

DEPARTMENT OF AGRICULTURE**Rural Utilities Service****Rural Business-Cooperative Service****Rural Housing Service****7 CFR Parts 1703, 1780, 3570, 4280, 4284, and 5002**

RIN 0570-AA68

Rural Development Grants

AGENCIES: Rural Business-Cooperative Service, Rural Housing Service, and Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: Rural Development, a mission area within the U.S. Department of Agriculture, is proposing a unified grant platform for enhanced delivery of eight existing Rural Development grant programs—Community Facility; Distance Learning and Telemedicine; Economic Impact Initiatives; Renewable Energy Systems and Energy Efficiency Improvement Projects; Rural Cooperative Development; Tribal College; Value-Added Producer; and Water and Waste Disposal Facilities. This proposed rule would eliminate or revise the grant regulations for the eight existing programs and consolidate them under a new, single regulation.

DATES: Comments on the proposed rule must be received on or before December 15, 2008. The comment period for the information collection under the Paperwork Reduction Act of 1995 continues through December 15, 2008.

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

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

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

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

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

FOR FURTHER INFORMATION CONTACT: Mr. Michael Foore, Rural Development,

Business and Cooperative Programs, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Stop 3201, Washington, DC 20250-3201; *e-mail:* Michael.Foore@wdc.usda.gov; telephone (202) 690-4730.

SUPPLEMENTARY INFORMATION:**Executive Order 12866**

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

The Agency conducted a qualitative benefit-cost analysis to fulfill the requirements of Executive Order 12866. The Agency has identified potential benefits to the prospective grantee and to the Agency. These benefits are associated with the increase in program transparency, Administrative flexibility, and increased efficiency in delivering the programs. While unable to quantify any costs or benefits associated with this rulemaking, the agency believes that the overall effect of the rule may be beneficial.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act 1995 (UMRA) of Public Law 104-4 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, Rural Development generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of 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 proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Environmental Impact Statement

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

Executive Order 12988, Civil Justice Reform

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

Executive Order 13132, Federalism

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

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-602) (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act 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 governmental jurisdictions.

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

Executive Order 12372, Intergovernmental Review of Federal Programs

Rural Development grants are subject to the Provisions of Executive Order 12372, which require 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 Rural Development Programs and Activities," available in any Rural Development office, on the Internet at <http://www.rurdev.usda.gov/regs>, and in 7 CFR part 3015, subpart V.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This executive order imposes requirements on Rural Development in the development of regulatory policies that have tribal implications or preempt tribal laws. Rural Development has determined that the proposed rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and the Indian tribes. Thus, the proposed rule is not subject to the requirements of Executive Order 13175.

Programs Affected

The Catalog of Federal Domestic Assistance Program numbers assigned to this program are 10.766, Community Facilities Loans and Grants; 10.855, Distance Learning and Telemedicine Loans and Grants; 10.766, Economic Impact Initiatives Grants; 10.775, Renewable Energy Systems and Energy Efficiency Improvements Program; 10.771, Rural Cooperative Development Grants; 10.352, Value-Added Producer Grants; and 10.760, Water and Waste Disposal Loans and Grants (Section

306a); and 10.221, Tribal College Educational Equity Grants.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, Rural Development will seek OMB approval of the reporting and recordkeeping requirements contained in this proposed rule and hereby opens a 60-day public comment period.

Title: Rural Development Grants.

Type of Request: New collection.

Abstract: Rural Development is implementing a new consolidated grant platform. The new grant platform would combine the following existing grant regulations into a consolidate rule: (1) The Community Facility Program, (2) the Distance Learning and Telemedicine Program; (3) the Economic Impact Initiatives Program; (4) the Rural Cooperative Development Program, (5) the Tribal College Grant Program, (6) the Value-Added Producer Program, (7) the Water and Waste Disposal Facilities Program, and (8) the Renewable Energy Systems and Energy Efficiency Improvement Program (now known as the Rural Energy for America program). These programs provide grants for a variety of projects intended to assist and improve rural America.

The information required under the proposed rule is similar to much of the information currently being required under the separate regulations. Under these separate regulations, the current information being collected is approved under OMB control numbers as follows:

- 0570-0006 (Rural Cooperative Development Grants).
- 0570-0039 (Value-Added Producer Grants).
- 0570-0050 (Renewable Energy Systems and Energy . Efficiency Improvement Grants).
- 0572-0096 (Distance Learning and Telemedicine).
- 0572-0121 (Water and Waste Loan and Grant Program).
- 0575-0173 (Community Facilities Grants).

The proposed rule creates a single set of common forms that applicants can use across all eight programs, thereby creating efficiencies in reporting.

The collection of information is vital to Rural Development to make wise decisions regarding the eligibility of projects and applicants in order to ensure compliance with the regulations and to ensure that the funds obtained from the Government are used appropriately (i.e., being used for the purposes for which the grant funds were awarded). In sum, this collection of information is necessary in order to

implement the consolidated grant regulation being proposed.

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

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 4.8 hours per response.

Respondents: Rural developers, farmers and ranchers, rural businesses, public bodies, local governments, institutions of higher learning, hospitals and medical facilities, Indian tribes, agricultural producers groups, farmer and rancher cooperatives, independent producers, majority controlled producer-based businesses, private corporations, non-profit organizations, rural electric cooperatives, public power entities, faith-based organizations, and incorporated organizations and partnerships.

Estimated Number of Respondents: 2.045.

Estimated Number of Responses per Respondent: 4.8.

Estimated Number of Responses: 24,650.

Estimated Total Annual Burden (hours) on Respondents: 118,802.

Copies of this information collection may be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250-0742 or by calling (202) 692-0043.

Comments

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

included in the request for OMB approval. All comments will also become a matter of public record.

E-Government Act Compliance

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

I. Background

Rural Development proposes a unified platform for delivery of eight existing Rural Development grant programs—Community Facility; Distance Learning and Telemedicine; Economic Impact Initiatives; Renewable Energy Systems and Energy Efficiency Improvement Projects (now known as the Rural Energy for America program); Rural Cooperative Development; Value-Added Producer; Water and Waste Disposal Facilities; and Tribal College. These programs are administered by the Rural Housing Service (Community Facilities, Economic Impact Initiatives, Tribal Grants), Rural Utilities Service (Distance Learning and Telemedicine, Water and Waste Disposal Facilities), and Rural Business-Cooperative Service (Rural Cooperative Development, Value-Added Producer, Rural Energy for America). Collectively, Rural Development's programs work together to assist in building and maintaining entire, sustainable rural communities.

For the reasons cited below, the Agency is proposing to incorporate eight of its 39 existing grant programs into this proposed new platform.

First. In selecting grant programs for inclusion in the proposed consolidated grant program, the Agency's two principal priorities are to include (1) grant programs associated with programs being included in the consolidated guaranteed loan rule and (2) grant programs that are representative of both State-allocated grant programs and nationally-competed grant programs, which are the two main types of grant programs administered by Rural Development.

As such, three of the seven grant programs are being proposed for inclusion because their guaranteed loan programs are being included in the Agency's new guaranteed loan program consolidating four of the Agency's guaranteed loan programs. These three programs are: Community Facilities, Water and Waste Disposal, and Rural Energy for America.

The Community Facilities and Water and Waste Disposal grant programs are

both State-allocated grant programs, while the Rural Energy for America grant program is a nationally-competed grant program. To "round these out," the Agency is proposing to add three additional nationally-competed grant programs—Rural Cooperative Development grants, Value-Added Producer grants, and Distance Learning and Telemedicine grants.

The Agency is proposing to include the Economic Impact Initiative grant program because it is administered under the same regulation as Community Facilities.

Second. The Agency is proposing to include Tribal College grants. As mentioned elsewhere in this preamble, the Tribal College grants program is neither a State-allocated or nationally-competed grant program. However, it does rely on portions of the Community Facilities grant program for its administration requirements. Because the proposed rule would eliminate the Community Facilities grant rule once the proposed rule is finalized, the Tribal College grant program would no longer have a grant regulation for its administration. Thus, the Agency was faced with two options—incorporate the Tribal College grant program into the proposed rule or develop a new regulation specific to Tribal College grants. The Agency believes that it makes more sense to include Tribal College grants in the new rule, then to develop a completely separate regulation for that one specific grant program.

As noted later in this preamble, the Agency is seeking specific comment on the grant programs being proposed for inclusion in the consolidated grant rule. Please see section II.C of this preamble.

The purpose of this proposed rule is to initiate the process of developing a single regulation covering all grant programs of the Rural Development Mission Area. Given the logistical and administrative challenges for the Agency and the stakeholders associated with such a consolidation, the Agency has decided to conduct this effort in stages. The proposed rule represents the first stage of this process. In this proposed rule stage the Agency selected grant programs to be included that: (1) Represented a cross section of the Agency's grant programs to ensure that the single regulatory platform being developed would be flexible enough to accommodate all of the Agency's grant programs; (2) corresponded to the loan guarantee programs that are covered by the regulatory consolidation taking place with respect to the Agency's loan guarantee programs (see 7 FR 52618, September 14, 2007); and (3) allowed

whole regulatory parts of the current program regulations to be deleted.

After the Agency has the opportunity to determine the success of this initial phase of this regulatory consolidation effort, the Agency will decide whether it would be appropriate to continue to the next phase of incorporating additional grant programs into this regulatory platform and the schedule for the next phase. A key assumption the Agency has made in deciding to initiate the process of consolidating these regulations is that the platform is flexible enough to accommodate all of the various grant programs of the Rural Development Mission Area. Therefore, the Agency's decision to move forward to the next phase of this effort and to add the regulations of new grant programs to this platform will hinge on the degree the rulemaking process of this proposed rule either supports or challenges this assumption.

Under the unified grant platform, Rural Development will simplify, improve, and enhance the delivery of these grant programs across their service areas. The remainder of this section describes Rural Development's mission, the eight grant programs being aligned under the new platform, why the new platform is being proposed, and how the new platform will work.

A. Rural Development's Mission

By statutory authority, Rural Development is the leading Federal advocate for rural America, administering a multitude of programs, ranging from housing and community facilities to infrastructure and business development. Its mission is to increase economic opportunity and improve the quality of life in rural communities by providing the leadership, infrastructure, venture capital, and technical support that enables rural communities to prosper and supports them in the dynamic global environment defined by the Internet revolution, and the rise of new technologies, products, and markets.

To achieve its mission, Rural Development provides financial support (including direct loans, grants, and loan guarantees) and technical assistance to help enhance the quality of life and provide the foundation for economic development in rural areas. To improve the delivery of this financial support for all of its programs and thereby enhance its mission, Rural Development in February 2006 initiated the Delivery Enhancement Task Force (DET). The DET is working to develop consolidated program delivery platforms.

This proposed rulemaking presents the Agency's proposed consolidated

grant platform. The Agency has already published a proposed rule in support of its unified guaranteed loan platform, which was published in the **Federal Register** on September 14, 2007 (72 FR 52618).

B. Current Grant Programs

The following paragraphs describe briefly the scope of each of the current programs with regard to eligible projects and applicants.

Community Facilities Grant Program. The Community Facilities grant program provides grants to develop essential community facilities in rural areas. However, eligible utility-type service facilities, such as telecommunications and hydroelectric, that serve both rural and non-rural areas can be located in either rural or non-rural areas. Grant funds may be used to construct, enlarge, or improve community facilities for health care, public safety, and public services. This can include costs to acquire land needed for a facility, pay necessary professional fees, and purchase equipment required for its operation.

Eligible applicants for community facilities grants are public bodies, such as municipalities, counties, districts authorities, or other political subdivisions of a State; non-profit corporations and associations, and Federally-recognized tribes. Further, applicants must have the legal authority to own, construct, operate, and maintain the proposed facility.

The amount of grant assistance provided under this program must be the minimum amount sufficient for feasibility which will provide for facility operation and maintenance, reasonable reserves, and debt repayment. As statutorily required, grants may be made up to 75 percent of the cost of developing essentially community facilities. Recently, these grants have averaged \$29,916, which is approximately 7 percent of the average costs of the projects that the grants are funding.

Economic Impact Initiatives Grant Program. This program is administered under the same regulations as the Community Facilities grant program, but provides grants to rural communities with extreme unemployment and severe economic depression. In addition, the essential community facility must be located in a rural community where the "not employed rate" is greater than the percentage specified in section 306(a)(20) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)(20)(B)). (The "not employed rate" is the percentage of individuals

over the age of 18 who reside within the community and who are ready, willing, and able to be employed but are unable to find employment, as determined by the department of labor of the State in which is the community is located.)

Notwithstanding the above, eligible applicants are otherwise the same as under the Community Facilities grant program. Eligible projects are also the same as under the Community Facilities grant program.

Under this program, the minimum grant amount awarded is that amount needed to achieve financial feasibility for the project. Recently, these grants have averaged \$42,890, which is approximately 19 percent of the average costs of the projects that the grants are funding.

Tribal College Grant Program. The Tribal College grant program is designed to enhance educational opportunities at the Tribal colleges and universities designated as the 1994 Land-Grant Institutions (1994 Institutions) by strengthening their educational programs. The program provides funding for essential community facilities and equipment for the Tribal colleges and universities.

To be eligible to receive a grant under this program, the applicant must be one of the Tribal colleges or universities designated as the 1994 Institutions. Grant funds are disbursed in an attempt to provide an equal distribution of funds to each of the 1994 Institutions when possible. Recently, these grants have averaged \$572,837, which is approximately 32 percent of the average costs of the projects that the grants are funding.

Distance Learning and Telemedicine Grant Program. The purpose of the Distance Learning and Telemedicine (DLT) Loan and Grant program is to encourage and improve telemedicine services and distance learning services in rural areas through the use of telecommunications, computer networks, and related advanced technologies by students, teachers, medical professionals, and rural residents.

To be eligible to receive a grant under this program, the applicant must be legally organized as an incorporated organization or partnership, an Indian tribe or tribal organization, as defined in 25 U.S.C. 450b (b) and (c), a state or local unit of government, a consortium, as defined in § 1703.102, or other legal entity, including a private corporation organized on a for profit or not-for profit basis. In addition, each applicant must provide written evidence of its legal capacity to contract with the Agency to obtain the grant, loan and grant

combination, or the loan, and comply with all applicable requirements. If a consortium lacks the legal capacity to contract, each individual entity must contract with the Agency in its own behalf.

As implemented by the program office, an applicant is responsible for providing at least 15 percent of the grant amount requested and the minimum amount of a grant under this program is \$50,000. Recently, these grants have averaged \$294,950, which is approximately 60 percent of the average costs of the projects that the grants are funding.

Renewable Energy Systems and Energy Efficiency Improvement Grant Program. The current Renewable Energy Systems and Energy Efficiency Improvement grant program provides grants for the purchase and installation of renewable energy systems and energy efficiency improvements. Eligible applicants are farmers, ranchers, and rural small businesses who can demonstrate financial need, as determined by the Agency.

The amount of the grant made available to an eligible project cannot exceed 25 percent of total eligible project costs, as required by the authorizing statute. Currently, the program office sets the minimum amount of a grant at \$2,500 and the maximum amount at \$500,000 for renewable energy systems and \$2,500 and \$250,000, respectively, for energy efficiency improvement projects. Unlike the 25 percent limitation, these minimum and maximum grant amounts are not statutorily specified, but are set by the Agency in implementing the program. Recently, these grants have averaged \$35,703, which is approximately 17 percent of the average costs of the projects that the grants are funding.

Rural Cooperative Development Grant Program. The Rural Cooperative Development grant program provides grants for the development or continuation of the cooperative development center concept. Grant funds and matching funds may be used for, but are not limited to, providing the following to individuals, cooperatives, small businesses and other similar entities in rural areas served by the Center:

- Applied research, feasibility, environmental and other studies that may be useful for the purpose of cooperative development.
- Collection, interpretation and dissemination of principles, facts, technical knowledge, or other information for the purpose of cooperative development.

- Providing training and instruction for the purpose of cooperative development.

- Providing loans and grants for the purpose of cooperative development in accordance with the annual Notice of Solicitation of Applications and applicable regulations.

- Providing technical assistance, research services and advisory services for the purpose of cooperative development.

Applicants eligible for rural cooperative development grants are non-profit organizations and institutions, including institutions of higher education. Public bodies are not eligible to receive grants.

Under the current Rural Cooperative Development grant regulation, grant funds may be used to pay up to 75 percent (95 percent where the grantee is a 1994 Institution) of the cost of establishing and operating centers for rural cooperative development. Applicants must verify in their application that all matching funds are available for the time period of the grant. Recently, these grants have averaged \$189,000, which is approximately 58 percent of the average costs of the projects that the grants are funding.

Value-added Producer Grant Program. The purpose of this program is to provide grants to enable producers to develop businesses that produce and market value-added agricultural products, including the development of strategies, creation of marketing opportunities, and development of business plans. The program distinguishes between planning grants and working capital grants. Grant funds for planning grants may be used for such purposes as, but not necessarily limited to: Obtaining legal advice and assistance; conducting a feasibility study; developing a business plan; and developing a marketing plan. Grant funds for working capital grant may be used for such purposes as, but not necessarily limited to: Designing or purchasing an accounting system, paying for salaries, utilities, and rental office space; and purchasing inventory, office equipment, and office supplies.

Applicants eligible for grants under this program are independent producers, agricultural producer groups, farmer or rancher cooperatives, and majority-controlled producer-based business ventures. Except for independent producers, all other applicants must be entering an emerging market in order to be eligible.

As required by its authorizing statute, grant funds may be used to pay up to 50 percent of the costs for carrying out

eligible projects. Recently, these grants have averaged \$150,000, which is approximately 50 percent of the average costs of the projects that the grants are funding.

Water and Waste Disposal Facilities Grant Program. The Water and Waste Disposal Facilities grant program provides grants to develop water and wastewater systems, including solid waste disposal and storm drainage, in rural areas and to cities and towns with a population of 10,000 or less. Example projects include construction of water lines, pumping stations, wells, storage tanks, and sewage treatment facilities.

Eligible applicants for water and waste disposal facilities grants are public bodies, such as municipalities, counties, districts authorities, or other political subdivisions of a State, territory, or commonwealth; non-profit organizations, such as corporations and associations; Indian tribes on Federal and State reservations or other federally-recognized Indian tribes. Further, applicants must have the legal authority to own, construct, operate, and maintain the proposed facility.

As required by its authorizing statute, grant funds are limited to no more than 75 percent of the Agency eligible project development costs. As implemented by the program office, grant funds are limited to: (1) No more than 75 percent of the Agency eligible project development costs when the median household income of the service area is below the higher of the poverty line or 80 percent of the state non-metropolitan median income and the project is necessary to alleviate a health or sanitary problem and (2) no more than 45 percent of the Agency eligible project development costs when the median household income of the service area exceeds 80 percent of the state non-metropolitan median income but is not more than 100 percent of the statewide non-metropolitan median household income. Recently, these grants have averaged \$663,190, which is approximately 20 percent of the average costs of the projects that the grants are funding.

How the Current Programs Work

The grant programs being included in today's proposed rulemaking have many similarities, with a few major differences. A major difference between seven of the eight grant programs is whether the grant program is administered as a Nationally-competed grant program or a State-allocated grant program. The eighth grant program, Tribal College grants, is a program with a small statutorily defined set of beneficiaries.

The following paragraphs provide an overview of how the Nationally-competed and State-allocated grant programs are currently implemented.

Nationally-competed grant programs. The following paragraphs describe how the Agency currently administers its nationally-competed grant programs, four of which are being consolidated under this proposed rule—Distance Learning and Telemedicine, Renewable Energy Systems and Energy Efficiency Improvement (now known as the Rural Energy for America Program), Rural Cooperative Development, and Value-added Producer.

As it currently administers its nationally-competed grant programs, the Agency typically publishes a **Federal Register** notice announcing that it is accepting applications for the program, either as a Notice of Solicitation of Application (NOSA) or a Notice of Funding Availability (NOFA). The primary purpose of this notice is to alert the public to the opening of a period during which the Agency will accept applications for the program. This creates a "window" for submitting applications.

The amount and type of information contained in these NOSAs and NOFAs varies from program to program and may vary greatly year to year. Most notices include information on applicant and project eligibility, application submittal and content requirements, minimum and/or maximum grant amounts, and project priority categories and scoring.

Under the current administration of the nationally-competed grant programs, applications are either submitted to a Rural Development State Office or to the Rural Development National Office, depending on the program, for review, evaluation, and scoring. For most of the nationally-competed grant programs, the applicant will receive a letter from the Agency acknowledging receipt and confirmation that a full application was received. If an incomplete application is received, the Agency notifies, for some nationally-competed grant programs, the applicant as to what information is missing and the applicant has a set period of time in which to provide the missing information. For other nationally-competed grant programs, however, if an incomplete application is received, the Agency does not go back to the applicant for the missing information. This is done because some nationally-competed grant programs receive a sufficient number of complete applications to use all of the funds in a fiscal year and, accordingly, the Agency does not pursue incomplete applications. If this is the situation, the

NOSA or NOFA indicates this to the public.

As noted above, the nationally-competed grant programs provide a window for which applications are accepted. This results generally in a one time review and then scoring and ranking of applications. As currently implemented, the Agency reviews an application upon its receipt to determine whether the applicant and project are eligible for that program. If the Agency determines that the applicant and/or project are ineligible, the Agency notifies the applicant of such determination. Applications that are determined to be eligible are scored and ranked by National Office program staff. Depending on the nationally-competed grant program, independent reviewers may be used to evaluate and score applications. In addition, the nationally-competed grant programs currently limit the Administrator's discretionary points that can be included in the scoring of applications to 10 percent or less of the total potential points that an application can score.

Based on this pool of applications, a nationally-competed grant program's National Office selects applications for funding. Applicants that are not selected due to a low priority rating are notified. The Agency then proceeds to work with the applicants selected for funding in order to make awards by the end of the Federal fiscal year.

In currently administering its nationally-competed grant programs, the Agency begins the process of obligating funds and making awards (disburse the grant) by sending the applicant a letter of conditions that must be agreed to before the Agency and the grantee enter into a binding agreement, such as a grant agreement.

Once the Agency has initiated funds disbursement, it monitors the grantee to ensure conformance with the terms and conditions of the grant agreement. Depending on the nationally-competed grant program, the grantee is currently required to submit reports to the Agency during the grant period. Once the project has been completed, the Agency closes out the grant. If a grantee violates the terms and conditions of the grant agreement, the Agency takes appropriate steps, including, depending on the severity of the violation, the suspension or termination of the agreement.

State-allocated grant programs. These paragraphs describe how the Agency currently administers its State-allocated grant programs, three which are being consolidated under this proposed rule—Community Facilities, Economic Impact Initiatives, and Water and Waste

Disposal Facilities. In contrast to the Nationally-competed grant programs, the Agency typically does not publish **Federal Register** (FR) notices for its State-allocated programs, but instead relies on other methods for alerting the public to the programs and the submittal of applications. In addition, the Agency tends to accept applications for State-allocated grant programs at any point during the course of the year.

Using Community Facilities (and the Economic Impact Initiatives) as an example of how the Agency currently implements a State-allocated grant program, applicants file a preapplication with requisite documentation and supporting information to the Rural Development field office. The Rural Development field office then reviews the package for completeness of the documentation and for applicant and project eligibility. If needed, the Rural Development field office will request the opinion of the Office of General Counsel on the applicant's legal existence and authority to perform the proposed project.

As currently being administered, the Rural Development field office submits a copy of the application package to the Rural Development State Office with a letter of recommendation. The Rural Development State Office reviews the package and notifies the Rural Development field office of its findings. If an application is determined to be ineligible, the Rural Development field office notifies the applicant, who has the right of appeal.

If an application is determined to be eligible, the Rural Development field office provides the applicant with the necessary forms and instructions for filing a complete application. For example, the Community Facilities program requires Form SF 424, a preliminary architecture report, a financial feasibility report, and environmental information. If the project is small, the architectural and financial feasibility reports may not be required.

If there is a concern (e.g., incomplete, not properly assembled) with the application, the Rural Development field office will notify the applicant as to what information is needed. If the applicant fails to submit a complete application by the date specified by the Rural Development State Office or in an otherwise timely manner, the Agency may discontinue processing the application. If the application is complete, the Agency will notify the applicant as to eligibility and anticipated availability of funds.

Completed applications returned to the Rural Development field office are

evaluated. The Rural Development field office reviews the application package for the amount of grant funds allowed and scores the application for selection priority. As currently implemented, applications may also receive discretionary points from the State Director.

Generally, the Rural Development State Office authorizes grant assistance to those eligible applicants with the highest priority score. Other factors, however, may enter into selecting applications for funding including the amount of funding being requested relative to available funds and whether the application is for the continuation of a project. Applicants who are eligible for funding, but cannot be funded due to lack of Agency funds are advised by the State Office that grant assistance is not available. If, based upon the application, it appears that funds will be available for the project within a feasible period of time, the Agency notifies the applicant that the application will be retained until funding becomes available. If, based upon the application, it is not likely that the project will be funded in the near future, the Agency returns the application to the applicant at the end of the fiscal year.

As for nationally-competed grant programs, the process the Agency currently uses to obligate funds and make awards (disburse the grant) for State-allocated grant programs begins with the Agency sending the applicant a letter of conditions that must be agreed to before the Agency and the grantee enter into a binding agreement, such as a grant agreement.

Once funds have been disbursed, the Agency monitors the grantee to ensure conformance with the terms and conditions of the grant agreement. Depending on the State-allocated grant program, the grantee is currently required to submit reports to the Agency during the grant period. Once the project has been completed, the Agency closes out the grant. If a grantee violates the terms and conditions of the grant agreement, the Agency takes appropriate steps, including, depending on the severity of the violation, the suspension or termination of the agreement.

C. Goals of the New Platform

The grant programs that are being combined under the proposed new platform were developed separately, and are administered independently of each other. The platform being proposed seeks to achieve the following objectives:

- Reduce the burden to applicants;

- Increase the efficiency in delivering grant programs; and
- Improve the Agency's program monitoring and reporting capabilities.

Reduce the burden to applicants. The new platform can potentially reduce the burden to applicants in several ways.

First. When applicants seek grants under more than one of the programs, they are required to learn how to fill out multiple forms. This is inefficient and costly to the applicants and makes the programs less attractive to the applicants. By combining common elements into a single subpart, the new platform can reduce the burden to applicants applying to multiple grant programs covered in this regulation.

Second. Many grant programs receive applications from applicants or projects that are ineligible. In some cases, the applicant spends a significant amount of resources in putting together such applications. To help reduce the number of such applications, the new platform incorporates a voluntary preapplication process that applicants can use to help assess whether they and their projects are eligible. By getting an early assessment of eligibility, the Agency believes that fewer "non-eligible" applications will be submitted, thereby saving the applicant expenses in assembling and submitting a complete application.

Third. Under the new platform, applicants would be allowed to submit applications, including preapplications, to any Rural Development office or online through grants.gov. Allowing applicants to submit applications to any Rural Development office, including Rural Development field offices, provides applicants with additional submittal options than under the current programs, which specify locations where applications are to be submitted. For some applicants, the ability to submit applications to their local Rural Development field office will be more convenient. In addition, to the extent that this platform can leverage and further promote the utilization of field offices, it will serve to improve communication between the Agency and the applicants.

Increase efficiency in delivering grant programs. There are several ways in which the new platform will help the Agency improve the efficiency in delivering the grant programs.

First. The new platform would improve the work flow for the National and State Rural Development office personnel. The current delivery platform creates significant processing peaks and valleys in the delivery of the grant programs. The new platform seeks to "smooth out" these peaks and valleys

through an open application period. This will also allow the Agency to better manage staffing requirements and provide administrative consistency among the various grant programs.

Second. The new platform improves program delivery efficiency by "separating" the application process from the funding process. Currently, consideration of grants waits until funds are made available through the appropriations process. This creates uncertainty in work flow and, at times, compresses the effort and resources required to review applications and make decisions into a very short timeframe.

The new platform incorporates two different application submittal schemes. Under the first scheme, applications are accepted at any time. Under the second scheme, applications are submitted once each year. These processes will occur regardless of when funds are available and under what mechanism they are made available. By separating the application submittal and review process from funding availability, the Agency is creating a process that will allow both applicants and Agency staff to better manage their resources.

Third. The new platform would streamline the Agency's efforts in administering the grant programs. Maintaining separate sets of basic requirements creates complexity in administrative activities. For example, with each program administered under separate regulations, any change to basic requirements calls for multiple concurrences. Similarly, adding a new program requires the addition of a new set of basic requirements as these are not currently shared. The proposed combined platform will streamline basic grant requirements, allowing all the grant programs included in this regulation to reach a uniform functionality of process.

Further, when new programs are implemented under the current delivery platform, a new regulation is developed that, in many respects, addresses or adopts many of the same requirements. Time and effort are wasted in readdressing issues during the development of new program regulations leading to inefficient rulemaking and a delay in program implementation. The structure of the new platform provides for the addition of other Agency, or newly authorized, grant programs as needed without the addition of new sets of basic requirements. The common elements (proposed subpart A) of the proposed rule are intended to remain unchanged, while additional programs would be added to proposed subpart B.

Fourth. Having a common rule for multiple programs will be easier to administer, improve communication of basic program characteristics, and reduce confusion among both staff and the public. A common regulation will reduce the staff time, effort, and training necessary for issuing grants. Efficiencies will be realized as common program elements facilitate consolidation of information technology platforms and systems' maintenance cost. Internal management controls will improve with standardized servicing and oversight. Uniform processes will facilitate electronic commerce between Rural Development and its customers.

Improve the Agency's program monitoring and reporting capabilities. Building on the efficiency improvements under a common grants platform, monitoring and reporting program performance of grant recipients will be conducted in conformance with uniform standards. With standardized servicing and oversight, Agency staff will be better able to monitor grant recipients to the extent necessary to ensure that facilities are functioning in accordance with project performance goals.

Through the grantee's uniform standard semiannual performance reporting and a final performance report, the Agency will be able to compare actual accomplishments against the objectives and benchmarks stated in the project's performance plan. To account for the diversity in grant programs, additional grantee performance data may be needed for a thorough evaluation. Any special reporting requirements not specified in the rule or subsequent notices will be established in the Agency's letter of conditions provided to the grantee.

Project monitoring and report data will be captured and retained through the Agency's management information systems and data warehouse. Drawing on standardized collected data, the Agency will be able to generate more comprehensive program performance reports both within a program and comparisons across several programs. This will be especially useful where programs with common or complementary performance measures may have a compounded impact on a community's social and economic development.

D. The New Platform

By way of this rule, the Agency is initiating the process of developing a single regulation covering all 39 grant programs of the Rural Development Mission Area. For the grant programs listed in this regulation, the proposed

new platform simplifies, improves, and enhances the delivery of the grant programs. By applying the requirements shared among the eight grant programs included in this rule while maintaining required programmatic differences, this new structure will streamline the promulgation of regulations for new grant programs.

As noted earlier, the Agency is proposing to include eight grant programs within this proposed rule. Under the new platform, the common features of the programs are

incorporated into a single subpart (subpart A), with program-specific features provided in a separate subpart (subpart B). While key features (e.g., applicant and project eligibility, funding) of the existing programs remain under the new platform, key differences can be found in applying for a grant, in the process in which applications are submitted, evaluated, and selected for funding, and in the manner in which notifications will be used to provide information to the public on the grant programs.

The following paragraphs address the new platform by examining the proposed delivery mechanisms, beginning with a discussion on the use of notifications under the new platform and concluding with grant close-out. Figure 1 illustrates the overall application process for grant programs with an application deadline. Figure 2 illustrates the overall application process for grant programs with an open application period.

