

**DEPARTMENT OF AGRICULTURE****Office of the Secretary****7 CFR Part 26**

RIN#0503-AA22

**Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program****AGENCY:** Office of Outreach, Office of the Secretary, USDA.**ACTION:** Proposed rule.

**SUMMARY:** The United States Department of Agriculture (USDA or the Department) is proposing to add regulations at 7 CFR part 26 to govern the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program whereby the 1890 Land Grant Colleges, including Tuskegee University, Indian tribal community colleges and Alaska native cooperative colleges, Hispanic serving post-secondary educational institutions and or other qualifying educational institutions and community-based organizations are eligible to compete for grants and cooperative agreements to provide outreach and technical assistance to socially disadvantaged farmers and ranchers. The program's objective is to reverse the decline of socially disadvantaged farmers and ranchers across the United States. The recipients of these awards will provide services to encourage and assist socially disadvantaged farmers and ranchers to own and operate their own farms and ranches, participate in agricultural programs, and thus allow them to become an integral part of the agricultural community and strengthen the rural economy.

**DATES:** Comments on the proposed rule must be received on or before May 30, 2001.

**ADDRESSES:** Submit written comments, in duplicate, to Director, USDA Office of Outreach, Ag STOP 1710, 1400 Independence Avenue, SW., Washington, DC 20250-1710, fax number (202) 720-7489, or via e-mail to [2501rfp@usda.gov](mailto:2501rfp@usda.gov). Comments hand-delivered or those delivered by overnight express mail or courier service should be brought to the following address: USDA Office of Outreach, 501 School Street, SW., First Floor, Washington, DC 20024 between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday, excluding Federal holidays. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above address.

**FOR FURTHER INFORMATION CONTACT:**

Geraldine Herring, Special Outreach Program Coordinator, USDA Office of Outreach, telephone (202) 720-6350 or 1-800-880-4183, fax number (202) 720-7489, e-mail: [2501rfp@usda.gov](mailto:2501rfp@usda.gov).

**SUPPLEMENTARY INFORMATION:****Executive Orders 12866 and 12988**

The Office of Management and Budget (OMB) has determined that the proposed rule is not a "significant regulatory action" as defined in Executive Order 12866 because the proposed rule will not have an annual effect on the economy of \$100 million or more or have any other adverse effects on the economy or any sector thereof, will not create a serious inconsistency or otherwise interfere with prior or intended actions of another agency, will not materially alter the budgetary impact of grants or similar programs or the rights or recipients thereof, and does not raise novel legal or policy issues. Therefore, Executive Order 12866 does not require review of the proposed rule by OMB, and such review has not occurred.

USDA has reviewed this proposed rule in accordance with Executive Order 12998, Civil Justice Reform. The proposed rule meets the applicable standards in section 3 of Executive Order 12988.

**Executive Order 12372**

For the same reasons contained in the Final rule related notice to 7 CFR part 3015, subpart V (48 FR 29114, June 24, 1983), the Secretary has determined that this program does not directly affect State and local governments, and thus is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

**Executive Order 13132**

Executive Order 13132, Federalism, imposes requirements on USDA in the development of regulatory policies that have Federalism implications. USDA has determined that the proposed rule will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule also will not impose substantial costs on States and localities. Accordingly, the proposed rule is not subject to the requirements of Executive Order 13132.

**Executive Order 13175**

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, imposes requirements on

USDA in the development of regulatory policies that have tribal implications or preempt tribal law. USDA has determined that the proposed regulation does not have a substantial direct effect on one or more Indian tribes 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.

**Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), the undersigned has determined and certified by signature of this document that the proposed rule will not have a significant economic impact on a substantial number of small entities. Eligibility and guidelines for this program are dictated by statute. Educational institutions are not small entities as defined in the Regulatory Flexibility Act. Community-based organizations may or may not qualify as small entities. The amount of annual funding for this program thus far typically ranges from \$3 million to \$6 million, including awards to both educational institutions and community-based organizations, and thus does not have a large economic impact on small entities. This program does not impose requirements on small entities which are not eligible and do not affirmatively elect to apply for a competitive award under this program, and imposes on small entities receiving applying for and receiving awards only minimal requirements necessary for proper administration, oversight, and fiscal accountability of this program. Therefore, a regulatory flexibility analysis is not required and was not performed.

**The Unfunded Mandates Reform Act of 1995**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538, established requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector. Under section 202 of the UMRA, 2 U.S.C. 1532, agencies must prepare a written statement, including a cost benefit analysis, before promulgating a notice of proposed rulemaking that includes any Federal mandates that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. The proposed rule contains no Federal mandates that would result in such expenditures for State, local, and Tribal governments or

the private sector. Therefore, no written statement, including cost-benefit analysis, is required under the UMRA for this proposed rule.

