,

Acting Under Secretary, Rural Development.

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