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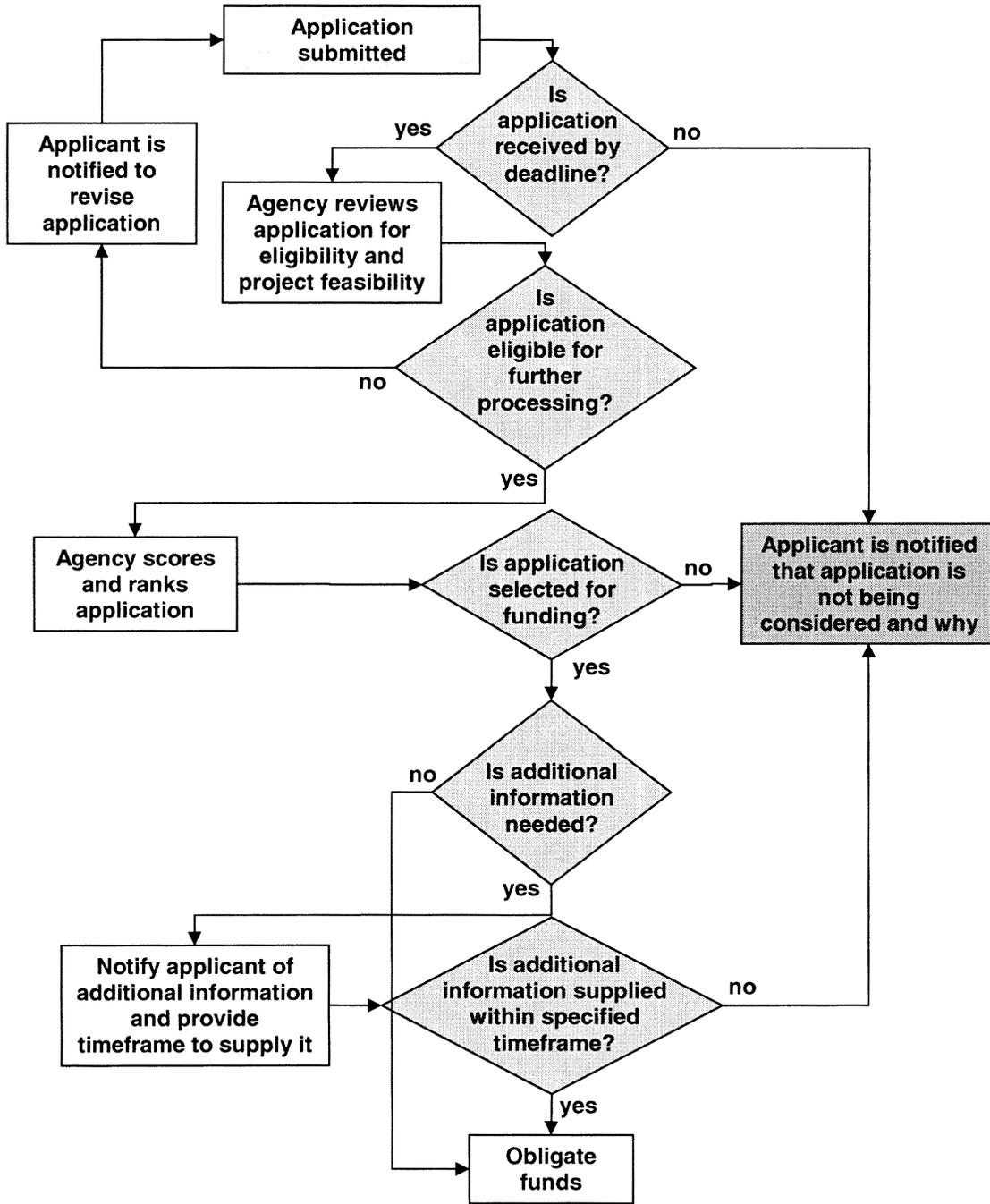


Figure 1. Application Process Flow Diagram for Grant Programs with a Specified Application Deadline

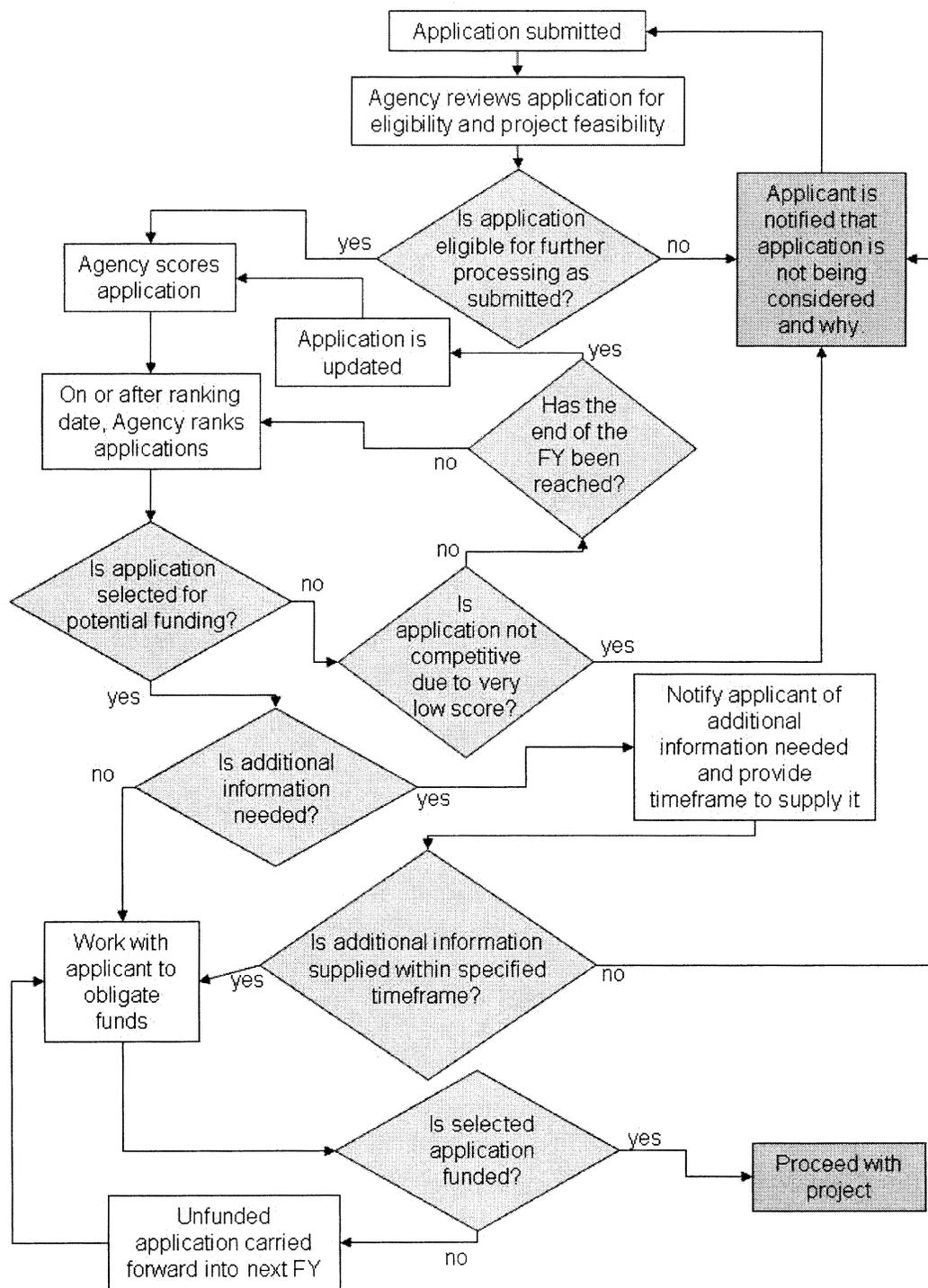


Figure 2. Application Process for Grant Programs with an Open Application Period

1. *Notifications.* Under the new platform, the Agency will use notifications to provide information on program funding and on programmatic changes relevant to applications and to program administration. The primary notification method used to disseminate this information depends on whether the program is a Nationally-competed grant program or a State-allocated grant program. In addition, the timing of when the Agency issues a notification depends on the type of information the notification contains.

Funding. The Agency will issue notifications identifying the level of funds are available for each program and their minimum and maximum grant amounts.

The Agency may elect to provide additional funding information in these notifications. Such information may include, but would not be limited to:

- Type of award;
- Fiscal year funds;
- Approximate total funding;
- Approximate number of awards;
- Approximate average award;
- Floor of award range;
- Ceiling of award range;
- Budget period length; and
- Project period length.

For Nationally-competed grant programs, the primary notification method that the Agency will use will be a **Federal Register** notice. One or more notices may be necessary to do this. For State-allocated grant programs, the primary notification method will be through a link found on Rural Development's Web site <http://www.rurdev.usda.gov>. Funding information for both types of grant programs would also be available at any Rural Development office. The Agency will provide funding information on each program every fiscal year.

Programmatic changes. The Agency will also issue notifications that identify changes to a program that would affect the applicant or the applicant's application. These circumstances are discussed below.

• *Administrator and State Director priority categories.* Subpart A provides lists of Administrator and State Director priority categories. Administrator priority categories apply to both State-allocated grant programs and nationally-competed grant programs, while State Director priority categories apply only to State-allocated grant programs. Individual programs may elect to use any or all of the priority categories identified in subpart A in scoring applications, but would not be able to add to these lists (unless done through a change to the rule). Subpart B specifies the specific sets of

Administrator and State Director priority categories that each program can use each year to score applications.

If a program office determines that a different set of priority categories (but still within the priority categories identified in subpart A) will be applicable for a given fiscal year, the Agency will issue a notification to announce the priority categories that will be used in scoring applications for that fiscal year.

• *Administrator and State Director points.* Subpart B identifies how points will be allocated for both Administrator and State Director priority categories for each of the grant programs. If a program office determines that a different allocation of these points is appropriate, whether or not in conjunction with a change in priority categories, then that program office would issue a notification, as applicable, to indicate the point allocation to be used in that fiscal year.

• *Additional reports.* A program office may determine that additional reports on project performance that are generally applicable across projects within the program are necessary in addition to those required under the proposed rule. In such instances, the Agency would issue a notification to the public.

• *Ranking dates.* A program office may elect to change one (or more) of the ranking dates specified in subpart B of the proposed rule. For example, a program office that has a specified ranking date (July 15) may determine that it is necessary to move the ranking date to earlier in the year because the program office has determined that additional time may be needed to rank the applications in order to ensure sufficient time to obligate funds. In such instances, the Agency would issue a notification to the public.

• *Application deadline.* For those programs with a specified application deadline, a program office may elect to change the application deadline date specified in subpart B of the proposed rule. For example, a program office that has a specified application deadline (March 1) may determine that it is necessary to move the application deadline to earlier in the year in order to better manage Agency resources and program funds. In such instances, the Agency would issue a notification to the public.

For changes in Administrator and State Director priority categories and/or points, the program office would issue the notification(s) at least 30 days prior to the first ranking date in the upcoming fiscal year or the application deadline, as applicable, to allow sufficient time

for applicants to finish their applications. If multiple program offices seek to make these types of changes, the Agency may issue, where feasible, a single notification covering all of the affected programs rather than individual notifications for each of the affected programs. For other programmatic changes, the Agency would issue notifications on an as needed basis.

Finally, a program's eligibility requirements may change or the Agency may determine that certain types of projects are no longer eligible for grants or certain ineligible projects may become eligible. Such instances would require the Agency to change to the regulation. In order to help ensure the public is aware of such changes, the Agency may include such information in the programmatic change notifications discussed above.

Administrator approval. Under the new platform, State Directors would propose to the Administrator each year the minimum and maximum grant amounts for each State-allocated grant program included in this part. Upon approval from the Administrator, the Agency would then notify the public of the minimum and maximum grant amounts approved by the Administrator. Similarly, each State Director may propose to the Administrator changes in State Director priority categories and associated points for State-allocated grant programs included in this part. Upon approval from the Administrator, the Agency would then notify the public of the priority categories and associated points approved by the Administrator for each affected State-allocated program.

2. *Acceptance of Applications.* As noted above, Nationally-competed grant programs establish defined "windows" for when applications can be submitted and both types of programs (Nationally-competed and State-allocated) frequently specify the Rural Development office (field, State, National) to which applications are to be submitted. Under the new platform, the Agency is proposing to implement two application submittal schemes, depending on the needs of the individual program:

- An open application period; and
- A specified application deadline.

Under the open application period scheme, the Agency would accept applications at any time during the year. By accepting applications at any time, there would no longer be any "window" for when to submit an application. This feature eliminates the need for the public to wait on the Agency to publish **Federal Register** notices, or use other methods, to solicit applications. It is

important to note, however, that the Agency will still undertake activities to promote the various grant programs.

The second scheme (a specified application deadline) is similar to current Nationally-competed grant programs, but the date for application submittal would be fixed in the regulation in subpart B. By providing a date, the public will not have to wait for the Agency to publish a notice identifying when applications are due. This will allow applicants to plan for the preparation of their applications with certainty.

By accepting applications at any Rural Development office under either scheme, the Agency is seeking to make it more convenient for applicants to submit their applications. To the extent that this facilitates interaction between Rural Development staff and the applicants, the Agency expects better communication will occur. The Agency will implement internal procedures to ensure all applications are delivered to the appropriate Agency program office.

3. *Eligibility.* Under the current programs, Rural Development offices (National and State offices, as appropriate) determine both applicant and project eligibility based on the individual grant program's requirements. As described below, the proposed rule continues this determination process mainly unchanged.

Applicant eligibility is based on the applicant meeting the common requirements, which are citizenship and legal authority and responsibility, and program-specific criteria, which are contained in proposed subpart B. The proposed rule also identifies applicants who would be categorically ineligible. In terms of eligible and ineligible applicants, little has changed under the new platform compared to the current programs. In addition, these criteria cannot be voided under the exception authority provided in the proposed rule.

Project eligibility is based on the proposed project meeting criteria found in Subparts A and B, as applicable. Subpart A requires each project to meet the following criteria, as applicable and unless otherwise modified by a specific provision in subpart B for a program:

- Being primarily for the benefit of a rural area;
- For those projects and purposes that acquire or improve real or personal property, the applicant must be the owner of the property or have leasehold interest acceptable to the Agency in the property and control the revenues and expenses of the project, including operation and maintenance; and

- For projects and purposes that are determined by a service area, on the boundaries of the proposed service area meeting a non-discrimination criterion.

Projects that do not meet the applicable proposed criteria (as found in Subparts A and B, as applicable) would be ineligible under the new platform. In addition, these criteria (as found in subpart A and as may be modified in subpart B) cannot be voided under the exception authority provided in the proposed rule.

The applicable program-specific project eligibility requirements, which are located in subpart B, remain essentially unchanged for those of the current programs. Some differences are being proposed and these are discussed in section II of this preamble.

In addition to identifying eligible projects, the proposed rule identifies specific projects and purposes that are ineligible under all circumstances from receiving a grant. The Agency assembled this list from the list of ineligible projects and purposes identified in the regulations and associated program notices for the programs being included in the proposed rule. In addition, the Agency added the following projects and purposes as ineligible:

- Investment or arbitrage, or speculative real estate investment;
- Prostitution or projects generating income from activities of a prurient sexual nature;
- Any project eligible for Rural Rental Housing and Rural Cooperative Housing loans under sections 515, 521, and 538 of the Housing Act of 1949, as amended;
- Any project generating income from the sale of illegal drugs, drug paraphernalia, or any other illegal product or activity;
- Any project located in a special flood or mudslide hazard area as designated by the Federal Emergency Management Agency in a community that is not participating in the National Flood Insurance Program unless the project is an integral part of a community's flood control plan; and
- Any other similar project or purpose that the Agency determines is ineligible for funding under this part and publishes in a **Federal Register** notice.

4. *Applying for a Grant.* All applicants would be required to submit an application. For some applicants (i.e., a government that is proposing a project that is for construction, land acquisition, or land development and that would require more than \$100,000 of Federal funding), a preapplication would be required (as is currently the situation). For all other applicants,

however, the submittal of a preapplication would be optional. The following paragraphs discuss briefly preapplications and applications.

Preapplications. The primary purpose of the preapplication is for the Agency to make an assessment as to both applicant eligibility and project eligibility. In addition, use of preapplications facilitates early communication between the Agency and the applicant. By reviewing preapplications, the Agency reduces the time and effort spent by applicants in preparing full applications where the applicant and/or project are clearly not eligible.

Applications. Because of the varying nature of the projects that are associated with the grant programs, the Agency has determined that the information to be included in a grant application should be program specific, as it is currently. The contents of grant applications will be made available to applicants through any Rural Development office, the Agency's Web site, or National Headquarters. The information associated with a grant application will not be significantly different than currently required under the current programs.

However, an applicant would be allowed to submit an application (including preapplications) to any Rural Development office. Under the current programs, applications are submitted to specified locations. As noted earlier, the Agency is proposing this change to make it more convenient for applicants to submit their applications and to foster communication between Rural Development staff and applicants.

Rather than identifying the specific documents that must accompany each application for each program in the regulation, the Agency would provide all the necessary forms and instructions in program-specific application packages. This proposed process is similar to the current process for several existing grant programs, but represents a change for those Nationally-competed programs where the regulations and/or **Federal Register** notice identify specifically what is required in each application under each of those programs. The Agency believes that implementing the proposed process for all grant programs affected by this rule will provide administrative flexibility to each program as well as consistency in implementation.

5. *Processing Applications.* The Agency would review each application for the determination of applicant and project eligibility and the likelihood of the project's feasibility. It is at this stage of the process that the Agency would

make the formal determination of eligibility, unless it has already been made.

In order to determine eligibility, the application must contain sufficient and necessary information to allow the Agency to make the eligibility determination. The Agency will also review the application for assessing whether or not the project is likely to be feasible. To further process an application for a project or purpose that is likely to be unfeasible would be an inefficient use of Agency resources. At the same time, the amount of information that is needed to make this assessment varies between programs because of the differing complexity of projects and purposes. The information provided to the applicant for preparation of an application will assist the applicant in identifying the amount of information necessary to allow the Agency to make this feasibility assessment.

When reviewing an application for applicant and project eligibility, if the Agency finds that there is insufficient information, including for example if a form has not been signed, to make an eligibility determination, the Agency will notify the applicant. Once an eligibility determination has been made, the Agency will notify the applicant. If the Agency determines that either the applicant or the project is ineligible, the applicant would have the right to appeal the decision to the National Appeals Division (NAD). The steps associated with eligibility under the new platform are essentially the same as under the current programs.

Similarly, if the Agency makes an assessment that a project is not likely to be feasible, the Agency will notify the applicant of its concerns. The applicant will then have the opportunity to address those concerns before the Agency continues processing the application.

For programs with open application periods, an application that is revised and resubmitted to the Agency will be processed at the next applicable ranking date for that program. For example, if a revised application is received on January 15, the Agency will consider it at the March 15 ranking date, which is the next applicable ranking date. For grant programs with a specified application deadline, each revised grant application will be processed by the Agency if it is received on or before the application deadline for that grant program. If such revised applications are not received by the specified application deadline for the grant program, the Agency will not process the application.

6. Scoring Applications. For those applications for which the applicant and project are eligible and the project is feasible (or is likely to be feasible), the Agency will continue processing the application by scoring it. The Agency will score applications on the basis of the information provided when the Agency receives the application. Thus, it is the responsibility of the applicant to provide all information necessary at the time of application for the Agency to score the application.

The Agency will score each application using a set of program-specific priority categories, a set of State Director priority categories, and a set of Administrator priority categories and their associated points that are specific to each grant program. State Director priority categories and points are only applicable to State-allocated grant programs. In addition, Administrator priority categories and points may be applied to State-allocated grant applications only when applications are submitted for the national pool of funds.

These sets of priority categories are identified in subpart B of the proposed rule. As noted earlier (Section I. D. 1.), the Agency may use a revised set of Administrator and State Director priority categories and point allocations through the issuance of a notification.

Priority Categories. As noted above, the Agency is distinguishing between program-specific priority categories and Administrator and State Director priority categories. Program-specific priority categories are those priority categories that the Agency must use in scoring each application for that grant program. In contrast, Administrator and State Director priority categories are not mandatory; that is, the Administrator and State Director are not obligated to use their specified priority categories in scoring applications. If the Administrator or State Director elects not to use their priority categories, then neither can affect the scoring of an application.

The specification of priority categories for the Administrator and the State Directors is a major difference from the current process. Currently, the Administrator and State Directors have significant discretion to reflect their priorities. In contrast, the proposed rule eliminates this discretionary aspect by specifying the sets of Administrator and State Director priority categories for each program that will be considered each year. This change provides the public with a much greater understanding of how their applications can be evaluated by the Administrator and the State Directors. Furthermore, these priority categories would be used

each year, unless otherwise specified in a notification issued under proposed § 5002.15. Note that program-specific priority categories can only change, however, if the Agency subsequently revises subpart B of the regulation.

Points. Currently, the total available points vary considerably between grant programs. The Agency is proposing to standardize the total points (to 100) that can be awarded to an application under any of the grant programs. Standardizing point totals is intended to help the Agency administer the grant programs.

One difference from the current programs is the proposed Administrator and State Director points that could be awarded to an application. Except for the Community Facilities grant program, as discussed in the following paragraph, both State Director points and Administrator points would be each limited to 10 points (10 percent of the total potential points) and can only be awarded for the specific set of priority categories in effect for that program. In other words, the Administrator or State Director could not use discretionary categories to establish specific earmarks. Note that only State-allocated grant programs would be allowed to award points for State Director priority categories.

For the Community Facilities grant program, the Agency is proposing to limit Administrator points to 20 points (20 percent of the total potential points). The Community Facilities grant program applies to projects that are "essential community facilities." The types of projects that may qualify as essential community facilities are very broad, much broader than any of the other grant programs being included in the new platform. This diversity of community facility projects presents unique challenges for meeting the overall goals of the program. The Agency believes, regarding these broad based programs, that it is appropriate to provide greater flexibility in order to meet the goals and objectives of the program. Therefore, the Administrator would be allowed to award up to 20 points for community facilities applications. As noted earlier, Administrator points may be applied to State-allocated programs only when the National Office makes the determination of which grant applications to fund from the national pool of funds.

As with the sets of Administrator and State Director priority categories, the procedures used for awarding Administrator and State Director points each year would be as specified in subpart B, unless a notification is issued as specified in proposed § 5002.15. The

maximum number of points that the Administrator and the State Director can award, however, can only be changed through a revision to the regulation.

Changes in Administrator and State Director priority categories and points. As noted earlier in this preamble, if there is a change in Administrator or State Director priority categories and/or point allocation to be considered for a particular year, the proposed rule allows the Administrator or State Director to change the priority categories and/or point allocation (but not the Administrator's or State Director's point total) contained in the rule by issuing an appropriate notification in a timely fashion. To illustrate the award of Administrator and State Director priority categories and points under the new platform, consider the following examples.

Examples. These examples are for State Director priority categories for community facility grants, which allow the State Director to award up to 10 points to an individual application. These examples are also illustrative of the award of State Director priority categories and points for other programs.

- *Example 1.* The Agency does not issue a notification for an upcoming fiscal year and an application meets each of the 10 priority categories listed in subpart A of § 5002.42(b)(2). In this situation, the scoring procedure specified in subpart B for community facility grants (§ 5002.101(f)(3)) would be used to score the application for awarding State Director points. The Agency determines that the application can be awarded full points for all 10 priority categories. This would total 100 points. However, because the rule limits the total number of State Director points to 10 points for any one application, this application would receive 10 State Director points.

- *Example 2.* The Agency issues a notification indicating that only four of the 10 State Director priority categories in subpart A will receive consideration. In this case, the notification also identifies the specific points to be awarded to the four priority categories, such that the total points to be awarded do not exceed 10 points. For example, Priority Category 6—up to 3 points; Priority Category 7—up to 3 points; Priority Category 8—up to 2 points; and Priority Category 9—up to 2 points. Note that in this example the point distribution totals 10. In evaluating this application, the Agency determines that the application should be awarded full points for Priority Categories 6, 7, and 8, but only one point for Priority Category 9. The application would,

therefore, receive nine (9) State Director points.

7. Award process for applications. The Agency is establishing a consistent process for selecting applications for funding. The two main areas of the proposed award process are:

- Ranking of applications; and
- Selection of applications for funding.

In addition, the proposed rule addresses the disposition of applications not selected for funding.

Ranking of applications. For those grant programs that have an open application period, which would receive applications on a continuous basis, the Agency is establishing a process for ranking applications that sufficiently demonstrates competition for grant funds. To accomplish this, the Agency is proposing that all scored applications for a program be ranked by the Agency four times per year. The four proposed ranking dates are, in order of occurrence during the fiscal year, December 15, March 15, July 15, and August 15. If any of these dates fall on a weekend or a Federally-observed holiday, the affected ranking date would move to the next Federal business day. Further, as noted earlier in this preamble, a program may change one or more ranking dates in a fiscal year if it publishes a notification as specified in proposed § 5002.15.

The first three ranking dates were selected to provide an even spacing of ranking dates to help even out the work flow. The first date was selected with enough time after the beginning of the fiscal year and after the publication of any applicable notification for the upcoming fiscal year to allow applicants to prepare and submit an application to be considered during the first ranking period. The last date, August 15, was included because some programs need to obligate funds prior to the end of the fiscal year and this date provides sufficient lead time to accommodate such obligations. While only a month after the July 15 date, the Agency is including it because it provides additional time for applicants to submit applications for consideration during the current fiscal year.

Applications submitted after August 15 of a given fiscal year, however, will not be ranked until December 15 of the following fiscal year. In this situation, the Agency will retain these applications through the next ranking date (i.e., through December 15 of the following fiscal year). Such applications would be evaluated and scored based on that program's priority categories for the following fiscal year. Therefore, if a program's Administrator and/or State

Director priority categories selected to score applications were to change between the current fiscal year and the next, applicants should consider whether their retained applications need to be resubmitted in order to better address the change in the program's selected Administrator and/or State Director priority categories.

It is important to note that the ranking dates for programs with an open application period are not the same as application deadlines. Under the new platform, applicants can submit applications for such programs at any time. Once the application is determined to be eligible, the Agency will rank the application on or after the next ranking date. Consider the following examples for grant programs with an open application period.

Example 1. Applicant A submits an application to the Agency on November 1, 2008. The Agency determines that the application is eligible for further processing on November 30, 2008. The Agency will rank the application on or after December 15, 2008.

Example 2. Applicant B submits an application to the Agency on December 16, 2008. The Agency determines that the application eligible for further processing on January 5, 2009. The Agency will rank the application on or after March 15, 2009.

Example 3. Applicant C submits an application to the Agency on August 17, 2009. The Agency determines that the application is eligible for further processing on September 23, 2009. The Agency will rank the application on or after December 15, 2009.

Example 4. Applicant D submits an application to the Agency on November 15, 2009. The Agency determines that the application is eligible on December 20, 2009, after the December 15 ranking date has passed. The Agency will rank Applicant D's application at the next scheduled ranking date after December 15, which would be, in this example, on or after March 15, 2010.

For grant programs that have a specified application deadline, such as the Distance Learning and Telemedicine grant program, either a single ranking date—July 15—or two ranking dates—March 15 and July 15—is being proposed, depending on the needs of the specific program. The July 15 date was selected to ensure sufficient time for the Agency to obligate funds to those applications selected for funding. As noted earlier in this preamble, a program office may determine that it is necessary to move the application deadline to earlier in the year in order to better manage Agency resources and program funds. In such instances, the

Agency would provide notification to the public.

Whether for a grant program with an open application period or for a grant program with a specified application deadline, applications that are ranked in a given fiscal year will be considered for selection for funding or for potential funding, as applicable, during that fiscal year. For grant programs with an open application period, this means that applications received early in the fiscal year will have a longer timeframe to be considered for selection for potential funding than those received later in the fiscal year.

Selection of applications for funding or potential funding. For all grant programs, the Agency will create, on or after each ranking date, a priority list of ranked applications from which to select applications for consideration for (potential) funding. In considering which applications to select for (potential) funding, the Agency will consider three basic criteria, which are discussed below, and any program-specific criteria, as specified in subpart B. For each application that is selected for (potential) funding, the Agency will so notify the applicant.

As noted in the previous paragraph, the Agency will consider three basic criteria selecting applications for (potential) funding. These criteria are: (1) Ranking, (2) availability of funds, and (3) other funding sources.

- *Ranking.* This refers to an application's place on the program's priority list, which is based on the score each application receives. Higher scoring applications would receive first consideration for (potential) funding. However, as discussed below for the two other basic criteria and as may be specified in subpart B for a specific program, a lower scoring application may be selected for (potential) funding

ahead of a higher scoring application. For example, if there is insufficient funding for the higher scoring project, the Agency may pass over that project to fund a lower scoring project in order to fully expend the budget authority.

- *Availability of funds.* This refers to the size of the grant request relative to the program funds that remain available to the program during the fiscal year. In order for the Agency to better manage the availability of program funds, the Agency could select, under the new platform, a lower scoring application before an eligible, higher-scoring application when the higher scoring application:

- Would require grant assistance in an amount greater than the funds remaining in a particular funding period,
- Would require more than 25 percent of a State's allocated funds, or
- Would require more than 25 percent of a Nationally-competed grant program's funds.

In these situations, the Agency would notify the applicant associated with the higher scoring application and provide the applicant an opportunity to revise the amount of funds being requested in their application, provided the reduced funding request does not change the project's purposes and financial feasibility. The applicant would then be able to resubmit the application before the Agency selects the next highest scoring application for funding.

The Agency is proposing the 25 percent threshold for nationally-competed grant programs based on current practice in the Agency's water and waste disposal grant program. The Agency is willing to consider a different threshold. The Agency is concerned that too low of a threshold might create a situation, especially in smaller nationally-competed grant programs,

where this provision could be used to override the selection of applications based on their scores. The Agency is also concerned that too high of a threshold might not be effective at limiting applications that commit too high a percentage of a fiscal year's available funding for a particular program. As stated later in this preamble, the Agency is requesting comment on this threshold level.

- *Availability of other funding sources.* This refers to whether Rural Development loans and other, non-Rural Development funding sources should be available to an applicant. If an applicant with a higher scoring application can accomplish the project using Rural Development loans or other non-Rural Development funding sources, the Agency may consider the next highest scoring application ahead of the higher scoring application.

Disposition of applications not selected for potential funding—grant programs with an open application period. There are four scenarios in which a ranked application may not receive funding:

- Application selected for potential funding, but not funded due to the Agency's lack of funds;
- Application selected for potential funding, but not funded due to missing information;
- Application not selected for potential funding due to its ranking and the available level of funds to the Agency; and
- Application not selected for potential funding due to very low ranking.

As summarized in Table 1 and described in the following paragraph, the process for handling these four situations would be slightly different.

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Table 1. Disposition of Applications in Programs
with Open Application Periods

Item	Application has been selected for potential funding		Application has not been selected for potential funding	
	Agency's lack of funds	More information needed	Its ranking and Agency's lack of funds	Noncompetitive/very low score
Application is not funded due to ...				
Is application carried over to next ranking date?	Yes	Yes, but only if requested information is provided in specified timeframe	Yes	No
Is application carried over to the next fiscal year	Yes		Yes; applicant is afforded opportunity to revise their application	No
Is carried-over application re-competed (i.e., re-evaluated and rescored)?	No	No	Yes	Not applicable

An application that is selected for potential funding, but is not funded due to the Agency's lack of funds, will be carried forward in the fiscal year in which it was selected for potential funding until either it is funded or the end of the fiscal year in which it was selected, whichever occurs first. If the selected application is not funded by the end of the fiscal year in which it was selected for potential funding, the Agency will carry the application forward into the next fiscal year unless the applicant requests in writing the Agency to withdraw the application from further consideration. Unless there is a change to the regulation or authorizing statute that would affect this process, a selected application that is carried forward into the next fiscal year would not be subject to re-evaluation or re-scoring, even if the priority categories applicable to that application change for the next fiscal year, because it has already been completed. However, the application may be required to be updated if information in it becomes outdated.

If a ranked application has been selected for potential funding, but has not been funded because additional information is needed, the Agency will notify the applicant as to what information is needed, including a timeframe for the applicant to provide the information. If the applicant does not provide the information within the specified timeframe, the Agency will remove the application from further processing.

If a ranked application has not been selected for potential funding because of its ranking and the available level of funds to the Agency, it will be included in the set of applications considered in each subsequent ranking date in the fiscal year in which it was ranked until it is either selected for potential funding, funded, or the end of the fiscal year in which the application was ranked is reached, whichever occurs first. The Agency will retain the application for consideration in the next fiscal year. All such retained applications must be updated by the applicant as required by the Agency (e.g., financial conditions, change in supporting documentation requirements). In this instance and in addition to satisfying Agency requirements, the applicant is afforded the opportunity to otherwise revise the application. The application will then be re-evaluated and re-scored along with new applications received for consideration for funding in the next fiscal year.