### National Environmental Policy Act

It is the determination of USDA that this action is not a major Federal action significantly affecting the quality of the human environment. Therefore, in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

### Paperwork Reduction Act

This proposed rule does not impact existing approved collections. This rule contains no new reporting or recordkeeping burdens under OMB control number 0560-0163 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

### Discussion of Proposed Rule

#### Background

The Department is proposing regulations in 7 CFR Part 26 to reflect the transfer of the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program to the USDA Departmental Administration, Office of Outreach. The USDA Office of Outreach administers the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program pursuant to section 2501(a) of the Food, Agriculture, Conservation, and Trade Act of 1990, 7 U.S.C. 2279(a) (the FACT Act). Congress intended to make funds available to provide outreach and technical assistance to encourage and assist socially disadvantaged farmers and ranchers to own and operate farms and ranches and to participate in agricultural programs. This outreach and assistance should enable socially disadvantaged farmers and ranchers to obtain information on application and bidding procedures, farm management, and other essential information to participate in agricultural programs.

Prior to 1997, USDA administered this program through other agencies. When USDA last competed awards under this program, the predecessor to the Farm Service Agency (FSA) administered the competition in conjunction with its administration of other outreach, training and technical assistance programs. In August 1997, the Secretary delegated to the USDA Office of Outreach responsibility solely for the section 2501 Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program. Therefore, the new regulations proposed

by the USDA Office of Outreach are limited exclusively to the section 2501 authority and thus narrower in scope than the prior combination of program authorities administered by the predecessor to FSA.

The definition of "Agricultural programs" contained in § 26.4 of this subpart is based on the programs authorized by the statutes referenced in Section 2501 (e)(3) (7 U.S.C. 2279 (e)(3)). Section 2501 (e)(3)(G) also authorizes the Secretary of Agriculture, who has delegated this authority to the Office of Outreach, to designate additional USDA programs as "Agricultural programs" for purposes of this program as appropriate. The USDA Office of Outreach bases the designation of additional Acts, and thereby the programs in those Acts on a belief that the participation of socially disadvantaged farmers and ranchers in such programs will serve an important public purpose. The definition of "Agricultural programs" references many USDA programs, however, the list is not intended to be all inclusive. Rather, the regulation intends to increase participation by socially disadvantaged farmers and ranchers in all relevant USDA agricultural programs. The public may request the Director, USDA Office of Outreach to include additional Acts and programs within this definition. Requests must be submitted in writing and include an explanation of the reasons for inclusion. The Director will make determinations on a case-by-case basis. During the project period, the USDA Office of Outreach will need to work with USDA field offices to provide information to the recipients regarding each USDA Agency's relevant agricultural programs within the scope of the funded project.

Specific Agricultural programs include but are not limited to the following, identified by the Catalog of Federal Domestic Assistance number and program title: (10.054) Emergency Conservation Program; (10.055) Production Flexibility Payments for Contract Commodities; (10.064) Forestry Incentives Program; (10.069) Conservation Reserve Program; (10.404) Emergency Loans; (10.406) Farm Operating Loans; (10.407) Farm Ownership Loans; (10.900) Great Plains Conservation; and (10.903) Soil Survey.

#### Program Description

The program's objective is to reverse through the use of the outreach and assistance the decline of socially disadvantaged farmers and ranchers throughout the United States. This outcome will be reached by encouraging and assisting socially disadvantaged

farmers and ranchers to own and operate their own farms, participate in agricultural programs, and thus allow them to become an integral part of the agricultural community.

The recipients of the Federal assistance will provide services to socially disadvantaged farmers and ranchers through such means as outreach and technical assistance in farm and ranch management, recordkeeping, marketing techniques, and testing innovative solutions to existing or anticipated issues or problems that these farmers and ranchers may encounter.

When funds are available, the USDA Office of Outreach will publish a request for proposals for the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program. The USDA Office of Outreach will make competitive awards to eligible organizations and institutions to implement a one-year plan for outreach and technical assistance to encourage and assist socially disadvantaged farmers and ranchers to own and operate farms and ranches and to participate in agricultural programs.

The USDA Office of Outreach will select peer reviewers to evaluate individually the technical merit of responsive proposals. The peer reviewers are necessary to evaluate what is expected to be a variety of very technical proposals. The USDA Office of Outreach staff will use these evaluations to make recommendations for funding to the Director, USDA Office of Outreach. The Director will make final funding decisions. To assure consistency and fairness in the evaluation process, the proposed rule establishes proposal guidelines, evaluation criteria and the decision-making process for reviewing responsive proposals.

The accounting for the funds awarded under the section 2501 program is subject to the applicable rules for USDA assistance awards in parts 3015 and 3019 of this title. The proposal content and format regulations are intended to assure that applicants provide sufficient information to evaluate proposals and make awards. The application format and evaluation process is similar to that used by other USDA agencies for their competitive assistance programs.

#### Section by Section analysis

Section 26.1 states the general purpose of the program pursuant to section 2501 (a) of the FACT Act and explains what the implementing regulations are intended to accomplish and why compliance is necessary. The USDA Office of Outreach has no

discretion regarding the purpose of the program and is repeating the terms of the statute.

Section 26.2 states the objectives of assistance awards under this program. These objectives come from the statute and legislative history for this program.

Section 26.3 addresses the project period for awards under this program. Awards under this program previously were for five-year periods, with funding provided for the first year and annual renewal of each award based on the progress of the awardee and the availability of funds. Because of the substantial fluctuation in the amount of funding available for this program from year to year, the USDA Office of Outreach made an administrative determination that the limiting of the project periods for a duration of one year with full funding for each project at the time of award would carry out this program in the most effective and efficient manner. The USDA Office of Outreach considers a shorter period with full funding to provide more certainty to the awardees and to ensure that projects will be carried out in their entirety. Shorter project periods also allow the USDA Office of Outreach to fund more projects and provide greater flexibility to respond better to ever-changing societal needs in terms of socially disadvantaged groups, geographic areas, and agricultural programs.