If a ranked application has not been selected for potential funding because it

is determined by the Agency to be non-competitive due to its very low score by the end of the fiscal year in which it was scored, the Agency will remove the application from further consideration and will notify the applicant that the Agency is no longer considering the application.

Disposition of applications not selected for funding—grant programs with an application deadline. All ranked applications that are not funded in the fiscal year in which they were submitted will not be carried forward into the next fiscal year. The Agency will so notify the applicant in writing.

If an application has been selected for funding, but has not been funded because additional information is needed, the Agency will notify the applicant as to what information is needed, including a timeframe for the applicant to provide the information. If the applicant does not provide the information within the specified timeframe, the Agency will remove the application for further consideration and will so notify the applicant. In this situation, the application is also not carried forward into the next fiscal year.

8. *Grant agreement and conditions.* This section of the new platform addresses the mechanism the Agency will use an Agency-approved grant agreement to make awards to those applicants selected for funding. This section also identifies additional conditions that must be met by grantees both prior to the award being made and after the award is made. In general, the proposed requirements are the same as those for the grant programs currently in place. The proposed rule, though, provides a consistent structure for the administration of all of the grant programs covered by the proposed rule.

9. *Post-award activities and requirements.* As for grant agreements and conditions, the proposed rule generally adopts current practices and provides a consistent structure for all of the grant programs covered by the proposed rule.

10. *Grant close out and related activities.* As for the previous two sections, the requirements in this section generally adopt current practices and provide a consistent structure for all of the grant programs covered by the proposed rule.

II. Discussion of Proposed Rule

In this section, the proposed rule is further described. First, an overall organization of the proposed rule is presented, followed by a section-by-section discussion of each part. Please note that the discussion in this section applies in its entirety to seven of the

eight grant programs being included; it does not apply in its entirety to Tribal College grants. The provisions discussed in this section that apply to Tribal College grants are contained in proposed §§ 5002.1 through 5002.14 and in proposed §§ 5002.60 through 5002.80. The discussions in this section on eligibility, applying for a grant, processing applications, application scoring, and award process do not apply to Tribal College grants. A discussion of these aspects of the proposed rule for Tribal College grants is presented in section II.B.

A. Overall Organization of the Rule

The proposed rule is divided into two main parts, subparts A and B. Subpart A, contains the provisions that apply to all of the grant programs, except for Tribal College grants as described in the previous paragraph, covered by the proposed rule. In addition, subpart A contains provisions applicable to cooperative agreements. These subpart A provisions would not become effective until cooperative agreements are provided and published in subpart B to this part.

Subpart B, contains the provisions specific to the grant programs covered by the proposed rule. The Agency is not proposing to include cooperative agreements in subpart B at this time, but may consider adding cooperative agreements to subpart B at a future date.

Subpart A. Subpart A is divided into nine major elements. The first element, General Provisions, covers general provisions associated with this part, and addresses the purpose of this part (§ 5002.1), the definitions and abbreviations used in this part (§ 5002.2), appeal rights (§ 5002.3), exception authority (§ 5002.4), compliance with other Federal laws (§ 5002.5) and with State and local laws (§ 5002.6), environmental requirements (§ 5002.7), and forms, regulations, and instructions (§ 5002.8).

The second element, Funding and Programmatic Change Notifications, covers funding and programmatic change notifications (§ 5002.15).

The third element, Eligibility, covers the basic eligibility requirements for eligible applicants (§ 5002.20), ineligible applicants (§ 5002.21), eligible projects and purposes (§ 5002.22), and ineligible projects and purposes (§ 5002.23).

The fourth element, Applying for a Grant, covers the basic requirements associated with applying for a grant (§ 5002.30), including preapplications (§ 5002.31) and applications (§ 5002.32).

The fifth element, Processing and Scoring Applications, addresses the steps that the Agency will use in

processing and scoring applications. The steps associated with processing applications (§ 5002.40) cover initial review of applications by the Agency, notifications to the applicants, resubmittal of applications by applicants, and applications that are subsequently found to be ineligible. This element also addresses the processes for dealing with application withdrawal (§ 5002.41) and the scoring of applications (§ 5002.42), including the priority categories that the Administrator and the State Directors may use in scoring applications. Specific priority categories and points to be used are found in subpart B for each individual program.

The sixth element, Awarding Grants, covers the award process (§ 5002.50). In this element, the process that the Agency will use in ranking and selecting applications for funding is presented. In addition, this element covers processes associated with applications that are not selected and those that are selected, but do not receive funding.

The seventh element, Grant Agreements and Conditions, addresses the grant agreement and conditions for applications that are funded. This element covers actions that must occur prior to grant closing or start of construction (§ 5002.60), the process used in making the grant agreement (§ 5002.61), and the use of remaining funds (§ 5002.62).

The eighth element, Post Award Activities and Requirements, addresses activities and requirements once an award has been made. This element covers the following areas:

- Monitoring and reporting program performance (§ 5002.70);
- Programmatic changes and budget revisions (§ 5002.71); and
- Transfer of obligations (§ 5002.72).

The ninth element, Grant Close Out and Related Activities, covers grant close out, non-compliance, and termination (§ 5002.80).

Subpart B. This subpart addresses provisions that are specific to the individual programs as follows:

- Provisions specific to the Community Facilities grant program are found in § 5002.101;
- Provisions specific to the Rural Energy for America grant program are found in § 5002.102;
- Provisions specific to the Rural Cooperative Development grant program are found in § 5002.103;
- Provisions specific to the Distance Learning and Telemedicine grant program are found in § 5002.104;

- Provisions specific to the Value-Added Producer grant program are found in § 5002.105;
- Provisions specific to the Water and Waste Disposal Facilities grant program are found in § 5002.106;
- Provisions specific to the Economic Impact Initiatives grant program are found in § 5002.107; and
- Provisions specific to the Tribal College grant program are found in § 5002.108.

The intent of subpart B is to identify all of the provisions specific to each of the eight programs. In this way, each program maintains its integrity under the new platform. Within subpart B, each program specific provisions are related back, where applicable, to a corresponding section in subpart A. For example, each section has subsections that address applicant and project eligibility. In addition, some program-specific requirements in subpart B supersede specific subpart A requirements. For example, there is a subpart B provision for value-added producer grants that indicates that the subpart A requirement for the project to primarily serve a rural area does not apply to value-added producer grants.

B. Discussion of Sections

Purpose and Scope (§ 5002.1)

This section defines the purpose, scope, and applicability of this part (§ 5002.1(a), (b), and (c)), respectively.

This rule applies to “grant only” applications and not to loan grant applications (§ 5002.1(c)(1)). A loan and grant combination application is one in which an entity is seeking both a loan and a grant in order to fund its project. This part would apply only to “grant only” applications, unless another 7 CFR part incorporates provisions from the proposed rule. If an applicant is seeking a grant as part of a “grant and loan” application, this part would not apply to the grant portion of the grant and loan application, unless another 7 CFR part incorporates provisions from the proposed rule.

This section also includes the incorporation by reference (§ 5002.1(d)) of all of the regulations of the Department of Agriculture’s Office of Chief Financial Officer (or successor office) as codified in 7 CFR parts 3000 through 3099, including, but not necessarily limited to, 7 CFR parts 3015 through 3019, 7 CFR part 3021, and 7 CFR part 3052, and successor regulations. These parts are referred to in the preamble and the rule as the “Departmental regulations,” and constitute the existing Department’s regulations affecting all grant programs.

Note that this phrase is not used in all sections of the rule. The absence of this phrase from a section of the rule does not mean that the Departmental regulations do not apply to that section.

Definitions and Abbreviations (§ 5002.2)

This section presents the definitions and abbreviations used in this part, including terms that may be specific to one of the eight programs found in subpart B. It also incorporates by reference terms used in the Departmental regulations.

The proposed rule contains fewer definitions than found in the existing regulations, primarily because the deleted terms are not used. Some definitions have been added or revised.

The proposed rule includes a definition for “poverty line.” Poverty line is used determining project eligibility under the Community Facilities program. The Agency determines the poverty line in a manner consistent with criteria established by the Department of Health and Human Services (DHHS) and the Department of Housing and Urban Development. Current poverty line information published by DHHS, however, does not cover Puerto Rico, the Western Pacific Islands, and the Virgin Islands. As it is possible for the Community Facilities grant program to award grants to applications from these locations, the Agency has established poverty lines for these locations, based on the level of income.

Appeal Rights (§ 5002.3)

As currently provided, this paragraph provides the legal basis for a person to file an appeal of an adverse decision made by the Agency in implementing the proposed program. When the Agency makes an adverse decision, a person may file an appeal to the National Appeals Division in accordance with 7 CFR part 11.

Exception Authority (§ 5002.4)

This section identifies the situations under which the Administrator may make exceptions to the requirements contained in the regulation.

Unlike the current regulations, the proposed rule identifies three exceptions to this Exception Authority, where the Administrator would not be allowed to make exceptions. These three exceptions are:

- Applicant eligibility;
- Project eligibility; and
- Rural area definition.

The Agency believes that applicant and project eligibility criteria must be maintained at all times in order to be consistent with statutory authority.

Compliance With Other Federal Laws (§ 5002.5)

This section states that applicants must comply with other applicable Federal laws including, but not limited to, Equal Employment Opportunities, Americans with Disabilities Act, Equal Credit Opportunity Act, Fair Housing Act, and the Civil Rights Act of 1964.

State Laws, Local Laws, and Regulatory Commission Regulations (§ 5002.6)

This section states that the provisions of this part will be controlling in all cases where there are conflicts between the provisions of this part and State or local laws or regulatory commissions regulations.

Environmental Requirements (§ 5002.7)

The applicant would be required to comply with Agency environmental requirements as found under subpart G of either 7 CFR part 1940 (for Rural Housing, Business-Cooperative, and Utilities Services) or 7 CFR part 1794 (for Rural Utilities Services), as appropriate. These requirements are consistent with those under the eight current programs.

In addition, the applicant must not take any action or incur any obligation with respect to the proposed project that would either limit the range of alternatives to be considered during the Agency's environmental review process or which would have an adverse effect on the environment. If such actions or obligations have been incurred that would limit the range of alternatives, the project will be ineligible for a grant under this part.

Forms, Regulations, and Instructions (§ 5002.8)

This section states that all forms, regulations, instructions, and other materials necessary to submit applications for each of the grant programs included in this part may be obtained through the Agency. This material, including application packages, will be available from Agency offices, including but not limited to Rural Development State Offices, and the Agency's Web site.

Funding and Programmatic Change Notifications

This part of the proposed rule identifies the types of information to be included in the notifications, the methods that the Agency will use to disseminate this information, and when the notifications will be made.

Notifications (§ 5002.15)

This section identifies the types of information the Agency will include in

the notifications, which includes the level of available funds, the minimum and maximum grant amounts, and various programmatic changes (e.g., changes in Administrator and State Director priority categories and points, changes in ranking dates, changes in application deadlines for those programs with specified application deadlines). The primary notification methods that the Agency will use to make this information are **Federal Register** notices for Nationally-competed grant programs and Rural Development's Web site for State-allocated grant programs. All information contained in these notifications would also be available at any Rural Development office.

Notifications involving funding will be made each fiscal year for each grant program. Notifications involving changes in Administrator and State Director priority categories and points will be made at least 30 days prior to the first ranking date in the year or the application deadline, as applicable. Notifications involving all other programmatic changes will be made on an as needed basis.

Eligibility

This section covers requirements associated with both applicant and project eligibility and is divided into four sections, which are described below. In order for a project to be considered for a grant, both the applicant and the project must be determined by the Agency to be eligible.

Applicant Eligibility (§ 5002.20)

This section identifies the requirements for applicant eligibility. For an applicant to be eligible for a grant under this part, the applicant must meet the criteria in this section and the applicant eligibility criteria in subpart B for the applicable grant program. The program-specific applicant eligibility requirements found in subpart B for the program under which their project falls are discussed later in this preamble when the individual programs are presented.

This section identifies two common applicant eligibility requirements that all applicants must meet. These two criteria address citizenship (§ 5002.20(a)) and legal authority and responsibility (§ 5002.20(b)).

To be eligible, an applicant must either (1) be a citizen of the United States (U.S.), the Republic of Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, or American Samoa or (2) reside in the U.S. after legal admittance for permanent residence. If the applicant is

an entity other than an individual, the applicant must be at least 51 percent owned by persons who are either citizens of one of the countries identified above or legally admitted permanent residents residing in the U.S.

In addition, the applicant must have, or be able to obtain, the legal authority to carry out the purposes of the grant.

Ineligible Applicants (§ 5002.21)

This section identifies criteria that would make an applicant ineligible for a grant under this part. An applicant would be ineligible if the applicant (1) Is debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, (2) has an outstanding judgment obtained by the U.S. in a Federal Court (other than U.S. Tax Court), (3) is delinquent on the payment of Federal income taxes, or (4) is delinquent on Federal debt. These conditions are generally consistent with those found in the current programs.

Project Eligibility (§ 5002.22)

This section identifies three criteria required for a project to be eligible to receive a grant under this part. To be eligible, a project must meet the criteria in this section that are applicable to the project, unless otherwise specified in subpart B for a specific program. For most programs, additional project eligibility criteria are found in subpart B for specific programs. Thus, for a project to be eligible for a grant under this part, the project must meet both the applicable criteria in this section (unless otherwise specified in subpart B) and the criteria in subpart B for the applicable grant program.

A grant application for a project that meets its applicable project eligibility criteria as specified in subparts A and B will not automatically receive grant funding. However, a project that fails to meet any one of its applicable project eligibility criteria would be automatically ineligible for consideration for a grant, regardless of the other attributes of the project.

Primarily serve a rural area. The first criterion (§ 5002.22(a)), which applies to all projects and purposes, except those under the Value-Added Producer grant program (§ 5002.105) and the Rural Energy for America grant program (§ 5002.102), addresses the purpose of the project—the project must primarily serve a rural area. This criterion is generally consistent with what the current programs require, but, unless otherwise specified in subpart B, does not require the project to be physically located within a rural area.

For both the Value-Added Producer grant program and the Rural Energy for America grant program, the rule would require all projects to be located in a rural area. For the Rural Energy for America grant program, the Agency is proposing to continue the current requirement that the project must be located in a rural area. For the Value-Added Producer grant program, however, this is a new requirement from the current program.

Ownership and control requirement. The second criterion (§ 5002.22(b)) applies only to those projects and purposes that acquire or improve real or personal property, unless otherwise specified in subpart B. This criterion requires the applicant to be the owner of the property or have leasehold interest acceptable to the Agency in the project and control the revenues and expenses of the project, including operation and maintenance.

Service area selection. The third criterion (§ 5002.22(c)) applies only to those projects and purposes that are determined by a service area. This criterion specifies that the proposed service area of the project must be chosen in a way that no user or area is excluded because of race, color, religion, sex, marital status, age, disability, or national origin. This criterion, where applicable, is the same as found under the current regulations of the Community Facilities and the Water and Waste Disposal Facilities grant programs.

To reiterate, a project or purpose must meet each one of the project eligibility criteria applicable to it in order to be eligible for a grant. Meeting only some of the criteria is insufficient to be eligible. These criteria cannot be waived under the Exception Authority (§ 5002.4).

Ineligible Projects and Purposes (§ 5002.23)

This section identifies projects and purposes that are ineligible for grants under this part regardless of whether the project meets the conditions specified in subpart B and § 5002.22. These projects represent primarily an aggregation of projects and purposes already prohibited under the programs being included in today's proposed rulemaking. The Agency added to this aggregation a number of additional projects and purposes as ineligible, which are identified earlier in this preamble.

As also noted earlier in this preamble, the Agency will provide a notification as needed to identify additional projects or purposes that the Agency has

determined are ineligible for grants under this part.

Applying for a Grant

Applying for a Grant (§ 5002.30)

This section discusses the submittal of preapplications and applications when applying for a grant. For most applicants, submitting a preapplication is optional, but is required by the Departmental regulation incorporated herein for certain government applicants based on criteria contained in the Departmental regulations. This section also points out that the submission of a preapplication, or the lack thereof, does not affect in any way the evaluation and scoring of the subsequent application, and applicants who submit a preapplication do not receive any priority for funding.

This section also contains requirements for the filing of preapplications and applications, including:

- When they are to be submitted;
- Where to submit them; and
- Their format.

Lastly, this section addresses *incomplete applications*. The Agency will reject incomplete applications. If the Agency receives an incomplete application, the Agency will notify the applicant of the elements that made the application incomplete. The Agency points out that applicants need to consider that applications must be submitted sufficiently ahead of the applicable application deadline to allow for Agency review, notification to the applicant of missing elements, and resubmittal of the application before the applicable application deadline. If a resubmitted application is received by the applicable application deadline, the Agency will reconsider the application.

Preapplications (§ 5002.31)

This section presents the requirements associated for submitting preapplications, and applies to both Nationally-competed grants and to State-allocated grants. Submittal of a preapplication or, in lieu of a preapplication, a written request for an eligibility determination, is optional unless otherwise required under the Departmental regulations (as defined in § 5002.2). In addition, all applicants (governmental and non-governmental) must comply with the provisions of the Departmental regulations when submitting a preapplication.

This section also points out that, unless the preapplication is required by department regulations, the Agency's assessment of applicant and project eligibility based on a preapplication is

advisory in nature and does not constitute a formal determination by the Agency of either applicant or project eligibility. The formal determination of eligibility would be made once the application is received. If the preapplication is submitted because it is required by the Departmental regulations, the Agency will assess it in accordance with the Departmental regulations.

Applications (§ 5002.32)

This section identifies the application forms required for grant applications under this part and states that the Agency will make available to the public program-specific application packages, which will include the necessary forms and instructions for filing an application for the specific grant program. For some programs, additional application requirements are being proposed. These are found in subpart B and are discussed later in this preamble.

Finally, all applications must be consistent with Departmental regulations and must be submitted with the appropriate standard form (*i.e.*, forms in the SF 424 series).

Processing Applications

Processing Applications (§ 5002.40)

This section identifies the process that the Agency will use to review and process applications including the initial review of application, notification to the applicants of the Agency's review results, the resubmittal of applications, and subsequent ineligibility determinations. The processing of applications was discussed earlier in the preamble (see Section D, Item 5).

Application Withdrawal (§ 5002.41)

This section outlines actions to be performed by the applicant and the Agency if, during the period between the submission of an application and the execution of documents, the project is no longer viable or the applicant no longer is requesting financial assistance for the project. Upon such notification by the applicant, the Agency will either withdraw the application or, if it has already been selected for funding, rescind the selection of the application.

Application Scoring

Scoring Applications (§ 5002.42)

This section identifies the process that the Agency will use to score applications. As noted earlier in this preamble, the Agency will only score applications for which it has determined that both the applicant and

project are eligible and the project is feasible or is likely to be feasible.

As provided under § 5002.42(a), for grant programs with an open application period, all such applications received in a Federal fiscal year will be scored in the fiscal year in which it was submitted unless it is received after the last ranking date of the fiscal year for that program. Unless a program issues a notification indicating otherwise, this would be August 15. If the application is received after the last ranking date of the fiscal year, the Agency will score the application no later than the first ranking date of the next fiscal year. Such applications will be scored against the priority categories and their point values effective for the next fiscal year.

For grant programs with a specified application deadline, each such application received will be scored in the year it was received unless it is received after the applicable application deadline. Any application received after the application deadline for that program will not be considered by the Agency.

As stated in § 5002.42(b), the Agency will score applications for each grant program based on the priority categories and their associated points using the procedures specified in subpart B. This paragraph also states that the Agency will score applications based on the information supplied by the applicant at the time the applicant submits the application to the Agency.

Paragraphs (b)(1) and (2) of this section present, respectively, the inclusive list of Administrator and State Director priority categories that each grant program may consider when awarding points for these priority categories. The specific set of priority categories that each program will consider in scoring applications, and the points that can be awarded for these priority categories, are found in subpart B for each grant program.

Awarding Grants

Award Process (§ 5002.50)

This section describes the award process that will be used in selecting application for (potential) funding.

As stated in § 5002.50(a), the Agency will rank all scored applications for each program on or after each ranking date for that program to create a priority list of all scored applications for consideration for (potential) funding. (Note that the ranking dates for each program are found in subpart B.) If the ranking date falls on a weekend or a Federally-observed holiday, the next Federal business day will become the applicable ranking date. Finally,

applications that are ranked in a given Federal fiscal year will be considered for selection for funding for the fiscal year in which the application was ranked.

Paragraph (b) of this section describes the process the Agency will use in selecting applications for funding or for potential funding. From a program's priority list, the Agency will select applications for funding using criteria specified in § 5002.50(b)(1)(i) through (iii) (which were discussed earlier in this preamble in Section D, Item 7) and any additional program-specific criteria found in subpart B for the grant program. Selection of applications for funding will also be conducted in a manner consistent with the Departmental regulations. For each application selected for (potential) funding, the Agency will notify the applicant in writing.

Paragraph (c) of this section identifies the process the Agency will use for applications that are selected for (potential) funding, but are not funded. This process was described earlier in this preamble in Section D, Item 7.

Lastly, § 5002.50(d) addresses the process the Agency will use if a State or local government raises objections to a proposed project under the intergovernmental review process and the objections are not resolved within 90 days of the Agency's selection of the application.

Grant Agreements and Conditions

This section addresses the grant agreement and conditions that recipients (and subrecipients) of grants are required to satisfy in order to receive the grant funds and to be complied with once the grant agreement has been signed and funds awarded.

Actions Prior to Grant Closing or Start of Construction, Whichever Occurs First (§ 5002.60)

This section addresses three areas—excess grant funds (§ 5002.60(a)), evidence and disbursement of other funds (§ 5002.60(b)), and the acquisition of land, easements, water rights, and existing facilities (§ 5002.60(c)). The proposed requirements in this section are consistent with existing program implementation.

As stated in § 5002.60(a), which addresses excess grant funds, the Agency will reassess the applicant's funding needs whenever there is a significant reduction in project cost or a change in project scope. This paragraph identifies the factors and procedures that the Agency will use in making this reassessment and any attending decreases in funding needs. The Agency

will deobligate any obligated grant funds not needed to complete the project.

Under § 5002.60(b), which addresses evidence of and disbursement of other funds, applicants expecting funds from other sources for use in completing projects being partially financed with Agency funds would be required to present evidence of the commitment of these funds from such other sources. An agreement should be reached with all funding sources on how funds are to be disbursed before the start of construction.

Lastly, under § 5002.60(c), which addresses acquisition of land, easements, water rights, and existing facilities, applicants would be responsible for acquiring all property rights necessary for the project and determining that prices paid are reasonable and fair. The Agency may require an appraisal by an independent appraiser or Agency employee. Requirements are specified for rights-of-way and easements (§ 5002.60(c)(1)), for title for land and for existing facilities (§ 5002.60(c)(2)), for water rights, and for lease agreements (§ 5002.60(c)(3)).

Grant Agreement (§ 5002.61)

The section identifies the documents and steps that the Agency will use to enter into a grant agreement with the applicant.

Section 5002.61(a) states that the Agency will notify each applicant whose application has been selected for funding using a letter of conditions. The letter of conditions will set out the conditions under which the grant will be made. After reviewing the conditions and requirements set forth in the letter of conditions, if the applicant agrees with those conditions, the applicant would be required to acknowledge, in writing, acceptance of the conditions. If, however, the applicant believes that certain conditions cannot be met, the applicant may propose alternate conditions to the Agency. The Agency must concur with any changes proposed to the letter of conditions by the applicant before the application will be further processed.

As provided under § 5002.61(b), the Agency will execute grant awards through the issuance of an Agency-approved grant agreement between the Agency and the grantee. In addition, other documents as identified by the Agency will be executed. The Agency notes that it will not advance any grant funds to the grantee until this agreement is signed by the grantee.

As provided under § 5002.61(c), the Agency will execute cooperative agreements through the issuance of an

Agency-approved cooperative agreement, or similar Agency-approved document, between the Agency and the recipient of the cooperative agreement. In addition, other documents as identified by the Agency will be executed. Finally, this paragraph states that there will be significant Agency involvement in cooperative agreements.

Lastly, § 5002.61(d) states that the Agency will disburse grant funds according to the letter of conditions or the grant agreement, as applicable.

Use of Remaining Funds (§ 5002.62)

This section provides requirements on the handling of funds that remain after all costs incident to the basic project have been paid or provided for as follows:

- Remaining funds are not to include grantee contributions (§ 5002.62(a)).
- Remaining funds may be refunded to each source in direct proportion to the amounts obtained from each source (§ 5002.62(b)).
- Remaining funds may be used for eligible grant purposes, provided the use will not result in major changes to the project, the purpose of the grant remains the same, and the project remains within its original scope (§ 5002.62(c)).

Under § 5002.62(d), grant funds not expended after being used for eligible grant purposes will be canceled. Before the Agency cancels these unexpended grant funds, the Agency will provide written notification to the grantee of the Agency's intent to cancel the remaining funds.

Post Award Activities and Requirements Monitoring and Reporting Program Performance (§ 5002.70)

In § 5002.70(a), the Agency will monitor grantees to the extent necessary to ensure that facilities are constructed in accordance with Agency-approved plans and specifications and to ensure that funds are expended for approved purposes.

Section 5002.70(b) would require grantees to submit performance reports on a semiannual basis, unless otherwise specified in subpart B, and a final performance report. The semiannual performance reports are to include a comparison of accomplishments with the objectives stated in the application.

The grantee would also be required to submit additional reports that may be specified in the grant agreement, in a notification issued under § 5002.15, or as specified in subpart B.

Finally, the Agency is reserving the right to collect additional project and/or performance data for projects that have received grant funds.

Programmatic Changes and Budget Revisions (§ 5002.71)

In addition to the requirements specified in the Departmental regulations, this section would allow the Agency, at its sole discretion, to require an applicant to submit a new application if there is a change to the scope of the project whose application has been selected. If a new application is submitted, it would be re-ranked in accordance with this part.

Transfer of Obligations (§ 5002.72)

This section addresses the conditions under which an obligation of funds established for an applicant can be transferred to a different (substituted) applicant. The two conditions are:

- The substituted applicant is eligible, has a close and genuine relationship with the original applicant, and has the authority to receive the assistance approved for the original applicant (§ 5002.72(a)); and
- The need, purpose(s), and scope of the project for which the Agency funds will be used remain substantially unchanged (§ 5002.72(b)).

Grant Close Out and Related Activities

Grant Close Out and Related Activities (§ 5002.80)

This section addresses grant close out for all grants awarded under this part. In addition to requiring compliance with the Departmental regulations, this section allows the Agency to suspend or terminate a grant if the grantee fails to submit satisfactory reports on time under the provisions of § 5002.70(b).

Subpart B—Program-Specific Provisions

Subpart B presents the program-specific requirements for each of the programs covered by this subpart.

Community Facilities (§ 5002.101)

This section identifies program-specific requirements for community facility projects. The prospective grantee must comply both with subpart A provisions and the provisions in this section when seeking a community facilities grant. The program-specific provisions for community facility projects follow.

Applicant Eligibility

To be eligible for a community facilities grant, an applicant must not only meet the applicant eligibility criteria specified in subpart A, but also the applicant eligibility criteria specified in subpart B for this program. Specifically, the subpart B criteria (§ 5002.101(a)), which are the same as for the current program, are:

- The applicant must be a public body, such as a municipality, county, district, authority, or other political subdivision of a State; a non-profit corporation or association; or a Federally recognized Indian tribe; and
- The applicant must have significant ties with the local rural community. Such ties are necessary to ensure to the greatest extent possible that a facility under private control will carry out a public purpose and continue to primarily serve rural areas.

The proposed rule identifies two conditions under which ties with the local rural community can be evidenced. These conditions, which are not exclusive, are:

- Association with, or controlled by, a local public body or bodies or broadly based ownership and controlled by members of the community, and
- Substantial public funding through taxes, revenue bonds, or other local government sources, or substantial voluntary community funding such as would be obtained through a community-wide funding campaign.

These community tie provisions are the same as found in the current Community Facilities regulation.

Project Eligibility

To be eligible for community facilities grant funding, the project would have to meet the applicable project eligibility requirements specified in subpart A and be for an essential community facility (§ 5002.101(b)). Essential community facilities include, but are not limited to, fire, rescue, health and public safety facilities or equipment, telecommunications, supplemental and supporting structures for other rural electrification or telephone systems, the purchase of major equipment that in themselves provide an essential service to rural residents, and the purchase of facilities necessary to improve or prevent a loss of service.

In addition, subpart B requires community facility projects to:

- Be located in a rural area (except for eligible utility-type of facilities such as hydroelectric and telecommunication systems);
- Meet certain median household income and population requirements for those to be served by the project;
- Be based on satisfactory sources of revenue;
- Have an applicant who is responsible for operating, maintaining, and managing the facility and providing for its continued availability and use at reasonable rates and terms; and
- Be unable to finance the proposed project from their own resources or

through commercial credit at reasonable rates and terms.

These conditions are the same as found in the current grant program for community facilities.

Uses of Grant Funds

Subpart B for community facilities grants identifies additional eligible and ineligible uses of grant funds (§ 5002.101(c) and (d), respectively). These uses are the same as found in the current implementation of the Community Facilities grant program, with the exception, as discussed below, of adding two additional eligible uses and identifying recreational facilities (except for community parks and community wellness centers) as an ineligible use. Eligible uses of grant funds (§ 5002.101(c)) include:

- Construction, enlargement, extension, or otherwise improvement of essential community facilities providing essential service primarily to rural residents and rural businesses;
- Construction or relocation of public buildings, roads, bridges, fences, or utilities and to make other public improvements necessary to the successful operation or protection of eligible facilities;
- Relocation of private buildings, roads, bridges, fences, or utilities, and other private improvements necessary to the successful operation or protection of eligible facilities;
- Facilities that have no more than 25 percent of the floor space occupied by Federal Agencies, State Agencies, or other ineligible entities or purposes, when these entities enhance the primary purpose of the facility; and
- Payment of certain expenses that are a necessary part of a project to finance eligible facilities.

The proposed rule also adds the following eligible purpose:

- Facilities that house State funded organizations that are typically housed in community funded facilities and offering services provided by an essential community facility.

Examples of ineligible uses of grant funds, which are listed in § 5002.101(d), are:

- Payment of initial operating expenses or annual recurring costs, including purchases or rentals that are generally considered to be operating and maintenance expenses (unless a Community Facilities loan is part of the funding package, in which case the grant would be part of a grant-loan combination and would not be subject to this proposed rule);
- Construction or repair of electric generating plants, electric transmission

lines, or gas distribution lines to provide services for commercial sale;

- Refinancing of existing indebtedness;
- Payment of interest;
- Payment of any costs when the median household income of the population to be served is higher than specified percentages of the State non-metropolitan median household income;
- Recreational facilities, except for community parks and community wellness centers; and
- Payment for any purposes restricted by the Community Facilities direct loan program (see 7 CFR 1942.17(d)(2)).

One type of project that the Agency is adding to the list of ineligible projects under the Community Facilities grant program is recreational facilities, with two exceptions as discussed below. The Community Facilities grant program is, and has been, oversubscribed; that is, it receives more grant requests than it can fund. The Agency has found that the types of grant requests it receives are usually for projects that more directly address essential community needs, such as health and safety needs, than do most recreational facilities. Given this situation, it is highly unlikely that recreational facilities would be funded. Thus, the Agency is proposing to include recreational facilities, except as discussed below, in the list of ineligible projects. If the Agency does not explicitly exclude recreational facilities, except as indicated, applicants might be otherwise encouraged to submit applications with little chance of scoring high enough relative to other types of projects to be funded.

As noted above, the Agency is proposing to allow grants to be used for two types of recreational facilities. These are community parks and community wellness centers. Community parks could include sport fields that would be used for citizen-based sports (e.g., youth soccer league fields, community softball fields), but would exclude professional and semi-professional sports venues. Many communities have found that providing community parks and community wellness centers allow them to attract and, equally important, retain citizens. The Agency believes that these two types of recreational facilities provide an essential service to such communities and should be eligible for grants under the Community Facilities grant program.