Section 26.4 defines relevant terms for purposes of this program. These definitions are limited to this program. Many terms are defined by statute. The USDA Office of Outreach has no discretion regarding the definitions of statutorily-defined terms and has merely repeated the statutory definitions. The statutorily-defined terms are "socially disadvantaged group" and "socially disadvantaged farmer or rancher." The definition of "socially disadvantaged group" establishes the criteria for a group to qualify. The Secretary determines which groups meet the criteria. The proposed regulation allows the public to submit requests for the designation of additional groups for purposes of this program. The term "agricultural programs" also is defined by statute, but that definition too still provides limited discretion to the Secretary of Agriculture to expand the definition to include similar programs. Again, the proposed regulation provides for the public to submit requests for inclusion of additional Acts and programs, with case-by-case determinations by the USDA Office of Outreach on such requests.

The USDA Office of Outreach used statutory definitions applicable to U.S.

Department of Education programs to define the various educational institutions eligible to compete for awards under this program. Use of the same definitions as the Department of Education promotes uniformity and consistency among Federal programs, which is intended to benefit the public. Furthermore, those statutory definitions, while not directly applicable to this program, shed light on the congressional intent in using these terms. The USDA Office of Outreach found no indication in the section 2501 program authority or legislative history to suggest that the Congress intended for these terms to have a distinct meaning for this program. The definitions are 1890 Land Grant Colleges, Indian tribal community college, Alaska Native cooperative college, Alaska Native, Hispanic serving post-secondary educational institution, post secondary educational institution, full-time equivalent student, junior or community college, and low-income individual. Grant and cooperative agreement are defined by statute at 31 U.S.C. 6304 and 6305. The remaining definitions in section 26.4 reflect terms and definitions commonly used for USDA competitive assistance programs.

Section 26.5 lists the eligible entities as set by the statute. The USDA Office of Outreach has no discretion regarding eligibility for this program. The proposed regulations describe the type of documentary evidence required from a community-based organization to show prior relevant experience.

Section 26.6 discusses substantial involvement on cooperative agreements. As noted in section 26.1, USDA Office of Outreach has the authority to award assistance through grants or cooperative agreements under this program. USDA Office of Outreach may determine that the responsibility for the management, control, or direction of the project will be shared both by the USDA Office of Outreach and the awardee. If so, the USDA Office of Outreach will award a cooperative agreement as the instrument to distribute the award and will be substantially involved in the implementation and performance of the project. It is important to understand that such an agreement will be a cooperative venture in which each party has a substantial role to play. Being substantially involved can enable a better understanding and knowledge of how well the project is performing, whether it is meeting its goals and objectives, and what types of assistance the recipient needs to do a better job.

Section 26.7 is reserved.

Section 26.8 addresses solicitation of proposals through the program announcement. USDA Office of

Outreach has decided to publish program announcements soliciting proposals in the **Federal Register** which is consistent with general USDA practice for competitive assistance programs. The USDA also reserves the right to publish the program announcement in other publications as appropriate which will be determined for each new competition.

Section 26.9 provides guidance on how to prepare a proposal for this program. This section sets guidelines for the proposal format and content. The proposed requirements are similar to those established for other USDA assistance programs. Uniform proposal format and content are necessary for fair comparative evaluation and review of competitive proposals.

Section 26.10 outlines the proposal review process, including the evaluation criteria. The USDA Office of Outreach will specify the weight of the evaluation criteria in the program announcement. Not indicating the weight in the regulations allows the USDA Office of Outreach the ability to vary the relative weights of these criteria for each competition as necessary to best achieve the program objectives. The USDA Office of Outreach decided to use peer reviewers to assess the merits of applications. Peer reviewers contribute expert judgment and objectivity to the proposal review process. Prior to any technical review, USDA Office of Outreach staff will review each proposal for responsiveness to the request for proposals. The USDA Office of Outreach will review for technical merit only those proposals submitted by eligible entities for projects within the scope of this program.

Section 26.11 discusses the fundamental aspects of the award procedure. USDA Office of Outreach staff will use the evaluations by the individual reviewers to rank the proposals and make recommendations to the Director, USDA Office of Outreach for funding. The USDA Office of Outreach reserves the right to make awards to ensure the necessary variety among funded projects to best achieve the program objectives. Necessary variety refers to both types of entities receiving award and types of projects, including targeted populations and regions. Based on the limited resources available for this program, the USDA Office of Outreach also reserves the right to negotiate with applicants the scope of projects recommended for funding. For example, a proposal may have substantial merit, but at a very high cost. Funding of that one proposal would preclude funding of several other meritorious proposals. The Director,

USDA Office of Outreach, could negotiate with that applicant in an effort to reduce the scope and funding requirements of that proposal, perhaps focusing on one or two discrete components of the project. The Director, USDA Office of Outreach will take great care during any such negotiations not to engage in any actions that would undermine the competitive nature of this program. All revisions must be within the scope of the original proposal. No revisions will be allowed to enlarge the project or funding originally proposed.