Finally, with regard to recreational facilities that would be excluded from the Community Facilities grant program, the Agency recognizes that conditions may change in the future such that the

Agency would accept applications for other types of recreational facilities. If this occurs, the Agency would propose to allow specific types of recreational facilities, through a proposed rulemaking change, to apply for a Community Facilities grant.

Funding Limitations and Matching Funds

The proposed rule incorporates the current Community Facilities grant program's maximum grant assistance and funding limitations (§ 5002.101(e)(1) and (e)(2), respectively). The proposed rule (§ 5002.101(e)(3)), consistent with the current program, allows funding of the balance of project costs to consist of other Community Facilities financial assistance, applicant contributions, and loans and grants from other sources. However, other Federal grant funds cannot be used as matching funds unless provide by other authorizing legislation.

Scoring Applications

The priority categories and points associated with those priority categories that would be used to score applications are identified in § 5002.101(f)(1) through (3), and are divided into program-specific priority categories and points, Administrator priority categories and points, and State Director priority categories and points. The maximum number of points an application can receive would be 100 points.

The program-specific priority categories and points are in § 5002.101(f)(1). These priority categories are the same as currently used in scoring community facilities grant applications, with two minor differences (i.e., the population levels for a couple of scoring criteria changed and under "Other priorities," the proposed rule replaces conformance with State strategic plan with educational facility). The points associated with the priority categories, however, have been modified to total 70 points. The relative point values were not changed between priority categories.

The Administrator and State Director priority categories and points are identified in § 5002.101(f)(2) and (f)(3), respectively. With regard to Administrator priority categories and points, the Community Facilities grant program would allow the Administrator to award up to 20 points (compared to 10 points for the other grant programs) to improve the geographic diversity of awardees in a fiscal year. The current Community Facilities grant program identifies additional Administrator priority categories, which are generally

covered in subpart A of the proposed rule.

With regard to State Director priority categories, the Community Facilities grant program would use the State Director priority categories identified in § 5002.42(b)(2)(i) through (x) under subpart A and could award up to 10 points for the State Director priority categories. The proposed State Director priority categories expand upon and repackage those found in the current regulation.

Ranking Applications

Unless otherwise specified in a notification, the Agency will rank grant applications under this program four times per year (§ 5002.101(g)). The proposed ranking dates are (in the order in which they occur each fiscal year): December 15, March 15, July 15, and August 15.

Additional Criteria for Selecting Applications

Consistent with Departmental regulations, § 5002.101(h) would allow the Agency to consider in selecting applications for funding whether an application is a subsequent request for a previously approved project. If the lower scoring application is for the continuation of an existing funded project, the Agency may give the lower scoring application consideration ahead of a higher scoring application. However, if the request for additional grant funds is due to cost overruns, the Agency will give consideration to the lower scoring application only if the cost overrun is due to certain causes. Specifically, the cost overruns must be due to either high bids or unexpected construction problems neither of which can be reduced by negotiations, redesign, use of bid alternatives, rebidding, or other means. However, if the cost overrun exceeds 20 percent of the development cost at time of grant approval or if the scope of the original purpose has changed, the Agency would not use this criterion as a factor in choosing a lower scoring application over a higher scoring application. Such an application could still be selected for funding, but it would need to compete based on its ranking and other award criteria.

Public Information Process

This section (§ 5002.101(i)) would require all grants awarded under this section to comply with the public information process specified for community facilities direct loan program (see 7 CFR part 1942.17(j)(9)), as is currently required for community facilities grants. This public information

process, in part, requires the applicant to inform the general public regarding the development of any proposed project.

Rural Energy for America (§ 5002.102)

This section identifies program-specific requirements for renewable energy system or energy efficiency improvement projects. The prospective grantee must comply both with subpart A provisions and the provisions in this section when seeking a Rural Energy for America grant. The program-specific provisions for renewable energy systems and energy efficiency improvement projects follow.

Applicant Eligibility

To be eligible for a Rural Energy for America grant, an applicant must not only meet the applicant eligibility criteria specified in subpart A of the proposed rule, but also the applicant eligibility criteria specified in subpart B for this program. Specifically, the subpart B criteria (§ 5002.102(a)) require the applicant to be an agricultural producer or rural small business. This requirement is the same as in the current program for renewable energy systems and energy efficiency improvement grants. However, unlike the current program, the applicant would no longer be required to demonstrate financial need to be considered an eligible applicant. This change was made as a result of the 2008 Farm Bill. As noted below, the Agency, however, is incorporating financial need as a scoring criterion.

Project Eligibility

To be eligible for a Rural Energy for America grant, a project would have to meet the applicable project eligibility requirements in subpart A and subpart B requirements (§ 5002.102(b)). Subpart B identifies two general types of projects—(1) those for renewable energy systems and energy efficiency improvements (§ 5002.102(b)(1)) and (2) those for feasibility studies (§ 5002.102(b)(2)).

Under § 5002.102(b)(1), the project must:

- Be for the purchase, installation, expansion, and/or other energy-related improvement of a renewable energy system or to make energy efficiency improvements;
- Be located in a rural area;
- Be for technology that is replicable and either pre-commercial or commercially available; and
- Have technical merit as determined by the Agency. If the Agency determines that the project is without technical

merit, the project would be ineligible for a grant.

Under § 5002.102(b)(2), feasibility studies are eligible projects provided they are for a project that meets the criteria specified in § 5002.102(b)(1).

The project eligibility provisions in § 5002.102(b)(1), and those in subpart A for project eligibility, are found in the current regulations for this program. The project eligibility provisions in § 5002.102(b)(2) are being included in response to section 9007 of the 2008 Farm Bill.

Additional Preapplication and Application Requirements

In addition to the preapplication and application requirements specified in subpart A, subpart B for this program contains program-specific provisions for the submittal of preapplications and applications (§ 5002.102(c)). If an applicant elects to submit a preapplication, it must be received by the Agency on or before January 15 to be considered for funding by the Agency for that fiscal year.

For applications, the proposed rule would require applications to be received by the Agency on or before June 15 each year to be considered for funding for that fiscal year. Applications received by the Agency after June 15 would not receive consideration for funding for that fiscal year.

The proposed rule also allows for the submittal of lower documentation applications (referred to as “simplified applications” under the current program) for renewable energy systems and energy efficiency improvement projects. The proposed rule contains criteria to determine if an applicant is eligible to submit a lower documentation application. These criteria are:

- Total eligible project costs are \$200,000 or less; and
- The proposed project uses either commercially available renewable energy systems or energy efficiency improvements.

In addition, the applicant would be required to agree to grant reimbursement after the project is completed. Project completion would be demonstrated when the applicant has provided a written final project development, testing, and performance report acceptable to the Agency.

The proposed criteria for submitting a lower documentation application are consistent with the current program. The current regulation, however, has additional criteria (e.g., addressing project construction, timeframe for project completion, and interim financing) that the Agency is not

including in this proposed rule. Such information would still be considered by the Agency in evaluating grant applications, but would use the application package for this program to ensure such information was included in the application.

As under the current program, it is the Agency's intent to allow lower documentation applications to exclude certain financial information and the business-level study for renewable energy systems from the application. In addition, the technical reports associated with lower documentation applications can be less detailed than other applications submitted under this program. For example, the technical reports for lower documentation applications are not required to provide authoritative evidence that project service providers have the necessary professional credentials or relevant experience to perform the required services. Instead, such technical reports are to list all key service providers.

Eligible Project Costs

Subpart B for Rural Energy for America grants identifies eligible project costs (§ 5002.102(d)(1) through (9)). These eligible project costs are the same as allowed under the current grant program for these types of projects.

The proposed rule would allow eligible project costs in mixed business and residential projects under certain circumstances. Eligible project costs would apply to a mixed business and residential renewable energy system or energy efficiency improvement project if the applicant is an agricultural producer. However, if the mixed business and residential project is from an applicant who is a rural small business, the proposed rule would allow these eligible project costs to apply to the applicant's project only if the residential portion of the project is less than 25 percent of the square footage of the entire project.

Funding Limitations, Matching Funds, Availability of Other Funding, and Grant-Loan Guarantee Combinations

The proposed funding limitation provisions (§ 5002.102(e)(1)), which are the same as in the current Renewable Energy Systems and Energy Efficiency Improvement regulation, would limit:

- The amount of grant assistance to an eligible project under this program to 25 percent of total eligible project costs, which are identified in § 5002.102(e); and
- The maximum amount of grant assistance to one individual or entity to no more than \$750,000 in any one Federal fiscal year.

In meeting the applicant share of costs (§ 5002.102(e)(2)), other Federal grant funds and applicant in-kind contributions would not be allowed. Third-party, in-kind contributions, however, would be allowed, provided they do not exceed 10 percent of the matching fund requirement. Passive investor contributions would be acceptable.

Finally, the Agency seeks to leverage the amount of funds available to grantees by requiring certain applicants seeking grants of over \$50,000 to seek loan guarantees before being considered for grant funds (§ 5002.102(e)(3)). In addition, the 2008 Farm Bill encourages the Agency to fund smaller grant requests. The Agency, therefore, is proposing provisions to make the program more available to those seeking smaller grants.

Specifically, if the size of the grant amount being requested in the application is \$50,000 or less, the Agency will consider funding the application on its own merit, without consideration of other sources of funding. However, if the size of the grant amount being requested in the application is more than \$50,000, the Agency will consider funding the application only to the extent that:

1. The applicant cannot obtain a loan guaranteed by the Agency for any portion of the project; or
2. The amount being requested in the grant application is necessary for the bank to make a guaranteed loan to the applicant.

If neither of the two situations described above exist, then the Agency will not consider the application under this rule.

As noted in this preamble, the proposed rule is specific to "grant only" projects. However, there is an associated issue with projects seeking a grant-loan guarantee combination under this program. In fiscal year 2008, the Agency began funding the grant portion of a grant-loan guarantee combination from the monies administratively allocated for loan guarantees. The Agency intends to continue this practice subject to future appropriations.

Grant Award Amount

As under the current grant program, the Agency will take into account certain criteria when determining the amount of a grant to be awarded (§ 5002.102(f)). The eight criteria being proposed are:

- The type of renewable energy system to be purchased;
- The estimated quantity of energy to be generated by the renewable energy system;

- The expected environmental benefits of the renewable energy system;
- The extent to which the renewable energy system will be replicable;
- 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;
- The estimated length of time it would take for the energy savings generated by the activity to equal the cost of the activity;
- The expected energy efficiency of the renewable energy system; and
- The amount of energy output per amount of grant award.

Six of these eight criteria are in the current regulation. The seventh criterion, expected energy efficiency of the renewable energy system, is required under section 9007 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill). The eighth criterion, energy output per amount of grant award, is being proposed as part of the results on an Office of Inspector General audit that recommended considering such a criterion for this program.

Scoring Applications

The priority categories and points associated with those priority categories that would be used to score applications are identified in § 5002.102(g)(1) and (g)(2), and are divided into program-specific priority categories and points and Administrator priority categories and points. The maximum number of points an application can receive would be 100 points.

The program-specific priority categories and points are in § 5002.102(g)(1). With two exceptions, these priority categories are the same as currently used in scoring renewable energy systems and energy efficiency improvement grant applications. One exception is the award of points for "hybrid technology" projects (i.e., a combination of two or more renewable energy technologies incorporated into a single project), which replaces the "previous grantee/borrowers" priority category. The other exception is the award of points for demonstrated financial need. Demonstrated financial need is being proposed as a scoring criterion because it is no longer an eligibility criterion and the Agency has determined that an applicant's financial need is an appropriate criterion for receiving a grant under this program.

The points associated with the priority categories, however, have been modified to total 90 points. The relative point values between priority categories have been modified slightly, with the

largest change associated with environmental benefits.

The Administrator priority categories and points are identified in § 5002.102(g)(2). The current program regulation does not address Administrator priority categories. The Rural Energy for America grant program would allow the Administrator to award an application up to 10 points in the following priority categories:

- Unserved or underserved areas;
- Geographic diversity;
- Emergency conditions;
- Public health and safety; and
- Presidential initiatives.

Ranking Applications

Unless otherwise specified in a notification, the Agency will rank grant applications under this program twice each year, on or after March 15 and on or after July 15 (§ 5002.102(h)).

Rural Cooperative Development Grants (§ 5002.103)

This section identifies program-specific requirements for rural cooperative development projects. The prospective grantee must comply both with subpart A provisions and the provisions in this section when seeking a rural cooperative development grant. The program-specific provisions for rural cooperative development projects follow.

Definition

The proposed rule provides a specific definition (§ 5002.103(a)) for the word "Center," because this term has a unique meaning when used in the context of rural cooperative grants.

Applicant Eligibility

To be eligible for a rural development cooperative grant, an applicant must not only meet the applicant eligibility criteria specified in subpart A of the proposed rule, but also the applicant eligibility criterion specified in subpart B for this program. Specifically, this subpart B criterion (§ 5002.103(b)), which is the same as in the current Rural Cooperative Development grant regulation, requires that the applicant to be a non-profit organization or institution, including an accredited institution of higher education. Public bodies would not be eligible to receive grants under this section.

Project Eligibility

To be eligible for a rural cooperative development grant, a project would have to meet the applicable project eligibility requirements in subpart A and the following subpart B requirements (§ 5002.103(c)):

- Applications that focus on only one cooperative will not be considered for funding;

- Except for 1994 Institutions, the applicant must provide 25 percent of total project cost; and

- Applications that provide for the sharing of information among centers will not be considered for funding if more than 10 percent of the funding request is for the provision of sharing of information among centers.

The first and third project eligibility criteria are consistent with the current implementation of this program. The second criterion is being added as a result of the 2008 Farm Bill.

The Agency notes that it is proposing to include specifically in the regulation the "sharing of information among centers" as an eligible project purpose (§ 5002.103(c)(3)), but to limit the amount of funds that can be awarded to this purpose. The Agency is proposing to include sharing of information as an eligible project purpose because such sharing can assist other centers with proven strategies in cooperative development that could possibly be transferred to other areas of the nation. However, the goal of the Rural Community Development grant program is to facilitate the creation of jobs in rural areas through development of new rural cooperative, value added processing, and rural businesses. With a historically-limited funded program, the sharing of information among centers is not necessarily the highest priority for funding at the current time. Therefore, the Agency is proposing the 10 percent limit on the amount of grant funds that can be awarded to this purpose.

Additional Application Requirements

In addition to the application requirements specified in subpart A, subpart B for this program (§ 5002.103(d)) would require the applicant to include in the application a plan for the establishment and operation by the institution of a center or centers for cooperative development. This plan, which is required under the current regulations for rural cooperative development grants, must contain specific elements, which are statutorily required (§ 5002.103(d)(1) through (5)).

Uses of Grant Funds

Subpart B for rural cooperative development grants identifies eligible and ineligible uses of grant funds (§ 5002.103(e) and (f), respectively). These uses are generally consistent with those allowed under the current grant program (7 CFR 4284, subpart A) for these types of projects.

Grant Agreement and Conditions

Under paragraph § 5002.103(g), three conditions would affect the term of the grant agreement. The first two of the conditions (§ 5002.103(g)(1) and (2)) are required under section 6013 of the 2008 Farm Bill, while the third condition (§ 5002.103(g)(3)) is part of the current implementation of this program. These three conditions are:

- A grant awarded to a center that has received no prior funding under this section shall be made for a period of one year;

- If the Agency determines that it is in the best interest of the program, grants will be awarded for a period of more than one year, but not more than three years, to a center that has successfully met the parameters described in § 5002.103(i)(1)(i) through (v), as determined by the Agency; and

- The Agency will not approve requests to extend the grant period for more than 12 months.

Funding Limitations and Matching Funds

Under paragraph § 5002.103(h)(1), the maximum amount of a grant awarded under this section for 1994 Institutions would be no more than 95 percent of the total cost of the Center. The Agency would be prohibited from requiring a match of more than 5 percent of the total cost of the Center. This is consistent with current program requirements.

Paragraph § 5002.103(h)(2) addresses requirements associated with matching funds. The proposed matching fund requirements are the same as under the current program and address, in general, the form of the matching funds, the acceptable sources for matching funds, and the use of the matching funds.

Scoring Applications

The priority categories and points associated with those priority categories that would be used to score applications are identified in proposed § 5002.103(i)(1) and (i)(2), and are divided into program-specific priority categories and points and Administrator priority categories and points. The maximum number of points an application can receive would be 100 points.

The program-specific priority categories and points are in § 5002.103(i)(1). These priority categories are similar to those currently used in scoring rural community development grant applications, with some modification as required under section 6013 of the 2008 Farm Bill. Specifically, the priority categories of

“linkages” and “matching funds” have been removed, and a priority category for “networking and regional focus” has been added. In addition, the points associated with the priority categories have been modified to total 90 points. The relative point values were not changed between priority categories.

The Administrator priority categories and points are identified in § 5002.103(i)(2). The Administrator may award an application up to 10 points to improve the geographic diversity of awardees in a fiscal year.

Ranking Applications

Unless otherwise specified in a notification, the Agency will rank grant applications under this program once each year, on or after July 15 (§ 5002.103(j)).

Additional Criteria for Selecting Applications for Funding

If two projects obtain the same score, the Agency will select the project whose score for the five criteria identified in the authorizing statute for this program (§ 5002.103(i)(1)(i) through (v)) is higher (§ 5002.103(k)).

Distance Learning and Telemedicine Grants (§ 5002.104)

This section identifies program-specific requirements for distance learning and telemedicine projects. The prospective grantee must comply both with subpart A provisions and the provisions in this section when seeking a distance learning and telemedicine grant. The program-specific provisions for distance learning and telemedicine projects follow.

Definition

The proposed rule provides a specific definition (§ 5002.104(a)) for the term “Telecommunications or electric borrower,” because this term has a unique meaning when used in the context of the Distance Learning and Telemedicine grant program.

Applicant Eligibility

To be eligible for a distance learning or telemedicine grant, an applicant must not only meet the applicant eligibility criteria specified in subpart A of the proposed rule, but also the applicant eligibility criteria specified in subpart B for this program. Specifically, these subpart B criteria (§ 5002.104(b)), which are in the current Distance Learning and Telemedicine grant regulation, require that:

- The applicant be legally organized as an incorporated organization or partnership; be an Indian tribe or tribal organization, as defined in 25 U.S.C.

450b (b) and (c); be a state or local unit of government or a consortium; or be an other legal entity, including a private corporation organized on a for profit or not-for profit basis; and

- The applicant have the legal capacity to contract with the Agency to obtain the grant, and comply with all applicable requirements. If a consortium lacks the legal capacity to contract, each individual entity must contract with the Agency on its own behalf.

Individuals would not be eligible for grants under this program directly. Further, entities that are electric or telecommunication borrowers under the Rural Electrification Act of 1936 would not be eligible for grants under this program provided, however, that such borrowers are eligible for funding under the Distance Learning Telemedicine Combination Loan and Grant Program (7 CFR 1703, subpart D) and the Distance Learning Telemedicine Loan Program (7 CFR 1703, subpart G). These eligibility requirements and conditions are in the current Distance Learning and Telemedicine grant program.

Project Eligibility

To be eligible for a grant under this program, a project would have to meet the applicable project eligibility requirements in subpart A and the following subpart B program-specific requirements (§ 5002.104(c)):

- The project must deliver distance learning or telemedicine services to entities that operate a rural community facility, including libraries, or to residents of rural areas at rates calculated to ensure that the benefit of the financial assistance is passed through to such entities or to residents of rural areas; and

- DLT end-user sites must be located in one of the four rural areas identified in § 5002.104(h)(1)(ii)(A), although the DLT hub site may be located in either a rural or non-rural area. DLT end-user facilities not within one of these four defined rural areas are not eligible for grant funding under this section.

The first of these two criteria is in the current Distance Learning and Telemedicine grant regulation. The second criterion, however, is new, as discussed in the following paragraph.

Under the current DLT regulation, each application must apply certain population criteria to each of its end-user sites, and hubs that are also proposed as end-user sites, in order to determine a rurality score. The rurality score is the average of all end-user sites' rurality scores. For the project to be eligible, the average score of the end user sites must meet a specified

minimum threshold score. Under the current scheme for determining the project's eligibility, non-rural end user sites are eligible as long as the minimum rurality score is met. This was not a desired outcome by the Agency. Therefore, all end user sites in each application would be required to be in a rural area in order to be eligible, and, thus, the current minimum rurality score criterion is unnecessary.

Additional Preapplication and Application Requirements

In addition to the preapplication and application requirements specified in subpart A, subpart B for this program contains program-specific provisions for preapplications and applications (§ 5002.104(d)).

If an applicant submits a preapplication (either as required or voluntarily), the proposed rule would require the preapplication to be received on or before January 1 each year in order to be considered for funding in that fiscal year. If the Agency receives a preapplication after January 1, it will not consider the preapplication.

For applications, the proposed rule would require an original and two copies of the application to be submitted. In addition, all applications must be received on or before March 31 of each year to be considered for funding for that fiscal year. If the Agency receives the application after March 31, it will not be considered for funding. Lastly, the applicant must include with the application evidence from the Agency State Director, Rural Development that the application conforms with the State strategic plan as prepared under section 381D of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*). If a State strategic plan does not exist, the applicant should so indicate in its application.

Uses of Grant Funds

Subpart B for this program identifies additional eligible and ineligible uses of grant funds (§ 5002.104(e) and (f), respectively). These uses are the same as found in the current program for these types of projects.

Funding Considerations and Matching Funds

Consistent with the implementation of the current program, § 5002.104(g)(1) limits the amount of funds (to 10 percent) that can be used when an application includes any of the three purposes identified in § 5002.104(e)(3), (e)(4), or (e)(5). This limit applies whether the application contains one, two, or all three of these eligible uses.

The provisions for matching funds (§ 5002.104(g)(2)) are consistent with the current Distance Learning and Telemedicine grant regulation. Applicants would be required to provide at least 15 percent of the grant amount requested (i.e., grant funds can be used to pay up to 85 percent of the cost of the project). Matching funds must generally be in the form of cash. In-kind contributions may be substituted for cash if they are used solely for the purposes specified in § 5002.104(e). Additional in-kind contribution requirements are specified in § 5002.104(g)(2)(ii) through (iv). Lastly, any financial assistance from Federal sources would not be considered as matching contributions for this program unless there is a Federal statutory exception specifically authorizing the Federal financial assistance to be considered as a matching contribution, and that exception is documented in the application.

Scoring Applications

The priority categories and points associated with those priority categories that would be used to score applications are identified in § 5002.104(h)(1) and (2), and are divided into program-specific priority categories and points and Administrator priority categories and points. The maximum number of points an application can receive would be 100 points.

The program-specific priority categories and points are in § 5002.104(h)(1). While covering the same areas as the program-specific priority categories used in grant applications under the current program, the proposed rule greatly consolidates the scoring into three priority categories, which are:

- Critical need for the project;
- Comparative population sparsity of the service area; and
- The economic need of the applicant's service area.

The points associated with these priority categories have been modified to total 90 points, with points being assigned as 35 for critical need, 30 for population sparsity, and 25 for economic need of the applicant's service area.

Under the current program, the Administrator may select a lower scoring application for funding in order to improve geographic diversity without including Administrator points in the application's scoring. Under the proposed rule, the Agency would retain the ability of the Administrator to consider geographic diversity in selecting applications for funding, but

would require the actual awarding of points to applications. As provided for in § 5002.104(h)(2), the Distance Learning and Telemedicine grant program would allow the Administrator to award an application up to 10 points to improve the geographic diversity of awardees in a fiscal year.

Ranking Applications

Unless otherwise specified in a notification, the Agency will rank grant applications under this program once each year, on or after July 15 (§ 5002.104(i)).

Value-Added Producer Grants (§ 5002.105)

This section identifies program-specific requirements for value-added producer projects. The prospective grantee must comply both with subpart A provisions and the provisions in this section when seeking a value-added producer grant. The program-specific provisions for value-added producer projects follow.

Definitions

Several terms are being defined in § 5002.105(a) because the terms have a unique meaning when used in the context of the Value-added producer grant program. The terms being defined are: "agricultural producer," "beginning farmer or rancher," "family farm," "special purpose equipment," and "socially disadvantaged farmer or rancher."

Applicant Eligibility

To be eligible for a value-added producer grant, an applicant must not only meet the applicant eligibility criteria specified in subpart A of the proposed rule, but also the applicant eligibility criteria specified in subpart B for this program. Specifically, the subpart B criteria (§ 5002.105(b)), which are in the current Value-Added Producer grant regulation, require that:

- The applicant be an independent producer, an agricultural producer group, a farmer or rancher cooperative, or a majority-controlled, producer-based business; and
- If the applicant is a farmer or rancher cooperative, an agriculture producer group, or a majority-controlled producer-based business venture, the applicant must be entering into an emerging market as a result of the proposed project. This requirement does not apply to an independent producer because the authorizing statute does not require it.

Examples of agricultural producers include: A logger who has a majority interest in the logs harvested that are

then converted to boards, a fisherman that has a majority interest in the fish caught that are then smoked, a wild herb gatherer that has a majority interest in the gathered herbs that are then converted into essential oils, a cattle feeder that has a majority interest in the cattle that are fed, slaughtered and sold as boxed beef, and a corn grower that has a majority interest in the corn produced that is then converted into corn meal.

Venture Eligibility

To be eligible for a value-added producer grant, a venture would have to meet the eligibility requirements found in § 5002.105(c) in subpart B, which requires the venture to evidence a high likelihood of creating value-added for an agricultural product by meeting at least one of the following categories: (1) A change in its physical state, (2) differentiated production or marketing, as demonstrated in a business plan, or (3) product segregation. The project eligibility requirements in § 5002.22 in subpart A would not apply in determining venture eligibility.

Other program-specific considerations that the Agency will use in determining whether an application for a venture under this program will be considered are:

- The venture must be located in a rural area;
- Working capital grants must have a feasibility study and business plan completed specifically for the proposed venture before the application is submitted. The feasibility study and business plan must be submitted when requested by the Agency during application processing;
- Applicants who have already received a planning grant for the proposed venture would be ineligible to receive another planning grant for the same venture. Applicants who have already received a working capital grant for a venture would be ineligible to receive any additional grants for that venture;
- No venture may be the subject of more than one planning grant or more than one working capital grant under this section. The same venture may, however, be awarded one planning grant and subsequently apply for and receive a working capital grant;
- Not more than one venture per funding cycle per applicant may receive grant funding under this program; and
- If the agricultural product is a value-added product, agricultural producers must have a majority ownership interest in the agricultural product to which value-added is to accrue.

These requirements and considerations are currently being used in implementing the Value-Added Producer grant program.

Uses of Grant Funds

Subpart B for value-added producer grants identifies additional eligible and ineligible uses of grant funds (§ 5002.105(d) and (e), respectively). The eligible uses, which depend on whether the grant is a planning grant or a working capital grant, and ineligible uses, which are the same for both types of grants, are general consistent with the current grant program for these projects (7 CFR 4284, subparts A and J).

Additional Preapplication and Application Requirements

In addition to the preapplication and application requirements specified in subpart A, subpart B for this program contains program-specific provisions for preapplications and applications (§ 5002.105(f)).

For preapplications, if submitted, they must be received by the Agency on or before January 15 each year to be considered for funding in that fiscal year. If the Agency receives a preapplication after January 15, it will not consider the preapplication. In addition, all preapplications must be submitted to the program's National Office.

For applications, all applications must be received by the Agency on or before March 1 of each year to be considered for funding for that fiscal year. If the Agency receives the application after March 1, it will not be considered for funding. The proposed rule also contains program-specific application requirements for business plans and feasibility studies. Business plans must include at least three years of pro forma financial statements. Feasibility studies should show how the venture would operate under a set of assumptions, the technology used, the qualifications of the management team, and the financial aspects of the venture.

Lastly, in response to section 6013 of the 2008 Farm Bill, applicants with ventures requesting less than \$50,000 would be allowed to submit applications with less documentation (referred to as "simplified applications").

Grant Agreement and Conditions

As required by the 2008 Farm Bill, the length of grant agreements made under this section would not be allowed to not exceed three years (§ 5002.105(g)).

Funding Limitation and Matching Funds

Consistent with the current Value-Added Producer grant regulation, grant funds can be used to pay up to 50 percent of the cost of the venture and the aggregate amount of awards to majority controlled producer-based business ventures may not exceed ten percent of the total funds obligated under this program during any fiscal year (§ 5002.105(h)(1)). The proposed rule would also limit the total amount of grant funds awarded to a recipient in any one year to \$500,000.

The provisions for matching funds (§ 5002.105(h)(2)) are also consistent with those being used for the current Value-Added Producer grant program. Specifically,

- Applicants must verify in their applications that matching funds are available for the time period of the grant;
- Matching funds must be at least equal to the amount of grant funds requested;
- Unless provided by other authorizing legislation, other Federal grant funds cannot be used as matching funds;
- Matching funds must be spent at a rate equal to or greater than the rate at which grant funds are expended; and
- Matching funds must be provided by either the applicant or by a third party in the form of cash or in-kind contributions.

Scoring Applications

The priority categories and points associated with those priority categories that would be used to score applications are identified in § 5002.105(i), and are divided into program-specific priority categories and points and Administrator priority categories and points. The maximum number of points an application can receive would be 100 points.

The program-specific priority categories and points are in § 5002.105(i)(1). While covering the same areas as these priority categories used in grant applications under the current program, the proposed rule greatly consolidates the scoring into four priority categories, and adds a fifth category (type of applicant), in response to section 6202 of the 2008 Farm Bill. These priority categories, which apply to both planning grants and working capital grants, are:

- Nature of the proposed venture;
- Personnel qualifications;
- Commitments and support;
- Work plan/budget; and
- Type of applicant.

The points associated with these priority categories have been modified to total 90 points, with up to 25 points available for the first two criteria (nature of the proposed venture and personnel qualifications) and up to 20 points available for the last two criteria (commitments and support and work plan/budget).

The Administrator priority categories and points are identified in § 5002.105(i)(2). The Value-Added Producer grant program would allow the Administrator to award an application up to 10 points to improve the geographic diversity of awardees in a fiscal year.

Ranking Applications

Unless otherwise specified in a notification, the Agency will rank grant applications under this program once each year, on or after July 15 (§ 5002.105(j)).

Water and Waste Disposal Facilities (§ 5002.106)

This section identifies program specific requirements for water and waste disposal facilities projects. The prospective grantee must comply both with subpart A provisions and the provisions in this section when seeking a water or waste disposal facilities grant. The program-specific provisions for water and waste disposal facilities projects follow.

General

Consistent with the current Water and Waste Disposal Facilities grant regulations, § 5002.106(a) discusses the Agency's general expectations of the experience and expertise of all applicants for water and waste disposal facilities projects.

Applicant Eligibility

To be eligible for a water and waste disposal facilities grant, a prospective grantee must not only meet the eligibility criteria specified in subpart A of the proposed rule, but also the applicant eligibility criterion specified in subpart B for this program. This program-specific criterion (§ 5002.106(b)) requires the applicant to be one of the following:

- A public body, such as a municipality, county, district, authority, or other political subdivision of a State located in a rural area;
- An organization operated on a not-for-profit basis, such as an association, cooperative, or private corporation. The organization must be an association controlled by a local public body or bodies, or have a broadly based

ownership by or membership of people of the local community; or

- An Indian tribe on a Federal or State reservation or any other Federally-recognized Indian tribe.

This criterion is found in the current Water and Waste Disposal Facilities grant program.

Project Eligibility

To be eligible for a water and waste disposal facilities grant, the project would have to meet the applicable project eligibility requirements specified in subpart A and program-specific project eligibility criteria found in subpart B for this program. The project eligibility criteria in subpart B require, in summary (§ 5002.105(c)(1) through (6)), that the project:

- Serve a rural area that, if such project is completed, is not likely to decline in population below that for which the project was designed;
- Be designed and constructed so that adequate capacity will or can be made available to serve the present population of the area to the extent feasible and to serve the reasonably foreseeable growth needs of the area to the extent practicable;
- Must be necessary for orderly community development and consistent with a current comprehensive community water, waste disposal, or other current development plan for the rural area;
- Must be based on taxes, assessments, income, fees, or other satisfactory sources of revenues in an amount sufficient to provide for facility operation and maintenance, reasonable reserves, and debt payment;
- Must be for public use and installed so as to serve any potential user within the service area who desires service and can be feasibly and legally served; and
- Be unable to finance the proposed project from their own resources or through commercial credit at reasonable rates and terms.

These criteria are the same as found in the current Water and Waste Disposal Facilities grant program.

Notice of Intent To Apply for Grant

Consistent with its statutory authority and the current program, subpart B for this program (§ 5002.106(d)) would require an applicant to provide public notice of its intent to apply for a grant under this program at not more than 60 days before the applicant files its application with the Agency.

Uses of Grant Funds

Subpart B for water and waste disposal facilities grants identifies additional eligible and ineligible uses of

grant funds (§ 5002.106(e) and (f), respectively). The proposed eligible and ineligible uses in the current grant program for these types of projects.

Funding Considerations and Matching Funds

Proposed subpart B identifies additional funding considerations that the Agency will use in determining whether or not to fund an application. These considerations, which are found in § 5002.106(g)(1) and are consistent with the current provisions for grants for this program, are, in summary:

- If the grant results in an annual equivalent dwelling unit (EDU) cost that is not comparable with similar systems, the Agency will determine a grant amount based on achieving EDU costs that are not below similar system user costs;
 - The amount of grant needed to achieve a reasonable wholesale user cost if the applicant provides wholesale sales or services on a contract basis to another system or entity; and
 - The amount necessary to reduce delivery cost to a reasonable level when the annual cost for delivery of service is subsidized.

The provisions for matching funds (§ 5002.106(g)(2)) are consistent with the current Water and Waste Disposal Facilities grant regulation—either 75 percent or 45 percent, depending on the median household income of the service area relative to the poverty line or state nonmetropolitan median income.

Scoring Applications

The priority categories and points associated with those priority categories that would be used to score applications are identified in § 5002.106(h)(1) through (3), and are divided into program-specific priority categories and points, Administrator priority categories and points, and State Director priority categories and points. The maximum number of points an application can receive would be 100 points.

The program-specific priority categories and points are in § 5002.106(h)(1). These priority categories are the same as currently used in scoring water and waste disposal facilities grant applications. The points associated with the priority categories, however, have been modified to total 80 points. The relative point values were not changed between priority categories.

The Administrator and State Director priority categories and points are identified in § 5002.106(h)(2) and (h)(3), respectively. With regard to Administrator priority categories and points, the Water and Waste Disposal

Facilities grant program would allow the Administrator to award up to 10 points based on grant size and to improve the geographic diversity of awardees in a fiscal year. No more than 10 Administrator points would be awarded to an application.

With regard to State Director priority categories, the Water and Waste Disposal Facilities grant program would use the State Director priority categories identified in subpart A (§ 5002.42(b)(2)(i) through (x)) plus two additional priority categories. These two priority categories are:

- Arsenic (as specified in a memorandum of understanding with the USEPA); and
- Areas located within 100 miles of New York City's "ground zero" as the result of the September 11, 2001, attacks.

Each application under this program is eligible for up to 10 points for the State Director priority categories.

Ranking Applications

Unless otherwise specified in a notification, the Agency will rank grant applications under this program four times per year (§ 5002.106(i)). The proposed ranking dates are (in the order in which they occur each fiscal year): December 15, March 15, July 15, and August 15.

Selecting Applications for Funding—Continuing Projects

Consistent with Departmental regulations, the Agency will, in selecting applications for funding, consider whether an application is for a project that has previously received grant funding from the Agency (§ 5002.106(j)). In this situation, the Agency may give a lower scoring application consideration ahead of a higher scoring application if the lower scoring application is for the continuation of an existing funded project. However, if the request for additional grant funds is due to cost overruns, the Agency will give consideration to the lower scoring application only if the cost overrun is due to certain causes. Specifically, the cost overruns must be due to either high bids or unexpected construction problems neither of which can be reduced by negotiations, redesign, use of bid alternatives, rebidding, or other means. However, if the cost overrun exceeds 20 percent of the development cost at time of grant approval or if the scope of the original purpose has changed, the Agency would not use this criterion as a factor in choosing a lower scoring application over a higher scoring application. Such an application

could still be selected for funding, but it would need to compete based on its ranking and other award criteria.

User Charges

Consistent with the current program, § 5002.106(k) identifies expectations for user charges. Specifically, user charges should be reasonable and produce enough revenue to provide for all costs of the facility after the project is complete. In addition, the planned revenue should be sufficient to provide for all debt service, debt reserve, operation and maintenance, and, if appropriate, additional revenue for facility replacement of short-lived assets without building a substantial surplus.

Professional Services and Contracts Related to the Facility

Consistent with the current program, § 5002.106(l) identifies specific requirements for the Water and Waste Disposal Facilities grant program related to professional services and contracts for these types of projects. Areas specifically covered, which are part of the current grant program for water and waster disposal projects, are:

- Fees provided in contracts and agreements;
- Engineering and architectural services;
- Other professional services; and
- Contracts for other services.

User Estimates

Consistent with the current Water and Waste Disposal Facilities grant program, § 5002.106(m) would require applicants who are dependent on users' fees for operation and maintenance expenses to base their income forecast on realistic base estimates. If users are not currently receiving service, the number of maximum users should not be used in making this estimate and the amount of cash contributions required must be set by the applicant and concurred with by the Agency. For most applicants, an enforceable user agreement with a penalty clause would be required. All applicants would be required to provide a positive program to encourage connection by all users as soon as service is available.

Water Rights

Consistent with the current program, § 5002.106(n) would require the applicant to provide the Agency with, as applicable:

- A statement by the applicant's attorney regarding the nature of the water rights owned or to be acquired by the applicant (such as conveyance of title, appropriation and decree,

application and permit, public notice and appropriation and use) and

- A copy of a contract with another company or municipality to supply water; or stock certificates in another company which represents the right to receive water.

Economic Impact Initiatives Grants (§ 5002.107)

The Economic Impact Initiatives grant program is currently being administered under the Community Facilities grant program. The Agency is proposing to continue the current relationship of the Economic Impact Initiative grant program with the Community Facilities grant program. Except for changes that would occur under subpart A of the proposed rule, the Agency is not proposing any changes to the requirements specific to the Economic Impact Initiatives grant program.

Tribal College Grants (§ 5002.108)

As noted earlier, the Tribal College grant program is distinctly different than the other existing grant programs in that it is a very small grant program with a small, statutorily defined set of eligible applicants. Certain provisions in subpart A would apply to this program and certain provisions would not. The provisions that would apply are contained in §§ 5002.1 through 5002.14 and §§ 5002.60 through 5002.80. These provisions generally deal with general requirements of the grant programs and with provisions affecting the actual award of the grants (grant agreement) through grant close-out.

The provisions in subpart A that do not apply to Tribal College grants generally address program notifications, preapplications and applications, applicant eligibility, and processing, scoring, ranking, and selecting applications for funding. These aspects are found in the subpart B program-specific provisions for Tribal College grants in § 5002.108.

Program Notification

Consistent with current program implementation, the Agency will issue a notice each year to the eligible Tribal colleges and universities, identifying the maximum grant size and the date that preapplications are due (§ 5002.108(a)).

Applicant Eligibility

To be eligible for a Tribal College grant, the applicant must be one of the tribal colleges or universities that are identified as 1994 Institutions (§ 5002.108(b)).

Project Eligibility

Grant funds can only be used to develop facilities provided by the Tribal college or university (§ 5002.108(c)). Project eligibility requirements for Tribal College grants are the same as for the Community Facilities grant program, except that a Tribal College grant project does not need to demonstrate economic feasibility (§ 5002.101(b)(3)).

Preapplications and Applications

Both preapplications and applications would have dates by which each should be received by the Agency at the State Office in the State in which the Tribal college or university is located (§ 5002.108(d)). For preapplications, the submittal date will be identified in the annual notification the Agency sends to the Tribal colleges and universities. For applications, the proposed rule would establish March 31 as the application submittal date. The Agency will give priority to preapplications and applications that are received on or before their respective submittal dates over those preapplications and applications that are received after their respective submittal dates.

The proposed rule also requires applicants submitting more than one application in a year to provide a priority listing for the grants it is seeking that year.

Funding Limitations

The maximum amount of a grant awarded under this section would be limited to no more than 95 percent of the total cost of the facility. Further, the Agency would be prohibited from requiring a match of more than 5 percent of the total cost of the facility. (§ 5002.108(e)). These requirements are in response to section 6007 of the 2008 Farm Bill and are different from the current program.

Award Process

In selecting applications for funding, the Agency will use a graduated scale, which is found in § 5002.101(e)(2). In addition, in selecting applications for funding (§ 5002.108(f)), the Agency may:

- Choose to fund only one grant per round from a single applicant;
- Reduce the grant amount for all applicants to a maximum level that will fund at least one application per Tribal college or university that applied during that round; and
- Negotiate to increase the scope of Tribal College projects and grants if funds remain available after the grant selection round.

III. Request for Comments

The Agency is interested in receiving comments on all aspects of the proposed rule. In particular, the Agency is seeking comments in the areas listed below. All comments should be submitted as indicated in the **ADDRESSES** section of this preamble.

A. Criteria for Determining Grant Award Amount for the Rural Energy for America Grant Program (§ 5002.102(f))

The Rural Energy for America program is an evolving area. Therefore, the Agency is seeking comment on whether there are any other criteria that the Agency should consider when awarding funding to grants under this program. Please be sure to provide sufficient detail on each criterion, how it would be measured, and any limitations in its applicability to the various technologies for which grants could be awarded under this program.

B. Project Scoring Criteria for the Rural Energy for America Grant Program (§ 5002.102(g)(1))

In scoring applications under the Rural Energy for America grant program, the proposed rule would apply the same program-specific criteria to feasibility studies as to the actual renewable energy system project or the energy efficiency improvement project. Because the program-specific priority categories and points were developed under the current program for renewable energy systems and energy efficiency improvement projects, the Agency is seeking comment on whether these criteria are appropriate for scoring feasibility studies. The Agency is also seeking comment on alternative scoring criteria for feasibility studies if the ones in the proposed rule are not appropriate. Please be sure to be specific on what criteria you propose, how they would be applied, and your rationale.

C. Minimum Funding Requirements for the Rural Energy for America Grant Program

In the current Renewable Energy System and Energy Efficiency Improvement program, a minimum grant size of \$1,500 is specified for energy efficiency improvement projects and \$2,500 for renewable energy system projects. In this proposed rule, the Agency is not proposing a minimum grant size for this program. The Agency seeks comment on whether there should be a minimum grant size for either or both types of projects under this program and, if so, what that level should be and why. If the Agency decides to implement a minimum grant size for either type of project, the

Agency wants to make sure that it is a “meaningful” level; that is, that the minimum level is not so low that potential applicants would not consider applying for the grant.

D. The Grant Programs Being Included in the Proposed Rule

Earlier in this notice, the Agency provided an explanation as to how the eight grant programs were selected for inclusion in the proposed rule. The Agency is seeking comment on whether it is appropriate to include these specific grant programs and, if not, which of the grant programs should be removed and why.

E. Grant Request Relative to Remaining Available Program Funds

As proposed, the Agency would be able to select the next highest scoring application if the higher scoring application requests grant funds in excess of 25% of the remaining available funds for a nationally competed grant program. The Agency is seeking specific comment on whether the proposed threshold of 25% is appropriate and why or why not. The Agency is also seeking comment on alternative thresholds and on the applicability of such thresholds (i.e., should they be program-specific or applied to all nationally competed grant programs). Please be sure to provide the rationale for the suggested thresholds and their applicability.

F. Minimum Score for Determining Applications To Be Eligible

The Agency is seeking comment as to whether applications must obtain a minimum score in order to be considered eligible for funding and, if so, what that minimum score should be. At this stage, the Agency has considered a minimum score in the vicinity of 40 points, but has decided at this point not to include a specific number in the proposed rule. By including such a minimum score, applicants would be given an understanding of how an application must score to receive consideration. However, the Agency is also concerned about the merits of establishing such a uniform score upfront without consideration of the availability of funds as well as the size and quality of the applicant pool.

If the Agency were to establish a minimum score, the Agency would consider including a provision that would allow it to adjust the minimum score each year through the issuance of a notification (e.g., a **Federal Register** notice).

List of Subjects

7 CFR Part 1703

Community development, Grant programs—education, Grant programs—health care, Grant programs—housing and community development, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1780

Business and industry, Community development, Community facilities, Grant programs—housing and community development, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply, Watersheds.

7 CFR Part 3570

Accounting, Administrative practice and procedure, Conflicts of interests, Environmental impact statements, Fair housing, Grant programs—housing and community development, Loan programs—housing and community development, Rural areas, Subsidies.

7 CFR Part 4280

Rural development assistance, Economic development, Energy, Grant programs, Renewable energy systems, Energy efficiency improvements, Rural areas.

7 CFR Part 4284

Agricultural commodities, Agriculture innovation centers, Agricultural marketing research, Business and Industry, Grant programs—housing and community development, Rural areas, Rural development, Value-added.

7 CFR Part 5002

Accounting, Agriculture innovation centers, Community development, Economics, Energy efficiency improvements, Environmental impact statements, Renewable energy systems, Rural areas, Rural development, Value-added, Waste treatment and disposal, Water supply.

For the reasons set forth in the preamble, under the authority at 5 U.S.C. 301 and 7 U.S.C. 1989, Chapters XVII, XXXV, and XLII of title 7 of the Code of Federal Regulations are proposed to be amended and Chapter L is proposed to be amended as follows:

CHAPTER XVII—RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE

PART 1703—Rural Development

1. The authority citation for part 1703 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.* and 950aaa *et seq.*

Subpart E of Part 1703 [Removed and reserved]

2. Subpart E of part 1703 is removed and reserved.

CHAPTER XVII—RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE

PART 1780—Rural Development

3. The authority citation for part 1780 continues to read as follows:

Authority: U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

Subpart A of Part 1780 [Amended]

4. Section 1780.10 is amended by removing paragraph (b)(4) and revising paragraphs (b)(2) and (b)(3) to read as follows:

§ 1780.10 Limitations.

- (a) * * *
- (b) * * *
- (1) * * *

(2) Pay any costs of a project when the median household income of the service area is more than 100 percent of the nonmetropolitan median household income of the State; and

(3) Pay project costs when other loan funding for the project is not at reasonable rates and terms.

* * * * *

CHAPTER XXXV—RURAL HOUSING SERVICE, DEPARTMENT OF AGRICULTURE

PART 3570—Community Programs

5. The authority citation for part 3570 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

Subpart B of Part 3570 [Amended]

6. Section 3570.51 is amended by adding paragraphs (a)(1) and (a)(2) to read as follows:

§ 3570.51 General.

- (a) * * *

(1) The provisions of 7 CFR part 3570, subpart B, do not apply to grants made under 7 CFR part 5002.

(2) Grants made in combination with loans that are issued under either 7 CFR part 1942, subpart A or 7 CFR part 5001 shall be subject to the requirements of 7 CFR part 3570, subpart B.

* * * * *

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

PART 4280—LOANS AND GRANTS

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

Authority: 7 U.S.C. 8106.

Subpart B of Part 4280 [Amended]

8. Section 4280.101 is amended by adding paragraphs (a)(1) and (a)(2) to read as follows:

§ 4280.101 Purpose.

- (a) * * *

(1) The provisions of 7 CFR part 4280, subpart A, do not apply to grants made under 7 CFR part 5002.

(2) Grants made in combination with loans that are issued under 7 CFR part 4280, subpart D, shall be subject to the requirements of 7 CFR part 4280, subpart A.

* * * * *

PART 4284—GRANTS

9. The authority citation for part 4284 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart F also issued under 7 U.S.C. 1932(e).

Subpart G also issued under 7 U.S.C. 1926(a)(11).

Subpart J also issued under 7 U.S.C. 1621 note.

Subpart K also issued under 7 U.S.C. 1621 note.

Subpart F of Part 4284 [Removed and Reserved]

10. Subpart F of part 4284 is removed and reserved.

Subpart J of Part 4284 [Removed and Reserved]

11. Subpart J of part 4284 is removed and reserved.

12. Chapter L consisting of parts 5000 through 5099 is established and a new part 5002 is added to read as follows:

CHAPTER L—RURAL DEVELOPMENT, DEPARTMENT OF AGRICULTURE

PART 5002—GRANTS

Subpart A—General Provisions

Sec.

- 5002.1 Purpose and scope.
- 5002.2 Definitions and abbreviations.
- 5002.3 Appeal rights.
- 5002.4 Exception authority.
- 5002.5 Compliance with other Federal laws.
- 5002.6 State laws, local laws, and regulatory commission regulations.
- 5002.7 Environmental requirements.
- 5002.8 Forms, regulations, and instructions.
- 5002.9—5002.14 [Reserved]

Funding and Programmatic Change Notifications

- 5002.15 Notifications.
- 5002.16—5002.19 [Reserved]

Eligibility

- 5002.20 Applicant eligibility.

- 5002.21 Ineligible applicants.
- 5002.22 Project eligibility.
- 5002.23 Ineligible projects and purposes.
- 5002.24—5002.29 [Reserved]

Applying for a Grant

- 5002.30 Applying for a grant.
- 5002.31 Preapplications.
- 5002.32 Applications.
- 5002.33—5002.39 [Reserved]

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- 5002.40 Processing applications.
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- 5002.50 Award process.
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- 5002.60 Actions prior to grant closing or start of construction, whichever comes first.
- 5002.61 Grant agreement.
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- 5002.70 Monitoring and reporting program performance.
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- 5002.80 Grant close out and related activities.
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Subpart B—Program Specific Provisions

- 5002.101 Community Facilities.
 - 5002.102 Rural Energy for America Grants.
 - 5002.103 Rural Cooperative Development Grants.
 - 5002.104 Distance Learning and Telemedicine Grants.
 - 5002.105 Value-Added Producer Grants.
 - 5002.106 Water and Waste Disposal Facilities Grants.
 - 5002.107 Economic Impact Initiatives Grants.
 - 5002.108 Tribal College Grants.
 - 5002.109—5002.200 [Reserved]
- Authority:** 5 U.S.C. 301; 7 U.S.C. 1926(a)(1); 7 U.S.C. 1932(a); 7 U.S.C. 8106.

Subpart A—General Provisions

§ 5002.1. Purpose and scope.

(a) *General.* The purpose and scope of this part is to simplify, standardize, and improve the administration and implementation of grants and cooperative agreements made by Rural Development. This part applies to those grant and cooperative agreement programs specified in subpart B of this part.

(b) *Terminology applicable to subpart A.* This subpart's substantive rules are the same for grants and cooperative agreements. Therefore, certain

simplified terminology is used in the text. Specifically in all portions of this subpart:

(1) Each provision that applies to “grants” also applies to “cooperative agreements,” even if the latter term does not appear in the provisions unless the context otherwise means specifically cooperative agreement.

(2) Each provision that applies to “applicants” for grants or “grantees” applies to “applicants” for cooperative agreements or “recipients of cooperative agreements,” even if the latter terms do not appear in the provision unless the context otherwise means specifically a cooperative agreement applicant or recipient.

(3) The term “grantee” or “applicant” refers equally to recipients or applicants of grants and recipients or applicants of cooperative agreements.

(4) The term “Agency” refers equally to a Rural Development agency that awards a grant and to one that awards a cooperative agreement.

(5) The term “subgrant” refers equally to certain awards under grants and to the same kinds of awards under cooperative agreements.

(c) *Applicability.* (1) “Grant only” applications. Unless otherwise specified in another part, the requirements of this part apply only to applicants submitting a “grant only” application. Any grant that is requested in combination with a loan (a loan and grant combination) will be determined based on the process associated with loan selection.

(2) *Tribal College Grants.* Unless otherwise specified in § 5002.108, the provisions in § 5002.15 through § 5002.59 do not apply to Tribal College grants.

(d) *Incorporation by reference.* Unless specifically stated, this part incorporates by reference the regulations of the Department of Agriculture’s Office of Chief Financial Officer (or successor office) as codified in 7 CFR parts 3000 through 3099, including but not necessarily limited to 7 CFR parts 3015 through 3019, 7 CFR part 3021, and 7 CFR part 3052, and successor regulations to these parts.

(e) *Relationship between subpart A and subpart B requirements.* All grant programs subject to this part are subject to the requirements and definitions specified in subpart A, unless there is a program specific provision or definition in subpart B that overrides the corresponding subpart A provision. Such a subpart B provision may modify the scope of or replace entirely the corresponding subpart A provision.

§ 5002.2 Definitions and abbreviations.

Each term used in this part shall have the meaning as found in the Departmental regulations and in this part. If a term is defined in this part and in the Departmental regulations, such term shall have the meaning as found in this part. If there is a conflict in how a term is defined in this part and in how it is defined in the Departmental regulations, it shall have the meaning as defined in this part.

(a) Definitions.

1994 Institution. A college identified as such for purposes of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note).

Administrator. Each of the Administrators of the Rural Utilities Service, the Rural Business-Cooperative Service, the Rural Housing Service or their respective designees or successors, as appropriate.

Agency identified target areas. An identified area in the State strategic plan or other plans developed by the Rural Development State Director.

Agency. The Rural Housing Service or successor for the programs it administers; the Rural Utilities Service or successor for the programs it administers; and the Rural Business-Cooperative Service or successor for the programs it administers.

Agricultural commodity. An unprocessed product of farms, ranches, nurseries, and forests. Agricultural commodities include: Livestock, poultry, and fish; fruits and vegetables; grains, such as wheat, barley, oats, rye, triticale, rice, corn, and sorghum; legumes, such as field beans and peas; animal feed and forage crops; seed crops; fiber crops, such as cotton; oil crops, such as safflower, sunflower, corn, and cottonseed; trees grown for lumber and wood products; nursery stock grown commercially; Christmas trees; ornamentals and cut flowers; and turf grown commercially for sod. Agricultural commodities do not include horses or animals raised as pets, such as cats, dogs, and ferrets.

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.

Agricultural producer group. An organization that represents independent producers, whose mission includes working on behalf of independent producers and the majority of whose membership and board of

directors are comprised of independent producers.

Agricultural product. Plant and animal products and their by-products to include crops (including farming); livestock (including ranching); forestry products, hydroponics; nursery stock; aquaculture; fish and seafood products.

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

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 un-segregated solid waste.

Commercially available. A system that has a proven operating history of viability of at least one year, 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.

Cooperative agreement. A legal instrument reflecting a relationship between the Agency and a State, a local government, or other recipient when:

(i) The principal purpose of the relationship is to transfer a thing of value to the State, local government, or other recipient to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the Agency; and

(ii) Substantial involvement is expected between the Agency and the State, local government, or other recipient when carrying out the activity contemplated in this agreement.

Cooperative development. The startup, expansion or operational improvement of a cooperative to promote development in rural areas of services and products, processes that can be used in the marketing of products, or enterprises that add value to farm products through processing or marketing activities. Development activities may include, but are not limited to, technical assistance, research services, educational services and

advisory services. Operational improvement includes making the cooperative more efficient or better managed.

Data terminal equipment. Equipment that converts user information into data signals for transmission, or reconverts the received data signals into user information, and is normally found on the terminal of a circuit and on the premises of the DLT end user.

Day. Calendar day, unless otherwise stated.

Departmental regulations. The regulations of the Department of Agriculture's Office of Chief Financial Officer (or successor office) as codified in 7 CFR parts 3000 through 3099, including but not necessarily limited to 7 CFR parts 3015 through 3019, 7 CFR part 3021, and 7 CFR part 3052, and successor regulations to these parts.

Distance learning. A telecommunications link to a DLT end user through the use of eligible equipment to:

(i) Provide educational programs, instruction, or information originating in one area, whether rural or not, to students and teachers who are located in a rural area; or

(ii) Connect teachers and students, located in one area, whether rural or not, with teachers and students that are located in a rural area.

DLT end user. One or more of the following:

(i) Rural elementary, secondary schools, and other educational institutions, such as institutions of higher education, vocational and adult training and education centers, libraries, and teacher training centers, and students, teachers and instructors using such rural educational facilities, that participate in a rural distance learning telecommunications program through a project funded under this subpart;

(ii) Rural hospitals, primary care centers or facilities, such as medical centers, nursing homes, and clinics, and physicians and staff using such rural medical facilities, that participate in a rural telemedicine program through a project funded under this subpart; or

(iii) Other rural community facilities, institutions, or entities that receive distance learning or telemedicine services.

DLT end-user site. A facility that is part of a network or telecommunications system that is utilized by DLT end users.

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

Emerging market. A new or developing market.

Energy assessment. An assessment 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 assessment identifies and provides a savings and cost analysis of low-cost/no-cost measures. The assessment will estimate the overall costs and expected energy savings from these improvements, and dollars saved per year. The assessment will estimate weighted-average payback period in years.

Energy audit. An audit 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 audit will provide detailed project costs and savings information with a high level of confidence sufficient for major capital investment decisions similar to but in more detail than an energy assessment.

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

Equivalent dwelling unit. The level of service provided to a typical rural residential dwelling.

Essential community facilities. The physical structure financed or the resulting service provided to primarily rural residents that is operated on a non-profit basis and that combined or severally must:

(i) Perform or fulfill a function customarily provided by a local unit of government;

(ii) Be a public improvement needed for the orderly development of a rural community;

(iii) Not include a project that benefits a single individual or group of single individuals as opposed to a class within a community;

(iv) Not include private affairs or commercial or business undertakings (except for limited authority for industrial parks, agricultural exposition centers, fair grounds, farmers markets, assisted living facilities, adult day care facilities, and child care facilities) unless it is a minor part of the total facility; and

(v) Be within the area of jurisdiction or operation for eligible public bodies or a similar local rural service area of a non-profit corporation.

Facility. The physical structure financed by the Agency or the resulting service provided to rural residents.

Farm or ranch. Any place from which \$1,000 or more of agricultural products

(crops and livestock) were raised and sold or would have been raised and sold during the previous year, but for an event beyond the control of the farmer or rancher.

Farmer or rancher cooperative. A farmer or rancher owned and controlled business from which benefits are derived and distributed equitably on the basis of use by each of the farmer or rancher owners.

Feasibility study. An analysis by a qualified consultant of the economic, market, technical, financial, and management capabilities of a proposed project, venture, or business in terms of its expectation for success.

Financial feasibility. The ability of a project or business to achieve the income, credit, and cash flows to financially sustain a project over the long term.

Fiscal year. Means the Federal government's fiscal year.

Grant. A legal instrument reflecting a relationship between the Agency and a State, a local government, or other recipient when the principal purpose of the relationship is to transfer a thing of value to the State, local government, or other recipient to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the Agency.

Hub. A facility that is part of a network or telecommunications system that provides educational or medical services to DLT end-user sites.

In-kind contributions. Applicant or third-party real or personal property or services benefiting the Federally assisted project or program that are provided by the applicant or a third-party entity consistent with this part. The identifiable value of goods and services must be considered eligible expenditures, must be used for eligible purposes of the grant program, and must directly benefit the project.

Independent producers. Agricultural producers, individuals or entities (including for-profit and non-profit corporations, limited liability companies (LLCs), partnerships, or limited liability partnerships (LLPs), where the entities are solely owned or controlled by agricultural producers who own a majority ownership interest in the agricultural product that is produced. Independent producers must produce and own the agricultural product to which value is being added. Producers who produce the agricultural product under contract for another entity but do not own the product produced are not independent producers. Independent producers must

supply product they produce and own the value-added venture.

Indian tribe. This term has the meaning given it in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

Institution of higher education. This term has the meaning given it in section 102(a) of the Higher Education Act of 1965 (20 U.S.C. 1002(a)).

Instructional programming. Educational material, including computer software, that would be used for educational purposes in connection with eligible equipment but does not include salaries, benefits, and overhead of medical or educational personnel.

Interactive video equipment. Equipment used to produce and prepare for transmission audio and visual signals from at least two distant locations so that individuals at such locations can orally and visually communicate with each other. Such equipment includes monitors, other display devices, cameras or other recording devices, audio pickup devices, and other related equipment.

Local exchange carrier. A commercial, cooperative or mutual-type association, or public body that is engaged in the provision of telephone exchange service or exchange access.

Majority-controlled producer-based business venture. A venture where more than 50 percent of the ownership and control is held by independent producers, or, partnerships, LLCs, LLPs, corporations, or cooperatives that are themselves 100 percent owned and controlled by independent producers.

Matching funds. The applicant's contribution for approved purposes in accordance with the Departmental regulations.

Non-profit. Any entity or organization no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual.

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

Planning grants. Grants to facilitate the development of a defined program of economic activities to determine the viability of a potential value-added venture, including feasibility studies, marketing strategies, business plans and legal evaluations.

Post-application. The period of time after the Agency has received an essentially completed application. An "essentially completed" application is an application that contains all parts

necessary for the Agency to determine applicant and project eligibility, to score the application, and to conduct the technical evaluation.

Poverty line. The level of income for a family of four, as determined consistent with criteria established by the Department of Health and Human Services or the Department of Housing and Urban Development, as determined by the Agency.

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.

Product segregation. Physical separation of a product or commodity from similar products. Physical separation requires a barrier to prevent mixing with the similar product.

Public body. A municipality, county, or other political subdivision of a State; a special purpose district; or an Indian tribe on a Federal or State reservation or other Federally-recognized Indian tribe or an organization controlled by any of the above.

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

Ranking date. A specified date on or after which the Agency will rank all scored applications for a specific grant program to create a priority list of applications. Grant programs may have more than one ranking date.

Renewable biomass.

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

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

(B) would not otherwise be used for higher-value products; and

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

(ii) any organic matter that is available on a renewable or recurring basis from non-Federal land or land belonging to an Indian or Indian tribe that is held in

trust by the United States or subject to a restriction against alienation imposed by the United States, including:

(A) renewable plant material, including feed grains; other agricultural commodities; other plants and trees; and algae; and

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

Renewable energy.

(i) Energy derived from a wind, solar, renewable biomass, ocean (including tidal, wave, current, and thermal), geothermal, or hydroelectric source;

(ii) Hydrogen derived from renewable biomass or water using an energy source described in paragraph (i) of this definition.

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

Rural or rural area.

(i) For purposes of providing Renewable Energy/Energy Efficiency and Rural Cooperative Development grants, rural and rural area are defined as any area of a State not in a city or town that has a population of more than 50,000 inhabitants, according to the latest decennial census of the United States, and the contiguous and adjacent urbanized area.

(ii) For the purpose of providing Community Facilities and Economic Impact Initiatives grants, rural and rural area are defined as any area not in a city, town, or Census Designated Place with a population of more than 20,000 inhabitants according to the latest decennial census of the United States.

(iii) For the purpose of providing Distance Learning and Telemedicine grants, rural and rural area are defined as any area not within the boundary of (A) an urbanized area or (B) an urban cluster in excess of 20,000 inhabitants according to the latest decennial census of the United States.

(iv) For the purpose of providing Water and Waste Disposal facilities grants, rural and rural area are defined as any area not in a city, town, or Census Designated Place with a population in excess of 10,000 inhabitants, according to the latest decennial census of the United States.

(v) For cooperative agreements, the definition of rural or rural area is the definition for the program which provides the source of funds for the cooperative agreement.

(vi) For the purposes of this definition, cities and towns are

incorporated population centers with definite boundaries, local self-government, and legal powers set forth in a charter granted by the State. For Puerto Rico, Census Designated Place (CDP), as defined by the U.S. Census Bureau, will be used as the equivalent to city or town. For the purpose of defining a rural area in the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands, the Agency shall determine what constitutes rural and rural area based on available population data.

Rural community facility. A facility such as a school, library, learning center, training facility, hospital, or medical facility that provides educational or health care benefits primarily to residents of rural areas.

Rural Development. A mission area of the Under Secretary for Rural Development within the U.S. Department of Agriculture (USDA), which includes Rural Housing Service, Rural Utilities Service, and Rural Business-Cooperative Service and their successors.

Service area. The area reasonably expected to be served by the project/facility.

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 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.

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

State director. The term "State Director" means, with respect to a State,

the Director of the Rural Development State Office.

State office. USDA Rural Development offices located in each state.

State program official. The Agency official at the State level who has been delegated the responsibility of administering the water and waste disposal facilities programs under this regulation for a particular State or States.

State strategic plan. A plan developed by each State for Rural Development initiatives and the type of assistance required. Plans shall identify goals, methods, and benchmarks for measuring success.