Sections 26.12–26.14 are reserved.

Section 26.15 discusses the authorized use of funds. The statute limits the purposes for which USDA can award funds. Once USDA awards a grant or cooperative agreement, the awardee can use those funds only in accordance with the terms of the agreement, i.e. for the identified project and as specified in the approved budget.

Sections 26.16 through 26.25 are reserved.

Section 26.26 lists some of the other applicable Federal statutes and regulations that govern the actions of the awardee and the Federal agency for assistance programs. The USDA Office of Outreach has no discretion regarding the mandated laws and regulations governing the USDA assistance programs.

Section 26.27 discusses the payment mechanism and payment method. The U.S. Department of the Treasury regulations at 31 CFR part 208 establish the payment mechanism for recipients of Federal funds. These regulations implement the Debt Collection Improvement Act of 1996 (P.L. 104–134, Title III, Chapter 10) which amended 31 U.S.C. 3332 to require federal agencies to convert their payments (including assistance payments) from check to electronic funds transfer (EFT) beginning January 1, 1999. The USDA Office of Outreach has decided to require the SF–270, Request for Advance or Reimbursement, be used by the recipients to request payments under this program pursuant to their awards and reimbursement will be by EFT.

Section 26.28 sets forth the procedures for monitoring and reporting on the awardee's financial management systems and program performance and the necessary standard reporting forms. The USDA Office of Outreach proposes the frequency for the financial management and program performance reporting to be quarterly.

Sections 26.29 through 26.36 are reserved.

Section 26.37 discusses the monitoring process to assure compliance with the terms and conditions of the award, including compliance with applicable Federal statutes and regulations. The USDA Office of Outreach has chosen to monitor performance of the recipient and assess compliance with laws, regulations, and policies by conducting site visits to monitor business management capability and performance. The monitoring methods will also include the reviews of audit reports, performance reports, financial status reports, recipient correspondence and information received from USDA field offices, the intended project beneficiaries and the public. These are standard methods used in administering similar USDA assistance programs to meet the provisions of pertinent statutes, regulations, agency administrative requirements, and relevant OMB circulars to ensure project success.

Sections 26.38 through 26.40 are reserved.

Section 26.41 notifies the applicant of the applicable USDA policies and regulations on nondiscrimination. Whenever an individual or organization accepts federal funds under an assistance award, there are certain public requirements, established by Congress or the President, with which the recipient must comply. The USDA Office of Outreach has no discretion regarding these requirements and has a duty to enforce compliance.

Sections 26.42 through 26.50 are reserved.

#### List of Subjects in 7 CFR Part 26

Grant programs—agriculture.

For reasons set out in the preamble, USDA proposes to add 7 CFR part 26 as set forth below.

#### PART 26—OUTREACH AND ASSISTANCE FOR SOCIALLY DISADVANTAGED FARMERS AND RANCHERS PROGRAM

- 26.1 General.
- 26.2 Objectives.
- 26.3 Project period.
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- 26.15 Authorized use of funds.
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- 26.26 Other applicable Federal statutes and regulations.
- 26.27 Fund disbursement.

26.28 Financial management systems and reporting requirements.

26.29–26.36 [Reserved].

26.37 Monitoring compliance and penalty for noncompliance.

26.38–26.40 [Reserved].

26.41 Nondiscrimination.

26.42–26.50 [Reserved].

**Authority:** 5 U.S.C. 301; 7 U.S.C. 2279(a); 7 CFR 2.24.

#### PART 26—OUTREACH AND ASSISTANCE FOR SOCIALLY DISADVANTAGED FARMERS AND RANCHERS PROGRAM

##### § 26.1 General.

This part establishes procedures for the administration of the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program whereby eligible entities enter into a grant or cooperative agreement with the USDA Office of Outreach (OR) to provide outreach and technical assistance to encourage and assist socially disadvantaged farmers and ranchers to own and operate farms and ranches and to participate in agricultural programs. The Catalog of Federal Domestic Assistance (CFDA) number for this program is 10.443.

##### § 26.2 Objectives.

OR will fund grant agreements or cooperative agreements with eligible entities for outreach and assistance to socially disadvantaged farmers and ranchers projects, which are determined to meet the following program objectives:

(a) To encourage and assist members of socially disadvantaged groups to own and operate farms and ranches and to participate in agricultural programs.

(b) To keep socially disadvantaged farmers and ranchers on the farm and to ensure diversified ownership of agricultural land and farm operations throughout the United States, thus strengthening the rural economy.

##### § 26.3 Project period.

An agreement under this program will specify a project period for a duration not to exceed one year, subject to the availability of funds or termination of the project either by mutual agreement or for material noncompliance with the terms and conditions of an award.

##### § 26.4 Definitions.

For the purpose of the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program, the following definitions apply:

*1890 Land-Grant Colleges* means one of those institutions eligible to receive funds under the Act of August 30, 1890, as amended (7 U.S.C. 321 *et seq.*), including Tuskegee University.