Statewide nonmetropolitan median household income. The median household income of the State's nonmetropolitan counties and portions of metropolitan counties outside of cities, towns or places of 50,000 or more population.

Technical assistance. Assistance in learning to manage, operate, or use equipment or systems; and studies, analyses, designs, reports, manuals, guides, literature, or other forms of creating, acquiring, or disseminating information.

Telecommunications systems plan. The plan submitted by an applicant in accordance with § 1703.125 for grants.

Telecommunications terminal equipment. The assemblage of telecommunications equipment at the end of a circuit or path of a signal, including but not limited to facilities that receive or transmit over the air broadcast, satellite, and microwave, normally located on the premises of the DLT end user, that interfaces with telecommunications transmission facilities, and that is used to modify, convert, encode, or otherwise prepare signals to be transmitted via such telecommunications facilities, or that is used to modify, reconvert, or carry signals received from such facilities, the purpose of which is to accomplish the goal for which the circuit or signal was established.

Telecommunications transmission facilities. Facilities that transmit, receive, or carry voice, video, or data between the telecommunications terminal equipment at each end of the telecommunications circuit or path. Such facilities include microwave antennae, relay stations and towers, other telecommunications antennae, fiber-optic cables and repeaters, coaxial cables, communication satellite ground station complexes, copper cable electronic equipment associated with telecommunications transmissions, and similar items.

Telemedicine. A telecommunications link to a DLT end user through the use of eligible equipment that electronically links medical professionals at separate sites in order to exchange health care information in audio, video, graphic, or other formats for the purpose of providing improved health care services primarily to residents of rural areas.

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

Tribal college or university. An institution of higher education that is formally controlled, or has been formally sanctioned, or chartered, by the governing body of an Indian tribe or tribes, except that no more than one such institution shall be recognized with respect to any such tribe, and includes an institution listed in the Equity in Educational Land Grant Status Act of 1994.

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

Value-added. The incremental value that is realized by the producer from an agricultural commodity or product as the result of (i) A change in its physical state, (ii) differentiated production or marketing, as demonstrated in a business plan, (iii) product segregation, or (iv) is aggregated and marketed as a locally-produced agricultural food product. Also, the economic benefit realized from the production of farm or ranch-based renewable energy, including E-85 fuel. Incremental value may be realized by the producer as a result of either an increase in value to buyers or the expansion of the overall market for the product. Examples include milling wheat into flour, slaughtering livestock or poultry, making strawberries into jam, the marketing of organic products, an identity-preserved marketing system, wind or hydro power produced on land that is farmed and collecting and converting methane from animal waste to generate energy. Identity-preserved marketing systems include labeling that identifies how the product was produced and by whom.

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

Working capital grants. Grants to provide funds to operate ventures and pay the normal expenses of the venture that are eligible uses of grant funds.

(b) *Abbreviations:*

CDP—Census Designated Place.

DLT—Distance Learning and Telemedicine.

EDU—Equivalent Dwelling Unit.

LLC—Limited liability company.

LLP—Limited liability partnership.
NSLP—National School Lunch Program.

RUS—The Rural Utilities Service or a successor agency, an agency within USDA established pursuant to section 232 of the Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354, 108 Stat. 3178), successor to the Rural Electrification Administration and successor to the Farmer's Home Administration and the Rural Development Administration with respect to certain water and waste disposal loan and grant programs.

SBA—Small Business Administration.

USDA—United States Department of Agriculture.

§ 5002.3 Appeal rights.

A person may seek a review of an Agency decision under this part from the appropriate Agency official that oversees the program in question or appeal to the National Appeals Division in accordance with 7 CFR part 11 of this title.

§ 5002.4 Exception authority.

Except as specified in paragraphs (a) through (c) of this section, the applicable Administrator may make exceptions to any requirement or provision of this part, if such exception is necessary to implement the intent of the authorizing statute in a time of national emergency or in accordance with a Presidentially-declared disaster, or, on a case-by-case basis, when such an exception is in the best financial interests of the Federal Government and is otherwise not in conflict with applicable laws.

(a) *Applicant eligibility.* No exception to applicant eligibility can be made.

(b) *Project eligibility.* No exception to project eligibility can be made.

(c) *Rural area definition.* No exception to the definition of rural area can be made.

§ 5002.5 Compliance with other Federal laws.

Applicants must comply with other applicable Federal laws including Equal Employment Opportunities, Americans with Disabilities Act, Equal Credit Opportunity Act, Fair Housing Act, and the Civil Rights Act of 1964.

§ 5002.6 State laws, local laws, regulatory commission regulations.

If there are conflicts between this part and State or local laws or regulatory commission regulations, the provisions of this part will control.

§ 5002.7 Environmental requirements.

(a) All grants awarded under this part are subject to the environmental

requirements in subpart G of 7 CFR part 1940 or 7 CFR 1794, as applicable, or successor regulations.

(b) The applicant must not take any action or incur 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. If the applicant takes such adverse actions, the project will be ineligible for funding under this part.

§ 5002.8 Forms, regulations, and instructions.

Copies of all forms, regulations, instructions, and other materials related to programs referenced in this part may be obtained through the Agency.

§§ 5002.9—5002.14 [Reserved]

Funding and Programmatic Change Notifications

§ 5002.15 Notifications.

In implementing this part, the Agency will issue notifications addressing funding and programmatic changes, as specified in paragraphs (a) and (b) of this section, respectively, for each grant program under this part. The methods that the Agency will use in making these notifications is specified in paragraph (c) of this section, and the timing of these notifications is specified in paragraph (d) of this section.

(a) *Funding.* The Agency will issue notifications concerning funding for each program as described in paragraphs (a)(1) through (3) of this section.

(1) For each Nationally-competed grant program, the funding level and the minimum and maximum grant amount.

(2) For each State-allocated grant program, the funding level and minimum and maximum grant amount, as proposed by State Directors and as approved by the Agency.

(3) Any additional funding information associated with an individual grant program as determined by the Agency.

(b) *Programmatic changes.* For each program, as applicable, the Agency will issue notifications of the programmatic changes specified in paragraphs (b)(1) through (5) of this section.

(1) The set of Administrator priority categories or their point allocation, if the provisions specified in subparts A and B are not to be used for awarding Administrator points.

(2) The set of State Director priority categories or their point allocation, if the provisions specified in subparts A and B are not to be used for awarding

State Director points, as proposed by State Directors and as approved by the Agency.

(3) Additional reports that are generally applicable across projects within a program associated with the monitoring of and reporting on project performance.

(4) Any change in a program's ranking dates.

(5) For programs with a specified application date, any change in the application date.

(c) *Notification methods.* The Agency will issue the information specified in paragraphs (a) and (b) of this section as specified in paragraphs (c)(1) through (3) of this section.

(1) For Nationally-competed grant programs covered by this part, the Agency will issue one or more **Federal Register** notices.

(2) For State-allocated grant programs covered by this part, the Agency will make the information available on the Agency's Web site.

(3) For both Nationally-competed grant programs and State-allocated grant programs, all information will be available at any Rural Development office.

(d) *Timing.* The Agency will make the information specified in paragraphs (a) and (b) of this section available as specified in paragraphs (d)(1) through (3) of this section.

(1) The Agency will make the information specified in paragraph (a) of this section available each fiscal year.

(2) The Agency will make the information specified in paragraphs (b)(1) and (b)(2) of this section available at least 30 days prior to the first ranking date in the year or the application deadline, as applicable.

(3) The Agency will make the information specified in paragraphs (b)(3) through (b)(5) of this section available on an as needed basis.

§ 5002.16—5002.19 [Reserved]

Eligibility

§ 5002.20 Applicant eligibility.

To be eligible for a grant under this part, an applicant must meet the applicant eligibility requirements for the applicable grant program as specified in subpart B of this part and the requirements specified in paragraphs (a) and (b) of this section.

(a) *Citizenship.*

(1) Individual applicants must:

(i) be citizens of the United States (U.S.), the Republic of Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, or American Samoa, or

(ii) reside in the U.S. after legal admittance for permanent residence.

(2) Entities other than individuals must be at least 51 percent owned by persons who are either citizens as identified under paragraph (a)(1)(i) of this section or legally admitted permanent residents residing in the U.S.

(b) *Legal authority and responsibility.* Each applicant must have, or obtain, the legal authority necessary to carry out the purpose of the grant.

§ 5002.21 Ineligible applicants.

(a) Consistent with the department regulations, an applicant is ineligible if the applicant is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

(b) An applicant will be considered ineligible for a grant due to an outstanding judgment obtained by the U.S. in a Federal Court (other than U.S. Tax Court), is delinquent on the payment of Federal income taxes, or is delinquent on Federal debt.

§ 5002.22 Project eligibility.

To be eligible for a grant under this part, a project or purpose must, at a minimum, meet the project or purposes eligibility requirements for the applicable grant program as specified in subpart B of this part. In addition, the project or purpose must meet each of the requirements specified in paragraphs (a) through (c) of this section, as applicable.

(a) The project or purpose must primarily serve a rural area.

(b) For those projects and purposes that acquire or improve real or personal property, the applicant must be the owner of the property or have leasehold interest acceptable to the Agency in the property and control the revenues and expenses of the project, including operation and maintenance.

(c) For projects and purposes that are determined by a service area, boundaries for the proposed service area must be chosen in such a way that no user or area will be excluded because of race, color, religion, sex, marital status, age, disability, or national origin. This does not preclude:

(1) Financing or constructing projects in phases when it is not practical to finance or construct the entire project at one time, and

(2) Financing or constructing facilities where it is not economically feasible to serve the entire area, provided economic feasibility is determined on the basis of the entire system or facility and not by considering the cost of separate extensions to, or parts thereof. Additionally, the applicant must

publicly announce a plan for extending service to areas not initially receiving service and must provide written notice to potential users located in such areas.

§ 5002.23 Ineligible projects and purposes.

Grants under this part must not be used for:

(a) Investment or arbitrage, or speculative real estate investment.

(b) Prostitution or projects generating income from activities of a prurient sexual nature.

(c) Any project eligible for Rural Rental Housing and Rural Cooperative Housing loans under sections 515, 521, and 538 of the Housing Act of 1949, as amended.

(d) Any facility used primarily for the purpose of housing Federal or State agencies.

(e) Finders', packagers', or loan brokers' fees. Pay costs of preparing the application package for funding under this program.

(f) Any project deriving income from illegal drugs, drug paraphernalia, or any other illegal product or activity.

(g) To pay the applicant for the rental of equipment or machinery owned by the applicant.

(h) The payment of either a judgment or a debt owed to the United States.

(i) Any project that creates, directly or indirectly, a conflict of interest or an appearance of a conflict of interest.

(j) Properties to be used for commercial rent when the grantee has no control over tenants and services offered except for industrial-site infrastructure development and limited sections of essential community facilities when the activity in the leased space is related to and enhances the primary purpose for which the facility is being established by the grantee.

(k) Any project located within the Coastal Barriers Resource System that does not qualify for an exception as defined in section 6 of the Coastal Barriers Resource Act, 16 U.S.C. 3501 *et seq.*

(l) Any project located in a special flood or mudslide hazard area as designated by the Federal Emergency Management Agency in a community that is not participating in the National Flood Insurance Program unless the project is an integral part of a community's flood control plan.

(m) Fund political activity.

(n) Any other similar project or purpose that the Agency determines is ineligible for funding under this part and publishes in a **Federal Register** notice.

§§ 5002.24—5002.29 [Reserved]

Applying for a Grant

§ 5002.30 Applying for a grant.

(a) *Preapplications.* Unless required under the Departmental regulations, the public has the option of submitting a preapplication as specified in § 5002.31. The submission of a preapplication, or the lack thereof, does not affect in any way the scoring of the subsequent application. In addition, applicants who submit a preapplication do not receive any priority for funding under this part.

(b) *Conformance with § 5002.32.* All applicants are required to submit an application, as specified in § 5002.32.

(c) *Filing instructions.* Unless otherwise specified in a notification issued under § 5002.15, the following requirements apply to all grant preapplications and applications submitted under this part.

(1) *When to submit.*

(i) *Preapplications.* For grant programs with an open application period, preapplications for all programs may be submitted at any time. For grant programs with an application deadline, preapplications must be submitted at least 90 days before the application deadline.

(ii) *Applications.* For grant programs with an open application period, applications may be submitted at any time. For grant programs with an application deadline, applications must be received on or before the application deadline to receive consideration for funding for that fiscal year.

(iii) *Incomplete applications.* Incomplete applications will be rejected. Applicants will be informed of the elements that made the application incomplete. If a resubmitted application is received by the applicable application deadline, the Agency will reconsider the application.

(2) *Where to submit.* All preapplications and applications may be submitted to any Rural Development office or on line through grants.gov.

(3) *Format.* Preapplications and applications may be submitted as hard copy or electronically via grants.gov. If submitted as hard copy, an original and one hard copy of the entire application and supporting documentation must be submitted.

§ 5002.31 Preapplications.

Unless otherwise excepted, the provisions of this section apply to all programs under this part.

(a) Submittal of a preapplication is optional under this part unless it is otherwise required under the Departmental regulations.

(1) When submitting a preapplication, all applicants must comply with the Departmental regulations, except as provided in paragraph (a)(2) of this section.

(2) In lieu of filing SF 424, "Application for Federal Assistance," a member of the public may instead submit a written request for an eligibility determination alone. Members of the public should contact a Rural Development office to obtain a list of the items needed to make an eligibility assessment for the specific grant program in which the member is interested.

(b) The Agency will review all preapplications to make an assessment as to applicant and project eligibility. If the preapplication is submitted by a government applicant as required under the Departmental regulations, the Agency will make its assessment in accordance with the Departmental regulations. If the preapplication is submitted on a voluntary basis, the Agency will make an informal assessment of both the applicant's eligibility and the project's eligibility. In all instances, the Agency will then provide a written response to the applicant on its assessment.

§ 5002.32 Applications.

(a) *Application forms.* The following application forms, as applicable, must be used in applying for a grant under this part.

(1) Form SF-424, "Application for Federal Assistance."

(2) Form SF-424A, "Budget Information—Non-Construction Programs."

(3) Form SF-424B, "Assurances—Non-Construction Programs."

(4) Form SF-424C, "Budget Information—Construction Programs."

(5) Form SF-424D, "Assurances—Construction Programs."

(b) *Other forms and instructions.* The Agency will make available to the public the necessary forms and instructions for filing an application on a program-specific basis. These forms and instructions may be obtained from any Rural Development office, Rural Development National Headquarters, and the Agency's Web site.

§§ 5002.33—5002.39 [Reserved]

Processing and Scoring Applications

§ 5002.40 Processing applications.

(a) *Initial review.* Upon receipt of an application, the Agency will conduct a review to determine if the applicant and project are eligible and if the project is feasible or is likely to be feasible with regard to financial, technical, and

environmental feasibility and sustainability of the project. If applicant or project eligibility has already been determined through the submittal of a required preapplication, the Agency will review the application to ensure no changes have occurred that would affect eligibility.

(b) *Notifications.* After the review in paragraph (a) of this section has been conducted, the Agency will notify the applicant in writing of the Agency's findings. If the Agency has determined that either the applicant or project is ineligible or that the project is not likely to be feasible, it will include in the notification the reason(s) for its determination(s).

(c) *Resubmittal by applicants.* Applicants may submit revised applications to the Agency in response to the notification received under paragraph (b) of this section. For grant programs with an open application period, each revised grant application will be processed by the Agency at the next applicable ranking date for the applicable grant program. For grant programs with a specified application deadline, each revised grant application will be processed by the Agency if it is received on or before the application deadline for that grant program. If such revised applications are not received by the specified application deadline for the grant program, the Agency will not process the application.

(d) *Subsequent ineligibility determinations.* If at any time an application is determined to be ineligible, the Agency will notify the applicant in writing of its determination.

§ 5002.41 Application withdrawal.

During the period between the submission of an application and the execution of documents, the applicant must notify, in writing, the Agency if the project is no longer viable or the applicant no longer is requesting financial assistance for the project. When the applicant so notifies the Agency, the selection will be rescinded or the application withdrawn.

§ 5002.42 Scoring applications.

(a) *General.* The Agency will only score applications for which it has determined that the applicant and project are eligible and that the project is feasible or is likely to be feasible.

(1) For grant programs with an open application period, each such application the Agency receives in a Federal fiscal year will be scored in the fiscal year in which it was submitted, unless it is received after the last ranking date in the fiscal year for that

program. If an application is received after the last ranking date of the fiscal year, the Agency will score the application no later than the first ranking date of the next fiscal year. Such applications will be scored based on the priority categories and points effective for that next fiscal year.

(2) For grant programs with an application deadline, each such application the Agency receives on or before the application deadline in a fiscal year will be scored in the fiscal year in which it was received. All applications received after a program's application deadline will not be considered.

(b) *Scoring.* The Agency will score applications for each grant program based on the priority categories and their associated points using the procedures specified in subpart B. All applications for grants under this part will be scored based on the information supplied by the applicant at the time the applicant submits the application to the Agency.

(1) *Administrator priority categories.* Paragraphs (b)(1)(i) through (vi) of this section present the list of Administrator priority categories that a grant program may consider in awarding Administrator points to applications. The specific set of Administrator priority categories that each program will use is specified in subpart B. The Agency may elect to use a different set of Administrator priority categories than specified in subpart B, if it issues a notification in accordance with § 5002.15. However, the Agency cannot add to the list of priority categories specified in this paragraph.

- (i) Unserved or underserved areas.
- (ii) Geographic diversity.
- (iii) Emergency conditions.
- (iv) To accomplish the mission area's plans, goals, and objectives.
- (v) Public health and safety.
- (vi) Presidential initiatives.

(2) *State Director priority categories.* Paragraphs (b)(2)(i) through (x) of this section present the list of State Director priority categories that a grant program may consider in awarding State Director points to applications. The specific set of State Director priority categories that each program will use is specified in subpart B. The Agency may elect to use a different set of State Director priority categories than specified in subpart B, if it issues a notification in accordance with § 5002.15. However, the Agency cannot add to the list of priority categories specified in this paragraph.

- (i) Persistent poverty counties and out-migration counties.
- (ii) Unserved or underserved areas.
- (iii) Geographic diversity.

- (iv) Emergency conditions.
- (v) State, local, or regional governmental, and Tribal strategic plans and goals (must be consistent with program goals and objectives).
- (vi) To accomplish the mission area's plans, goals, and objectives.
- (vii) Leveraging.
- (viii) Loss of essential services.
- (ix) Public health and safety.
- (x) Presidential initiatives.

§§ 5002.43—5002.49 [Reserved]

Awarding Grants

§ 5002.50 Award process.

(a) *Ranking of applications.* All scored applications for a program will be ranked by the Agency on or after each ranking date, as specified in subpart B, to create a priority list of scored applications for that program.

(1) If a ranking date falls on a weekend or Federally-observed holiday, the ranking date will be the next Federal business day.

(2) All applications that are ranked in a given fiscal year will be considered for selection for funding or potential funding, as applicable, for that entire fiscal year.

(b) *Selection of applications for funding and for potential funding.*

(1) Using the priority list created under paragraph (a) of this section for each grant program, the Agency will select applications for funding or for potential funding based on the criteria specified in paragraphs (b)(1)(i) through (iii) of this section and any additional criteria specified in subpart B for a specific program. The Agency will notify, in writing, applicants whose applications have been selected for funding or for potential funding.

(i) *Ranking.* The Agency will consider the score an application has received compared to the scores of other applications in the priority list, with higher scoring applications receiving first consideration for funding.

(ii) *Availability of funds.* The Agency will consider the size of the request relative to the funds that remain available to the program during the fiscal year.

(A) If there are insufficient funds during a particular funding period to select a higher scoring application, the Agency may elect to select the next highest scoring application for further processing. Before this occurs, the Administrator or State Director, as applicable, will provide the applicant of the higher scoring application the opportunity to reduce the amount of its grant request to the amount of funds available. If the applicant agrees to lower its grant request, it must certify

that the purposes of the project can be met, and the Administrator or State Director, as applicable, must determine the project is financially feasible at the lower amount.

(B) If the amount of funding required is greater than 25 percent of a State's allocated funds for a State-allocated grant program, or is greater than 25 percent of a program's funds for a Nationally-competed grant program, then the Agency may elect to select the next highest scoring application for further processing, provided the higher scoring applicant is notified of this action and given an opportunity to revise their application and resubmit it.

(iii) *Availability of other funding sources.* If other financial assistance is needed for the project, the Agency will consider the availability of Rural Development loans and of other non-Rural Development funding sources. If funds for these other sources are not available at the time of selecting applications for funding or potential funding, the Agency may instead select the next highest scoring application for further processing ahead of the higher scoring application.

(2) [Reserved]

(c) *Ranked applications not funded.*

The disposition of ranked applications not funded depends on whether the program has an open application period or an application deadline, and on the reason for which the application was not funded.

(1) *Grant programs with an open application period.*

(i) If a ranked application has been selected for potential funding, but has not been funded due to the Agency's lack of funds by the next ranking date or by the end of the fiscal year in which it was selected for potential funding, the Agency will carry the application forward into the next fiscal year unless the applicant otherwise notifies the Agency in writing to withdraw the application from further consideration. Such applications are not subject to re-evaluation or re-scoring, but information in the application may need to be updated.

(ii) If a ranked application has been selected for potential funding, but has not been funded because additional information is needed, the Agency will notify the applicant of what information is needed, including a timeframe for the applicant to provide the information. If the applicant does not provide the information within the specified timeframe, the Agency will remove the application for further processing.

(iii) If a ranked application has not been selected for potential funding because of its ranking and the available

level of funds to the Agency, it will be included in the set of applications considered in each subsequent ranking date in the fiscal year in which it was ranked until it is either selected for potential funding, funded, or the end of the fiscal year in which the application was ranked is reached, whichever occurs first. The Agency will retain the application for consideration in the next fiscal year. The Agency will provide applicants the opportunity to update their application accordingly. At a minimum, all such retained applications must be updated by the applicant as required by the Agency (e.g., financial conditions, change in supporting documentation requirements). The application will then be re-evaluated and re-scored along with new applications received for consideration for funding in the next fiscal year.

(iv) If a ranked application has not been selected for potential funding because the Agency has determined the application is non-competitive due to a very low score, the Agency will remove the application from further consideration and will so notify the applicant.

(2) *Grant programs with an application deadline.* (i) A ranked application that is not funded in the fiscal year in which it was submitted will not be carried forward into the next fiscal year. The Agency will notify the applicant in writing.

(ii) If an application has been selected for funding, but has not been funded because additional information is needed, the Agency will notify the applicant of what information is needed, including a timeframe for the applicant to provide the information. If the applicant does not provide the information within the specified timeframe, the Agency will remove the application from further consideration and will so notify the applicant.

(d) *Intergovernmental review.* If State or local governments raise objections to a proposed project under the intergovernmental review process that are not resolved within 90 days of the Agency's selection of the application, the Agency will rescind the selection and will provide the applicant with a written notice to that effect. The Agency, in its sole discretion, may extend the 90-day period if it appears resolution is imminent.

§§ 5002.51–5002.59 [Reserved]**Grant Agreements and Conditions****§ 5002.60 Actions prior to grant closing or start of construction, whichever occurs first.**

(a) *Excess grant funds.* If there is a significant reduction in project cost or changes in project scope, the applicant's funding needs will be reassessed. Decreases in Agency funds will be based on revised project costs and current number of users. However, other factors including Agency regulations used at the time of grant approval will remain the same. Obligated grant funds not needed to complete the project will be de-obligated.

(b) *Evidence of and disbursement of other funds.* Applicants expecting funds from other sources for use in completing projects being partially financed with Agency funds will present evidence of the commitment of these funds from such other sources. Agency funds will not be used to pre-finance funds committed to the project from other sources without prior Agency approval.

(c) *Acquisition of land, easements, water rights, and existing facilities.* Applicants are responsible for acquiring all property rights necessary for the project and determining that prices paid are reasonable and fair. The Agency may require an appraisal by an independent appraiser or Agency employee.

(1) *Rights-of-way and easements.* Where applicable, applicants will obtain valid, continuous, and adequate rights-of-way and easements needed for the construction, operation, and maintenance of the facility. For user connections funded by the Agency, applicants will obtain adequate rights to construct and maintain the connection line or other facilities located on the user's property.

(2) *Title for land or existing facilities.* Title to land essential to the successful operation of facilities or title to facilities being purchased must not contain any restrictions that will adversely affect the suitability, successful operation, security value, or transferability of the facility. The Agency may waive title defects or restrictions, such as utility easements, that do not adversely affect the suitability, successful operation, security value, or transferability of the facility.

(3) *Lease agreements.* Where the right of use or control of real property not owned by the applicant is essential to the successful operation of the facility, such right will be evidenced by written agreements or contracts, acceptable to the Agency, between the owner of the property and the applicant.

§ 5002.61 Grant agreement.

(a) *Letter of conditions.* When a grant is obligated subject to conditions established by the Agency, the Agency will notify, in writing, each applicant whose application has been selected for funding using a letter of conditions, which will set out the conditions under which the grant will be made. If the applicant agrees with the conditions, the applicant must acknowledge, in writing, acceptance of the conditions. If the applicant believes that certain conditions cannot be met, the applicant may propose alternate conditions to the Agency. The Agency must concur with any changes proposed to the letter of conditions by the applicant before the application will be further processed.

(b) *Grant agreement.* Each grant awarded under this part must be executed through an Agency-approved grant agreement between the Agency and the grantee and through any other documents as identified by the Agency.

(c) *Cooperative agreement.* Each cooperative agreement made under this part must be executed through an Agency-approved cooperative agreement, or similar Agency-approved document, between the Agency and the grantee and through any other documents as identified by the Agency. Cooperative Agreements must provide for significant Agency involvement.

(d) *Grant disbursements.* Grant disbursement will be made in accordance with the letter of conditions or the grant agreement as applicable.

§ 5002.62 Use of remaining funds.

Funds remaining after all costs incident to the basic project have been paid or provided for are to be handled as specified in this section.

(a) Remaining funds are not to include grantee contributions.

(b) Remaining funds may be refunded to each source in direct proportion to the amounts obtained from each source.

(c) Remaining funds may be used based on prior approval by the Agency for eligible grant purposes, provided:

(1) The use will not result in major changes to the project;

(2) The purpose of the grant remains the same; and

(3) The project remains within its original scope.

(d) Grant funds not expended after being used for eligible grant purposes will be cancelled by the Agency. Prior to the actual cancellation, the Agency will notify, in writing, the grantee of the Agency's intent to cancel the remaining funds.

§§ 5002.63–5002.69 [Reserved]**Post Award Activities and Requirements****§ 5002.70 Monitoring and reporting program performance.**

The requirements specified in this section shall apply to grants made under this part.

(a) Grantees will be monitored to the extent necessary to ensure that facilities are constructed in accordance with Agency-approved plans and specifications and to ensure that funds are expended for approved purposes.

(b) Grantees shall submit performance reports that include a comparison of accomplishments with the objectives stated in the application.

(1) Performance reports shall be submitted on a semiannual basis. A final performance report is required.

(2) Additional reports shall be submitted as specified in the grant agreement, as otherwise provided in a notification issued under § 5002.15, or as specified in subpart B.

(3) The Agency may request any additional project and/or performance data for the project for which grant funds have been received.

§ 5002.71 Programmatic changes and budget revisions.

In addition to the requirements specified in the Departmental regulations, if an application has been selected and the scope of the project changes, the Agency, at its sole discretion, may require the applicant to submit a new application. A new application will be re-ranked in accordance with this part.

§ 5002.72 Transfer of obligations.

An obligation of funds established for an applicant may be transferred to a different (substituted) applicant provided:

(a) The substituted applicant

(1) Is eligible;

(2) Has a close and genuine relationship with the original applicant; and

(3) Has the authority to receive the assistance approved for the original applicant; and

(b) The need, purpose(s), and scope of the project for which the Agency funds will be used remain substantially unchanged.

§§ 5002.73–5002.79 [Reserved]**Grant Close Out and Related Activities****§ 5002.80 Grant close out and related activities.**

In addition to the requirements specified in the Departmental

regulations, failure to submit satisfactory reports on time under the provisions of § 5002.70(b) may result in the suspension or termination of a grant. The provisions of this section apply to grants and sub-grants.

§§ 5002.81–5002.100 [Reserved]

Subpart B—Program-Specific Provisions

§ 5002.101 Community Facilities.

The Community Facilities grant program is a State-allocated grant program with an open application period.

(a) *Applicant eligibility.* In addition to the requirements specified in § 5002.20 in subpart A of this part, as appropriate, the following requirements also apply where applicable:

(1) *Type of applicant.* The applicant must be one of the following:

(i) A public body, such as a municipality, county, district, authority, or other political subdivision of a State;

(ii) Non-profit corporation or association; or

(iii) Federally recognized Indian tribe.

(2) *Local community ties.* Applicants must have significant ties with the local rural community. Ties may be evidenced by items such as:

(i) Association with, or controlled by, a local public body or bodies or broadly based ownership and controlled by members of the community; or

(ii) Substantial public funding through taxes, revenue bonds, or other local government sources, or substantial voluntary community funding such as would be obtained through a community-wide funding campaign.

(b) *Project eligibility.* In addition to the requirements specified in § 5002.22 in subpart A of this part, the project must be an essential community facility primarily serving rural areas. In addition, the project must meet the conditions specified in paragraphs (b)(1) through (5) of this section.

(1) *Located in rural area.* Except for eligible utility-type services, such as telecommunications or hydroelectric, serving both rural and non-rural areas, the project must be located in a rural area. In the case of an eligible utility-type service project serving both rural and non-rural areas, grant funds issued under this section may be used to fund only that portion serving rural areas, regardless of the facility's location.

(2) *Household income.* The median household income of the population to be served by the proposed facility must be below the higher of the poverty line or the eligible percentage (60, 70, 80, or 90) of the State non-metropolitan

median household income (paragraph (e)(2) of this section).

(3) *Economic feasibility.* All projects funded under the provisions of this section must be based on satisfactory sources of revenues as outlined in the economic feasibility requirements for the Community Facility direct loan program. The amount of grant assistance must be the minimum amount sufficient for feasibility that will provide for facility operation and maintenance, reasonable reserves, and debt repayment. The applicant's available excess funds must be used to supplement eligible project costs.

(4) *Facility operation and maintenance.* The applicant shall be responsible for operating, maintaining, and managing the facility and providing for its continued availability and use at reasonable rates and terms. This responsibility shall be the applicant's even though the facility may be operated, maintained, or managed by a third party under contract or management agreement.

(5) *Credit elsewhere.* Applicants must certify in writing and the Agency shall determine and document that the applicant is unable to finance the proposed project from their own resources or through commercial credit at reasonable rates and terms.

(c) *Eligible uses of grant funds.* Grant funds made under this section may be used for the purposes listed in paragraphs (c)(1) through (6) of this section.

(1) Construct, enlarge, extend, or otherwise improve essential community facilities providing essential service primarily to rural residents and rural businesses. "Otherwise improve" includes, but is not limited to, the following:

(i) The purchase of major equipment that will in themselves provide an essential service to rural residents; and

(ii) The purchase of existing facilities when it is necessary either to improve or to prevent a loss of service.

(2) Construct or relocate public buildings, roads, bridges, fences, or utilities and to make other public improvements necessary to the successful operation or protection of facilities authorized in paragraph (c)(1) of this section.

(3) Relocate private buildings, roads, bridges, fences, or utilities, and other private improvements necessary to the successful operation or protection of facilities authorized in paragraph (c)(1) of this section.

(4) Facilities that have no more than 25 percent of the floor space occupied by Federal Agencies, State Agencies, or other ineligible entities or purposes,

when these entities enhance the primary purpose of the facility;

(5) Facilities that house State funded organizations that are typically housed in community funded facilities and offering services provided by an essential community facility;

(6) Pay the following expenses, but only when such expenses are a necessary part of a project to fund facilities authorized in paragraphs (c)(1) through (5) of this section:

(i) Reasonable fees and costs such as legal, engineering, architectural, accounting, environmental, archeological, and appraisal.

(ii) Costs of acquiring interest in land; rights, such as water rights, leases, permits, and rights-of-way; and other evidence of land or water control necessary for development of the facility.

(iii) Purchasing or renting equipment necessary to install, maintain, extend, protect, operate, or utilize facilities.

(iv) Obligations for construction incurred before grant approval. Construction work should not be started and obligations for such work or materials should not be incurred before the grant is approved. However, if there are compelling reasons for proceeding with construction before grant approval, applicants may request Agency approval to pay such obligations. Such requests may be approved if the Agency determines that:

(A) Compelling reasons exist for incurring obligations before grant approval;

(B) The obligations will be incurred for authorized grant purposes;

(C) Contract documents have been approved by the Agency;

(D) All environmental requirements applicable to the Agency and the applicant have been met; and

(E) The applicant has the legal authority to incur the obligations at the time proposed, and payment of the debts will remove any basis for any mechanic's, material, or other liens that may attach to the security property.

(7) The Agency may authorize payment of such obligations at the time of grant closing. The Agency's authorization to pay such obligations, however, is on the condition that it is not committed to make the grant; it assumes no responsibility for any obligations incurred by the applicant; and the applicant must subsequently meet all grant approval requirements. The applicant's request and the Agency's authorization for paying such obligations shall be in writing.

(d) *Ineligible uses of grant funds.* Grant funds under this section may not be used to fund:

(1) Initial operating expenses or annual recurring costs, including purchases or rentals that are generally considered to be operating and maintenance expenses;

(2) Construction or repair of electric generating plants, electric transmission lines, or gas distribution lines to provide services for commercial sale;

(3) Refinancing of existing indebtedness;

(4) Interest;

(5) Any cost of a project when the median household income of the population to be served by the proposed facility is above the higher of the poverty line or eligible percent (60, 70, 80, or 90) of the State non-metropolitan median household income (paragraph (e)(2) of this section);

(6) Recreational facilities, except for community parks and community wellness centers; or

(7) Any purposes restricted under the Community Facilities direct loan program.

(e) *Funding limitations and matching funds.* Grant assistance cannot exceed the applicable percentages contained in this paragraph and may be further limited due to availability of funds or by the maximum grant assistance allowable determined in accordance with paragraph (e)(1) of this section.

(1) *Maximum grant assistance.* Grant assistance cannot exceed the lower of:

(i) Qualifying percentage of eligible project cost determined in accordance with paragraph (e)(2) of this section;

(ii) Minimum amount sufficient to provide for economic feasibility as determined in accordance with paragraph (b)(3) of this section; or

(iii) Either 50 percent of the annual State allocation or \$50,000, whichever is greater, unless otherwise concurred with Agency approval.

(2) *Funding limitations.* Not more than 75 percent Federal grant funds, including CF grant funds, may be used to fund a project funded with CF grant funds. Grant assistance will be provided on a graduated scale with smaller communities with the lowest median household incomes being eligible for projects with a higher proportion of grant funds. Grant assistance is limited to the following percentages of eligible project costs:

(i) 75 percent when the proposed project is:

(A) Located in a rural community having a population of 5,000 or less; and

(B) The median household income of the population to be served by the proposed facility is below the higher of the poverty line or 60 percent of the statewide non-metropolitan median household income.

(ii) 55 percent when the proposed project is:

(A) Located in a rural community having a population of 12,000 or less; and

(B) The median household income of the population to be served by the proposed facility is below the higher of the poverty line or 70 percent of the statewide non-metropolitan median household income.

(iii) 35 percent when the proposed project is:

(A) Located in a rural community having a population of 20,000 or less; and

(B) The median household income of the population to be served by the proposed facility is below the higher of the poverty line or 80 percent of the statewide non-metropolitan median household income.

(iv) 15 percent when the proposed project is:

(A) Located in a rural community having a population of 20,000 or less; and

(B) The median household income of the population to be served by the proposed facility is below the higher of the poverty line or 90 percent of the statewide non-metropolitan median household income.

(v) 60 percent when the proposed project is:

(A) Located in a rural community having a population of 20,000 or less; and

(B) The median household income of the population to be served by the proposed facility is below the higher of the poverty line or 90 percent of the State non-metropolitan median household income. The 60 percent grants are only available to communities affected by a catastrophic natural disaster that has resulted in a loss of 60 percent of the community's population and is located in a county designated as a major disaster area by the President.

(3) *Matching.* Funding for the balance of the project may consist of other Community Facility financial assistance, applicant contributions, or loans and grants from other sources. However, other Federal grant funds cannot be used as matching funds unless provided by other authorizing legislation. Matching funds may not be made up of in-kind contributions other than real estate donated to the project from any entity other than the grantee.

(f) *Scoring applications.* Each application for a grant under this section will be scored based on the priority categories and points specified in paragraphs (f)(1) through (3) of this section. The maximum number of

points that will be awarded to an application is 100.

(1) *Program-specific priority categories and points.* The Agency will award program-specific points for the priority categories described in paragraphs (f)(1)(i) through (iii) of this section.

(i) *Population priorities.* The proposed project is located in a rural community having a population of:

(A) 5,000 or less—25 points;

(B) Between 5,001 and 12,000, inclusive—15 points; and

(C) Between 12,001 and 20,000, inclusive—10 points;

(ii) *Income priorities.* The median household income of the population to be served by the proposed project is below the higher of the poverty line or:

(A) 60 percent of the statewide non-metropolitan median household income—25 points;

(B) 70 percent of the statewide non-metropolitan median household income—15 points;

(C) 80 percent of the statewide non-metropolitan median household income—10 points; or

(D) 90 percent of the statewide non-metropolitan median household income—5 points.

(iii) *Other priorities.* If the project is for health care, for public safety, or for an educational facility, 20 points will be awarded.

(2) *Administrator priority categories and points.* Unless otherwise specified in a notification issued under § 5002.15 of subpart A of this part, the Administrator may award up to 20 points to an application under this section to improve the geographic diversity of awardees in a fiscal year.

(3) *State director priority categories and points.* Unless otherwise specified in a notification issued under § 5002.15 of subpart A of this part, a State Director may award up to 10 points to an application that meets any of the State Director priority categories to specified in § 5002.42(b)(2)(i) through (x). No more than a total of 10 State Director points may be awarded under this paragraph to an application.

(g) *Ranking applications.* Unless otherwise specified in a notification issued under § 5002.15 of subpart A of this part, the Agency will rank applications on or after the following dates each fiscal year: December 15, March 15, July 15, and August 15.

(h) *Additional criteria for selecting applications for funding.* The Agency may select the next highest scoring application for funding before a higher scoring application when the application is a subsequent request for a previously approved project. If the

request is due to cost overruns, the cost overruns must be due to high bids or unexpected construction problems that cannot be reduced by negotiations, redesign, use of bid alternatives, rebidding, or other means. Cost overruns exceeding 20 percent of the development cost at time of grant approval or where the scope of the original purpose has changed will not be considered in selecting the next highest scoring application over the higher scoring application.

(i) *Public Information Process.* All grants awarded under this section are subject to the public information process required under the Community Facility direct loan program.

§ 5002.102 Rural Energy for America Grants.

The Rural Energy for America grant program is a Nationally-competed grant program with a specified application deadline.

(a) *Applicant eligibility.* In addition to the requirements specified in § 5002.20 in subpart A of this part, an applicant must be an agricultural producer or rural small business.

(b) *Project eligibility.* In addition to the requirements specified in § 5002.22(b) and (c) in subpart A of this part, the project must also meet the criteria specified in paragraphs (b)(1) or (2) of this section. The requirement specified in § 5002.22(a) in subpart A does not apply to projects seeking a grant under this section.

(1) The project must:

(i) Be for the purchase, installation, expansion and/or other energy-related improvement of a renewable energy system or to make energy efficiency improvements;

(ii) Be located in a rural area;

(iii) Be for technology that is:

(A) Pre-commercial or commercially available, and

(B) Replicable; and

(iv) Have technical merit as determined by the Agency. Projects that the Agency determines are without technical merit are ineligible for grants.

(2) The project must be for a feasibility study for a project that meets the criteria specified in paragraph (b)(1) of this section.

(c) *Additional preapplication and application considerations.* In addition to the requirements specified in §§ 5002.30, 5002.31, and 5002.32, the following requirements apply to preapplications and applications submitted under this section.

(1) *Preapplications.* If an applicant elects to submit a preapplication, the preapplication must be received by the Agency on or before January 15 of each

year to be considered. Preapplications received after January 15 will not be considered by the Agency.

(2) *Applications*—(i) *Application deadline.* Applications must be received on or before June 15 of each year to be considered for funding for that fiscal year. Applications received by the Agency after June 15 will not be considered.

(ii) *Business plans.* The business plan submitted with the application must include at least three years of pro forma financial statements.

(iii) *Simplified applications.* Applicants with projects that meet both criteria specified in paragraphs (c)(2)(iii)(A) and (B) of this section and agree to the terms specified in paragraph (c)(2)(iii)(C) of this section will be allowed to submit an application under this section that has less documentation than for applications that do not meet these two criteria. The requirements for simplified applications are available at any Rural Development office and on the Agency Web site.

(A) The total eligible project costs are \$200,000 or less.

(B) The proposed project uses either commercially available renewable energy systems or energy efficiency improvements.

(C) 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.

(d) *Eligible project costs.* Grant funds under this section may only be used for those costs associated with the items listed in paragraphs (d)(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. The eligible project costs also apply to a mixed business and residential project if the applicant is an agricultural producer. If the mixed business and residential project, however, is from an applicant who is a rural small business, these eligible project costs apply to the applicant's mixed business and residential project only if the residential portion of the project is less than 25 percent of the square footage of the entire project.

(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.

(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.

(e) *Funding limitations, matching funds, and availability of other funds*—(1) *Funding limitations.* (i) The amount of grant funds that will be made available to an eligible project under this section must not exceed 25 percent of total eligible project costs. Eligible project costs are specified in paragraph (d) of this section.

(ii) The maximum amount of grant assistance to one individual or entity will not exceed \$750,000 per Federal fiscal year.

(2) *Matching funds.* (i) 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.

(ii) Passive investor equity contributions are acceptable for renewable energy system projects, including those that are eligible for Federal production tax credits, provided the passive investor meets the requirements of paragraph (a) of this section.

(3) *Availability of other funds.* In determining funding grant applications, the Agency will consider the following:

(i) If the size of the grant amount being requested in the application is \$50,000 or less, the Agency will consider funding the application on its own merit, without consideration of other sources of funding.

(ii) If the size of the grant amount being requested in the application is more than \$50,000, the Agency will consider funding the application only to the extent that:

(A) The applicant cannot obtain a loan guaranteed by the Agency for any portion of the project; or

(B) the amount being requested in the grant application is necessary for the bank to make a guaranteed loan to the applicant.

(C) If neither of the two situations described in paragraphs (e)(3)(ii)(A) or

(B) of this section apply, then the Agency will not consider the application under this rule.

(f) *Grant award amount.* In determining the amount of a grant awarded, the Agency will take into consideration the following eight 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;

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

(7) The expected energy efficiency of the renewable energy system; and

(8) The amount of energy produced per amount of grant award.

(g) *Scoring applications.* Each application for a grant under this section will be scored based on the priority categories and points specified in paragraphs (g)(1) and (2) of this section. The maximum number of points that will be awarded to an application is 100.

(1) *Program-specific priority categories and points.* The Agency will award program-specific points for the priority categories described in paragraphs (g)(1)(i) through (x) of this section.

(i) *Quantity of energy replaced, produced, or saved (maximum score of 13 points).* Points may only be awarded for energy replacement, energy savings, or energy generation. Points will not be awarded for more than one category. Renewable energy projects are eligible for points under either paragraph (g)(1)(i)(A) or (g)(1)(i)(C). Energy efficiency improvement projects are eligible for points under paragraph (g)(1)(i)(B) only.

(A) *Energy replacement (maximum score of 13 points).* 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, 6 points will be awarded; greater than 25 percent, but equal to or less than 50 percent, 9 points will be awarded; or greater than 50 percent, 13 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, 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.

(B) *Energy savings (maximum score of 13 points).* 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, 6 points will be awarded; 30 percent up to, but not including 35 percent, 9 points will be awarded; or, 35 percent or greater, 13 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 3 points.

(C) *Energy generation (maximum score of 13 points).* If the proposed renewable energy system is intended primarily for production of energy for sale, 13 points will be awarded.

(ii) *Environmental benefits (maximum score of 3 points).* If the purpose of the proposed system contributes to the environmental goals and objectives of other Federal, State, or local programs, 3 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.

(iii) *Commercial availability (maximum score of 9 points).* 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, 9 points will be awarded.

(iv) *Technical merit score (maximum score of 30 points).* The Technical Merit of each project will be determined using the procedures specified in paragraphs (g)(1)(iv)(A) and (B) of this section. The procedures specified in paragraph (g)(1)(iv)(A) will be used to score paragraphs (g)(1)(iv)(A)(1) through (10) of this section. The final score awarded will be calculated using the procedures

described in paragraph (g)(1)(iv)(B) of this section.

(A) *Technical merit.* Paragraphs (g)(1)(iv)(A)(1) through (10) of this section have their 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 30 points.

(1) *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.

(2) *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.

(3) *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.

(4) *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.

(5) *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 cash flow requirements.

(6) *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.

(7) *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.

(8) *Equipment installation (maximum score of 5 points)*. The applicant has described the plan for site development and system installation.

(9) *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.

(10) *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.

(B) *Calculation of Technical Merit Score (maximum score of 30 points)*. To determine the actual points awarded a project for Technical Merit, the following procedure will be used: The scores awarded for paragraphs (g)(1)(iv)(A)(1) through (10) 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 30 to achieve the points awarded for the proposed project for Technical Merit.

(v) *Readiness (maximum score of 10 points)*. 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, 3 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, 6 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, 10 points will be awarded.

(vi) *Small agricultural producer/very small business (maximum score of 8 points)*. If the applicant is an agricultural producer producing agricultural products with a gross market value of less than \$600,000 in the preceding year, 4 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, 8 points will be awarded.

(vii) *Simplified application/low cost project (maximum score of 3 points)*. 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, 3 points will be awarded.

(viii) *Hybrid technology (maximum score of 3 points)*. If the application is for a combination of two or more renewable energy technologies incorporated into a single project, 3 points will be awarded.

(ix) *Return on investment (maximum score of 6 points)*. If the proposed project will return the cost of the investment in less than 4 years, 6 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 points will be awarded.

(x) *Financial need (maximum score of 5 points)*. If the applicant can demonstrate either 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 cash flows to sustain it financially over the long term without grant assistance, 5 points will be awarded.

(2) *Administrator priority categories and points*. Unless otherwise specified in a notification issued under § 5002.15 of subpart A of this part, the Administrator may award up to 10 points to an application under this section in the priority categories specified in paragraphs (g)(2)(i) through (v) of this section. No more than 10

Administrator points will be awarded to an application.

- (i) Unserved or underserved areas;
- (ii) Geographic diversity;
- (iii) Emergency conditions;
- (iv) Public health and safety; and
- (v) Presidential initiatives.

(h) *Ranking applications*. Unless otherwise specified in a notification issued under § 5002.15 of subpart A of this part, the Agency will rank applications on or after March 15 and July 15 each year.

§ 5002.103 Rural Cooperative Development Grants

The Rural Cooperative Development grant program is a Nationally-competed grant program with a specified application deadline.

(a) *Definition*. For the purpose of this section, "Center" is defined as the entity established or operated by the grantee for rural cooperative development. It may or may not be an independent legal entity separate from the grantee.

(b) *Applicant eligibility*. In addition to the requirements specified in § 5002.20 in subpart A of this part, as appropriate, the applicant must be a non-profit organization or institution, including an accredited institution of higher education. Public bodies are not eligible to receive grants under this section.

(c) *Project eligibility*. In addition to the requirements specified in § 5002.22 in subpart A of this part, the project must be for the establishment and operation or the continuation of a rural cooperative development center (Center).

(1) Applications that focus on only one cooperative will not be considered for funding.

(2) Except for 1994 Institutions, applicants must provide 25 percent of total project cost.

(3) Applications for providing for the sharing of information among Centers will not be considered for funding if more than 10 percent of the funding request is for the provision of sharing of information among Centers.

(d) *Additional application requirements*. In addition to the application requirements specified in § 5002.32, all applications under this section must include a plan for the establishment and operation by the institution of a Center or Centers for cooperative development. This plan must contain the following elements:

(1) A provision that substantiates that the Center will effectively serve rural areas in the United States;

(2) A provision that the primary objective of the Center will be to improve the economic condition of rural areas through cooperative development;

(3) A description of the contributions that the proposed activities are likely to make to the improvement of the economic conditions of the rural areas for which the Center will provide services.

(4) Provisions that the Center, in carrying out the activities, will seek, where appropriate, the advice, participation, expertise, and assistance of representatives of business, industry, educational institutions, the Federal Government, and State and local governments.

(5) Provisions that the applicant will:

(i) Take all practicable steps to develop continuing sources of financial support for the Center, particularly from sources in the private sector;

(ii) Make arrangements for the activities by the non-profit operating the Center to be monitored and evaluated; and

(iii) Provide an accounting for the money received by the grantee under this section.

(e) *Eligible uses of grant funds.* Grant funds may be used for, but are not limited to, providing the following to individuals, cooperatives, small businesses and other similar entities in rural areas served by the Center:

(1) Applied research, feasibility, environmental and other studies that may be useful for the purpose of cooperative development.

(2) Collection, interpretation and dissemination of principles, facts, technical knowledge, or other information for the purpose of cooperative development.

(3) Providing training and instruction for the purpose of cooperative development.

(4) Providing loans and grants for the purpose of cooperative development in accordance with this section.

(5) Providing technical assistance, research services and advisory services for the purpose of cooperative development.

(6) Providing for the coordination or services and the sharing of information among Centers.

(f) *Ineligible uses.* Grant funds under this section will not be provided and cannot be used to:

(1) Duplicate current services or replace or substitute support previously provided. If the current service is inadequate, however, grant funds may be used to expand the level of effort or services beyond that which is currently being provided;

(2) pay costs of the project incurred prior to the date of grant approval;

(3) plan, repair, rehabilitate, acquire, or construct a building or facility, including a processing facility;

(4) purchase, rent, or install fixed equipment. Fixed equipment means nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost of greater than or equal to \$5,000.

(5) Pay for the repair of privately owned vehicles; or

(6) Fund research and development.

(g) *Grant agreement and conditions.*

The length of grant agreements made under this section are subject to the conditions specified in paragraphs (g)(1) through (3) of this section.

(1) A grant awarded to a center that has received no prior funding under this section shall be made for a period of one year.

(2) If the Agency determines that it is in the best interest of the program, grants will be awarded for a period of more than one year, but not more than three years, to a center that has successfully met the parameters described in paragraphs (i)(1)(i) through (v) of this section, as determined by the Agency.

(3) The Agency will not approve requests to extend the grant period for more than 12 months.

(h) *Funding limitations and matching funds.*

(1) *Funding limitations.* For 1994 Institutions, the maximum amount of a grant awarded under this section will be no more than 95 percent of the total cost of the Center. The Agency shall not require a match of more than 5 percent of the total cost of the Center.

(2) *Matching funds.*

(i) Applicants must verify in their application that all matching funds are available for the time period of the grant.

(ii) Matching funds must be spent in advance of, or as a pro rata portion of, grant funds being expended.

(iii) All matching funds must be spent on eligible expenses and must be from eligible sources.

(iv) All matching funds must be provided by either the applicant or a third party in the form of cash or in-kind contributions.

(A) Matching funds contributed by the applicant may include a loan from another federal source. However, other Federal grant funds cannot be used as matching funds unless provided by other authorizing legislation.

(B) Any in-kind contributions must be performed for the benefit of the Center. The Center must be able to document and verify the number of hours worked and the value associated with the contribution. In-kind contributions provided by individuals, businesses, or cooperatives who are being assisted by the Center cannot be provided for the

benefit of their own projects because the Agency considers this a conflict of interest or the appearance of a conflict of interest.

(i) *Scoring applications.* Each application for a grant under this section will be scored based on the priority categories and points specified in paragraphs (i)(1) and (2) of this section. The maximum number of points that will be awarded to an application is 100.

(1) *Program-specific priority categories and points.* The Agency will award program-specific points for the priority categories described in paragraphs (i)(1)(i) through (viii) of this section.

(i) *Administrative capabilities (maximum score of 10 points).* The Agency will evaluate the application to determine whether the applicant has a proven track record of carrying out activities to promote and assist the development of cooperatively and mutually owned businesses. The applicant must also discuss their financial systems and audit controls, personnel and program administration performance measures and rules of governance. Applicants that evidence capable systems and controls and clear rules of governance will receive more points.

(ii) *Technical assistance and other services (maximum score of 15 points).* The Agency will evaluate the applicant's demonstrated expertise in providing technical assistance and accomplishing effective outcomes in cooperative development in rural areas to promote and assist the development of cooperatively and mutually owned businesses. The applicant should also discuss their potential for delivering effective technical assistance, the expected effects of that assistance, and the sustainability of organizations receiving the assistance. Applicants that evidence effective delivery systems for cooperative development will receive more points.

(iii) *Economic development (maximum score of 15 points).* The Agency will evaluate the applicant's demonstrated ability to assist in the retention of businesses, facilitate the establishment of cooperatives and new cooperative approaches and generate employment opportunities that will improve the economic conditions of rural areas. Applicants that provide statistics and identify their role in the economic development outcomes will receive more points.

(iv) *Networking and regional focus (maximum score of 10 points).* The Agency will evaluate the applicant's demonstrated commitment to:

(A) networking with and sharing the results of the efforts of the center with other cooperative development centers and other organizations involved in rural economic development efforts (maximum score of 5 points); and

(B) developing multiorganization and multistate approaches to addressing the economic development and cooperative needs of rural areas (maximum score of 5 points).

(v) *Commitment (maximum score of 10 points)*. The Agency will evaluate the applicant's commitment to providing technical assistance and other services to underserved and economically distressed areas in rural areas of the United States. Applicants that provide statistics and tie their service area and projects to the underserved and the economically distressed areas as appropriate will receive more points.

(vi) *Qualifications of those performing the tasks (maximum score of 10 points)*.

The Agency will evaluate the application to determine if the personnel expected to perform key Center tasks have a track record of positive solutions for complex cooperative development and/or marketing problems, or a successful record of conducting accurate feasibility studies, business plans, marketing analysis, or other activities relevant to cooperative development Center success as determined by the tasks identified in applicant's work plan. Applicants that evidence commitment/availability of qualified personnel expected to perform the tasks will receive more points.

(vii) *Local support (maximum score of 10 points)*. The Agency will evaluate the applications for previous and expected local support for the Center and plans for coordinating with other developmental organizations (including state and local institutions) in the proposed service area. Applicants that evidence strong support from potential beneficiaries and formal evidence of intent to coordinate with other developmental organizations will receive more points.

(viii) *Future support (maximum score of 10 points)*. The Agency will evaluate the applicant's vision for funding Center operations for future years. Discussion should include issues such as sources and uses of alternative funding; reliance on Federal, State, and local grants; and the use of in-house personnel for providing services versus contracting out for that expertise. Applicants that evidence vision of long-term sustainability with diversification of funding sources and building in-house technical assistance capacity will receive more points.

(2) *Administrator priority categories and points*. Unless otherwise specified in a notification issued under § 5002.15 of subpart A of this part, the Administrator may award up to 10 points to an application under this section to improve the geographic diversity of awardees in a fiscal year.

(j) *Ranking applications*. Unless otherwise specified in a notification issued under § 5002.15 of subpart A of this part, the Agency will rank applications on or after July 15 each year.

(k) *Additional criteria for selecting applications for funding*. If two projects obtain the same total score, the Agency will select the project whose aggregate score for the criteria specified in paragraphs (i)(1)(i) through (v) of this section is higher.

§ 5002.104 Distance Learning and Telemedicine Grants.

The Distance Learning and Telemedicine (DLT) grant program is a Nationally-competed grant program with a specified application deadline.

(a) *Definition*. For the purpose of this section, "*Telecommunications or electric borrower*" is defined as an entity that has outstanding RUS or Rural Telephone Bank electric or telecommunications loans or loan guarantees under the provisions of the Rural Electrification Act of 1936.

(b) *Applicant eligibility*. In addition to the requirements specified in § 5002.20, except for § 5002.20(c), in subpart A of this part:

(1) The applicant must be:

(i) Legally organized as an incorporated organization or partnership;

(ii) An Indian tribe or tribal organization, as defined in 25 U.S.C. 450b (b) and (c);

(iii) A state or local unit of government or a consortium; or

(iv) Other legal entity, including a private corporation organized on a profit or non-profit basis.

(v) If the applicant is a consortium, at least one member of the consortium must meet the requirements of paragraphs (b)(1)(i) through (iv) of this section. If a consortium lacks the legal capacity to contract, each individual entity must contract with the Agency in its own behalf.

(2) Each applicant must provide written evidence of its legal capacity to contract with the Agency to obtain the grant, and comply with all applicable requirements. If a consortium lacks the legal capacity to contract, each individual entity must contract with the Agency on its own behalf.

(3) Individuals are not eligible for program financial assistance under this program directly.

(4) Telecommunications or electric borrowers under the Rural Electrification Act of 1936 ((7 U.S.C. 950aaa et seq.) are not eligible for grants, provided, however, that such borrowers are eligible for funding under the Distance Learning Telemedicine Combination Loan and Grant Program (7 CFR 1703, subpart D) and the Distance Learning Telemedicine Loan Program (7 CFR 1703, subpart G).

(c) *Project eligibility*. In addition to the requirements specified in § 5002.22 in subpart A of this part:

(1) The project must be to deliver distance learning or telemedicine services to entities that operate a rural community facility, including libraries, or to residents of rural areas at rates calculated to ensure that the benefit of the financial assistance is passed through to such entities or to residents of rural areas; and

(2) DLT end-user sites must be located in a rural area described in one of the four rural areas described in paragraph (h)(1)(ii)(A) of this section, although the DLT hub site may be located in either a rural or non-rural area. DLT end-user facilities not within one of these four defined rural areas are not eligible for grant funding under this section.

(d) *Additional preapplication and application requirements*. In addition to, or in lieu of, as applicable, the requirements specified in §§ 5002.30, 5002.31, and 5002.32, the following requirements apply to preapplications and applications submitted under this section.

(1) *Preapplications*. If an applicant elects to submit a preapplication, the preapplication must be received by the Agency on or before January 1 of the year in which a related application is received. Preapplications received after January 1 will not be considered by the Agency.

(2) *Applications*—(i) *Application submittal*. When submitting applications, the applicant shall submit one original and two copies of the application to the Agency.

(ii) *Application deadline*. Applications must be received on or before March 31 of each year to be considered for funding for that fiscal year. Applications received by the Agency after March 31 will not be considered for funding that fiscal year.

(iii) *State strategic plan*. The application must contain evidence from the Agency State Director, Rural Development, that the application conforms with the State strategic plan as prepared under section 381D of the

Consolidated Farm and Rural Development Act (7 U.S.C. 1921). The applicant should indicate if such a plan does not exist.

(e) *Eligible uses of grant funds.* Grant funds under this section must be used to fund only the costs for approved purposes as defined in paragraphs (e)(1) through (5) of this section. Grants shall be expended only for the costs associated with the initial capital assets associated with the project.

(1) Acquiring, by lease or purchase, constructing, or installing eligible equipment, which is computer hardware and software, audio or video equipment, computer network components, telecommunications terminal equipment, data terminal equipment, inside wiring, interactive video equipment, or similar equipment, or other facilities that would further telemedicine services or distance learning services.

(2) Acquiring or installing instructional programming.

(3) Providing technical assistance and instruction for using eligible equipment, including any related software.

(4) Developing instructional programming.

(5) Providing engineering or environmental studies relating to the establishment or expansion of the phase of the project that is being funded with the grant.

(f) *Ineligible uses of grant funds.* Grant funds under this section will not be provided and cannot be used:

(1) To cover the costs of acquiring, installing or constructing telecommunications transmission facilities;

(2) To pay for medical equipment not having telemedicine as its essential function;

(3) To pay salaries, wages, or employee benefits to medical or educational personnel;

(4) To pay for the salaries or administrative expenses of the applicant or the project;

(5) To purchase equipment that will be owned by the local exchange carrier or another telecommunications service provider unless that service provider is the applicant;

(6) To duplicate facilities providing distance learning or telemedicine services in place or to reimburse the applicant or others for costs incurred prior to the Agency's receipt of the completed application;

(7) To pay costs of preparing the application package for financial assistance under this program;

(8) For projects whose primary objective is to provide links between teachers and students or between

medical professionals who are located at the same facility;

(9) For site development and the destruction or alteration of buildings;

(10) For the purchase of land, buildings, or building construction;

(11) For any purpose that the Administrator has not specifically approved; or

(12) Except for leases provided for in paragraph (e)(1) of this section, to pay the cost of recurring or operating expenses for the project.

(g) *Funding considerations and matching funds—(1) Limitation on funding certain purposes.* No more than 10 percent of the funds for a grant under this section can be used for any one of the purposes listed in paragraphs (e)(3) through (5) of this section, or for any combination thereof.

(2) *Matching funds.* The grant applicant's minimum matching contribution must equal 15 percent of the grant amount requested and shall be used for approved purposes for grant funds listed in paragraph (e) of this section.

(i) Matching contributions generally must be in the form of cash. However, in-kind contributions solely for the purposes listed in paragraph (e) of this section may be substituted for cash.

(ii) In-kind items listed in paragraph (e) of this section must be non-depreciated, new assets with established monetary values. Manufacturers', vendors', or service providers' discounts are not considered in-kind matching.

(iii) Costs incurred by the applicant, or others on behalf of the applicant, for facilities or equipment installed, or other services rendered prior to submission of a completed application, shall not be considered as an eligible in-kind matching contribution.

(iv) Costs incurred for non-approved purposes identified in paragraph (f) of this section shall not be used as an in-kind matching contribution.

(v) Any financial assistance from Federal sources will not be considered as matching contributions under this section unless there is a Federal statutory exception specifically authorizing the Federal financial assistance to be considered as a matching contribution, and that exception is documented in the application.

(h) *Scoring applications.* Each application for a grant under this section will be scored based on the priority categories and points specified in paragraphs (h)(1) and (2) of this section. The maximum number of points that will be awarded to an application is 100.

(1) *Program-specific priority categories and points.* The Agency will award program-specific points for the priority categories described in paragraphs (h)(1)(i) through (iii) of this section.

(i) *The critical need for the project (maximum score of 35 points).* (A) This criterion will be used to score applications based on the documentation in support of the need for services, the benefits derived from the services proposed by the project, the local community involvement in planning and implementing the project, the local participation in financing the project, the financial need of the applicant, and the technical and functional quality of the project. Technical and functional quality is determined in part by the utilization of existing or non-project telecommunications resources in an area, the integration of the project into other networks, and the ability of the project to serve the greatest practical number of residents in the project's area. This determination will be made by the Agency based on information submitted by the applicant under paragraph (d)(2) of this section.

(B) The Agency will consider the extent of the applicant's documentation explaining the economic, education, or health care challenges facing the community; the applicant's proposed plan to address these challenges; how the grant can help; and why the applicant cannot complete the project without a grant. The Agency will also consider the extent to which the applicant provides evidence that economic, education, or health care challenges could not be addressed without employing the specific technology proposed. The Agency will also consider any support by recognized experts in the related educational or health care field, any documentation substantiating the educational or health care underserved nature of the applicant's proposed service area, and any justification for specific educational or medical services that are needed and will provide direct benefits to rural residents. The Agency will consider the extent to which the applicant demonstrates that the project most efficiently provides the needed services. The Agency will also consider evidence of local support of the project, including demonstrations of local (applicant and community) financial contributions for eligible and ineligible grant purposes, planning and administrative support for the project, and support from community and institutional leaders. When an applicant believes a project area's or beneficiaries' financial need is

greater than the need expressed by the project's National School Lunch Program (NSLP) eligibility score, the Agency will consider evidence of this unusual need.

(ii) *The comparative population sparsity of the service area (maximum score of 30 points)*. This criterion will be used to evaluate the relative rurality of service areas for various projects. Under this system, the DLT end-user sites contained within the service area are identified and given a score according to the population of the area where the DLT end-user sites are located.