*Agricultural programs* means those activities established or authorized by the Agricultural Act of 1949; the Consolidated Farm and Rural Development Act; the Agricultural Adjustment Act of 1938; the Soil Conservation Act; the Domestic Allotment Assistance Act; the Food Security Act of 1985; and other such Acts as determined by the Director, USDA Office of Outreach, on a case-by-case basis either at the Director's initiative or in response to a written request with supporting explanation for inclusion of an Act. Covered programs include, but are not limited to, agricultural conservation program, programs comprising the environmental conservation acreage reserve program (ECARP), conservation technical assistance program, emergency conservation program, forestry incentives program, Great Plains Conservation Program, integrated farm management option program, price support and production adjustment programs, rural environmental conservation program, soil survey program, and water bank program; and USDA farm loan programs (farm ownership, operating, soil and water, and emergency loans).

*Alaska Native* means a citizen of the United States who is a person of one-fourth degree or more Alaska Indian (including Tsimshian Indians not enrolled in the Metlakla Indian Community) Eskimo, or Aleut blood, or combination thereof. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or Native group of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any village or group.

*Alaska Native cooperative colleges* means any post-secondary education institution that at the time of application, has an enrollment of undergraduate students that is at least 20 percent Alaska Native students.

*Authorized organizational representative* means the president or chief executive officer of the applicant organization or the official, designated by the president or chief executive officer of the applicant organization, who has the authority to commit the resources of the organization.

*Awardee* means the recipient designated in the grant award document as the responsible legal entity to which the Federal assistance is awarded.

*Awarding official* means the Director of the USDA Office of Outreach or the Director's designee, who has been delegated the authority to issue or

modify program agreements on behalf of the Secretary of Agriculture for this program.

*Budget period* means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

*Community-based organization* means a nonprofit, nongovernmental organization with a well-defined constituency that includes all or part of a particular community, e.g., communities consisting of socially disadvantaged farmers and ranchers.

*Cooperative agreement* means an award of funds to an eligible entity with the following characteristics:

(1) The principal purpose of the award is to transfer a thing of value to the awardee to accomplish a public purpose of support or stimulation authorized by statute, rather than acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; and

(2) At the time of award, substantial involvement is anticipated between OR and the awardee in performing the activity under the agreement.

*Department or USDA* means the United States Department of Agriculture.

*Enrollment of needy students* means an enrollment at an institution with respect to which:

(1) At least 50 percent of the degree students so enrolled are receiving need-based Federal financial assistance, including the Federal work-study program, in the second fiscal year preceding the fiscal year for which the determination is made (other than loans for which an interest subsidy is paid pursuant to 20 U.S.C. 1078); or

(2) A substantial percentage of the students so enrolled are receiving Federal Pell Grants in the second fiscal year preceding the fiscal year for which determination is made, compared to the percentage of students receiving Federal Pell Grants at all such institutions in the second fiscal year preceding the fiscal year for which the determination is made.

*Full-time equivalent students* means the sum of the number of students enrolled full time at an institution, plus the full-time equivalent of the number of students enrolled part time (determined on the basis of the quotient of the sum of the credit hours of all part-time students divided by 12) at such institution.

*Grant* means an award of funds to an eligible entity with the following characteristics:

(1) The principal purpose of the award is to transfer a thing of value to

the awardee to accomplish a public purpose of support or stimulation authorized by statute, rather than acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; and

(2) At the time an award is made, no substantial involvement is anticipated between OR and the awardee in performing the activity under the agreement.

*Hispanic serving post-secondary educational institutions* means a post-secondary educational institution that:

(1) At the time of application, has an enrollment of undergraduate full-time equivalent students that is at least 25 percent Hispanic students; and

(2) Provides assurances that not less than 50 percent of the institution's Hispanic students are low-income individuals.

*Indian Tribal Community Colleges* means a post-secondary educational institution which:

(1) 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

(2) Includes an institution listed in the Equity in Educational Land Grant Status Act of 1994, as amended (7 U.S.C. 301 note). The 1994 Land-Grant Institutions are: Bay Mills Community College, Blackfeet Community College, Cankdeska Cikana Community College, Cheyenne River Community College, Dine Community College, D-Q University, Dullknife Memorial College, Fond Du Lac Community College, Fort Belknap Community College, Fort Berthold Community College, Fort Peck Community College, LacCourte Orielles Ojibwa Community College, Little Big Horn Community College, Little Priest Community College, Nebraska Indian Community College, Northwest Indian College, Oglala Lakota College, Salish Kootenai College, Sinte Gleska University, Sisseton Wahpeton Community College, Sitting Bull College, Stonechild Community College, Turtle Mountain Community College, United Tribes Technical College, Southwest Indian Polytechnic Institute, Institute of American Indian Arts, Crownpoint Institute of Technology, Haskell Indian Nations University, Leech Lake Tribal College, and College of the Menominee Nation.

*Junior or community college* means an institution of higher education:

(1) That admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located

and who have the ability to benefit from the training offered by the institution;

(2) That does not provide an educational program for which the institution awards a bachelor's degree (or an equivalent degree); and

(3) That—

(i) Provides an educational program of not less than 2 years in duration that is acceptable for full credit toward such a degree; or

(ii) Offers a 2-year program in engineering, mathematics, or the physical or biological sciences, designed to prepare a student to work as a technician or at the semiprofessional level in engineering, scientific, or other technological fields requiring the understanding and application of basic engineering, scientific, or mathematical principles of knowledge.

*Low-income individual* means an individual from a family whose taxable income for the preceding year did not exceed 150 percent of an amount equal to the poverty level determined by using criteria of poverty established by the Bureau of the Census.

*Peer reviewers* means experts from the public and private sectors qualified by training and experience in particular fields and designated by the Director, USDA Office of Outreach or other designated official to evaluate eligible proposals.

*Post-secondary educational institutions* means an institution of higher education in any State which:

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is a public or other nonprofit institution;

(3) Which has an enrollment of needy students as defined in the definition of "low-income individual";

(4) The average educational and general expenditures of which are low, per full-time equivalent undergraduate student, in comparison with the average educational and general expenditures per full-time equivalent undergraduate student of institutions that offer similar instruction;

(5) Which is—

(i) Legally authorized to provide, and provides within the State, an educational program for which such institution awards a bachelor's degree;

(ii) A junior or community college; or

(iii) The College of the Marshall Islands, the College of Micronesia/Federated States of Micronesia, and Palau Community College;

(6) Which is accredited by a nationally recognized accrediting agency or association determined by the

Secretary to be reliable authority as to the quality of training offered or which is, according to such an agency or association, making reasonable progress toward accreditation;

(7) Which meets such other requirements as the Secretary may prescribe; and

(8) Located in a State. Any branch of any institution of higher education described above which satisfies the criteria in paragraphs (3) and (4) of this definition. For purposes of the determination of whether an institution is an eligible institution under this paragraph, the factor in paragraph (3) of this definition shall be given twice the weight of the factor in paragraph (4) of this definition.

*Prior approval* means written, prior consent by the awarding official.

*Project* means the total activities within the scope of the program as identified in the grant or cooperative agreement.

*Project director* means the individual responsible for the direction and management of the project, as designated by the awardee in the project proposal and approved by the awarding official. The project director will devote full time to the administration of the project.

*Project period* means the total time approved by the awarding official for conducting the proposed project as outlined in an approved project proposal or the approved portions thereof and as specified in the grant or cooperative agreement.

*Recipient* means an entity as defined in § 26.5 of this part that has entered into a grant or cooperative agreement with OR.

*Requests for Proposals (RFP)* means an invitation to submit proposals for consideration for funding under this program.

*Socially disadvantaged farmer or rancher* means a farmer or rancher who is a member of a socially disadvantaged group.

*Socially disadvantaged group* means a group whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities. Socially disadvantaged groups include, but are not limited to, African-Americans, Native Americans, Alaskan Natives, Hispanics, Asians, and Pacific Islanders. The Secretary will determine on a case-by-case basis whether additional groups qualify under this definition, either at the Secretary's initiative or in response to a written request with supporting explanation.

#### § 26.5 Eligible entities.

The statute limits eligibility under this program to the following institutions and organizations:

(a) 1890 Land-Grant Colleges, including Tuskegee University;

(b) Indian tribal community colleges;

(c) Alaska Native cooperative colleges;

(d) Hispanic-serving post-secondary educational institutions;

(e) Other post-secondary educational institutions with demonstrated experience in providing agricultural education or other agriculturally-related services to socially disadvantaged family farmers or ranchers in their region; and

(f) Any community-based organization that:

(1) Has demonstrated experience in providing agricultural education or other agriculturally-related services to socially disadvantaged farmers and ranchers;

(2) Provides documentary evidence of its past experience in working with socially disadvantaged farmers and ranchers during the 2 years preceding its application for assistance.

Documentary evidence shall include a narrative providing specific information regarding the scope of past projects (including the number of socially disadvantaged farmers and ranchers served or the area served by the organization), activities conducted, and community involvement and copies of prior agreements, press releases, news articles, and other contemporaneous documents supporting the narrative; and

(3) Does not engage in activities prohibited under Section 501 (c)(3) of the Internal Revenue Code of 1986.

#### § 26.6 Substantial federal involvement.

The USDA Office of Outreach may award cooperative agreements under this program. By statute, the Federal awarding agency must be substantially involved in the project to enter into a cooperative agreement to provide assistance. The USDA Office of Outreach anticipates the following involvement, which it has deemed substantial, in carrying out projects funded with Federal assistance provided through a cooperative agreement under this program:

(a) The USDA Office of Outreach will serve as liaison and coordinate the close collaboration between awardees and USDA agencies that administer agricultural programs targeted for outreach under the project;

(b) The USDA Office of Outreach will facilitate and coordinate training and continuing updates for awardees regarding the regulatory requirements,

application procedures, and compliance for targeted agricultural programs;

(c) USDA Office of Outreach will assist awardees in planning workshops for targeted socially disadvantaged groups, including coordinating the provision of available information (e.g., application forms and instructions) from USDA necessary to accomplish workshop objectives;

(d) The USDA Office of Outreach must approve position descriptions and the selection of key personnel as identified in the project proposal if such personnel are hired or replaced during the project period;

(e) The USDA Office of Outreach will work closely with awardees to obtain the significant amounts of information necessary for the USDA Office of Outreach to comply with its statutory requirements to provide reports regarding this program to the Congress; and

(f) The USDA Office of Outreach will monitor projects closely and may request changes in project direction as necessary.