(A) The following definitions are used in the evaluation of sparsity:

(1) Most Rural Area means any area of the United States not included within the boundaries of any Census-defined urban cluster or urbanized area having a population of 2,500 or more inhabitants.

(2) Extremely Rural Area means any area of the United States not included within the boundaries of any Census-defined urbanized area but which is included in an urban cluster of from 2,501 to 5,000 inhabitants.

(3) Mid-Rural Area means any area of the United States not included within the boundaries of any Census-defined urbanized area but which is included within the boundaries of an urban cluster having a population of from 5,001 to 10,000 inhabitants.

(4) Rural Area means any area of the United States not included within the boundaries of any Census-defined urbanized area but which is included in an urban cluster of from 10,001 to 20,000 inhabitants.

(B) There are a total of 30 possible points for this criterion. Each end-user site will receive points based on its location in accordance with paragraphs (h)(1)(ii)(B)(1) through (4) of this section. If a hub is utilized as an end-user site, the hub will be considered as an end-user site. The applicant will receive points as follows:

(1) If the end-user site is located in a Most Rural Area, it will receive 30 points.

(2) If the end-user site is located in an Extremely Rural Area, it will receive 25 points.

(3) If the end-user site is located in a Mid-Rural Area, it will receive 15 points.

(4) If the end-user site is located in a Rural Area, it will receive 0 points.

(C) The total score for this criterion will be based on the average score for all the end-user sites included in the project.

(iii) *The economic need of the applicant's service area as estimated by the NSLP (maximum score of 25 points)*.

This criterion will be used to evaluate the relative financial need of the applicant, community, and project. All applicants are required to provide the applicable percentage of students eligible to participate in the NSLP for each area to be served by the end-user site. The appropriate State or local organization administering the program must certify the percentages as being correct. The applicant must provide a listing of the location of each end-user site (city, town, village, borough or rural area) discussing how the appropriate NSLP percentage was determined in accordance with this section. These percentages may be obtained from the State or local organization that administers the program and must be certified by that organization as being correct by such entity. For purposes of this section, the NSLP percentage will reflect the percentage of eligibility rather than the percentage of actual participation.

(A) The following guidelines will be used to determine the applicable NSLP percent for a particular application:

(1) The eligibility percentage for each end-user site is the eligibility percentage of the school district where the end-user will be located.

(2) Percentage ratios will be rounded up to the next highest or rounded down to the next lowest whole number for fraction of percentages at or greater than 0.5 or less than 0.5, respectively.

(3) The project NSLP percentage will be determined by the average of the NSLP percentages of the end-user sites. If end-user sites fall within different percentile categories, the eligibility percentages associated with each end-user site will be averaged to determine the percentile category. For purposes of averaging, if a hub is also utilized as an end-user site, the hub will be considered as an end-user site.

(B) The applicant will receive economic need points based on the project NSLP percentage, as follows:

(1) NSLP percentage greater than or equal to 74 percent receives 25 points.

(2) NSLP percentage less than 25 percent receives zero points.

(3) One point is scored for each two percentage point increase in project NSLP percentage. For example, if the project NSLP percentage is 25 percent or 26 percent, the economic need score is 1 point. If the project NSLP percentage is 47 percent or 48 percent, the economic need score is 12 points.

(2) *Administrator priority categories and points*. Unless otherwise specified in a notification issued under § 5002.15 of subpart A of this part, the Administrator may award up to 10 points to an application under this

section to improve the geographic diversity of awardees in a fiscal year.

(i) *Ranking applications*. Unless otherwise specified in a notification issued under § 5002.15 of subpart A of this part, the Agency will rank applications on or after July 15 each year.

§ 5002.105 Value-Added Producer Grants.

The Value-Added Producer grant program is a Nationally-competed grant program with a specified application deadline. For the purposes of the application of the requirements in subpart A, in the case of this section the term "venture" means "project" as that term is used in subpart A and includes the project and any other activities related to the production, processing, and marketing of the value-added product that is the subject of the value-added producer grant request.

(a) *Definitions*.

Agricultural producer. Persons or entities, including farmers, ranchers, loggers, agricultural harvesters, and fishermen, that engage in the production or harvesting of an agricultural product. Producers may or may not own the land or other production resources, but must have majority ownership interest in the agricultural product to which value-added is to accrue as a result of the venture. Examples of agricultural producers include: a logger who has a majority interest in the logs harvested that are then converted to boards, a fisherman that has a majority interest in the fish caught that are then smoked, a wild herb gatherer that has a majority interest in the gathered herbs that are then converted into essential oils, a cattle feeder that has a majority interest in the cattle that are fed, slaughtered and sold as boxed beef, and a corn grower that has a majority interest in the corn produced that is then converted into corn meal.

Beginning farmer or rancher. The term "beginning farmer or rancher" has the meaning given the term in section 343(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1991(a)).

Family farm. The term "family farm" has the meaning given the term in section 761.2 of title 7, Code of Federal Regulations (as in effect on December 30, 2007).

Special purpose equipment. Equipment that is used only for research, medical, scientific, or other technical activities.

Socially disadvantaged farmer or rancher. The term "socially disadvantaged farmer or rancher" has the meaning given the term in section 355(e) of the Consolidated Farm and

Rural Development Act (7 U.S.C. 2003(e)).

(b) *Applicant eligibility.* In addition to the requirements specified in § 5002.20 in subpart A of this part:

(1) The applicant must be:

- (i) An independent producer;
- (ii) Agricultural producer group;
- (iii) Farmer or rancher cooperative; or
- (iv) A majority-controlled producer-based business venture.

(2) An applicant that is a farmer or rancher cooperative, an agriculture producer group, or a majority-controlled producer-based business venture must be entering into an emerging market as a result of the proposed venture.

(3) An applicant that is an independent producer does not have to be entering into an emerging market.

(c) *Venture eligibility.* In order for a venture to be eligible for grant funding under this section, the venture must evidence a high likelihood of creating value-added for an agricultural product by meeting at least one of the categories in the definition of value-added. The project eligibility requirements specified in § 5002.22 in subpart A of this part do not apply to ventures seeking a grant under this section.

(1) The venture must be located in a rural area.

(2) Working capital grants must have a feasibility study and business plan completed specifically for the proposed venture before the application is submitted. The feasibility study and business plan must be submitted when requested by the Agency during application processing.

(3) Applicants who have already received a planning grant for the proposed venture cannot receive another planning grant for the same venture. Applicants who have already received a working capital grant for a venture cannot receive any additional grants for that venture.

(4) No venture may be the subject of more than one planning grant or more than one working capital grant under this section. The same venture may, however, be awarded one planning grant and subsequently apply for and receive a working capital grant.

(5) Not more than one venture per funding cycle per applicant may receive grant funding under this section.

(6) If the agricultural product is a value-added product, agricultural producers must have a majority ownership interest in the agricultural product to which value-added is to accrue.

(d) *Eligible uses of grant funds.* Grant funds under this section must be used to fund only the costs for approved purposes as defined in paragraphs (d)(1) and (2) of this section.

(1) Planning grant funds may be used to develop a business plan or perform a feasibility study to establish a viable marketing opportunity for a value-added producer. These uses include, but are not limited to, the following:

(i) Conduct, or hire a qualified consultant to conduct, a feasibility analysis of the proposed value added venture to help determine the potential success of the venture;

(ii) Develop, or hire a qualified consultant to develop, a business operations plan that provides comprehensive detail on the management, planning and other operational aspects of the proposed venture;

(iii) Develop, or hire a qualified consultant to develop, a marketing plan for the proposed value-added product(s) including the identification of a market window, potential buyers, a description of the distribution system and possible promotional campaigns; and

(iv) Hire counsel to provide legal advice and to draft organizational and other legal documents related to the proposed venture.

(2) Working capital grant funds may be used to provide capital to establish alliances or business ventures that allow the producer of the value-added agricultural product to better compete in domestic or international markets. These uses include, but are not limited to, the following:

(i) Establish a working capital account to fund operations prior to obtaining sufficient cash flow from operations;

(ii) Hire counsel to provide legal advice and to draft legal documents related to the proposed venture;

(iii) Hire a certified public accountant or other qualified individual to design an accounting system for the proposed venture; and

(iv) Pay salaries, utilities and other operating costs such as inventory financing, the purchase of office equipment, computers and supplies and finance other related activities.

(v) Conduct a marketing campaign for a proposed value-added product.

(e) *Ineligible uses of grant funds.* Grant funds under this section may not be used to:

(1) Duplicate current services or replace or substitute support previously provided. If the current service is inadequate, however, grant funds may be used to expand the level of effort or services beyond what is currently being provided;

(2) Pay costs of the venture incurred prior to the date of grant approval;

(3) Plan, repair, rehabilitate, acquire, or construct a building or facility (including a processing facility);

(4) Purchase, rent, or install fixed equipment. Fixed equipment means nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost of greater than or equal to \$5,000. Rental or purchase of special purpose equipment for specific, limited applications related to planning grants may be approved at the discretion of the Agency;

(5) Pay for the repair of privately owned vehicles;

(6) Fund research and development;

(7) Purchase real property and/or vehicles, including boats;

(8) Pay expenses not directly related to the funded venture;

(9) Fund architectural or engineering design work for a specific physical facility;

(10) Fund any expenses related to the production of any commodity or product to which value will be added, including seed, rootstock, labor for harvesting the crop, and delivery of the commodity to a processing facility. The Agency considers these expenses to be ineligible because the intent of the program is to assist producers with marketing value-added products rather than producing agricultural commodities; or

(11) Conduct activities on behalf of anyone other than a specific independent producer or group of independent producers. The Agency considers conducting industry-level feasibility studies and business plans that are also known as feasibility study templates or guides or business plan templates or guides to be ineligible because the assistance is not provided to a specific group of independent producers.

(f) *Additional preapplication and application requirements.* In addition to the requirements specified in §§ 5002.30, 5002.31, and 5002.32, the following requirements apply to preapplications and applications submitted under this section.

(1) *Preapplications.* If an applicant elects to submit a preapplication, the preapplication must be received by the Agency on or before January 15 of each year to be considered. Preapplications received after January 15 will not be considered by the Agency.

(2) *Applications*—(i) *Deadline.* Unless otherwise specified in a notification issued under § 5002.15, applications must be received on or before March 1 of each year to be considered for funding for that fiscal year. Applications received by the Agency after March 1 will not be considered.

(ii) *Business plan.* The business plan must include at least three years of pro forma financial statements.

(iii) *Feasibility study.* The feasibility study should show how the venture would operate under a set of assumptions, the technology used (the facilities, equipment, production process, etc.), the qualifications of the management team, and the financial aspects (capital needs, volume, cost of goods, wages, etc.) of the venture. The analysis should answer the following questions about the venture.

(A) Where is it now?

(B) Where does the group want to go?

(C) Why does the group want to go forward with the venture?

(D) How will the group accomplish the venture?

(E) What resources are needed?

(F) Who will provide assistance?

(G) When will the venture be completed?

(H) How much will the venture cost?

(I) What are the risks?

(3) *Simplified application.* Applicants with ventures requesting less than \$50,000 will be allowed to submit an application under this section that has less documentation than for applicants with ventures requesting \$50,000 or more. The requirements for simplified applications are available at any Rural Development office and on the Agency Web site.

(g) *Grant agreement and conditions.* The length of grant agreements made under this section shall not exceed three years.

(h) *Funding limitations and matching funds—(1) Funding Limitations.* (i) Grant funds may be used to pay up to 50 percent of the costs for carrying out relevant ventures.

(ii) The aggregate amount of awards to majority controlled producer-based business ventures may not exceed ten percent of the total funds obligated under this program during any fiscal year.

(iii) The total amount provided to a grantee in any one year shall not exceed \$500,000.

(2) *Matching funds.* (i) Applicants must verify in their applications that matching funds are available for the time period of the grant.

(ii) Matching funds must be at least equal to the amount of grant funds requested.

(iii) Unless provided by other authorizing legislation, other Federal grant funds cannot be used as matching funds.

(iv) Matching funds must be spent at a rate equal to or greater than the rate at which grant funds are expended.

(v) Matching funds must be provided by either the applicant or by a third

party in the form of cash or in-kind contributions.

(vi) Matching funds must be spent on eligible expenses and must be from eligible sources.

(i) *Scoring applications.* Each application for a grant under this section will be scored based on the priority categories and points specified in paragraphs (i)(1) and (2) of this section. The maximum number of points that will be awarded to an application is 100.

(1) *Program-specific priority categories and points.* The Agency will award program-specific points for the priority categories described in paragraphs (i)(1)(i) through (v) of this section, as applicable.

(i) *Nature of the proposed venture (maximum score of 25 points).* Ventures will be evaluated for technological feasibility, operational efficiency, profitability, sustainability and the likely improvement to the local rural economy. Also considered will be the potential for expanding the customer base for the Value-Added product and the expected increase in returns to the producer-owners of the venture.

(ii) *Personnel qualifications (maximum score of 20 points).* Ventures will be evaluated for whether the personnel who are responsible for completing the proposed tasks, including those leading or managing the venture and those leading the venture, have the necessary qualifications.

(iii) *Commitments and support (maximum score of 20 points).* Commitment to the venture will be evaluated on the basis of the number of independent producers currently involved as well as how many may potentially be involved, and the nature, level, and quality of their contributions. End-user commitments will be evaluated on the basis of potential markets and the potential amount of output to be purchased. Applications will also be reviewed for evidence that the venture has significant third party support, with financial support being most important, followed by in-kind support and finally general support.

(iv) *Work plan/budget (maximum score of 20 points).* The work plan will be evaluated based on whether it provides specific and detailed task descriptions, reasonable and specific timeframes for the tasks, and the key personnel responsible for the tasks that will accomplish the venture's goals. The budget will be evaluated based on whether it provides a detailed breakdown of all estimated costs (both grant and matching) associated with the proposed activities, allocates these costs

among the listed tasks, and is reasonable.

(v) *Type of applicant (maximum score of 5 points).* If an application is from an applicant that is a beginning farmer or rancher, a socially disadvantaged farmer or rancher, or an operator of a small- or medium-sized farm or ranch that is structured as a family farm, 3 points will be awarded. If the application is from an applicant that meets any two of these three applicant types, 4 points will be awarded. If the application is from an applicant that meets all three applicant types, 5 points will be awarded.

(2) *Administrator priority categories and points.* Unless otherwise specified in a notification issued under § 5002.15 of subpart A of this part, the Administrator may award up to 10 points to an application under this section to improve the geographic diversity of awardees in a fiscal year.

(j) *Ranking applications.* Unless otherwise specified in a notification issued under § 5002.15 of subpart A of this part, the Agency will rank applications on or after July 15 each year.

§ 5002.106 Water and Waste Disposal Facilities Grants.

The Water and Waste Disposal Facilities grant program is a State-allocated grant program with an open application period.

(a) *General.* Water and waste applicants must demonstrate that they possess the financial, technical, and managerial capability necessary to consistently comply with pertinent Federal and State laws and requirements. In developing water and waste systems, applicants must consider alternatives of ownership, system design, and the sharing of services.

(b) *Applicant eligibility.* In addition to the requirements specified in § 5002.20 in subpart A of this part, as appropriate, an applicant must be:

(1) A public body, such as a municipality, county, district, authority, or other political subdivision of a State, territory or commonwealth;

(2) An organization operated on a non-profit basis, such as an association, cooperative, or private corporation. The organization must be an association controlled by a local public body or bodies, or have a broadly based ownership by or membership of people of the local community; or

(3) An Indian tribe on Federal and State reservations and other Federally-recognized Indian tribe.

(c) *Project eligibility.* In addition to the requirements specified in § 5002.22

in subpart A of this part, the project must meet the following requirements:

(1) *Rural area.* The project must serve a rural area that, if such project is completed, is not likely to decline in population below that for which the project was designed. Facilities funded by the Agency may be located in non-rural areas. However, loan and grant funds may be used to fund only that portion of the facility serving rural areas, regardless of facility location.

(2) *Capacity.* The project must be designed and constructed so that adequate capacity will or can be made available to serve the present population of the area to the extent feasible and to serve the reasonably foreseeable growth needs of the area to the extent practicable.

(3) *Community development and plan.* The project must be necessary for orderly community development and consistent with a current comprehensive community water, waste disposal, or other current development plan for the rural area.

(4) *Revenue sources.* All projects funded under the provisions of this section must be based on taxes, assessments, income, fees, or other satisfactory sources of revenues in an amount sufficient to provide for facility operation and maintenance, reasonable reserves, and debt payment. If the primary use of the facility is by business and the success or failure of the facility is dependent on the business, then the economic viability of that business must be assessed.

(5) *Public use.* All facilities funded under the provisions of this section shall be for public use. The facilities will be installed so as to serve any potential user within the service area who desires service and can be feasibly and legally served.

(i) This does not preclude:

(A) Financing or constructing projects in phases when it is not practical to finance or construct the entire project at one time; and

(B) Financing or constructing facilities where it is not economically feasible to serve the entire area, provided economic feasibility is determined on the basis of the entire system or facility and not by considering the cost of separate extensions to or parts thereof.

Additionally, the applicant must publicly announce a plan for extending service to areas not initially receiving service. Additionally, the applicant must provide written notice to potential users located in the areas not to be initially served.

(ii) Should the Agency determine that inequities exist within the applicant's service area for the same type service

proposed (i.e., water or waste disposal) such inequities will be remedied by the applicant prior to grant approval or included as part of the project. Inequities are defined as unjustified variations in availability, adequacy or quality of service. User rate schedules for portions of existing systems that were developed under different funding, rates, terms or conditions do not necessarily constitute inequities.

(iii) Developers are expected to provide utility-type facilities in new or developing areas in compliance with appropriate State statutes.

(6) *Credit elsewhere.* Applicants must certify in writing and the Agency shall determine and document that the applicant is unable to finance the proposed project from their own resources or through commercial credit at reasonable rates and terms.

(d) *Notice of intent to apply for grant.* An applicant must publish a notice of intent to apply for a grant under this program not more than 60 days before filing the application with the Agency. The notice of intent must be published in a newspaper of general circulation in the proposed area to be served.

(e) *Eligible uses of grant funds.* Grant funds under this section may be used only for the following purposes:

(1) To construct, enlarge, extend, or otherwise improve rural water, sanitary sewage, solid waste disposal, and storm wastewater disposal facilities.

(2) To construct or relocate public buildings, roads, bridges, fences, or utilities, and to make other public improvements necessary for the successful operation or protection of facilities authorized in paragraph (e)(1) of this section.

(3) To relocate private buildings, roads, bridges, fences, or utilities, and other private improvements necessary for the successful operation or protection of facilities authorized in paragraph (e)(1) of this section.

(4) For payment of other utility connection charges as provided in service contracts between utility systems.

(5) When a necessary part of the project relates to those facilities authorized in paragraphs (e)(1) through (4), grant funds may be used for:

(i) Reasonable fees and costs such as legal, engineering, architectural, accounting, environmental, archeological, and appraisal;

(ii) Costs of acquiring interest in land; rights, such as water rights, leases, permits, rights-of-way; and other evidence of land or water control or protection necessary for development of the facility;

(iii) Purchasing or renting equipment necessary to install, maintain, extend, protect, operate, or utilize facilities;

(iv) Cost of additional applicant labor and other expenses necessary to install and extend service; and

(v) In unusual cases, the cost for connecting the user to the main service line.

(vi) To restore loan funds used to prepay grant obligated costs.

(6) Construction incurred before grant approval.

(i) Funds may be used to pay obligations for eligible project costs incurred before grant approval if such requests are made in writing by the applicant and the Agency determines that:

(A) Compelling reasons exist for incurring obligations before grant approval;

(B) The obligations will be incurred for authorized grant purposes; and

(C) The Agency's authorization to pay such obligations is on the condition that it is not committed to make the grant; it assumes no responsibility for any obligations incurred by the applicant; and the applicant must subsequently meet all grant approval requirements, including environmental and contracting requirements.

(ii) If construction is started without Agency approval, post-approval in accordance with this section may be considered, provided the construction meets applicable requirements including those regarding approval and environmental matters.

(f) *Ineligible uses of grant funds.* Grant funds under this section may not be used to fund:

(1) Facilities that are not modest in size, design, and cost;

(2) Loan or grant finder's fees;

(3) The construction of any new combined storm and sanitary sewer facilities;

(4) Any portion of the cost of a facility that does not serve a rural area;

(5) That portion of project costs normally provided by a business or industrial user, such as wastewater pretreatment, etc.;

(6) For other purposes not directly related to operating and maintenance of the facility being installed or improved;

(7) Reduce equivalent dwelling unit (EDU) costs to a level less than similar system cost;

(8) Pay any costs of a project when the median household income of the service area is more than 100 percent of the nonmetropolitan median household income of the State;

(9) Pay project costs when other loan funding for the project is not at reasonable rates and terms; or

(10) Pay project costs when other funding is a guaranteed loan obtained in accordance with the guaranteed loan program for water and waste disposal facilities.

(g) *Funding considerations and matching funds*—(1) *Funding considerations*. Grants will be determined by the Agency in accordance with the provisions of this paragraph.

(i) *Similar system cost*. If the grant results in an annual EDU cost that is not comparable with similar systems, the Agency will determine a grant amount based on achieving EDU costs that are not below similar system user costs.

(ii) *Wholesale service*. When an applicant provides wholesale sales or services on a contract basis to another system or entity, similar wholesale system cost will be used in determining the amount of grant needed to achieve a reasonable wholesale user cost.

(iii) *Subsidized cost*. When annual cost to the applicant for delivery of service is subsidized by the state, commonwealth, or territory, and uniform flat user charges regardless of usage are imposed for similar classes of service throughout the service area, the Agency may proceed with a grant in an amount necessary to reduce such delivery cost to a reasonable level.

(2) *Matching funds*. Grants may not be made in excess of the percentages specified in paragraphs (g)(2)(i) and (ii) of this section. These percentages are based on Agency eligible project development costs. Facilities previously installed will not be considered in determining the development costs. Applicants are advised that the percentages contained in paragraphs (g)(2)(i) and (ii) of this section are maximum amounts and may be further limited due to availability of funds or the grant determination procedures contained in paragraph (g)(1) of this section.

(i) When the median household income of the service area is below the higher of the poverty line or 80 percent of the state nonmetropolitan median income and the project is necessary to alleviate a public health and safety or security problem, the maximum amount of the grant will not exceed 75 percent of Agency eligible project development costs.

(ii) When the median household income of the service area exceeds the 80 percent, but is not more than 100 percent of the statewide nonmetropolitan median household income, the maximum amount of the grant will not exceed 45 percent of Agency eligible project development costs.

(h) *Scoring applications*. Each application for a grant under this section will be scored based on the priority categories and points specified in paragraphs (h)(1) and (2) of this section. The maximum number of points that will be awarded to an application is 100.

(1) *Program-specific priority categories and points*. The Agency will award program-specific points for the priority categories described in paragraphs (h)(1)(i) through (iv) of this section.

(i) *Population priorities (maximum score of 10 points)*.

(A) 10 points will be awarded if the proposed project will primarily serve a rural area having a population not in excess of 1,000;

(B) 7 points will be awarded if the proposed project primarily serves a rural area having a population between 1,001 and 2,500;

(C) 2 points will be awarded if the proposed project primarily serves a rural area having a population between 2,501 and 5,500.

(ii) *Health priorities (maximum score of 30 points)*. (A) 12 points will be awarded if the proposed project is needed to alleviate an emergency situation, correct unanticipated diminution or deterioration of a water supply, or to meet Safe Drinking Water Act requirements that pertain to a water system;

(B) 12 points will be awarded if the proposed project is required to correct inadequacies of a wastewater disposal system, or to meet health standards that pertain to a wastewater disposal system;

(C) 6 points will be awarded if the proposed project is required to meet administrative orders issued to correct local, State, or Federal solid waste violations.

(iii) *Median household income priorities (maximum score of 10 points)*. If the median household income of the population to be served by the proposed project is:

(A) Less than the poverty line if the poverty line is less than 80 percent of the statewide non-metropolitan median household income, 10 points will be awarded;

(B) Less than 80 percent of the statewide non-metropolitan median household income, 8 points will be awarded;

(C) Equal to or more than the poverty line and between 80 percent and 100 percent, inclusive, of the statewide non-metropolitan median household income, 6 points will be awarded.

(iv) *Other priorities (maximum score of 30 points)*. (A) 7 points will be awarded if the proposed project will

merge ownership, management, and operation of smaller facilities providing for more efficient management and economical service;

(B) 5 points will be awarded if the proposed project will enlarge, extend, or otherwise modify existing facilities to provide service to additional rural areas;

(C) 2 points will be awarded if the applicant is a public body or Indian tribe;

(D) If the amount of other than Agency funds committed to the proposed project is:

(1) 50 percent or more, 6 points will be awarded;

(2) 20 percent to 49 percent, 4 points will be awarded;

(3) 5 percent to 19 percent, 2 points will be awarded;

(E) 4 points will be awarded if the proposed project will serve Agency identified target areas;

(F) 2 points will be awarded if the proposed project primarily will recycle solid waste products thereby limiting the need for solid waste disposal;

(G) 4 points will be awarded if the proposed project will serve an area that has an unreliable quality or supply of drinking water.

(2) *Administrator priority categories and points*. Unless otherwise specified in a notification issued under § 5002.15 of subpart A of this part, the Administrator may award up to 10 points to an application under this section for grant size and to improve the geographic diversity of awardees in a fiscal year. No more than 10 Administrator points will be awarded to an application.

(3) *State director priority categories and points*. Unless otherwise specified in a notification issued under § 5002.15 of subpart A of this part, a State Director may award up to 10 points to an application that meets any of the State Director priority categories specified in § 5002.42(b)(2)(i) through (x) and paragraphs (h)(3)(i) and (ii) of this section. No more than a total of 10 State Director points may be awarded under this paragraph to an application.

(i) Arsenic (as specified in a memorandum of understanding with the U.S. Environmental Protection Agency).

(ii) Areas located within 100 miles of New York City's "ground zero" as the result of the September 11, 2001, attacks.

(i) *Ranking applications*. Unless otherwise specified in a notification issued under § 5002.15 of subpart A of this part, the Agency will rank applications on or after the following dates each fiscal year: December 15, March 15, July 15, and August 15.

(j) *Additional criteria for selecting applications for funding.* The Agency may select the next highest scoring application for funding before a higher scoring application when the application is a subsequent request for a previously approved project. If the request is due to cost overruns, the cost overruns must be due to high bids or unexpected construction problems that cannot be reduced by negotiations, redesign, use of bid alternatives, rebidding, or other means. Cost overruns exceeding 20 percent of the development cost at time of grant approval or where the scope of the original purpose has changed will not be considered in selecting the next highest scoring application over the higher scoring application.

(k) *User charges.* The user charges should be reasonable and produce enough revenue to provide for all costs of the facility after the project is complete. The planned revenue should be sufficient to provide for all debt service, debt reserve, operation and maintenance, and, if appropriate, additional revenue for facility replacement of short-lived assets without building a substantial surplus.

(l) *Professional services and contracts related to the facility.* Fees provided for in contracts or agreements shall be reasonable. The Agency shall consider fees to be reasonable if they are not in excess of those ordinarily charged by the profession as a whole for similar work when Agency funding is not involved. Applicants will be responsible for providing the services necessary to plan projects including design of facilities, environmental review and documentation requirements (in accordance with the environmental policies and procedures of the Rural Utilities Service), preparation of cost and income estimates, development of proposals for organization and funding, and overall operation and maintenance of the facility. Applicants should negotiate for procurement of professional services, whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiations of fair and reasonable compensation. Contracts or other forms of agreement between the applicant and its professional and technical representatives are required and are subject to Agency concurrence.

(1) *Engineering and architectural services.* (i) Applicants shall publicly announce all requirements for engineering and architectural services, and negotiate contracts for engineering and architectural services on the basis of demonstrated competence and qualifications for the type of

professional services required and at a fair and reasonable price.

(ii) When project design services are procured separately, the selection of the engineer or architect shall be done by requesting qualification-based proposals and in accordance with this section.

(iii) Applicants may procure engineering and architectural services in accordance with applicable State statutes or local requirements provided the State Director determines that such procurement meets the intent of this section.

(2) *Other professional services.* Professional services of the following may be necessary: Attorney, bond counsel, accountant, auditor, appraiser, and environmental professionals (if desired by applicant).

(3) *Contracts for other services.* Contracts or other forms of agreements for other services including management, operation, and maintenance will be developed by the applicant and presented to the Agency for review and concurrence.

(m) *User estimates.* Applicants dependent on users' fees for operation and maintenance expenses shall base their income and expense forecast on realistic user estimates. For users presently not receiving service, consideration must be given to the following:

(1) An estimated number of maximum users should not be used when setting user fees and rates since it may be several years before all residents will need service by the system. In establishing rates, a realistic number of users should be employed.

(2) The amount of cash contributions required will be set by the applicant and concurred in by the Agency. A new user cash contribution is not required when:

(i) The Agency determines that the potential users as a whole in the applicant's service area cannot make cash contributions; or

(ii) State statutes or local ordinances require mandatory use of the system and the applicant or legal entity having such authority agrees in writing to enforce such statutes, or ordinances.

(n) *Water rights.* The following will be furnished as applicable:

(1) A statement by the applicant's attorney regarding the nature of the water rights owned or to be acquired by the applicant (such as conveyance of title, appropriation and decree, application and permit, public notice and appropriation and use).

(2) A copy of a contract with another company or municipality to supply water; or stock certificates in another company that represents the right to receive water.

§ 5002.107 Economic Impact Initiatives Grants.

(a) The Economic Impact Initiatives grant program is a State-allocated grant program with an open application period.

(b) The Economic Impact Initiatives grant program will be implemented according to the requirements of subpart A and the requirements of § 5002.101, except that the essential community facility must be located in a rural community where the "not employed rate" is greater than the percentage established under section 306(a)(2) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)(20)(B)). The "not employed rate" is the percentage of individuals over the age of 18 who reside within the community and are ready, willing, and able to be employed but are unable to find employment, as determined by the Department of Labor of the State in which the community is located.

§ 5002.108 Tribal College Grants.

The requirements specified in §§ 5002.1 through 5002.14 and §§ 5002.60 through 5002.80 of this part apply to Tribal College grants. In addition, the requirements specified in paragraphs (a) through (f) of this section apply to Tribal College grants.

(a) *Notifications.* The Agency will issue each year a notice to Tribal colleges and universities that identifies:

- (1) maximum grant size and
- (2) the date that preapplications are to be submitted.

(b) *Applicant eligibility.* Only applicants that are 1994 Institutions are eligible for grants under this section.

(c) *Eligible projects and purposes.* Grant funds can only be used to develop facilities provided by the Tribal college or university.

(1) Eligible projects are those projects that meet the requirements specified in § 5002.101(b), except that § 5002.101(b)(3) does not apply to projects under this section.

(2) Eligible purposes are identified in § 5002.101(c) of this part.

(d) *Preapplications and applications.* All preapplications and applications must be submitted to the State Office in the State in which the Tribal college or university is located.

(1) *Preapplications.* Preapplications received by the Agency on or before the date specified in the notification issued under paragraph (a) of this section will receive priority consideration over preapplications received after the specified preapplication date.

(2) *Applications.* (i) Applications received on or before March 31 of each year will receive priority consideration

for funding over applications received by the Agency after March 31 for that fiscal year.

(ii) An applicant submitting more than one application in a year must provide a priority listing for the grants it is seeking.

(e) *Funding limitations.* The maximum amount of a grant awarded under this section will be no more than 95 percent of the total cost of the facility. The Agency shall not require a

match of more than 5 percent of the total cost of the facility.

(f) *Award process.* The Agency will use a graduated scale, as specified in § 5002.101(e)(2), in selecting applications for funding. In addition, the Agency may:

(1) Choose to fund only one grant per round from a single applicant;

(2) reduce the grant amount for all applicants to a maximum level that will fund at least one application per Tribal

college or university that applied during that round; and

(3) negotiate to increase the scope of Tribal College projects and grants if funds remain available after the grant selection round.

§§ 5002.109–5002.200 [Reserved.]

Dated: September 25, 2008.

Thomas C. Dorr,

Under Secretary for Rural Development.

[FR Doc. E8–23286 Filed 10–14–08; 8:45 am]

BILLING CODE 3410–XY–P