#### **§ 26.7 [Reserved]**

#### **§ 26.8 Program announcement.**

A program announcement for each new competition will be published in the Federal Register and such other publication(s) as deemed appropriate.

#### **§ 26.9 Proposal content.**

The project proposal must contain at a minimum the following information:

(a) *Background and need for the project.* Explain the circumstances that necessitate an Outreach and Technical Assistance Project within a county, region, State or other geographic area to serve socially disadvantaged farmers and ranchers.

(b) *Objectives and goals proposed to meet the objectives.* Clearly state the objectives of the project and explain the goals proposed to meet the objectives. Identify all important project milestones and dates as they relate to project start-up, execution, evaluation, dissemination, and close out. Indicate the specific agricultural programs for which the proposed project will provide outreach and assistance.

(c) *Statement of Work, including staffing.* Describe the plan of action for meeting the objectives of the Outreach and Technical Assistance Program and the necessary staffing. Describe and explain the nature of any proposed collaborative or subcontractual arrangements necessary to carry out the project.

(d) *Proposed budget.*

(1) Submit a detailed budget accompanied by a narrative description

outlining and justifying the listed costs, for one year (12 months).

(2) Show all funding sources and itemize costs by the following line items: Personnel costs, equipment, material and supplies, travel, and all other costs.

(3) Salaries of project personnel who will be working on the project may be requested in proportion to the effort that they will devote to the project.

(4) Funds may be requested under any of the line items listed above provided that the item or source for which support is requested is identified as necessary for the successful conduct of the project, is allowable under the authorizing legislation and applicable Federal cost principles, and is not prohibited under any applicable Federal statute or regulation.

(5) The program announcement will specify any limitations on indirect costs under this program. The General Provisions of the annual Appropriations Act funding USDA ordinarily limit indirect costs under cooperative agreements between USDA and non-profit institutions, including institutions of higher education, to ten percent of the total direct costs of the agreement, with an exception when an institution computes its direct cost rates on a similar basis for all agencies covered by that Act (typically referred to as the Federal negotiated indirect cost rate).

(e) *Personnel.* Include the resumes of all anticipated personnel, including the Project Director in the proposal package. Also discuss the experience, qualifications, and availability of all personnel, including the Project Director, to direct and carry out the project.

#### **§ 26.10 Proposal review.**

(a) Prior to the technical examination, a preliminary review will be made by the USDA Office of Outreach staff for responsiveness to this solicitation. Proposals that do not fall within the solicitation guidelines will be eliminated from competition. All responsive proposals will be reviewed by peer reviewers using the evaluation criteria stated below. The peer reviewers will be selected to provide maximum expertise and objective judgment in the evaluation of proposals.

(b) To assist in the evaluation and obtain the best possible balance of viewpoints for funding consideration, peer reviewers will evaluate responsive proposals. The proposal review panel will be selected and organized to provide maximum expertise and objective judgment in the evaluation of proposals. The peer reviewers will evaluate each proposal using the

following evaluation criteria. The weight of each criterion will be specified in the program announcement:

(1) *Institutional commitment and resources.* Degree to which the institution or organization is committed to the project. Experience, qualifications, competence, and availability of personnel and resources to direct and carry out the project.

(2) *Feasibility and policy consistency.* Degree to which the proposal clearly describes its objectives and evidences a high level of feasibility and consistency with the USDA policy and mission. This criterion relates to the adequacy, soundness of the proposed approach to the solution of the problem and evaluates the plan of operation, timetable, evaluation and dissemination plans.

(3) *Number of socially disadvantaged farmers and ranchers served and collaboration.* Degree to which the proposal reflects partnerships and collaborative initiatives with other agencies or organizations to enhance the quality and effectiveness of the program. Additionally, the areas and number of socially disadvantaged farmers and ranchers who would benefit from the services offered.

(4) *Socially disadvantaged applicants-outreach.* Degree to which the proposal contains efforts to reach persons identified as socially disadvantaged farmers and ranchers in targeted counties. Potential for encouraging and assisting socially disadvantaged farmers and ranchers to own and operate farms and ranches and to participate in agricultural programs. Elements considered include impact, continuation plans, innovation, and expected products and results.

(5) *Preparatory features—statement of work.* Degree to which the proposal reflects innovative strategies for reaching the population targeted in the proposal and achieving the project objectives. Elements evaluated include originality, practicality, and creativity in developing and testing innovative solutions to existing or anticipated issues or problems of socially disadvantaged farmers and ranchers. Responsiveness to the need to provide socially disadvantaged farmers and ranchers with information and assistance on application and bidding procedures, farm management, other essential information to enhance participation of agricultural programs and conducting a successful farming operation.

(6) *Overall quality of the proposal.* Degree to which the proposal complies with the Application Guidelines and is of high quality. Elements considered

include adherence to instructions, accuracy and completeness of forms, clarity and organization of ideas, thoroughness and sufficiency of detail in the budget narrative, specificity of allocations between targeted areas if the proposal addresses more than one area, and completeness of vitae for all key personnel associated with the project.

#### **§ 26.11 Award process.**

(a) OR will use the views of the individual reviewers to determine which proposals to recommend to the awarding official for funding. Evaluated proposals will be ranked by OR based on merit. The awarding official reserves the right to make awards to ensure the variety among successful applicants and the nature of the projects funded in order to accomplish the program objectives. The awarding official also reserves the right to negotiate with applicants recommended for funding regarding project revisions (e.g., reductions in scope of work), funding level, or period of support prior to an award, based on the amount of resources available to achieve the broad program objectives. Revisions to proposals recommended for funding may not increase the proposed scope of or funding for a project or otherwise undermine or circumvent the competitive nature of the award process.

(b) The final decision to award is at the discretion of the awarding official. The awarding official shall consider the peer reviewers' comments and the recommendations by the OR staff and any other pertinent information before making a final decision.

(c) After a decision regarding funding is made, OR and the awardee which is selected will enter into a grant or cooperative agreement. The awarding official will notify the awardee of approval and inform it of the necessary documents needed to execute the agreement.

(d) Once all award decisions are made, OR will notify all unsuccessful applicants that their proposals did not receive an award.

#### **§§ 26.12–26.14 [Reserved]**

#### **§ 26.15 Authorized use of funds.**

Any funds authorized by the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers program must be used only for the project under the grant or cooperative agreement. There is no other authorized use of the funds. Eligible costs are limited to those line items specified in the approved budget.

#### **§§ 26.16–26.25 [Reserved]**

#### **§ 26.26 Other applicable Federal statutes and regulations.**

Several other Federal statutes and regulations apply to this program. These include, but are not limited to, the following:

- (a) 7 CFR part 1b—USDA Implementation of the National Environmental Policy Act;
- (b) 7 CFR part 3—USDA implementation of OMB Circular A-129 regarding debt collection;
- (c) 7 CFR part 1.1—USDA implementation of the Freedom of Information Act;
- (d) 7 CFR part 15, Subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964;
- (e) 7 CFR part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB Directives (*i.e.*, Circular Nos. A-110, A-21, and A-122) and incorporating provisions of 31 U.S.C. 6301–6308 as well as general policy requirements applicable to awardees of Departmental financial assistance;
- (f) 7 CFR part 3017—USDA Implementation of Government-wide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants);
- (g) 7 CFR part 3018—USDA implementation of New Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on awardees of Federal contracts, grants, cooperative agreements, and loans;
- (h) 7 CFR part 3019—USDA Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations;
- (i) 29 U.S.C. 794, Section 504 of the Rehabilitation Act of 1973, and 7 CFR part 156 (USDA implementation of the statute)—Prohibits discrimination based upon physical or mental handicap in Federally assisted programs; and
- (j) 35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

#### **§ 26.27 Fund disbursement.**

The method of payment will be by reimbursement by Electronic Fund Transfer (EFT), and payment will be requested on Standard Form (SF) 270, "Request for Advance or Reimbursement." Payments will be

processed in accordance with 7 CFR parts 3015 and 3019, as applicable.

#### **§ 26.28 Financial management systems and reporting requirements.**

(a) Awardees must comply with standards for the financial management and reporting and program performance reporting found in 7 CFR parts 3015 and 3019, as applicable.

(b) Awardees must provide to the OR quarterly financial and program performance reports. The reports are due 30 days after the reporting period, and an original and two copies of each report will be submitted. The financial report will be presented on SF-269, "Financial Status Report," and the financial and program performance reports will be prepared in accordance with 7 CFR parts 3015 and 3019, as applicable.

(c) The program performance report should also address progress on the activities under each of the areas of outreach and technical assistance, as stipulated in the grant or cooperative agreement.

#### **§§ 26.29–26.36 [Reserved]**

#### **§ 26.37 Monitoring compliance and penalty for noncompliance.**

(a) *OR monitoring.* OR will monitor compliance of the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers projects through the reports received in accordance with § 26.28 of this part, through information received from USDA field offices and the public, and through on-site visits to observe the operation and administration of the program.

(b) *Audits.* Awardees are subject to the audit requirements of 7 CFR parts 3015 and 3019, as applicable. An audit report will be submitted to OR annually in accordance with OMB Circular A-133. All records of the awardees will be subject to audit by appropriate USDA Office of Outreach staff or other responsible authority.

(c) *Penalty for noncompliance.* If the Director, OR determines that a project does not meet or no longer meets the objective of the program, that there has been a violation of the grant or cooperative agreement, that reporting requirements are not being met, or that funds are not being used only for the operation and administration of the authorized project, the awarding official is authorized to impose any penalties or sanctions established in 7 CFR parts 3015 and 3019, as applicable. Penalties may include withholding payments, suspension of the grant or cooperative agreement, or termination for cause. If a penalty for noncompliance is enforced, the reason(s) will be stated in a letter to



the awardee along with appeal procedures.

**§§ 26.38–26.40 [Reserved]**

**§ 26.41 Nondiscrimination.**

The policies and regulations contained in 7 CFR parts 15, 15a, and 15b apply to grants and cooperative agreements made under this part.

**§§ 26.42–26.50 [Reserved]**

Done at Washington, DC, this 23rd day of April, 2001.

**Ann M. Veneman,**

*Secretary of Agriculture.*

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